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STATE OF WISCONSIN
BEFORE THE ARBITRATOR

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

In the Matter of the Petition of	:
	:
MILWAUKEE TEACHERS' EDUCATION ASSOCIATION	:
	:Case 240
To Initiate Arbitration	:No. 46354 INT/ARB 6163
Between Said Petitioner and	:Decision No. 27076
	:
MILWAUKEE BOARD OF SCHOOL DIRECTORS	:
	:

Appearances:

Milwaukee Teachers' Education Association by Perry, Lerner & Quindel, S.C., by Barbara Zack Quindel, Esq.

Milwaukee Board of School Directors by Office of the City Attorney, Milwaukee, by Mary M. Kuhnmuensch, Esq.

ARBITRATION AWARD

The parties have been unable to agree upon the terms to be included in their contract for the period January 1, 1991 through December 31, 1992. After eleven negotiating sessions and seven mediation sessions the Milwaukee Teachers' Education Association filed a petition with the Wisconsin Employment Relations Commission, on October 3, 1991, wherein it requested the Commission to initiate arbitration pursuant to Sec. 111.70(4)(cm)6 of the Municipal Employment Relations Act. The Commission caused an investigation to be conducted by a member of its staff. After the parties submitted their final offers dated October 28, 1991, an impasse was declared. On December 12, 1991, Reynolds C. Seitz was appointed as the arbitrator. Mr. Seitz withdrew from the case prior to any further action. On April 9,

1992, Morris Slavney was appointed as the arbitrator. Mr. Slavney withdrew from the case prior to any further action. The parties selected the undersigned from a new panel of arbitrators on May 26, 1992. That selection was confirmed by the appointment by the Commission on June 2, 1992.

The arbitration hearing was scheduled to commence at the district office on September 10, 1992. At that time the parties met and after some discussion requested that the arbitration session be continued until October 1, 1992, in order to permit a final effort to arrive at a voluntary settlement. That effort was not successful. The arbitration hearing was conducted on October 1, 2, 12, 16 and 20, 1992, at the district's administrative offices. A transcript of the proceedings was provided to all parties on December 14, 1992. The parties exchanged their initial briefs through the arbitrator on February 1, 1993. Reply briefs were exchanged through the arbitrator on February 18, 1993.

ISSUES IN DISPUTE

The parties have been unable to agree upon wage increases, health insurance and three administrative matters. Both parties have proposed across the board increases for the approximately 2100 teacher's aides belonging to the bargaining unit. The Board has offered 3.5% for 1991 and 4% for 1992. The Union offer contains 4.25% increases for both years. In addition to those increases, each party has proposed a different additional incremental increase for the approximately 100 teacher's aides who are designated as safety aides. The parties have separately argued that the principal issue in this dispute is the Board's proposal to require the employees to contribute 5% toward the cost of health insurance premiums. The Union also proposed three administrative language changes. Those proposals are described in the summary of the Union's position starting at page twelve herein.

THE ASSOCIATION'S POSITION

I. COMPARABILITY. The Association stated that the proper comparison under standard 7(d), wages, hours and conditions of employment for these employees compared to other employees performing similar services, is with teachers, psychologists and administrators. These are the employees, who like school aides, work directly with students in the instructional process. The 2100 members of this unit include approximately 900 general aides, 1100 paraprofessionals and 100 school safety aides.

The Association said that general aides assist teachers in a variety of classroom and supervisory activities. It reviewed the testimony of a general aide with 19 years experience who works as an elementary school library assistant. This witness described a broad range of instructional and administrative responsibilities. The witness is responsible for instructing students in the use of the library. She has 21 classes on a weekly basis, with no other teaching or administrative staff in the library during those classes. In addition to which, she works with teachers in training students in peer mediation, and is in charge of the detention room during lunch and afternoon recess. Another general aide who is assigned to the classroom spends about 80% of her time tutoring individual children, working with small groups, correcting papers and doing anything that needs to be done in the classroom.

The Union argued that paraprofessional aides are generally assigned to the classroom, perform a wide variety of instructional skills and frequently work one-on-one with students. Paraprofessional aides must have 60 college credits. Those who work with exceptional education students must be licensed by the DPI, those who work in bilingual programs must be proficient in the program's language. A paraprofessional aide testified that she conducted group instruction outside the presence of the classroom teacher. She has also been called upon to teach Spanish if a substitute teacher was present but not

bilingual. Other paraprofessional aides testified that they teach classes, work in peer mediation programs, run computer labs, translate curricula and coordinate materials for anti-drug programs. A paraprofessional works with exceptional education students in middle and post high school level employment training. This includes training students, developing job sites and following the students in the program. This individual also works with adult service agencies to ensure that the students receive the services for which they are eligible. Aides testified that they acted as substitutes when teachers were required to be absent from the classroom. Safety aides assist teachers and administrators in providing safety and security on school premises.

The Union said that the District has recognized that aide work is similar to the work done by teachers. The District has developed programs to allow school aides to become teachers and some have become building principals. The District has worked with others to attract minority and non-degreed persons to the fields of teaching, social work and psychology. Internships have been offered to aides because as a group they represent a larger pool of minorities than any other instructional group. Approximately 800 members of this bargaining unit are eligible for a new program developed by the U.W. Milwaukee School of Education. The program, Metropolitan Multi-Cultural Teacher Education Program, will permit school aides who have a bachelor's degree to receive an internship to work as teachers while taking courses for teacher certification. The Association said that teaching aides constitute a pool of paraprofessionals for minority recruitment and for employment as bilingual teachers. Teaching aides also have a great deal of responsibility in community based programs for handicapped students.

The Association argued that there is no basis for comparing the aides in this proceeding with other classified employees employed by the District. The fact that employees are classified does not mean that they perform similar services. The Board has

attempted to draw a distinction between classified employees and employees who are certified. That distinction does not support the Board's effort to compare aides to classified support staff. Nor does it preclude the Union's claim that aides are comparable to instructional employees. The Union pointed out that aides, unlike support staff, are exempted from civil service examinations. Aides are hired by the principals in cooperation with the Board's central office. It said that a large number of aides are required to be licensed by DPI. This makes aides more comparable to teachers and other instructional employees with DPI licenses, than to classified building service, secretaries, food service and other support staff who are unlicensed. The Union said that the fact that aides are placed into a different pension plan than teachers and other instructional employees does not mean that they are not comparable. The Board has not presented any evidence that aides are similar to classified employees. The arbitrator should reject classified employees as the appropriate internal comparables.

The Association noted that the Board had submitted the nine largest urban school districts as external comparables. A previous arbitrator chose this group as being most comparable. The Union stated that it had some reservations about comparing Milwaukee to other districts. School aides are less likely than teachers to look for work in other geographic areas. The Board presented evidence from other taxing districts in the Milwaukee area. The Union argued that the only relevant comparison is with MATC, where there are instructional employees "who perform similar services" to the teacher's aides in this case. Evidence presented by the Board from these comparables, supports the Association's proposal.

II. HEALTH INSURANCE. The Association argued that the Board's proposal that teacher's aides be required to pay 5% of the cost of health insurance is a significant change in the existing benefit, where the Board currently pays 100% of the benefit cost. Arbitration decisions have established that the

Board must show a compelling need for this change, as well as provide a quid pro quo.

The Union argued that the Board's proposal does not address the problem of escalating health care costs. The Association stated that it had worked with the Board to control health care costs since the early 1980s. Teacher negotiations have generally set the pattern for proposals to be included in aide, substitute and accountant contracts. The Association reviewed a series of cost containment measures to which it had agreed over the past dozen years. These measures have been negotiated between the Association, on behalf of the teachers, and the Board, then later extended to aide contracts. The Association's bargaining history demonstrates that it has not been intransigent in cooperating with the Board's efforts to control health care costs. The Union's philosophy has been that cost containment as opposed to cost shifting will have an effect on the underlying problem. Other arbitrators have considered the parties' willingness to compromise in prior negotiations as an element to be considered before imposing a significant change through arbitration. The Association does not believe the Employer's offer would have any effect upon the underlying causes of health care cost escalation.

The Union stated that the evidence showed that the Board's offer was an administratively easy way to provide a one time cost savings to the Board. That cost shift will not change the health care cost trend line. It argued that one party's proposed change in a significant benefit could not be supported by "ease of administration." It argued that there are other options, that META has been willing to negotiate, which would have an impact on the underlying problem. The Association stated that it has been involved in ongoing negotiations with the Board to explore increased managed care. In July 1992, the Association proposed a PPO model to the Board. The Board did not accept the Union's offer, but it did negotiate PPO type discounts with hospitals. Those negotiations resulted in the District saving 2½ million dollars during the term of this proposed contract. The

Association argued that, "The PPO option is but one of a number of moves towards managed care that would impact on the escalation of health care costs." It presented other examples which it argued demonstrated that the parties have not exhausted options to hold down costs and not simply shift costs to employees.

The Association cited comments from previous arbitration cases in which arbitrators recognized that proposals for cost shifting were economic proposals which would not effect health care costs. It argued that because the Board had not met its burden of showing that the Union offer would not contain costs, and in light of alternative options which have not been explored, the Board's proposal to shift costs is unreasonable. The Union said that it had demonstrated its commitment to cost containment by including a "maintenance of benefits" proposal in its final offer. That proposal, which the Board did not offer, would save costs. The savings would result from capping the benefits a spouse insured under a separate indemnity plan could receive from the Board's insurer. It stated that this proposal is a more equitable way to accomplish cost savings than the Board's proposed 5% premium shift.

The Association disputed the Board's claim that teaching aides were "out-of-step" with other bargaining units. It said that a comparison of the two offers with internal comparable settlements supports the Union offer. The units cited by the Board represent non-instructional employees who agreed to 5% cost sharing in their 1989 contracts. Subsequently, the Board entered contracts with teachers, administrators and psychologists which did not require employee contributions. On the day that the aide contract was scheduled to begin, on January 1, 1991, 9,260 or 76% of the Board's employees had fully paid insurance and 2,856 or 24% employees had agreed to a 5% premium share. The Board delayed implementing cost sharing for these employees until July 1992. The recent trend has been for the Board to pay 100% of premium. The Association said that, historically there has been a relationship between insurance coverage in the teachers

contract and the aides contract. Historically the Board has attempted to negotiate cost sharing with the teacher's unit. During most recent negotiations with that unit, the parties agreed upon a number of cost containment proposals, but did not adopt the 5% cost sharing proposal. The Association's proposal in this proceeding contains all of the cost saving features in the teachers contract; it is identical to the terms of the teacher contract. The Union stated that while it did not believe that the classified support staff is comparable, there is no evidence of what quid pro quo may have been given to those units in return for premium contributions. Without that evidence there is no adequate basis upon which to compare their voluntary settlements and the Board's offer in this proceeding.

The Association argued that the Board's proposal would have an unfair impact upon these lower paid employees. Higher paid teachers, psychologists, social workers, assistant principals and principals do not contribute toward premium cost. The superintendent of schools has only contributed since July 1992. Based upon a \$298.54 cost for the AETNA family plan, the superintendent's 5% contribution toward premiums represents .27% of his salary on an annual basis. For aides working 30 hours per week, the 5% contribution is equal to between 3.33 and 3.87% of general aide wages and between 2.42 and 2.74% of paraprofessional aide wages. The Union argued "the impact on these employees is more devastating over time, for the 5% contribution is tied to the trend line for health insurance inflation."

The Association stated that when the Board negotiated with the teachers for cost sharing, it proposed that the 5% contribution should come from pre-tax dollars. The present proposal would not provide for payment through a pre-tax plan. It argued that the Board is making an offer which would have the greatest impact upon the take home income of its lowest paid instructional employees. It cited a prior decision which held that fairness prohibits imposing such a result; and argued that in this case, "fairness prohibits requiring these employees from

bearing a premium share when the large majority of the employees who are in the upper scale of this municipal work force have not entered into contracts providing for any cost shifting."

The Association reviewed the fact that approximately 60% of the employees are insured under the AETNA indemnity plan and 40% under HMOs. It argued that because the Employer's offer would increase employee contributions to the indemnity plan by more than the cost of HMO coverage, employees might drop out of the indemnity plan. That action might threaten the integrity of the indemnity plan.

The Union argued that because the District provides a self-insured indemnity plan there are no actual premiums. Rates are set based upon a formula which includes three elements, including a trend factor. The evidence shows that that factor is problematic and could cause the rate to be inflated beyond the actual cost of the plan. When that occurs, the money collected under the Board's offer would exceed 5% of the cost of insurance.

The Association stated that comparable comparisons do not support the Board's proposal. It cited prior authority, and argued that, "comparison to practices of premium sharing by other districts must be reviewed in an historical context." It reviewed data for nine other districts. The history in each of the six districts that have cost sharing is that premium payments have been a long standing part of their agreements. Three districts do not share premium cost. There is no trend to support the Board's offer. The Board has referred to Milwaukee's historical ranking among comparable districts. Comparisons of economic offers should include consideration of the impact of the proposed 5% cost shift upon the District's total offer compared to comparable offers.

The Association reviewed the Employer's exhibits relating to premium contributions by employees of other Milwaukee municipal entities. It said that some exhibits are misleading because they fail to note that only employees hired after a certain date at MATC, the Sewage District and Milwaukee County currently pay an

employee contribution. It noted that none of the educational assistant employees at MATC are required to contribute toward premium cost; and argued that they are the most like school aides in the public schools. It argued that of the four local taxing districts, only one required a percentage as high as that which was being requested by the employer in this proceeding. The Union concluded that the comparison with three other taxing units supported its proposal.

III. WAGE INCREASE. The Association proposed across the board increases of 4.25% for each year of the contract, compared to the Board's offer of 3.5% on January 1, 1991 and 4% on January 1, 1992. The Association said that internal comparisons with teachers who received 5% increases, and with psychologists, administrators and supervisors who received approximately 4.25%, favors the Association's offer.

The Union reviewed data which has been presented for nine comparable urban districts. It said that it had noted that errors were contained in the Board's exhibit, and that it had prepared a corrected exhibit. The Union then converted the corrected school year data to coincide with the two calendar year term of this contract. It explained the rationale for the corrections and conversions. The Association compared the two offers in this proceeding with annualized average increases granted in those comparable districts for which wage information was available for 1991 and 1992 at four benchmarks. Those benchmarks are general aide minimum and maximum and paraprofessional aide minimum and maximum. It summarized the comparison as follows: "The Board's proposal is 1.12% less for the first year of the contract and .21% less for the second year for a total two-year difference of 1.33 percent. The META proposal also averages somewhat less than the increases received by the nine largest districts for the current two year period. Overall, the META proposal is .33% less. This difference, however, is far closer to maintaining comparability than the Board's proposal would be." Educational assistants at MATC

received 5% increases for 1991 and 1992. The Union argued that, based upon the similarity of services rendered by those MATC employees and the aides in this proceeding, that MATC contract supports the Association's offer.

The Association argued that "the interest and welfare of the public and other factors" support its proposal. It noted that, in 1991, the poverty level for an individual was \$6,932, and was \$13,924 for a family of four. The Union said that the Board's proposed rate for general aides would result in an annual income of between \$7,706 and \$8,976. The range for paraprofessional aides is between \$10,908 and \$12,331. It said that many of the aides provide the sole source of support for their households. It argued that the interest and welfare of the public requires that these employees, who work with children in the capacity of these aides, be paid fairly.

SAFETY AIDE WAGE INCREASE. The Union has proposed an additional 40¢ incremental increases for safety aides on each January 1, 1991, September 1, 1991 and January 1, 1992, compared to the Board's single additional increment of 50¢ on January 1, 1991. The Association said that it based its offer on the need to reach closer parity between safety and paraprofessional aides. It reviewed the evolution of the position from community aides, who functioned as liaison between the school and the community in the late 1970s, to an in-school security force. It noted that when the position of community aide was developed, no post high school education or experience was required for the position. Since 1985, with the change to school safety aide, an associate degree in law enforcement or two years of bonded security background has been a required eligibility requirement. More than half of the safety aides now have college credits; many have bachelors degrees. The Union pointed to testimony that an aide at South Division High School: supervises students between classes and in the cafeteria area; investigates violations of school rules against sexual assault, robbery, weapons, drugs and staff assaults. "Criminal investigations require extensive

interviews, liaison with police and court appearances. Since students are frequently returning from correctional institutions to the high school, school aides are required to perform background checks and keep a particular eye on these students." Safety aides are more frequently called upon by teachers, to help with disruptive students. School safety aides are put in dangerous situations. "The overall danger aspect is a lot greater than when I first started." The Board has approved the use of metal detectors within schools. The Union cited two studies which it said had been called upon to study security in Milwaukee Public Schools. These studies recommended that: "salary levels should be adjusted to reflect differences in levels of accountability, control and responsibility;" and, "compensation . . . should be commensurate with their training and with the compensation of local law enforcement officers." The Association concluded that based upon educational requirements, training and certification, school safety aides are most comparable to paraprofessional aides. It argued that since its offer would provide wages which more closely approximate paraprofessional wages than the Board's offer, its offer is more reasonable.

IV. OTHER ASSOCIATION PROPOSALS are summarized below:

A. **NINE-DAY PAY CHECKS.** this proposal would provide for teaching aides to receive a standard pay check covering nine days for every pay period. The Association said that, currently the aide's pay checks are based upon the number of working days covered in a pay period. Throughout the year, primarily because of vacation periods, the number of days paid fluctuates between eight and ten. This makes it difficult for these low income employees to budget. The Union stated that there was little Board testimony that this proposal would create any problem for the Board.

B. **DEFINED WORK DAY.** The teacher aide contract does not currently provide for any defined beginning or end of the work day. The practice has been to assign aides duties between 7 a.m.

and 4 p.m. "However, in recent years, there have been some instances of aides being asked to work beyond 4 p.m. One witness testified to being asked to work until 4:45 p.m.; she was concerned for her safety, because this necessitated her leaving the building alone. The only other employee in the building after 4 p.m. was a cleaning woman. The Union argued that "in order to avoid the safety problems arising when aides are requested to work beyond 4 p.m., the META proposed the defined work day provision." The Union stated that, "the only reason given by the Board for opposing this proposal was its wish to maintain flexibility." META argued that, since its proposal is consistent with the Board's actual practices, adopting the proposal would not result in any significant change for the Board.

C. PROFESSIONAL ASSISTANCE. The Association said that it has proposed a professional assistance program similar to one contained in the teacher contract. "This procedure provides a mechanism for identifying a chemical abuse or mental or emotional disorder which may be affecting the employee's performance and allows the employee to voluntarily seek professional assistance to avoid a negative evaluation or discipline." The Union discussed the merit of having such a program; and said that the Board did not dispute the reasonableness of the program. It explained that the parties disagreed whether the proposal would require the Board to grant an employee advance sick leave. The Union argued that it does not. It concluded that, since this is the only concern raised by the board, the proposal should be adopted.

V. QUID PRO QUO. META stated that, "Arbitrators have consistently found that where one party seeks to change a significant benefit, there must be a quid pro quo offered by that party sufficient to justify the change that is sought." It cited arbitral authority for that proposition; and argued that, "the Board has not presented a compelling basis for its essentially economic proposal to have these employees pay a portion of the

premium." The Union said that even if the Board had shown a compelling reason, it must provide an adequate quid pro quo for the change. It cited a number of previous cases where arbitrators had evaluated the adequacy of a proposed quid pro quo. The Association stated that in the present case the 5% employee premium contribution will significantly reduce the 1992 wage increases. It stated that, after the cost of the employee's contribution has been deducted from the Board's 4% wage offer, a general aide at minimum salary would receive a net wage increase of 2.06% in 1992. A paraprofessional aide at maximum salary would receive a 2.79% wage increase. It stated that compared to increases with external comparables, those increases are not quid pro quo. The Union cited other decisions where arbitrators found that wage offers, in those cases, were not quid pro quo for 5% health insurance cost sharing proposals.

The Union noted that "Board witnesses had testified that the quid pro quo in its proposal was a salary increase $\frac{1}{2}$ to 1% above all other classified units." The Union argued that classified employees are not comparable. There is no evidence of that comparability. When the comparison is made with other instructional employees there is no quid pro quo. When compared to the Board's own external comparables, the Board's proposed salary increase is below that comparable average wage increase. The Union said that even if the additional $\frac{1}{2}$ % increase that the Board offered for 1992 is considered quid pro quo, that offer is not adequate. The additional $\frac{1}{2}$ % in wages would not begin to pay the 5% toward premiums required for either of the family plans. "While a quid pro quo may not be dollar for dollar, there has to be some relationship which would lead the arbitrator to believe that there would have been a sufficient incentive through voluntary bargaining to significantly change an existing benefit." The Union concluded that the Board's offer does not meet that standard.

THE BOARD'S POSITION

I. COMPARABILITY.

The Board cited arbitral authority and argued that the statutory criteria requiring comparisons "is perhaps the most important and persuasive of the interest arbitration criteria." The Board reviewed a number of reasons for offering the ten largest school districts in the state of Wisconsin as intra-industry, external comparables. It noted that Milwaukee is unique among Wisconsin municipalities because of its size. However, "all large urban school districts, to one extent or another, share the same type of financial constraints. This common bond supports the utility of the comparison." The ten largest school districts in Wisconsin were found to be the most appropriate comparables during a prior arbitration proceeding between the District and the teachers unit of the META.

The District said that other public employers in Milwaukee County were comparable under Wis. Stat. 111.70(4)(cm)7.e., other employees generally in public employment in the same community and in comparable communities. The Board presented evidence for employees of Milwaukee Area Technical College, Sewage Commission, City of Milwaukee, Milwaukee County and state of Wisconsin employees working in Milwaukee as the basis for comparison under this standard.

The Board argued that for the purpose of this proceeding, "internal comparables are the most significant for the arbitrators consideration." It stated that it had , "consistently attempted to maintain an internal pattern of equity of contract settlements with its classified bargaining units." It cited previous arbitration decisions which stated that: the internal pattern of settlements deserves a great deal of attention; where a Union is seeking more than the internal pattern they must justify it; there is a very strong presumption in favor of an offer which is consistent with the settlement

reached through bargaining with other city units; what is a valid position in bargaining is a valid position in arbitration.

II. HEALTH INSURANCE. The District reviewed eligibility requirements for employer paid health insurance coverage in other comparable school districts. It also reviewed employee contributions in those districts. It noted that in two districts an employee is not eligible to participate in the plan unless the employee works full time. These districts, Kenosha and Sheboygan, consider 30 hours a week full time. Four districts: Appleton, Green Bay, Racine and Waukesha require aides to work 35 or 37½ hours a week in order to be eligible for the maximum employer contribution toward health insurance. These districts provide a pro rated employer contribution for aides who do not work full time. Each of the foregoing districts require their "full time" employees to contribute toward premiums for family coverage. Four of those six districts require contributions for single coverage; they are: Appleton 3%, Kenosha 9%, Racine 15% and Waukesha, which pays 100% of the premium except for the summer period. Waukesha requires the aides to pay 100% of the premium during the summer months. These six districts require larger employee contributions for family coverage. The employee's share of that cost also varies, it is: 6% in Green Bay, 9% in Kenosha, 10% in Sheboygan, 15% in Racine and 63% in Appleton. Once again Waukesha pays 100% of the premium cost for family coverage during the school year, but, employees must pay the full cost during the summer months.

The remaining three comparable districts are Eau Claire, Janesville and Madison. Eau Claire and Janesville pay 100% of the premium for full time aides, which requires 40 hours in Eau Claire and 35 hours a week in Janesville. Aides working less than 35 hours in Janesville are not eligible for insurance. Aides working less than 40 hours a week in Eau Claire must pay a pro rata share of the premium. The Board said that "Finally, Madison comes the closest structurally, to what the Board is proposing for health insurance. Madison provides health

insurance for all aides working 19 or more hours a week. Madison, however, requires an employee contribution of 10% toward the premium on the indemnity plan. Similarly, in Milwaukee, the Board has proposed providing insurance coverage for all aides working at least 20 hours a week, with the employee contributing 5% toward the premium for either the HMO or the indemnity plan. In the instant case, the Board's final offer as it relates to premium sharing is well within the norms currently in place with the ten largest school districts in Wisconsin." The Board said what is even more important is that other districts require the lowest paid aides to contribute something toward health insurance. It cited examples from Kenosha, Sheboygan and Appleton. It argued that other public employees in Milwaukee County and State employees working in Milwaukee pay between 3.6% and 15% of their health insurance premiums.

III. WAGE INCREASE. The District noted that the Union had not offered any external comparables for consideration. It referred to data showing aides' pay in Milwaukee and in the ten comparable districts for the period 1986 through the end of the proposed contract period. The Board summarized this data as showing that paraprofessional aides in Milwaukee have historically rated number one of ten at the maximum pay rate and been paid the second highest minimum wage rate among all comparables. Wages for general aides in Milwaukee have "ranked fourth as to minimum rate of pay and number five as to maximum rate of pay." The wage rankings would not change under either of the offers in this proceeding. The District said that it is important to note that the 1,000 paraprofessionals comprise the largest segment of the bargaining unit followed by about 900 general aides. Their wages have not eroded over time when compared to their respective counterparts.

The Board said that the approximately 100 safety aides are the smallest component of the unit. There are no comparables to this position in other school districts. The Board has offered a one time additional 50 cent wage increase compared to the Union's

request for three increments totalling \$1.20 over the life of the contract. It noted that the Union gave two reasons for its request, increased danger in the schools and to bring safety aide wages more in line with paraprofessional pay. The Board cited the testimony of a Union witness that, comparing these two positions is like mixing apples and oranges. That witness said that career paths for each position are very different. He, a safety aide, had no desire to teach. The Board argued that "amending the salary structure for safety aides based in part on alleged similarities in the job function, job requirements or career path, . . . is simply not supported by the record." The District said that it is a misrepresentation to paint the Milwaukee Public Schools as war zones. While violence in the community may spill over into the schools creating a greater degree of danger for everyone, the Board is dedicated to its task of educating over 99,000 students of all races, religions and nationalities. They have done so in a relatively safe environment in spite of increased violence in the community. The Board has offered an additional increase to safety aides in recognition of the important and very tough role these aides play in the schools.

The Board cited arbitral authority for the proposition that an "internal pattern of settlements should be given controlling weight unless the Union can demonstrate that acceptance of the employer's offer would result in significant disparities in wage rate levels relative to external comparisons. It said that voluntary - settled contracts should be determinant in a case where the Union is merely trying to 'get more' through arbitration." The Board argued that, "should the META prevail in this arbitration case, irreparable harm would be done to the collective bargaining process. A divergent outcome in this proceeding from that which has been achieved by numerous voluntary settlements would necessarily discourage collective bargaining and would set the Board back years in its efforts to reach voluntary settlements."

The District said that it has 13 different bargaining units falling into three categories, certified, classified or certified/classified. It said that it has historically distinguished between these categories, by labor function, in negotiating contracts. It argued that distinguishing characteristics between classified and certified units originates by statute. The Board has historically negotiated "separate internal patterns" with the two groups. The Board reviewed "historic wage patterns" for the period 1986-1989. In 1986, the wage pattern for the "majority of the classified units fell within a range of 3% to 4%, while the pattern for the majority of certified units that same year fell within a range of 4% to 5%." In 1987, the ranges for the majority of the units were 2.35-3.75% for classified units and 4% to 5% for the certified. In 1988, 3.5% to 4.8% classified and the majority of certified units fell at 4.5 percent. It said, "Finally, beginning in 1989, the classified units consistently received a wage increase of 3% per year, while the certified units were receiving 4% to 5% wage increases." It argued that all of the classified units who had reached voluntary settlements (for this contract period) agreed to 3% and 3% wage increases and a 5% contribution toward health insurance premium. It said that in order to induce a voluntary settlement with this unit, the Board broke the pattern it had set with other classified units, by offering 3.5% and 4% wage increases. The Board concluded by saying that its offer more closely mirrors what a voluntary settlement would have looked like had it been reached. The META is not only attempting to break the internal wage pattern, it is not willing to adopt employee contributions toward health insurance.

IV. PUBLIC POLICY considerations support the Board's health insurance proposal. The Board argued that it had presented volumes of evidence in support of the position on the 5% employee contribution toward health insurance. In Milwaukee, as in the nation, escalating health costs are going through the roof. A larger and larger portion of the budget is going toward health

insurance. As a public employer there are limited tax dollars available. The Board is interested in getting some relief from health costs in order to improve other services in the district. There is a philosophical dispute between the Board and the Union. The Board said that the Union was not willing to even consider cost sharing during negotiations. The Union believes cost containment measures are the appropriate response. Even with the Board's aggressive cost containment efforts, costs have continued to rise. The Board is not saying that employee contributions are the answer to increasing health costs. Those contributions would be one element of a multifaceted approach in trying to reduce over all health costs. The Board argued that it has made a compelling case for cost sharing. The Board has asked all of its other non-META classified bargaining units to cost share. Premium sharing has been implemented by both public and private sector employers. The Board is not proposing to take away a benefit, but, proposing that employees contribute toward its cost.

The Board argued that the aides' wages have kept ahead of consumer price index increases. The total package cost of the Union's offer for 1991 is 7.64%; in 1992 that offer would increase costs by 9.19 percent. The Board's offer has a total 1991 cost increase of 6.75% and a 1992 increase of 8.19 percent. The Board said that its offer most closely mirrors the voluntary settlements already in place in the district.

REPLY BRIEFS

I. **THE BOARD'S REPLY BRIEF** began by criticizing the Union's suggestions that, external comparables should be disregarded and that teachers, psychologists and administrators are comparable. It argued that, "external comparables offer a benchmark from which internal comparables may be judged." It argued that the Union's argument violates WERC rules against mixing professional and non-professional units. Aides should be compared to aides or

support staff compared to support staff. The aides unit shares a closer comparability with other support staff than it does with the teaching staff. It reviewed the differing educational requirements which it said distinguish the three categories of teaching aides from teachers, psychologists and administrators. It argued that the fact some school aides have the same license that is required for classified Handicapped Children's Assistants supports the Board's position that, aides are comparable to other classified support staff units.

The Board dismissed the Union's assertion that there is a career path between aides and teachers. The program cited by the Union was established outside of the Milwaukee Public School system, and can only accommodate 20 employees a year. It said that the aides who became teachers generally have held a bachelor's degree when they became employed as aides. It argued that the Union was inconsistent in arguing that other taxing districts in Milwaukee are not comparable, and then, arguing that education assistants at MATC are comparable to the aides in this proceeding. It said that MATC is not comparable because its students are primarily adults.

The District said that the Union had distorted the record in arguing its position on employee contributions toward health insurance. It then restated its position on eleven separate items in order to emphasize its arguments. In addition to those points, it said that the only reason the Union's proposed coordination of benefits proposal had not been included in the Board's offer was inadvertence. It said that, that program would only have saved \$28,100 out of a \$5.5 million dollar item. It denied that cost shifting would endanger the integrity of the indemnity plan. The Board stated that only one-third of the aides' unit is enrolled in the indemnity plan. It characterized the testimony of the Union's health insurance expert witness as speculative, theoretical and unsupported by the evidence, and argued, by implication, that the Board's offer would not adversely affect the viability of the District's indemnity plan.

The Board disputed the Union's assertion that the Board's external comparables did not support its proposal. It argued that because the "vast majority of the aides unit is less than 40 hours, with most being between 30 to 35 hours, they compare to other districts based upon their part-time status." Using that criteria, the Board argued that all of the other comparable districts require an employee contribution toward health insurance premiums.

The District criticized the Union's wage analysis as having been a manipulation of the Board's data. It said that the Union skewed the data by placing a disproportionate proportion of pay raises, received by comparables, in the latter half of the affected school year. It reiterated that the Board's offer would not affect the Milwaukee District's ranking among comparables. It said, "the ranking is not affected by premium sharing since virtually all of the other districts require premium sharing in some form or another."

The Board argued that the three administrative proposals contained in the Union's offer should be rejected. It said that it understands the desirability of the proposed "nine-day pay check." It would have been willing to agree with this proposal in a voluntary settlement, but, it is not willing to incur the additional administrative expense without a voluntary agreement. It argued that because the school year is predictable, employees should be able to plan their budgets. An alternative is also available through the credit union. The District said that the Union had only been able to point to one problem which would have been avoided by its "defined work day proposal;" that problem was resolved informally. Adopting the Union's proposal would jeopardize the Board's ability to adequately and safely supervise students after school. Buses often run late and there are problems associated with after school occurrences. The Union's "professional assistance procedure" is ambiguous. The Board had a reasonable concern that this proposal carried a potential cost in the form of advancement of sick days.

The Board argued that it had offered a twofold quid pro quo. The first is increased benefits in major medical and vision coverage. It said that these benefit improvements are equal to a one quarter percent increase in wages. It said that it had offered an extra 1.5% wage increase to the aides' unit. "A general aide will see his or her salary increase by 50¢ to 57¢ per hour over two years; a paraprofessional aide by 70¢ to 78¢ over two years, and the safety aide by \$1.09 to \$1.22 per hour over the same two-year period." "Given that two-thirds of the bargaining unit is enrolled in an HMO, they would only be asked to contribute approximately \$18 monthly toward their health insurance effective July 1, 1993. The Board concluded by saying that the Union's dental proposal represents first year costs of \$13,500 and second year costs of \$20,000. It said these increased costs negate any savings that would be realized under the Union's proposal. This demonstrates that META is unwilling to cooperate with the Board's effort to keep down costs.

II. META'S REPLY BRIEF began with the assertion that the Board has failed to establish a uniform pattern of internal settlements. The Union reviewed the prior arbitration decisions which had been cited by the Board and argued that they did not apply to the facts of the present case. It said that, "the Board has attempted to carve out a group of unions and claim that these groups, in and of themselves, constitute an internal pattern of settlement." The Union reviewed evidence and argued that, "there was no evidence introduced to show that the aides' past settlements had been patterned on contract settlements with classified bargaining units." It argued that to the extent that there has been an internal trend, that trend was three voluntary settlements affecting the majority of the District's employees. In those cases, the Board provided fully paid health insurance.

The Union argued that its philosophy of cost containment is a more reasonable approach in addressing health care cost escalation. It argued that in two cases, cited by the Board, where arbitrators recognized cost sharing as reasonable, the

parties had not worked together to contain health costs. It said that the parties in this case "have been working on an ongoing basis to contain cost increases."

The Association restated its belief that external comparables "are of limited usefulness given the history on the provision of health insurance in the various districts." With regard to the number of hours employees are required to work in order to be eligible for insurance coverage, the Union said that this is a condition that has existed since the beginning of provision of health insurance to this unit. This has been a constant feature of the Board's employment relationship with the aides and should not affect consideration of the premium share proposal.

DISCUSSION

I. **COMPARABILITY.** Both parties expended considerable effort in arguing their respective positions on comparables. They have agreed that the nine other largest school districts in the state are appropriate external comparables, though the Union stated that it had some reservations about comparing Milwaukee to other districts. The law requires the arbitrator to compare the two offers in this proceeding with wages, hours and conditions of employment of other employees performing similar services. This statutory requirement has been recognized by arbitrators as a primary standard for comparing the reasonableness of offers in arbitration proceedings. It is readily apparent that this comparison is not as helpful in this case as it is in more traditional fact situations. Those situations usually involve similar employees in similar circumstances. Here the nature of the job may be similar; but, the circumstances within the largest metropolitan area of Wisconsin, located in the southeast portion of the state, are dissimilar to Appleton, Eau Claire, Green Bay, Sheboygan, Madison and Janesville for at least the reason of geographic location. The Union's point that these employees are

less likely than teachers to look for work in other areas of the state is well taken. That argument simply recognizes that lower paid hourly employees do not have the incentive or economic mobility to relocate for subsistence wages in a new location.

It is not possible to determine just how similar the services of aides in this proceeding are to the services of teaching aides in those nine comparable districts. Two districts have a single classification for "all aides." These districts, Appleton and Kenosha, also have among the lowest aide wage scales, starting at \$5.62 and \$5.31 and topping out at \$7.17 and \$6.87 respectively. Green Bay has three separate categories with a straight wage of \$9.02 for general aides, \$9.32 for special education and \$10.02 for HRG interpreters. Some other districts have wide ranging wage scales; some have up to four separate categories of aides. The aide contracts all contain different kinds of references to job duties and responsibilities. Some contain job descriptions; most, as in Milwaukee, do not. Some contracts require in service training, most do not. Separate exhibits which contained job descriptions in the various districts are definitive. All of which causes one to question whether the fact that these groups of employees are classified as teaching aides justifies the conclusion that all aides are similar employees in similar circumstances. On the other hand, aides in all of these school districts do appear to have one significant similar job responsibility. That responsibility is to either assist professionals in the educational process or to provide direct assistance to children involved in that process. Education of children is the sole reason that these school districts exist. Because school aides, no matter into what additional classifications they may fit, have been deemed qualified to directly participate and interact with students, they are deemed comparable to other employees performing similar services in this proceeding.

The disagreement about which of this Districts' employees is most comparable for the purpose of internal comparison appears to

be academic. Each side has suggested that its offer should be compared to some other agreements which support the reasonableness of its offer. It is a well established doctrine in Wisconsin interest arbitration cases that such selectivity is not the rule. Rather, all of the other collective bargaining agreements voluntarily entered into between the instant employer and other labor organizations are subject to significant consideration. Arbitrator Neil Gundermann summarized one reason for this rule in a 1989 City of Milwaukee decision.

One reason is that voluntary settlements between an employer and other unions reflect the results of collective bargaining, and if interest arbitration is intended to provide the parties with the same results bargaining would have provided, other settlements give guidance as to what that result would have been if the parties had bargained an agreement. Settlements with other labor organizations reflect the factors normally taken into consideration by the parties in reaching a voluntary settlement including such factors as the cost of living. Some arbitrators have expressed the concern that if either party is permitted to deviate from the pattern of voluntary settlements through arbitration without considerable evidence to support such deviation, it will only serve to encourage the use of arbitration in the future.

Although the prevailing view of arbitrators is to give significant weight to internal comparables, arbitrators also recognize that in a particular situation there may be justification for deviating from the pattern of voluntary settlements. However, there appears to be a consensus among arbitrators that the party seeking such deviation from the established pattern has the burden of justifying such deviation. City of Milwaukee and Technicians, Engineers and Architects of Milwaukee, (1989) Case 307 No. 39793 INT/ARB 4671.

There has been a great deal of conflicting evidence presented on the record in this case. That evidence has established that this

is a unique group of employees who are not easily likened to any other bargaining unit in the Milwaukee School District. That fact underscores the importance of comparing the two offers in this proceeding with all of the voluntary settlements previously entered into by the Board during this contract period.

II. HEALTH INSURANCE. The parties presented what has become the classic argument about health insurance cost containment and the need for employee cost sharing of health insurance premiums. Each side presented its position completely and forcefully. Their arguments summarized above will not be repeated here. Escalating health care costs have been a matter of serious concern to the Employer since the early 1980s. Since that time the Board, with cooperation of the Union, has implemented a broad range of health care cost containment initiatives. In recent years, when it appeared that there is not much more to be done to contain costs, the Board has attempted to negotiate premium sharing. Premium sharing is probably not an effective cost containment measure; but, depending upon the proposal, it is an effective means of shifting some of the cost from the employer. Employee bargaining units, this Union in particular, have resisted the Employer's effort to negotiate any kind of premium sharing.

Employer exhibit RR provided 1991-1992 and 1992-1993 health insurance cost information for the ten largest school districts in the state. Neither party presented comparable historic cost data. The Employer argued that it provided a cadillac health plan. Actually, employees have the option of choosing between four health insurance offerings which ranged in cost during 1991-1992 from \$315 a month for Prime Care's family plan to \$461 for AETNA's family indemnity plan. In 1992-1993, these coverages ranged from \$346 to \$544. In seven out of nine comparable districts, employees did not have any choice of carriers. Total monthly family premiums for the two year period in those districts were as follows: Appleton \$383 and \$404; Green Bay \$410 both years; Janesville \$367 and \$383; Kenosha \$461 and \$508;

Racine \$390 both years; Sheboygan \$310 and \$411 and Waukesha \$514 and \$597 per month. Madison offered a choice of family plans with the HMO costing \$319 during 1991-1992 and the indemnity plan costing \$451. These costs increased to \$354 and \$502 during 1992-1993. Eau Claire offered a choice of two plans costing either \$351 or \$358 in 1991-1992. It changed from Blue Cross to WPS during 1992-1993, during which period its costs were either \$378 or \$392 depending on the choice of plan. From the foregoing it appears that HMO family health insurance premium costs in Milwaukee have been below the median costs for family coverage among comparable districts. The cost of its indemnity plan, however, is the most expensive offering among comparable districts except for Waukesha's family plan. Data on employer exhibit BB indicates the cost of Milwaukee's indemnity plan has increased by 246% between July 1, 1984 and July 1, 1992, when the family plan cost \$552.17 each month. (NOTE - This varies from \$543.57 reported on ER EX RR) Its other family plans increased between 175% and 183% during the same period. Testimony regarding what percent of the aides in this proceeding have indemnity coverage is in conflict. The Union's witness testified that 60% of the aides had opted for this plan, but the Board's witness testified 612 aides were enrolled in the indemnity plan. The Board argued that this means only one-third of the aides had opted for this high cost plan. (According to the arbitrator's calculator 612 is equal to 29% of 2,100) That same Board witness testified that 60% of all employees in the District were enrolled in the indemnity plan. Because the Board's witness was asked specific questions about the number of employees enrolled in the various plans, and because he responded knowledgeably to those inquiries, his answers are most convincing.

It appears that the cost increases in the indemnity plan have far outstripped other health insurance cost increases in this district over the past eight years. It also appears that a far smaller percentage of the employees in this bargaining unit, than employees of the District as a whole, are enrolled in this

high cost plan. It appears that the cost of other health insurance plans in Milwaukee are at or below the average and median cost of family coverage in comparable districts. It also appears that for the period 1992-1993, the cost of the indemnity plan in Milwaukee increased by \$82.49 each month compared to a \$32 per month average increase in Milwaukee's Family, Compare and Prime Care plans. The average monthly increase for family coverage was \$38 in the nine comparable districts. The fact that less than one-third of these aides are enrolled in the high cost indemnity plan, compared to 60% of all District employees, compels the conclusion that these aides contribute less to health care cost inflation than the average employee of the District.

The Board pointed out that it has maintained a very liberal policy in providing health insurance to all of its aides who work more than 20 hours a week. It argued that this fact supported its cost sharing proposal. It compared its policy to the policies of most other school districts which either require aides to work 35 or more hours per week to qualify for insurance coverage, or require aides who work less than full time to contribute toward premium cost. That argument is not germane to the health insurance issue in this proceeding. The established facts are that the vast majority of the aides in this proceeding work an average of 30 hours a week during the school year. Safety aides work 40 hours a week during the school year. For whatever reason these aides, and all others working 20 or more hours a week, have been previously granted full health insurance coverage paid for by the employer. The employer is proposing to reduce that benefit. There has not been any evidence that comparable employees in any of those comparable districts who have historically received an employer paid health insurance benefit are now being required to contribute toward the cost of the benefit. The Board stated that, "Madison comes the closest structurally, to what the Board is proposing for health insurance." In that district, employees contribute 10% toward the cost of either \$201 for single coverage or \$502 for family

coverage under the indemnity plan. They do not contribute toward the \$135 or \$354 premiums for HMO coverages. In Madison, all aides working 19 or more hours a weeks are provided with health insurance. The record indicates that there has not been any change in Madison's policy since at least 1986-1988. The record does not indicate what percent of Madison's aides contribute toward premium cost. It does show that Madison's aides have the same health insurance benefit package as its teachers. The comparison with external comparables favors the Union's health insurance offer in this proceeding.

In order to fortify their internal comparable comparisons and arguments, both parties compared their offers for the aides in this proceeding with settlements between the Board and some of its other bargaining units. Those arguments were ingenious and interesting. They were not compelling. Though more than one-half of the members of this bargaining unit are paraprofessionals, there is no basis upon which to make a finding that aides are comparable to teachers, psychologists and administrators employed by the District. The fact that the Board would like to treat all of its classified bargaining units the same way does not make those units comparable. The fact is that this is a very distinctive bargaining unit. The arbitrator has reviewed testimony and exhibits in an effort to be able to better understand this employer's employee classification system.

Those efforts indicate the Board has a total of 16,049 employees (ER Ex MM). Of that number, 7,828 are teachers, substitute teachers or psychologists. The Employer calls these employees "certificated" none of these employees contribute toward the cost of health insurance. There are 549 administrative and supervisors listed as "certificated/classified." These individuals apparently began to contribute toward the cost of health insurance on July 1, 1992. Another 7,672 employees are listed as "classified." The largest number in this group is 2,347 part-time recreation workers belonging to District Council 48 AFSCME Local 1616-889J.

According to Union Exhibit C, only 238 members of Local 1616 contribute toward health insurance. (The arbitrator understands that the numbers on this Union Exhibit reflect the number of the employees in the work force in 1990; the numbers therefore differ from the Employers count.) One can only assume that these Local 1616-888J employees are considered part-time employees who are not eligible for health insurance. No information about this group of classified employees has been provided. The next largest group of classified employees are the 1,997 school aides involved in this proceeding. Other groups include: 1,441 food service managers, food service assistants and handicapped children's assistants; 624 clerical employees, regular; 155 clerical employees, hourly; 398 building service helpers; 270 engineers, boiler attendants, 187 building trades employees; 15 school accountants; finally there is a group of 238 employees described as playground custodians and laborers, stores division materials handlers, truck drivers, driver helpers, plant operation servicemen and changemen, social work aides, physical plant employees, audiovisual assistant, central kitchen deliverymen and data processing employees. This latter group of employees appears to be that above-mentioned group of 238 employees listed by the Association as members of AFSCME Local 1616.

Using the Employer's numbers, it appears that after disregarding those 2,347 part-time workers for whom no information has been provided, 3,328 classified employees, all except the 1,997 teaching aides, contribute toward health insurance premium cost. According to the Union's numbers, of 12,116 employees having union contracts in September 1992, only 2,856 employees contributed toward health insurance. A total of 9,260 or 76% were not required to contribute. The disparity in the numbers appears to be caused by the fact that the parties used different base years. In spite of inconsistent numbers, it seems obvious that there is no pattern of employee contributions toward the cost of health insurance in this district.

It is evident that the Board has decided to attempt to negotiate employee contributions with greater intensity during recent rounds of contract negotiations with this and other bargaining units. While the Board succeeded in negotiating employee contributions with four locals in July 1989, it deferred those employee's contributions until July 1, 1992. In September 1990, it proposed that teachers should contribute, but, settled with the teachers three months later without requiring teacher contributions toward health insurance. The Board has subsequently settled two additional contracts which provided for the Board to pay 100% of the premium cost.

As noted, beginning at page 25 above, all of the other collective bargaining agreements entered into between the Milwaukee Board of School Directors and other labor organizations are subject to significant consideration. More than 75% of all of the employees who negotiated 1991-1992 contracts with this employer were not required to make any contribution toward health insurance premium cost. Further, a much higher percent of those employees who have contracts are insured by, but not contributing to, the higher cost indemnity plan than the percent of teaching aides who have that high cost coverage. The pattern of 1991-1992 contracts between this Employer and the Employers other bargaining units supports the Union's position on health insurance.

III. WAGES. The other principal issue in dispute is wages. The only evidence subject to analysis relates to the two proposed across the board wage offers. The Union has offered 4.25% for each of the two years compared to the Board's offer of 3.5% in 1991 and 4% for 1992. These offers would affect all of the approximately 2,100 members of the bargaining unit. The remaining wage issue relates to the parties proposed additional incremental increases for approximately 100 safety aides. That issue, for which there is a dearth of information, is reviewed briefly at the conclusion of this section of this discussion.

Of all of the teaching aides employed in the ten largest school districts in Wisconsin, approximately one-half are employed in the Milwaukee School District. Employer Exhibit RR indicates that there are a total of 3,888 aides employed in all ten districts, with 1,900 of them working in Milwaukee. The information on that exhibit is obviously dated, because we know that the actual number of aides in Milwaukee includes approximately 900 general aides, 1,100 paraprofessional aides and 100 safety aides. It is noted that effective with this contract, these employees who were formally known as school aides in Milwaukee will be referred to as "Educational Assistants." According to the Employer's exhibit, the largest contingent of aides employed outside of Milwaukee is 425 in Madison, while the smallest group consists of 109 in Eau Claire.

Neither of the parties emphasized a comparison of its offer with settlements in the comparable districts. The Board presented an exhibit containing data for the comparables for the period 1990-1991 through 1992-1993. From this data, the Board concluded that, relative to the classification of general aide, Milwaukee historically ranked fourth at the minimum pay scale and fifth in maximum pay. In the paraprofessional classification, it ranked second in minimum pay and at the top in maximum pay. The Board argued that neither of the proposals would change any of these rankings. The Union took the data on the Board's exhibit and corrected that data. Its corrections included converting school year wage increases to calendar year increases, to correspond with the term of this contract. It also corrected some apparent typographical errors and moved some of the wage data around to create what it said were consistent comparisons. The Union then summarized the corrected data as showing that over the two year period, the Board's wage proposal would increase wages by 1.33% less than comparable settlements. The Union has offered .33% less than comparable districts. The Board complained that the Union adjustments, "really skew the data by placing a larger proportion of the raise in the latter half of

the affected school year." The arbitrator has reviewed all of this wage data carefully and evaluated the Board's concern. It appears that the Union did in fact make appropriate adjustments to the raw data presented by the Board. It also appears that the Union's approach to regularizing the data, by placing 45% of the school year wage increase into its calendar year calculation, is far more reasonable than comparing school year data with calendar year data, as suggested by the Board. The Union explained a reasonable basis for its' allocating 45% to the period from September to December and 55% for the period from January to June. While this allocation may not be perfect, it appears that the Union's adjusted data is a reasonably reliable comparison of comparable wage increases granted in the ten largest school districts in Wisconsin during calendar years 1991 and 1992.

The arbitrator recognizes that there are all kinds of problems associated with these wage comparisons. Many of those problems have been reviewed earlier in this discussion. Not resolved in that discussion are the problems of knowing exactly what responsibilities and functions "comparable aides in these comparable districts" perform and evidence of what other factors may have affected their wage settlements. With the recognition that this comparison with external comparables leaves a lot to be desired, it is noted that the external wage comparison appears to favor the Association's offer.

The internal wage comparison involves many of the comparative problems that were previously considered in evaluating the health care offers. The Union points to: 5% wage increases awarded to teachers for school years 1990-1991 and 1991-1992; the 5% granted to psychologists in 1991-1992; the 4% increases granted to administrators and supervisors and 4% offered to substitutes for 1991-1992 as evidence that its 4.25% offer is reasonable. The Board cited four settlements at 3% and one for 3.5% for 1991-1992 as evidence that it has established a pattern of internal settlements with classified employees. The Board's argument of reasonableness is more compelling in relation

to the wage issue than it is in the health care arena. It appears that the Board has made a genuine effort to draw a line on wage increases at 3 or 3.5% for everyone except teachers, substitute teachers, administrators and supervisors and psychologists. Those exceptions which have resulted in settlements or offers at or above 4% for the majority of the Board's employees destroy the Board's assertion that the Union's offer of two 4.5% increases will break a pattern of internal settlements. Those higher settlements do not, however, cause the Board's offer of 3.5% and 4% to these employees appear to be unreasonable.

The Union has argued that these aides should be considered more comparable to those professional employees who play a significant role in interacting with students. Based upon the record in this case, that suggestion except for one exception appears to be reasonable. That exception, however, is critical. No matter how dedicated this group is, and no matter how important a role the aide's unit plays in the educational system, it is not a professional unit. It appears that the professional bargaining units have been able to negotiate higher wage increases with this Employer than the non-professional bargaining units have. The Board agrees that safety aides are entitled to receive an incremental wage adjustment. It has offered an additional 23% over two years. The Union offer exceeds the Board offer by an additional 12% over the term of this contract. Any party in arbitration who requests a 35% wage adjustment has a heavy burden to establish the need for that proposal.

The Union justified its request by arguing that safety aides should reach closer parity with paraprofessional aides. There is insufficient evidence to establish that safety aides are equivalent to paraprofessionals. The Union supported its request with testimony of safety aides to the effect that their responsibilities are similar to the responsibilities of law enforcement personnel. There was neither objective evidence for that comparison entered in the record nor was any evidence of law

enforcement wage standards introduced. Appendix B to the parties last contract encouraged school aides "to seek promotion to the community aide/school safety aide/Parent Information Center Liaison classification." Salary schedules in that document show safety aides earning \$9.16 an hour and Parent Liaison maximum salaries at \$10.87 an hour; both after five years of service. Other maximum salaries listed in Appendix A are: paraprofessionals aides \$10.21, technical aides \$8.78 and general aides \$7.43. It appears that if the Union's offer is adopted, some safety aide wage scales would slightly exceed paraprofessional wage scales. There is not sufficient evidence to support the Union's request for this hefty incremental wage increase for safety aides in this proceeding. The internal wage comparison slightly favors the District's offer.

IV. ADMINISTRATIVE LANGUAGE. The Union's proposed changes in administrative language in the contract were not major obstacles to settlement of the contract. The nine day pay period would be an available option to aides working at least 30 hours a week. It would help aides plan and meet personal budgeting requirements. The Employer recognized that there is merit in this proposal, but, said that there would be some, as of yet unquantified, costs associated with the change. The Employer would have agreed to the proposal if the parties had been able to agree upon other contract terms. The Union's position is preferred by the arbitrator.

The Union would like to see the beginning and end of the workday defined as between the hours of 7 a.m. and 4 p.m. It cited the testimony of one witness and a total of two or three instances in which aides' responsibilities required them to work beyond 4 p.m. The aide who testified said that she had been concerned about her safety because she could have been the last person to leave the building. The witness who testified may have had a valid concern about her own safety. In the event that the Union believes that working conditions present a safety problem of its employees, it should discuss those conditions with the

Employer in order to arrive at a mutually satisfactory solution. It does not appear to be necessary to establish a defined workday for 2,000 employees in order to resolve what appear to be, at most, two or three random incidents over the course of a year. The Board's position on this matter is preferred.

The parties disagreed about whether the Union's proposed language for a professional assistance program might be construed to require the Employer to grant employees advances on paid sick leave. The Board thinks the proposed language would permit that interpretation. The Union argued that the language is not ambiguous and that it would not require the employer to advance paid sick leave. Based upon the latter interpretation, and the fact that a similar program is in place for teachers, the Union's position on professional assistance is preferred.

V. OTHER STANDARDS. Included in the large volume of exhibits is the data relating to "other employees generally in public employment" in the City and County of Milwaukee. Neither party focused argument on this material which is too random a sampling to support either party's position in this proceeding. The District's argument that the Consumer Price Index supports its offer appears to be disingenuous. The District has represented that its proposed 3.5% and 4% wage increases are in fact equal to between 5.57% and 10.99% each year of the contract. There is no foundation for the assumption that it is appropriate to include progressive incremental increases into the employer's base wage proposal. The Board's comparison of total package cost increases between the two offers is deficient for the same reason. That comparison, however, reflects the difference in the total cost of the two offers using the Board's methodology, at just about 1% during each year of the contract. There is no total cost data presented for any of the purposed comparables or for the Board's budget as a whole. Later in this analysis a series of seven other contracts and wage settlements which have affected the cost of this employer's operation during this contract period are discussed. Those documents give an

indication of the magnitude of the size of the operations of the Milwaukee School District. The incremental cost increases of at least some of those agreements appear to exceed the relative cost increases of the aides' contract in this proceeding. In order to draw a reasonable conclusion about the total cost impact of this aides' contract upon the District's budget, it would be necessary to review all of the increased costs included in that budget. It is, therefore, not possible to draw any reasonable conclusions about how either of these two offers should be evaluated in comparison to consumer price increases for all urban consumers which averaged about 3.15% during 1991 and 1992.

The final statutory standards which appear to have application to the facts in this case are the ones which require the arbitrator to evaluate "overall compensation" and "such other factors . . . which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment." These are among the most subjective of the ten statutory criteria.

In reviewing the overall compensation received by the aides in this proceeding the arbitrator has relied upon Board Exhibit 00. Because 95% of the aides are either general aides (43%) or paraprofessional aides (52%), those salary schedules are being used for comparison. During 1990, the wage scale for general aides was between the minimum \$6.48 and maximum \$7.43 an hour. The Board would increase this range in 1991 to \$6.71 and \$7.69 compared to the Union's proposed \$6.75 and \$7.75. During the second year of the contract, the Board would raise general aide wages to \$6.98, compared to the Unions' \$7.04 starting wage. At the maximum, the Board would pay \$8.00 compared to the Union's \$8.08. For paraprofessional aides, the Board would increase minimum wages from \$9.18 in 1990, to \$9.50 in 1991 and \$9.88 in 1992. This compares to the Union's \$9.57 in 1991 and \$9.98 in 1992. The Board's offer would increase maximum paraprofessional wages from \$10.21 in 1990 to \$10.57 in 1991, compared to the

Union's \$10.64. During the second year, the Board offered \$10.99 per hour compared to the Union's \$11.09.

The parties agree that the general aides and paraprofessional aides work an average of 30 hours a week during the school year. For the purpose of estimating the aides' annual compensation, it was assumed the school year consists of 10 months, or 43 weeks or 1,290 hours. This is a greater number of hours than the annual average of 1,139 hours for paraprofessional aides and 1,126 hours for general aides reflected in Board Exhibit CCC. During 1990, working 1,290 hours, general aides earning the minimum \$6.48 an hour, would have earned \$8,359; those at the maximum would have earned \$9,585. Under the offers in this proceeding, general aides earning the minimum and maximum would be increased as follows:

1991	Union Minimum	\$ 8,707	Board Minimum	\$ 8,655
1991	Union Maximum	\$ 9,997	Board Maximum	\$ 9,920
1992	Union Minimum	\$ 9,082	Board Minimum	\$ 9,004
1992	Union Maximum	\$10,423	Board Maximum	\$10,320

At 1,290 hours 1990 annual wages for paraprofessional aides would have been \$11,842 at minimum and \$13,171 at maximum. The offers in this proceeding would increase those salaries as follows:

1991	Union Minimum	\$12,345	Board Minimum	\$12,255
1991	Union Maximum	\$13,726	Board Maximum	\$13,635
1992	Union Minimum	\$12,874	Board Minimum	\$12,745
1992	Union Maximum	\$14,306	Board Maximum	\$14,177

The Board argued that the aides in this proceeding should be compared to the Board's other classified employees. It introduced Exhibits NNN through QQQ, the Board's contracts with five other classified bargaining units. Each of those exhibits contains a series of wage schedules for each group of classified employees covered under the contract. Wages for each employee group are reported on a bi-weekly basis for the period 1989

through 1991. A summary of that wage data for each contract follows.

Local 950 is the International Union of Operating Engineers. During the period reported in the contract, the annual average minimum salaries paid to all groups went from \$24,081 in 1989 to \$26,234 in 1991. Average maximum rose from \$30,040 in 1989 to \$32,573 in 1991. Among these employees the lowest wage was earned by Boiler Attendant 1, who in 1991 at the minimum and maximum ranges earned from \$21,320 to \$26,182. The highest wages were earned by School Engineers IV, who had a range between \$30,420 and \$38,610 in 1991. This contract also provided additional compensation for shift differentials, task rates and overtime pay.

Local 1616 represents a wide range of employees. Recreation groundskeepers earned between \$25,891 and \$30,890 in 1991. Seasonal recreational laborers had a wage scale between \$10.15 and \$10.96 an hour. Material handlers I had 1991 salaries ranging from \$24,477 to \$28,414. The material handlers were the lowest paid employees in a class which included Driver Helper, Material Handler II, Material Handler III, Truck Driver (light delivery van), Truck Driver (heavy delivery van) and Inventory Control Manager. The latter had a 1991 salary range between \$26,918 and \$30,797.

Social work aides I earned between \$7.69 and \$8.50 an hour in 1991. In order to be promoted to Social Worker II, an aide I needed 4,600 hours of experience and either a high school diploma or GED. Social Work Aides II earned between \$8.60 and \$11.09 an hour in 1991 and worked an average of 30 hours a week.

Another group of Local 1616's employees included Garage Attendants, Small Engine Mechanics, Shade Shop Mechanics, Shop Utility Workers and Automotive Mechanics. As a group, these employees had a 1991 average wage range between \$24,864 and \$30,234 per annum. Seasonal labor in this category earned between \$10.15 and \$10.96 an hour. This Union also represented a group of data processing employees who were generally the highest

paid members of this bargaining unit. Wages for other groups of employees in the unit closely parallel the wages paid to the groups of employees reviewed above.

District Council 48 represents a group of employees which includes Clerks I who earned between \$15,132 and \$18,564 during the period July 1, 1991 and June 30, 1992. This unit also represents Clerk Stenographers, Bookkeeping Machine Clerks, Clerks II, Account Clerks, School Secretaries and Clerical Mentor Trainers. The average of all minimum and maximum salaries paid to all of these employees during 1991-1992, was between \$19,931 and \$25,447.

Local 150 is the Service Employees International, which represents two categories of Building Service Helpers. During the period July 1, 1991 through June 30, 1992, Building Service Helpers I worked for an hourly wage from \$6.36 to \$7.91 an hour. Building Service Helpers II earned between \$18,706 and \$23,512 per annum. These employees also received a uniform allowance and received shift differentials of 45¢ and 50¢ an hour for second and third shift employment. The contract also provides for a task rate of 85¢ an hour for Building Service Helpers I after July 1, 1990.

Local 150 represents Food Service Managers, Food Service Assistants and Handicapped Children's Assistants. During the period July 1, 1991 through June 30, 1992, the average starting wage for five separate categories of Food Service Manager was \$16,778. The average maximum wage for these five categories was \$22,506 per annum. Hourly Food Service Assistants were paid between \$6.45 and \$8.08 an hour.

There are three categories for Handicapped Children Assistants; the minimum and maximum annual wages are: 8 hour \$13,558 to \$15,944; 7 hour \$11,863 to \$13,951 and 6 hour \$10,168 to \$11,958. There are also three categories of Handicapped Assistant-Ortho for which the annual wages are: 8 hour \$14,033 to \$16,420; 7 hour \$12,279 to \$14,367 and 6 hour \$10,525 to \$12,315.

The Union argued that the aides in this proceeding were most comparable to teachers, school psychologists and administrators and supervisors council employees. Those contracts were Union Exhibits B, D and E. The 1991-1992 salary range for teachers with a B.A. degree was from \$23,113 to at the top stop to \$36,978 after 12 years of experience. The teacher, teacher-librarian, community recreation specialist wage matrix also contained a category for "non-degree" which started at \$21,957 through \$34,034 after 11 years. Schedule maximum for teachers with 13 years is \$46,907 per annum. The salary range for school psychologists commencing June 1, 1992 was between \$32,546 and \$49,678. The range for associate psychologists was from \$31,345 to \$47,764.

"ASC is the exclusive bargaining agent for all certified and classified personnel who fill positions requiring a college degree or equivalent or who are specifically exempt from certified bargaining units for the reason that they are classified as supervision" with certain listed exceptions. ASC's July 1, 1991 to June 30, 1992 contract provided for Employer paid health insurance. The provisions of the contract's salary schedules appear to be quite complex. No purpose would be served by attempting to review those provisions herein. That contract provided for a 4% across the board increase in addition to 3.43% annual incremental increase. It also provided for additional compensation for "the possession of an earned doctorate degree" and 80% Employer contributions to Early Retirement Supplement and Benefit Improvement Fund. There is a work year schedule which outlines between 190 days and 200 days or 12 months, depending on the job filled and the duties performed. The salary schedule starts at grade 0, which is listed as a 12 month work year with minimum compensation of \$24,303 and maximum compensation of \$24,960. Eighteen other salary grades each contain categories for each 197 days, 200 days and 12 months are listed. A sampling from salary Schedule III of the ASC contract follows:

GRADE	WORK YEAR	MINIMUM	MAXIMUM
18	12 Month	67,241	94,138
	200 Days	57,592	80,631
	197 Days	56,718	79,406
12	12 Month	50,177	70,247
	200 Days	42,976	60,168
	197 Days	42,324	59,252
6	12 Month	37,443	52,420
	200 Days	32,069	44,899
	197 Days	31,583	44,215
1	12 Month	31,583	44,215
	200 Days	26,246	34,120
	197 Days	22,140	28,780

After introducing the contracts referenced above, neither party elicited testimony about the contracts. There is virtually no evidence relating to the bargaining process which resulted in those agreements.

After reviewing the seven contracts cited above, one could conclude that it is nearly impossible to compare "the overall compensation presently received by these aides, 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" with equivalent wages and benefits received by other employees of the District. The principle reason for the difficulty in making the comparison is that the majority of the employees covered by the other contracts appear to be considered as full time employees. Aides appear to be considered full time - part time employees. That difference, which is no doubt justified, severely restricts or makes it impossible for aides who only have the opportunity to work an average of 30 hours a week for 10 months each year to earn annual wages which approach the annual wages of "full time" employees. Aides do not have the opportunity to work overtime, earn a shift differential and do not receive uniform allowances that some employees do. Aides appear to work as many days of the year as many other employees

of the district do, but, aides' annual earning capacity is limited to the number of hours they are able to work during the school year.

On the other hand, aides appear to benefit proportionately more than other employees of the District from the fact that they have the benefit of comprehensive group health insurance benefits. Aides qualify for this benefit even though they work only 62% as many hours as "regular" 40 hour a week employees. It is primarily the Board's insistence that the aides make a 5% contribution toward this benefit that has resulted in the impasse in the parties' negotiations. Except for that issue the two offers are very close.

The first year difference in the two general aide offers is 4¢ at minimum and 6¢ at maximum wage scale. The second year difference is 6¢ and 8¢ an hour. At 30 hours a week for ten months or forty-three weeks the average first year aid would receive \$64.50 a year more under the Union offer. During the second year the average 7¢ greater increase would gross \$90.30 for each general aide. A similar arithmetic exercise with the paraprofessional aide offers results in the conclusion that the average paraprofessional aide would receive \$90.30 a year more during the first year of the contract and \$129 more during the second year if the Union's offer is accepted.

It is not possible to calculate the annual cost of health insurance premium sharing for the "average" aide because there is no evidence how many aides are enrolled in any of the four available health insurance options. Assuming one-third of all aides are enrolled in the family indemnity plan at the 1992-1993 cost of \$552.17 a month and, assuming the other two-thirds of the aides are equally disbursed through the Family Health Plan, Compcare and Prime Care with family coverage with an average cost of \$351.92 a month, the average monthly insurance cost for all aides should be \$418.67 per month. Under the Board's offer, aides would pay 5% of the monthly premium for the last half of

1992. The average cost for health insurance to be borne by the average aide should be close to \$125.60 under the Board's offer.

To the extent that the foregoing calculations are accurate, the Union's offer would have a greater first year benefit of \$280.40 for each general aide and a greater benefit of \$344.90 for each paraprofessional aide. The foregoing calculations do not include roll up costs or the additional cost of the Union's offer for safety aides. The calculations do establish a range of additional direct dollar benefits that would be received by 95% of the aides in this proceeding under the Union's offer compared to the benefits they would receive under the District's offer. That average greater benefit of approximately \$312.65 for all general and paraprofessional aides is equal to a 1.56% wage and benefit increase for a \$20,000 a year employee. It appears that the average employee of this District has earnings well in excess of \$20,000 a year. The \$312.65 amounts to 2.67% to these aides who would average approximately \$11,700 during 1992 under the Union's higher offer. That \$11,700 is a reasonably accurate average for all aides. The 1992 contribution for health insurance under the District's offer would require these aides to contribute 1.07% of their gross income toward health insurance compared to the .63% contribution that is required for the hypothetical \$20,000 a year employee. The disparity of the impact upon aides and \$20,000 a year employees twice as great when that impact is evaluated on the basis of annual income. The Employer's offer would require their aides to contribute 2.15% of their annual income toward health insurance premiums. The majority of the District's higher paid employees would not be required to make any contribution.

The foregoing calculations are not exhaustive and are not completely accurate because the calculations are based only upon what this arbitrator believed to be the most relevant and reliable data. In order to compensate for recognized shortcomings in the available data, only the most reliable conclusions based upon a conservative analysis of the information

are being made. Two such conclusions appear to be irrefutable. They are that, the small difference between the two wage proposals has a much greater impact upon the earning potential for these employees than any settled bargaining unit. And, the 5% contribution by these employees toward health insurance premium cost would cost them proportionately more than the employees in any bargaining unit which has settled with the District. Those conclusions favor the Union's offer under the standards relating to overall compensation and such other factors which are normally taken into consideration in proceedings of this nature.

In conclusion, neither offer taken at face value appears to be unreasonable. The wage and insurance offers are very close in dollar value; the Union's wage offer, except for the safety aides wage portion of that offer, appears to be most comparable under most of the standards for comparison. The fact that the Union failed to establish the reasonableness of its safety aide offer is not a sufficient reason to reject a reasonable wage proposal affecting 95% of the members of this bargaining unit. The District's proposal that employees be required to contribute toward health insurance premium cost appears to be reasonable on its face. However, after analysis of the Employer's offer in relation to the facts of this case, that proposal appears unreasonable. If adopted it would exact contribution from these employees, with limited earning capacity, which would be disproportionately greater than the contribution required from the vast majority of other classified employees who are required to contribute toward health care premiums. This realization and the fact that the majority of the District's highest paid employees are not required to make any contribution toward health insurance costs make the District's offer inequitable under the circumstances herein. That conclusion is based in part upon the realization that the majority of those employees who have far greater earning capacity are enrolled in the higher cost indemnity plan while less than one-third of the aides in this

proceeding are enrolled in that plan. For the reasons set forth herein the final offer of the Milwaukee Teachers' Education Association shall be incorporated into the 1991-1992 collective bargaining agreement between these parties.

Dated at Madison, Wisconsin, this 2nd day of April, 1993.



John C. Oestreicher, Arbitrator