

JUL 12 1993

STATE OF WISCONSIN
BEFORE THE ARBITRATOR

In the Matter of the Arbitration of the
Dispute Between the

Milwaukee Teachers Education Association
(School Accountants/Bookkeepers)
and the

Milwaukee Board of School Directors

WERC Case 234
No. 45505 INT/ARB 6003
Decision No. 27142-A

Appearances:

Ms. Barbara Zack Quindel of Perry, Lerner, & Quindel, S.C., and Mr. Sam Carmen, Assistant Executive Director, MTEA both of Milwaukee, WI. for the Association.
Ms. Mary M. Kuehnmuench, Assistant City Attorney for the City of Milwaukee and Mr. Milt Ellis, Labor Relations Specialist, Milwaukee Public Schools, for the Employer.

Sworn Testimony was received from:

Ms. Nancy Hernandez, School Accounting Manager, MPS
Mr. Milt Ellis, Labor Relations Specialist, MPS
Mr. Stephen Brink, Consulting Actuary, Milliman & Robertson
Ms. Chris Toth, Director of Insurance and Risk Management, MPS
Mr. Kenneth Black, Senior Budget Analyst, MPS
Mr. Sam Carmen, Assistant Executive Director, MTEA
Mr. Michael Carr, General Manager, Aetna, MPS account
Mr. Barry Gilbert, Assistant Executive Director, MTEA
Mr. W. C. Holloway, School Accountant, MPS
Ms. Fern Hamilton, School Bookkeeper, MPS
Mr. Ray Kroll, School Accountant, MPS
Mr. David Kwiatkowski, Manager of Classified Staffing, MPS,
all of Milwaukee, WI.

Background

On September 5, 1990, representatives of the Milwaukee Board of School Directors (hereinafter referred to as the "District," the "Board," or the "Employer") and the Milwaukee Teachers Education Association (hereinafter referred to as the "Association," "MTEA," or the "Employees") exchanged proposals on retirement notice, a "me, too" clause related to the Martin Luther King holiday, and economic issues to be included in a successor agreement (for the years 1991 and 1992) to their agreement which expired December 31, 1990. The Association repre-

sents 15 bookkeepers (formerly titled "School Accountants") employed in the high schools of the District. The Parties met on six other occasions, including sessions with a mediator from the WERC, and failed to reach an agreement. On March 19, 1991 the Board filed a petition with the Wisconsin Employment Relations Commission for final and binding interest arbitration pursuant to Section 111.70(4)(cm)6 Wis. Stats. Investigator Karen Mawhinney, a member of the Commission's staff, conducted an investigation on May 6 and October 16, 1991, and again on January 22, 1992, and then advised the Commission that an impasse existed. The parties submitted final offers to the Commission on January 22, 1992. On January 30, 1992 the Commission certified the parties' final offers and directed them to select an impartial arbitrator. The Undersigned, Richard Tyson, was selected and appointed on April 7, 1992. He conducted a hearing on the matter on January 22, 1993 and February 8 and 9, 1993 at the Board's Offices in Milwaukee, Wisconsin. A transcript of the hearing was taken by Ms. Joanne Dietz and was received on February 25, 1993. Both parties had an opportunity to present exhibits and testimony and to outline their arguments in this dispute. They agreed to a schedule for exchanging briefs and replies.

The Issue(s)

Although many issues were resolved in the bargaining process, a number of issues remain in contention. The Association proposes to have the Board pay retirees' health insurance premiums at the June 30 or July 1 rates of the retirement year, whichever is more favorable to the employee, provided that retirement notification is given by April 1. It proposes to increase the dental premiums paid by the District to \$38/\$12 (F/S) per month, adjusted to reflect 93.9% (F) and 97.4%(S) of actual premiums in subsequent years. A "me, too" clause to provide for a paid Martin Luther King Jr. birthday holiday is proposed, though it is moot. Wage increases proposed by the Association are for a 4% increase in both calendar years of the contract, 1991 and 1992. The Board proposes that these wage increases be 3.5% and 4%, while dental premiums be increased to \$35/\$10 (F/S) per month. It also proposes to increase severance payout of accumulated sick leave by 10 days to 40 days. The major item in this dispute, however, involves the Board's proposal to require an employee contribution of 5% toward the health insurance "premium" beginning July 1, 1992.¹

The parties are agreed that the 5% health insurance contribution is the main issue for the Arbitrator to decide. In doing so, the parties have put two fundamental questions before him. Is this contribution an appropriate response to the rapidly-rising health care costs of the Board? Some Milwaukee Public Schools employees (24% ±, mainly Classified employees) now pay the 5% while the Certificated employees, particularly the teachers, do not. Some other public

¹The District provides employees the option of one of several HMOs or the self-funded, AETNA-administered Indemnity Plan. The HMOs cost about \$350/\$135 (F/S) per month, while the Indemnity Plan is estimated to cost \$552/\$278 per month. Employees and retirees would therefore pay about \$17.50/ \$6.70 (F/S) per month for the HMOs, or \$27.61/\$13.91 per month for the Indemnity Plan.

employees in the area as well as private sector employees pay part of their premiums. To which group is this group of employees to be compared? The Association contends that these employees should be compared to the other Accountants employed by the District who are in the Administrators and Supervisors unit. Needless to say, Accountants in this unit makes no contribution to health insurance. The Employer contends that these employees are one of the classified units, all of which (except for the Teacher's Aides) pay 5% toward health insurance.² The Bookkeepers are functionally more similar to Account Clerks or clerical employees than they are to Accountants. Both parties argue for the maintenance of the internal pattern of settlements for health insurance purposes, though the notion of "internal pattern" differs. The Board asserts that the appropriate internal reference group is all of the District's classified employees, while the Association asserts that it is all district employees.

Cost Costing of the proposals by the Employer is as follows:

Salary and Benefits Costs Under the Board and Association Offers³

	<u>1991(MTEA)</u>	<u>1991(MPS)</u>	<u>1992(MTEA)</u>	<u>1992(MPS)</u>
Wages	\$ 427,412	\$ 425,357	\$ 452,067	\$ 449,893
Benefits	<u>133,917</u>	<u>133,324</u>	<u>149,739</u>	<u>147,700</u>
Total Comp.	561,329	558,681	601,806	597,594
% change	6.57%	6.06%	7.21%	6.97%
Medical	\$44,495	\$44,495	\$51,147	\$49,787
Dental	4,067	3,885	4,110	3,885

Dollar differences are obviously small (\$2,647 in 1991 and \$4,212 in 1992) since the impact of the major issue, the health insurance premium contribution, is not felt until the last quarter of the contract period. More importantly, no other MTEA employees are paying health insurance, and none of the District's certificated employees were paying as of the close of the record. An award in the Board's favor would essentially be a "window of opportunity" or a "crack in the dike," depending on one's perspective.

²The Teacher's Aides unit was in arbitration. Arbitrator Oestreicher subsequently awarded in favor of the MTEA-Aides, leaving that unit with 100% employer-paid health insurance premiums (Milwaukee Board of School Directors (Teacher's Aides), Decision No. 27076-A, April, 1993).

³Employer's Exhibits 21A and 21B. Costing excludes potential savings and discounts.

The Statutory Criteria

The parties have directed their evidence and arguments to the statutory criteria of Sec. 111.70 (7) Wis. Stats. which directs the Arbitrator to consider and give weight to certain factors when making his decision. Those factors are:

- a. The lawful authority of the employer.
- b. Stipulations of the parties.
- c. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any settlement.
- d. Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services.
- e. Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees generally in public employment in the same community and in comparable communities.
- f. Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees generally in private employment in the same community and in comparable communities.
- g. The average consumer prices for goods and services, commonly known as the cost-of-living.
- h. The overall compensation presently received by the employees, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- i. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- j. Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, factfinding, arbitration or otherwise between the parties, in the public service or in private employment.

Arguments of the Parties

The Employer

The Board submits that the history of this unit and the job description of unit employees link this unit to other classified employees for purposes of the resolution of this dispute. In doing so, it makes its primary argument (below) that under criteria (e.), its offer is to be preferred.

The first contract between the parties was in 1971. The employees were classified as Accountant I or, after two years of service, Accountant II and were hired from Civil Service to do bookkeeping in the 15 high schools. The position was re-classified in the early 1980s because the Board felt that the work done did not require a professional accountant, textbooks were no longer being sold in the school bookstores, and a computer program (Peachtree) was to be used to do the accounting function. In 1982, the District was suffering a financial crisis, so six of the fifteen Accountants were laid off, requiring that six remaining accountants split their time between two schools. When some principals complained about lack of service, a committee of principals and members of the Accounting Division and union groups was formed. In 1984, the Board accepted this committee's recommendation that the fifteen accounting positions be eliminated and replaced by fifteen bookkeepers (BX 22). Technical accounting functions were transferred to the Central Office. The nine Accountants were "grandfathered" in their classification and pay, and participated in annual wage increases, although new unit employees were hired as Bookkeepers. The MTEA was agreeable to this arrangement which meant that the nine (now six) Accountants were "overfilling" the Bookkeeper position.⁴

The Board distinguishes the Accountant position (in the ASC unit) from the School Accountant /Bookkeeper position in this unit in several ways. For the former, a bachelor's degree in accounting and two years of experience are required, with a CPA being deemed desirable.⁵ The duties for Accountant I are "recording, classifying, summarizing, reconciling, and auditing... (accounts and reports)...and may...includ(e) supervision..."(BX 4D). The Accountants take gathered data, analyze and interpret it, and prepare reports in formats appropriate for users' needs.⁶ The Bookkeeper position, on the other hand, only requires two years of bookkeeping

⁴(BX 22B, TR Vol. II, pp. 504-12, and Board Brief, pp. 5-6.).

⁵BX 4D, TR Vol I, p. 37, and Vol II, p. 527.

⁶Board Brief, pp. 7-8 and Reply Brief, p. 4.

experience or an Associate Degree in Accounting and desirability of cash handling experience (BX 4). The advertised job duties include "the maintenance of accounts relative to school generated funds and operate(ing) the school bookstore under the direction of the Accounting Division"(BX 4). The job basically entails recording and classifying transactions, as opposed to analyzing and interpreting them. The only "supervision" by the bookkeepers is the direction of the work of students in the school bookstore. If any conclusions regarding similarity of positions is to be made, it ought to be that the Bookkeepers are more similar to Account Clerks (who are in Local 1053, one of the Classified units settling for 3% wage increases and the 5% insurance contribution).

That there is a clear distinction between positions is evidenced in other ways as well. First, Bookkeepers are "Classified" by statute. Second, the Board did not agree to MTEA proposals for a Bookkeeper salary progression to the Accountant pay scale because the position was not an accounting position. Third, the MTEA never has "moved for unit clarification" indicating that it either does not believe that the positions are substantially similar or that it would not prevail in its attempt.⁷ Fourth, there has been no movement between positions (as asserted by the Association) except in the case of one individual who failed his/her probationary period.⁸

The Board directed the Arbitrator's attention to criteria (d.) and in so doing, finds that there are no comparable positions in the ten largest school districts in the State of Wisconsin to form an appropriate "comparable pool." The Board then looked at other local taxing jurisdictions under criteria (e.) and concluded that its offer is well within reason. The Sewerage District employees contribute 15% (or \$68.93/\$29.09 (F/S) per month) to health insurance while the City of Milwaukee employees contribute \$15/\$7.50 per month or 3.6%/3.3% (F/S). Milwaukee County employees contribute 5%. State employees who are not in the lower cost HMOs pay \$33 or \$141/month for the two indemnity family plans (State Plan I or II) and \$18 or \$64 for the single plans (Vol.1 TR pp. 219-30). The Madison Area Technical College is the only area jurisdiction without employee contribution, but MATC's position in its current bargaining is to have employee contributions.

Under criteria (f.) the Employer argues that various surveys show employee contributions to health insurance, particularly for family coverage, to be the norm. These include surveys of

⁷Board Brief, p. 8, TR Vol II, p 39, and Reply Brief, p. 6.

⁸TR Vol I, p. 39 and Reply Brief, pp. 7-8.

major U.S. employers and surveys of state and local government employers. For the private sector, the survey results show that between 39% and 55% of employers require contributions for single plans and between 58% and 80% of employers require contributions for family plans. The Board takes special note of the Association's lack of attention to external comparability, contending that to do so would show the reasonableness of the provision for contribution.

The Employer's major argument is that internal comparables (e.) show that its offer is to be preferred. The Milwaukee Public Schools has thirteen bargaining units which it categorizes in three ways: certificated (which includes these unit employees), classified, and certificated/classified units. The certificated employees have four-year degrees and require state licenses. They belong to the Wisconsin Retirement System. Classified employees do not have such requirements, are hired by the Classified Staffing Office from Civil Service lists, and belong to the City's pension system. The School Accountant/Bookkeepers are by statutory definition in the Classified category.⁹ The last category (which includes the Administrators and Supervisors Council) has a combination of classified and certificated employees. Accountants assigned to the District's central office are in this group. The Employer maintains that it bargains "differently" (Brief, pp. 15-17) with each group. It has managed to bargain wage increases around 3% for classified employee units during the past 5 years and now has negotiated a 5% insurance contribution from most of those groups. The exception is this unit and the Teacher's Assistants who were awaiting a decision by Arbitrator Oestreicher¹⁰. The Employer has historically negotiated wage increases with the School Bookkeepers which are in line with the other classified units. Its wage offer of 3.5%/4% herein is 1/2 and 1% greater than the other classified units' settlements which represent an adequate quid pro quo for the 5% contribution to health insurance, particularly since these other units voluntarily settled at 3%/3% with the 5% contribution (BX 10). Given this pattern and arbitral authority which upholds maintenance of internal patterns of benefits, its offer should be accepted.¹¹

⁹Board Brief, p. 14 and Vol. I TR, p. 342.

¹⁰As noted earlier, the Teacher's Aides unit was in arbitration. Arbitrator Oestreicher subsequently awarded in favor of the MTEA-Aides, leaving that unit with 100% employer-paid health insurance premiums (Milwaukee Board of School Directors (Teacher's Aides), Decision No. 27076-A, April, 1993).

¹¹Arbitrator Vernon in City of Appleton, Dec. No. 25636-A, Nielson, in Dec. No. 25298-A, and Armenfield, Dec. No. 19800-A.

The Employer contends that the recent Oestreicher decision is not applicable to this case.¹² Arbitrator Oestreicher primarily reasoned that since the majority of the District's more highly paid employees (notably the Teachers, Administrators, and Psychologists) paid nothing towards health insurance, requiring that the low-paid Aides pay 5% would be inequitable.¹³ The Employer argues that the School Accountant/Bookkeepers are paid "far greater" than are the Aids, AND they are getting an additional 1/2 and 1% salary (above the 3% bargaining goal for classified employees) PLUS enhanced major medical, vision, and dental provisions.

The Employer asserts that it has a compelling need for the 5% contribution. It presented substantial evidence and testimony from expert witnesses of its skyrocketing health care costs. The average cost per active and retired employee rose from about \$2500/year to over \$4000 from 1988 to 1992.¹⁴ Health care costs have risen from 5% to over 9% of the District's operating costs.¹⁵ It has been aggressive in using various measures for cost containment such as implementing HMOs, precertification for hospital and outpatient procedures, and mail-order drugs.¹⁶ These measures have given some significant relief, but the cost trend continues. An employee contribution is another important measure in a multi-faceted approach to rein in escalating health care costs. A 5% employee health care insurance contribution will level off the rising cost trend (at least initially) and is consistent with other non-MTEA classified bargaining units as well as the prevailing practice in the private sector; moreover, it is recognized by arbitrators as a "reasonable response to rising health insurance premiums."¹⁷

The Employer rejects the Association's philosophy that cost containment is the most reasonable and appropriate strategy to rein in these health care cost increases to the exclusion of cost-sharing (or "-shifting" in the Association's terms). Moreover, the MTEA is not and has not been the party pushing the cost containment measures. Rather, the Board pressed for these

¹²Employer Brief, p. 21.

¹³ cited above.

¹⁴TR Vol. 1, p.164 and BX 18.

¹⁵BX 13. The figure was 8% in 1991-92, and the budgeted amount is 9.56% for 1992-93. Testimony indicated that there have been "substantial savings during the year."

¹⁶BX 14 and Board Brief, p. 23.

¹⁷Board Brief, pp. 25.

measures for all units and got them through the bargaining process. The containment measures also do not permanently control these cost increases, as admitted by the MTEA testimony and evidence. Thus, both strategies need to be implemented. The Board also rejects the Association's assertion that the 5% contribution will threaten the integrity of the District's Indemnity plan.¹⁸ The Employer has not made rebuttal arguments on the matter, although its expert witness noted no real evidence that substantiates this contention.

Finally, the Employer argues that with respect to the MTEA's dental insurance and early-retirement notification proposals, these proposals change the status quo and have no basis other than to inappropriately incorporate the Teacher's contract language into this contract. There is no reason for the Employer to pick up an increasing portion of the dental insurance with no quid pro quo offered on the Association's part. The MTEA proposal (\$12/\$38 (S/F) per month District payment, plus language changes) will reduce the Employees' contribution to almost nothing. The early retirement notification provision was negotiated to handle a problem specific to the Teachers' unit, namely teacher shortages, which does not apply in this case since there is no shortage of Bookkeepers. Lastly, the "me, too" proposal by the Association for the Martin Luther King holiday is moot.

The Association

The Association argues that the 5% health insurance contribution is a substantial change in the status quo for which the Employer has not offered an adequate quid pro quo, nor has it demonstrated that its proposal will rectify a compelling problem. Not only is the Board cost-shifting the insurance, its wage offer is less than that afforded to the appropriate comparable, the Accountants in the ASC unit who do not contribute to health insurance. The Board's proposal only shifts 5% of rising health care costs to the Employees which yields relief for one time period. It fails to deal with the fundamental problem. Cost containment measures such as precertification, mail-order drugs, and (as recently proposed by the MTEA) "preferred provider" type organizations seek to get at this fundamental problem. The Association is concerned about these rising costs, has participated in cost-containment strategies in the past, and continues to do so with measures included in this contract.

¹⁸See footnote 1. The District provides the health care options of various HMOs as well as an (Aetna-administered) indemnity plan. The latter has significantly higher "premiums." The Association argues below that this will cause "steerage" of employees towards the low cost HMOs, leaving the Indemnity plan with high-cost participants.

The Association first addresses the comparables issue by discussing the origins of this unit. The major difference from the Employer's account which the Undersigned finds in its discussion relates to the duties of unit employees before and after the reclassification. Witnesses for the Association testified that it agreed to the lower salaries paid Bookkeepers because the Board indicated that Bookkeepers would have different duties. Testimony by long term unit employees was that the duties were not changed. Instead, both groups were given additional responsibilities, such as providing services to the elementary and middle schools and helping Central Office Accountants with year-end cash determinations for these schools.

The Association then asserts that the duties of the School Accountant/Bookkeepers are similar to those performed by Accountants in the Administrators and Supervisors unit. They are not identical; the statute does not require that they be identical. While the Board downgraded the job requirements, almost half of the unit employees were hired under the same Civil Service provisions as ASC unit Accountants, and over half have baccalaureate degrees. The Bookkeepers and Accountants of the unit do identically the same work. There has been interchange of employees between Central Office and School Accountants. The nature of work done at Central Office and the schools is similar, although the aggregation level differs. At the school level, unit employees deal with a broader spectrum of accounts, while at the Central Office, Accountants typically deal with only one account (assets, receivables, payables, etc.). The notion that introduction of the Peachtree accounting software has downgraded the skill requirements so as to distinguish School Accountants from Central Office Accountants has little merit since Central Office uses it too. Moreover, School Accountants are responsible for installing and helping secretaries use the software program at their various sites.

The Association contends that the Board's reference to arbitrators' preferences for maintaining internal patterns of settlements is misplaced and/or draws inappropriate conclusions. The Board is making an irrelevant distinction between "classified" and "certificated" employees in its construction of an internal pattern. Where arbitrators have relied upon the importance of the internal pattern, the pattern was "clear and uniform" for all types of employees.¹⁹ Furthermore, there is no evidence that the unit's bargaining history has been linked to classified employees, other than an attempt to show this with a 10-year pattern of wage settlements for all MPS bargaining units. In six of the ten years, unit employees' wage increases exceeded some

¹⁹Association Reply Brief, pp. 1-3. Reference is made to Arbitrator Vernon in City of Appleton, Dec. No. 25636-A, Fleischli in City of Waukesha, Dec. No. 21299, and Nielsen, Dec. No. 25298-A.

(sic) classified units. Lastly, the concept of having an internal pattern of settlements for the District's 13 bargaining units with the exception of 4 units comprising 76% of the District's employees is not a clear pattern and did not persuade Arbitrator Oestreicher in his Teacher's Aide decision. Rather, he looked at all of the District's employees.

Over three-quarters (76%) of the District's employees do not contribute the 5% premium share. The Association contends that this strong "pattern" of internal comparables weighed heavily in the Oestreicher award.²⁰ Additionally, the Employer's suggestion that all other taxing jurisdictions require (or are bargaining to require) contributions is incorrect. Most (listed) employers have grandfathered employees from paying, and then do not have contributing employees pay as much as is required under the Board's proposal. Further, the Board's attempt to apply criteria (f) is fraught with problems; the data provided are national, not geographically proximate, and do not allow comparisons of represented employees.

The Association maintains that it is concerned with rising health care costs. It participated in cost containment efforts beginning with implementation of the HMOs, through precertification and second opinions, no Friday/Saturday admissions, self-funding, and mail-order drugs. It initiated a Preferred Provider Organization proposal in 1992 which was rejected but substantially implemented directly by the Board (rather than through a PPO). Additionally, the Board's witness suggested that a "point of service" model could yield additional savings.²¹ During negotiations for the current contract, the parties negotiated an outpatient precertification, maintenance of benefits, and "buy-out" provisions.²² These will have real, salutary effects on cost increases even according to the Board's witnesses.²³ The Employer's 5% cost-shifting proposal, on the other hand, does nothing but provide a one-time reduction for the District. Arbitrators have refused to award in favor of such employers' cost-shifting offers when they are not likely to remedy the problem.²⁴

²⁰cited above

²¹Association Brief, p. 25.

²²Brief, pp. 27-29.

²³TR, p. 490.

²⁴Arbitrator Stern in School District of Random Lake, Dec. No. 25390 (October, 1990), Petrie in Twin Lakes, Dec. No. 26592-A (March, 1991), McAlpin in Crawford County (Sheriff's Department), Dec. No. 26522-A (March, 1990), and Miller in Crawford County

The Association further maintains that an award in favor of the Employer will threaten the integrity of the Aetna-administered Indemnity Plan because of "adverse selection." The 5% contribution will cost family plan members \$120 more per year and single plan members pay \$85 more per year. Historically about 60% of the District's employees have been on the Indemnity Plan; by introducing a large cost differential, more, healthier employees will switch to HMOs leaving a less healthy participant, high-cost Indemnity Plan.²⁵

The Association asserts that examination of the collective bargaining history shows not only that the appropriate comparable to guide this Arbitrator's award is the ASC unit (which follows the Teacher's unit), particularly with respect to health premiums, but also that the Association is willing to deal with cost.²⁶ The School Accountants' contract (and ASC contract) mirrored the Teachers' contract for health insurance from 1969 through the current contract (p. 27). Whenever cost containment measures were negotiated between the MTEA and the Board for Teachers, they were incorporated into the School Accountants' (and ASC) contract. During negotiations for the current Teachers' contract and the ASC contract (which includes the central office Accountants), the Board introduced the same 5% cost-shifting proposal, but eventually signed a contract which does not include such a provision but does include additional cost containment measures identical to those proposed by the MTEA; yet the Board is still insisting on a 5% provision for the School Accountants/Bookkeepers. The contention by the Board that there is a "trend" towards employee contribution is contradicted by its own settlement pattern. It proposed the contribution to this unit in September, 1990, and then settled contracts providing for no employee contributions with the Teachers in December, 1990, the ASC unit in August, 1991, and the Psychologists in June of 1992.

In addition to contending that the Employer's proposal will be ineffective in controlling the rising cost of health care, the Association also contends that the Employer has offered no quid pro quo for the School Accountants' 5% contribution. It cites other arbitrators' rejection of

(Highway Department), Dec. No. 26529-A (January, 1991)

²⁵The Association suggests that a flat dollar contribution which is the same for both types of coverage would remedy the adverse selection problem. Employer Brief, p. 30.

²⁶Association Brief, pp. 19-21 and 27-29.

premium contributions which change the status quo for lack of an adequate quid pro quo.²⁷ When arbitrators did award in favor of the Employers' (generally 5%) insurance contribution proposals, they did so when the union was recalcitrant regarding efforts to deal with the problem.²⁸ As mentioned above, the Association has cooperated with efforts to rein in these costs. In the first year of the contract in dispute, the wage increases offered by the Board are a half percent less than the ASC unit and one and one-half percent less than the Teachers (both were not settled for 1992-93 at the close of the record). Members of the ASC unit also will be receiving a 3.43% "annual increment" and employer pick-up of pension contributions. There is obviously no quid pro quo for the proposed cost-shift and no evidence of employee intransigence.

Finally, the Association has argued that an award in favor of the Board would be inequitable in two respects. Arbitrator Oestreicher considered the proposed 5% contribution by low-paid Aides inequitable when most MPS (who average over \$20,000/yr.) employees don't pay. Central Office Accountants are generally more highly paid than the School Accountants/Bookkeepers and received a higher wage increase. Clearly this unit's employees are less able to afford the contribution which is not expected of higher-paid employees. Furthermore, the Board is currently saving \$1.2-3 million on health care after implementing the negotiated provider discounts. Additionally, this unit is really "saving" the Employer health care costs; "sixty percent" (60%) of the employees are enrolled in the least costly health care plans, while 60% of all District employees are in the high cost Indemnity plan.²⁹

Discussion and Opinion

The Statute requires the Arbitrator to consider the aforementioned criteria in making an award.

²⁷Arbitrator Petrie in Twin Lakes No. 4 School District, Dec. No. 26592-A (1991), Krinsky in Barron Area School District, Dec. No. 26651-A (1991), Vernon in Elkhart Lake-Glenbeulah School District, Dec. No. 26491-A (1990), Malamud in City of Prairie du Chien, Dec. No. 26628-A (1991), and the two Crawford County cases cited above.

²⁸citations were omitted.

²⁹The Arbitrator notes that BX 21E shows even fewer unit employees are in the Indemnity Plan. Four are in the Aetna-single plan, and only one is in the -family plan, so two-thirds (2/3) of the unit are in the low-cost plans.

The criteria cited by the Parties as pertinent to this decision are internal (e.) and private sector employees (f.) comparisons as well as interests of the public (c.), other factors--status quo change (j), and overall compensation (h.). Each of these is considered below as the outstanding issues of this dispute have been considered by the Arbitrator. First, the Arbitrator is compelled to comment on the question of the status quo, as outlined above, and all that this entails. The internal comparability factors are then addressed, followed by a discussion of other factors and of other issues.

Other factors: Status quo

The Arbitrator recognizes that the Board proposes a significant change in the bargaining relationship between the parties and at the same time he appreciates the substantial increases in its health care costs, particularly for the Indemnity plan. The Board's past contracts and the Board's practice of continuing to pay the full premium for 76% (+) of its employees convince the Undersigned that the Board must provide a compelling case for its proposal, that its proposal is a remedy or has intrinsic merit, and that it offers an adequate quid pro quo if it does not have clear support among the comparables.³⁰

The Board's "compelling public policy case" is that its health care costs have risen 175-250% during the past eight years, rising from slightly over 5% of total expenditures to slightly over 8% in 1991-92, and are budgeted at 9.56% of 1992-93 expenditures.³¹ While the Board presumably meant to say that these premiums rose 75%-150% above 1984 levels (from a 1984 level of about \$200/mo. to about \$350 in 1992 for the HMOs, and from about \$225/mo. to over \$550 for the Indemnity plan), the point is well taken. That the 5% premium contribution will bring down the real cost or its growth, rather than just shift 5% to the employees, has admittedly not been established by the Employer. Strangely enough, the Association's warning of an "adverse selection" effect would possibly be considered by the Arbitrator to be a "remedy" in the short-run. Employees who would have to pay 5% of the \$2400/yr. difference (the \$120 referred to by the Association) between the Indemnity Plan and the HMOs' premiums may migrate to the HMOs. The District saves the other 95%, or \$2280/yr., however. Employees

³⁰see Vernon in Elkhart Lake and Bloomer School District (Dec. No. 43193-A and 24342-A), Nielson in Manitowoc Public Schools, (Dec. No. 26263-A) and Petrie, in New Richmond School District.

³¹Board Brief, p. 24, BX 12 and 13.

under the family Indemnity plan would pay \$331/yr. (5% of \$6620) for health care while those under the HMO plans would pay about \$216/yr., which would be a small price to pay for the \$2400 savings from a social welfare perspective. There would be a \$2280 savings to the Board. Theoretically, the Board should come out ahead by "buying out" the employees' costs--unless the savings are merely transitory. According to testimony, the transitory nature of the savings would occur if more healthy employees choose the HMOs and drive up the Indemnity Plan costs. If "migrating" employees are less healthy than are current HMO participants, and if the HMOs are currently at their least cost method of providing services, then HMO costs (and presumably premiums) would rise as well. Whether Indemnity Plan costs (and possibly HMO costs) would rise to the extent necessary to wipe out savings from those migrating to the HMOs has not been established by either party. It would seem to this Arbitrator that for there to be a net increase in health care costs due solely to a changed "mix" between plans would require that the Indemnity Plan be a "lean and mean machine" while the HMOs are colluding cats fat from licking so much skimmed cream.³² A paucity of evidence to this possibility is noted. The Arbitrator does note that the family and single plan premiums for the HMOs have risen about 60% during the past 5 years while the Indemnity Plan "premiums" have risen 140% (F) and 87% (S) during a period in which the "mix" of District employees between plans have remained relatively constant at 39% HMO and 61% Indemnity.³³ The Board does not make the argument that the 5% cost sharing will encourage shifting to (other than Aetna-) managed care which will reduce costs, only that it will save 5% on its costs.

The above discussion indicates that the Undersigned believes that there may be some intrinsic merit in the Board's proposal to change the status quo. Were this to be the case, there would be no additional issue of quid pro quo. During testimony from Association witnesses when the issue of "steerage" arose, the Arbitrator inquired as to the problem of having the "integrity" of a health care plan "threatened" when it costs over 50% more than other plans (HMOs). The response was that employees want to be able to choose providers, to be able to go to the Mayo clinic if they feel that it is necessary. There is a cost to this choice. For the United States, it is part of the 14% of GDP devoted to health care, a percentage unsurpassed by any other nation

³²The Arbitrator is additionally cognizant of the distributional effect between employees wherein such migration may eventually establish low employee-cost HMOs for the healthy and a high employee-cost Indemnity Plan for employees with chronic conditions. This may be the big issue, conspicuously not addressed in this arbitration.

³³BX 15 and AX 37-43.

on earth. Who should bear this cost is the issue at hand, however. He is reluctant to base an award on the belief that this "steerage" is a positive factor rather than a negative concern, however, for several reasons. First, the parties have not developed and given sufficient evidence or thought to this argument. Second, the distributional consequences among classes of employees is not understood to a reasonable degree. Third, this unit is the District's smallest unit and therefore is not likely to be either the "problem" or the "solution." Fourth, two-thirds of the unit's employees are already in the low-cost health care plans. Fifth, there is a loss to the employees even if there is a gain which may exceed their loss for which there may be inadequate compensation. Whether this is correct depends on the nature of the appropriate comparables selected.

Public sector comparables

In applying the statutory criteria, Arbitrators (including the Undersigned) have been guided by considerations of geographic proximity, similarity of size of employer, and similarity of jobs. In the instant case, the latter consideration is most applicable. Similarity of jobs is further based on level of responsibility, the nature of the services provided, and the extensiveness of training and/or education required. The question posed to the Arbitrator is whether in his opinion, the School Accountants/Bookkeepers are more similar to other classified employees or to Accountants in the ASC unit. This a particularly difficult question. Regarding the level of responsibility, careful scrutiny of evidence and testimony indicates that the unit employees are relatively independent and exercise higher levels of judgement and responsibility than one would surmise from the list of other classified employees such as Playground Custodians, Social Work Aides, Data Processing employees, Building Service Helpers, Food Service, and other assistants. However, these units also include Engineers, Food Service Managers, and clericals, among whom are a few Account Clerks who (based on accepted testimony) have significant responsibilities as well. The types of services provided also are somewhat more similar to the Accountants in the ASC unit. However, other testimony and the record of job descriptions indicate a routine nature of the work not unlike many clerical jobs. Office secretaries routinely order supplies, maintain financial records, and make reports following prescribed formats. Classified Account Clerks also do similar work. In this case, both enter data in the appropriate categories of a "canned" accounting program. The level of education and training required of unit employees is somewhat more similar to ASC employees than to other classified employees. Prior to 1984, this would have been clearer. Currently, it is not. Many other classified employees require skills beyond what should or could have been learned in high school such as the engineers, food service managers, journeyman building trades employees, and many of the

clericals who may require substantial computer, bookkeeping and other skills. These appear to be less than a majority of the classified employees, however, while unit employees in this arbitration require at least this level of education and training, and a majority possess even more. The Arbitrator concludes that the unit employees' positions are not neatly comparable to certain employees in the ASC unit nor are they more similar to the other employees categorized as "classified." This should not be surprising, since in the external labor market, employees are distributed about multi-dimensional continuums of skill levels, responsibilities, and services rather than within a few discrete categories. As such, it is also not surprising that in the opinion of the Arbitrator, wage settlements have tended to be somewhat in between both groups until recently. Now the issue of health insurance contributions for these employees comes forward and they are "between" contributors (other classified employees) and non-contributors (ASC employees).

The Board argued and provided testimony to the deliberate practice of bargaining differently with, and establishing separate internal wage patterns between, Certificated and Classified employees. It then claims to offer the School Accountants/Bookkeepers (who are in the Classified group of its categorization scheme) a wage of 3-1/2 and 4% when the classified employees settled for 3% and a 5% insurance contribution. The "additional 1/2% and 1%" is the quid pro quo for a 5% insurance cost-share. Yet it settled with all other Certificated employees for 5% salary increases and no cost-share since these contracts were negotiated. The facts presented by the Board (BX 8) show the internal wage settlement pattern during the past decade tend to support the Board's position. In most years, the School Accountant/Bookkeepers' settlements were closer to the established pattern of the Classified employees than to the Certificated and the ASC employees.³⁴ Testimony by the Association of what went on during negotiations is to the contrary.

If the Board's argument that the appropriate comparables are the other Classified employees is accepted, then a quid pro quo of a wage increase above the 3% granted other units would not be required for the 5% contribution which other units have accepted. The logic of this is pointed out (above) by the Employer's reference to other arbitrators' opinions that "hold outs"

³⁴It appears to the Arbitrator that the School Accountant/Bookkeeper salary settlement more closely paralleled the Classified settlements than the Certificated units in 5 of the 10 years, while in 4 (of the earlier) years, no conclusion can be reached. Their settlements more closely paralleled the Classified units than the ASC unit in 6 of the 10 years, while the Arbitrator is unable to discern a pattern in 3 of the 10 years.

from a patterned settlement should not be rewarded if future negotiations with all units are to be fruitful. The proviso is that the status quo change proposed is necessary and effective. The Undersigned cannot find for the Board in this regard, given the above discussion. He does find, however, that the historical wage relationships coupled with its evidence on similarity of employees would indicate a 3% wage increase to be within the pattern.

The tie in of health insurance with the Teachers as maintained by the Association is not contradicted. The same could be said, however, of all other units until this past round of negotiation. If the Association's argument that the relevant internal pattern for health insurance benefits is the Employer's entire workforce, then this unit's employees should not have to pay for what 76% of the other employees do not pay for, namely, part of health insurance premiums, unless they are offered a sufficient quid pro quo. The Arbitrator finds this to be a reasonable position.

Is the board offering a sufficient quid pro quo for what the Association argues is a "strictly economic issue" of cost-shifting? The Undersigned has found that these employees cannot strictly be placed in either the Classified or the Certificated or Certificated/Classified(ASC) category. They appear to him to be "in between." He also has found that the bargaining history (or at least the results of it) reveals that the School Accountants/Bookkeepers settlements are closer to the Classified employees. That being the case, the 1/2% and 1% wage offer in excess of other Classified employees is the quid pro quo for the status quo change. Do the increased wages compensate? Generally they do. The Board offer of salaries for 1992 (BX 21A) results in average salaries of \$30,000 (\$449,893 /15 employees in the unit). This means approximately an additional \$440 for the average employee in this contract year. The difference in the medical portion of the offers (see p. 3 herein) is \$1360, or about \$91 per employee. For subsequent years, however, the "extra 1-1/2% salary" will yield about \$450 (plus raises, if they aren't less than the Classifieds', minus inflation). The insurance cost to employees will average \$175 (plus insurance inflation, less any "overstatement" of the current year's "premium"), but will be about \$330 for one unit member if s/he continues on the family indemnity plan. In contrast to the Teacher's Aide case recently decided by Arbitrator Oestreicher, these employees would be more able than the Aides to pay the 5% than the Aides since their salaries are about twice as high.

Other factors and issues

The Employer's argument that employee contributions to health insurance are common in the

private sector is noted, as are the Association's objections to the data presented based on proximity and representation of employees. Also noted are the Employer's contention and data related to health insurance contributions of other local municipal employees, as well as the Association's argument and evidence that many of these employees are grandfathered or pay less than 5%. Absent other factors considered above, these factors would tend to weigh in favor of the Board's position.

The Association's dental insurance provisions seek to change the District's contribution from a flat \$38/\$12 per month (F/S) rate to one modified to reflect 93.9%/97.4% for subsequent years as premiums change. There is little or no financial impact in the instant case. The Association has shown little compelling need for the change, intrinsic merit in its proposal, or other support. The additional provision for early retirement notification for retirees to be eligible to pay (presumably lower) health insurance rates similarly copies the Teachers' contract language. It also involves a change in the status quo and might be supportable if there is a demonstrated problem of bringing a replacement School Accountant/Bookkeeper "on line" as late as the middle of summer. This provision should be a benefit to the Employer as might be argued in the case of the Teacher's unit. Since the parties have directed virtually all evidence and argument towards the 5% health care premium cost-sharing, the Undersigned cannot make a determination one way or the other. Since neither provision is sufficiently compelling, the Arbitrator's findings on the health care issue will govern this award.

Award

Having carefully considered all of the evidence and argument of the Parties set forth above as well as the arbitral criteria provided under Section 111.70 Wisc. Stats., it is the decision of the Undersigned that:

The final offer of the Milwaukee Board of School Directors is to be incorporated into the 1991-92 Collective Bargaining Agreement with the Milwaukee Teachers Education Association (School Accountant/Bookkeeper).

Dated this 9th day of July, 1993.



Richard Tyson,
Arbitrator

SUMMARY OF FINAL OFFER FOR A SUCCESSOR AGREEMENT
TO THE 1989-90 SCHOOL ACCOUNTANTS/BOOKKEEPERS CONTRACT
(TENTATIVE AGREEMENTS ATTACHED)

The following is presented as a package. All proposals not addressed should be considered as dropped or rejected.

A-1: Duration of contract - January 1, 1991, up to including December 31, 1992.

A-3: Modify Part III, Section B(1)(c), by increasing major medical from one hundred thousand dollars (\$100,000) to two hundred thousand dollars (\$200,000).

A-4: Modify Part III, Section B(1)(c), by increasing major medical effective upon ratification by the parties.

Create a new Part III, Section B(1)(e), maintenance of benefits.

Create a new part III, Section B(1)(f), to read: Effective upon ratification by the parties, the Board shall pay the full premium, single or family as appropriate, for participation in the United Wisconsin Insurance Company (UWIC) vision plan.

Create a new Part III, Section B(1)(k), outpatient precertification.

B-5: Add to Part III, Section B(2): Effective July 1, 1992, the Board shall pay ninety-five percent (95%) of the premium cost for single or family coverage of regularly employed personnel.

Create a new Part III, Section B(4): Five hundred dollars (\$500) buy out.

B-6: Add to the second paragraph of Part III, Section B(7): Effective July 1, 1992, the Board shall pay ninety-five percent (95%) of the premium cost at the rate in existence at the time of retirement.

Add to the third paragraph of Part III, Section B(7): Effective July 1, 1992, the Board shall pay ninety-five percent (95%) of the premium cost for such spouse.

Modify the fifth paragraph of Part III, Section B(7), by deleting the reference to "full".

B-7: Add to Part III, Section B(8): Effective July 1, 1992, the Board shall pay ninety-five percent (95%) of the premium cost for such surviving spouse.

Add to Part III, Section B(9): Effective July 1, 1992, the Board's contribution toward such health insurance coverage shall be ninety-five percent (95%).

Add to Part III, Section B(10): Effective July 1, 1992, the Board will pay ninety-five percent (95%) of the health insurance cost for benefits provided in the 1980-82 contract with the MTEA.

A-8: Modify Part III, Section B(11)(b), by increasing the Board's contribution from nine dollars and fifty cents (\$9.50) to ten dollars (\$10) per month toward the premium cost of the single dental coverage and from thirty-two dollars (\$32) to thirty five dollars (\$35) per month toward the premium cost of family dental coverage.

A-9: Delete Part III, Section B(11)(c), effective upon ratification by the parties.

Modify Part III, Section J, by increasing the number of days of accumulated sick leave to be paid as severance pay from thirty (30) to forty (40) effective upon ratification by the parties.

A-15: Delete Part IV, Section C(3) and (5) and substitute the following: vacation request approved or denied by Department of Accounting within ten (10) days.

A-21: Appendix A - Salary:

Effective January 1, 1991	3.5%
Effective January 1, 1992	4.0%

Modify contract to reflect reorganization changes.

Stipulated agreement(s).

Pension

MBE/er
01/22/92

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