

STATE OF WISCONSIN

BEFORE THE ARBITRATOR

RECEIVED
JUN 28 1993

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

In the Matter of the Arbitration of the
Dispute Between the

Milwaukee Teachers Education Association
(Substitute Teachers)
and the

Milwaukee Board of School Directors

WERC Case 242
No. 46490 INT/ARB 6199
Decision No. 27187-B

Appearances:

Ms. Barbara Zack Quindel of Perry, Lerner, & Quindel, S.C., and Mr. Sid Hatch, Assistant Executive Director, MTEA both of Milwaukee, WI. for the Association.
Ms. Mary M. Kuehnmuench, Assistant City Attorney for the City of Milwaukee, for the Employer.

Sworn Testimony was received from:

Mr. Sid Hatch, Assistant Executive Director, MTEA
Mr. Sam Carmen, Assistant Executive Director, MTEA
Mr. Milt Ellis, Labor Relations Specialist, MPS
Mr. Martin Morgan, Staffing Specialist, MPS
Mr. Kenneth Black, Senior Budget Analyst, MPS
Ms. Chris Toth, Director of Insurance and Risk Management, MPS
Mr. Barry Gilbert, Assistant Executive Director, MTEA
Mr. Stephen Brink, Consulting Actuary, Milliman & Robertson
all of Milwaukee, WI.

Background

On August 31, 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, 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 represents regular, "day-to-day," and long-term vacancy substitute teachers of the District. The Parties met on six other occasions, including four with mediators from the WERC, and failed to reach an agreement. On October 31, 1991 the MTEA 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 Marshall Gratz, a

member of the Commission's staff conducted an investigation on December 16, 1991, and then advised the Commission that an impasse existed. The parties submitted final offers to the Commission by February 24, 1992. On March 6, 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 May 20, 1992. He conducted a hearing on the matter on February 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 March 2, 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)

The contract dispute primarily involves differences in offers of economic issues. The main issue in dispute is the Board's offer to include an employee contribution of 5% toward the health insurance premium beginning July 1, 1992. The Association proposes the status quo, a (moot) "me, too" clause providing that if the Teachers unit contract, which was subsequently negotiated, provided for such contributions, so would the Substitutes. The (apparently) non-economic issue which is somewhat related is an early notification of retirement provision. The MTEA proposes language from the Teachers contract which sets health insurance rates at the current level if the Employer is notified before April 1 of an intent to retire at the end of the academic year. The Association also proposes language from the Teachers contract regarding the Employer's contribution to the Dental Plan which expresses a percentage of the premium to be paid; the Employer simply proposes to increase contributions to \$12/\$38 (s/f) per month. Both salary offers provide for a 4% wage increase. The District's offer implements certain provisions (a "buy-out", outpatient precertification, maintenance of benefits, major medical, and dental) as of the ratification date while the Association's offer begins these 1/1/92.

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%±) now pay the 5% while the remainder, particularly the teachers, do not. Some other public employees in the area as well as private sector employees pay part of their premiums. Substitutes in seven of the ten largest school districts have no paid insurance while Green Bay and Madison have some form of insurance. To which group is this group of employees to be compared?

Cost Costing of the proposals by the Employer is as follows:
Salary and Benefits Costs Under the Board and Association Offers¹

	<u>1991</u>	<u>1992(MTEA)</u>	<u>1992(MPS)</u>
<u>Medical insurance</u>	<u>\$ 815,077</u>	<u>\$ 959,744</u>	<u>\$ 934,167</u>
<u>Total Compensation</u>	<u>9,298,952</u>	<u>9,787,223</u>	<u>9,761,646</u>
<u>percent increase</u>	<u>4.67%</u>	<u>5.25%</u>	<u>4.98%</u>

¹Employer's exhibits 13-15. Exhibits 15a-b contained errors (TR pp. 129-33) which have been corrected by the Arbitrator. 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 has directed the Arbitrator's attention to criteria (d.) and in so doing argues that the Milwaukee Public Schools pay substitute teachers very well and provide health care to an extent not found elsewhere. It contends that the ten largest school districts in the state of Wisconsin are an appropriate "comparable pool." In addition to the obvious need to establish comparability and the logic of selecting these ten districts, the Board refers to Arbitrator Fleischli's 1982 decision establishing this pool for the Teacher's unit.² These schools are large, urban, and are likely to be as similar in conditions as possible, given the uniqueness of Milwaukee in the state. Examining health care provisions of this pool shows that in seven of the districts, health/dental insurance is not available. In Green Bay, the employee must pay 100% of the premium, while in Madison, the district will pay only 90% after a year and a half (BX 7 and "background information"). Moreover, its pay for substitutes, particularly for day-to-day substitutes, is significantly higher than in those other districts (BX 5).

The Board also contends that under criteria (e.) its offer is well within reason. The Sewerage District employees contribute 15% 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). Additionally, the Madison Area Technical College 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 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.

²Milwaukee Board of School Directors, CXXX, No. 29120, Dec. 19337-A, July, 1982.

The Employer notes that internal comparables also show that its offer is to be preferred. The Milwaukee Public Schools have three classifications of employees: certificated (which includes these unit employees), classified, and certificated/classified. 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 last category (which includes the Administrators and Supervisors Council) has a combination of classified and certificated employees. The Employer maintains that it bargains "differently" (Brief, p. 10) 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 the Teacher's Assistants who were awaiting a decision by Arbitrator Oestreicher³. The Employer has negotiated wage increases with the Substitutes which are more in line with the classified units: about 1% less than the Teachers and Psychologists. Its wage offer of 4%/4% herein is 1% greater than the classified units' settlements which represent an adequate quid pro quo for the 5% contribution to health insurance. The Employer is also seeking a 5% insurance contribution for the same period from the School Accountants/Bookkeepers.

The Employer contends that the recent Oestreicher decision is not applicable to this case.⁴ 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.⁵ The Employer argues that the Substitute Teachers' pay "far exceeds" the Aides' pay AND they are getting an additional 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 an expert witness of its skyrocketing health care costs.

³The 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).

⁴Employer Brief, pp. 11-12.

⁵ cited above.

The average cost per active and retired employee rose from about \$2500/year to over \$4000 from 1988 to 1992.⁶ Health care costs have risen from 5% to over 9% of the District's operating costs.⁷ 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. 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."⁸

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 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.⁹ The Employer notes that there is no real evidence of record 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 early retirement notification provision was

⁶TR Vol. 1 (Accountants/Bookkeepers), p.164.

⁷BX 10,12. 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."

⁸Employer Brief, pp. 15-16

⁹The District provides the health care options of various HMOs as well as an (Aetna-administered) indemnity plan. The latter has significantly higher "premiums."

negotiated to handle a problem specific to this unit, namely teacher shortages, which does not apply in this case.

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. 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, and is willing to shoulder a 5% cost share by continuing a "me, too" clause if this unit's appropriate comparable, the Teachers unit, pays the 5% contribution.

The Association first addresses the comparables issue. The Substitutes are teachers and must be certificated and therefore should not be linked to classifieds for bargaining purposes. Furthermore, the issue in question is health care contributions for those substitute teachers who qualify. Qualification comes through teaching 80 or more days in the prior year as a "regular" substitute.¹⁰ Unrefuted testimony indicated that most regular substitutes work between 140-180 days per year.¹¹ Thus, the employees in the unit to whom this contract provision applies are appropriately compared to the Teacher's unit employees. The only recipients of coverage in this case are nearly full time teachers; the Employer is intent on a one-time shift of health care cost to them when it is not requiring the same from the full time teachers or the other certificated employees, the Administrators and Psychologists. 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.¹² Additionally, the Employer's suggestion that all other taxing jurisdictions require (or are bargaining to require)

¹⁰Of the 600± active substitutes, 250-300 are "regular substitutes" (available daily and have worked 15-19 or more days on a single/consecutive assignment). About 230-280 are "day-to-day" (may select days or assignments). About 125-130 fill teacher vacancies and are paid on the Teacher contract scale (IR pp. 17-20, 87, 137).

¹¹The Teacher contract provides for 190 work days, including 180 contact days.

¹²cited above

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.

The Association seeks to dispel the notion that appropriate comparisons can be made with the nine other largest districts in the State. Two-thirds of these do not include represented employees.¹³ They are not geographically proximate. The Employer has shown no evidence that the represented substitutes in Madison and Green Bay who are eligible for (less generous) health coverage are comparable to those eligible in this unit in terms of the regularity with which they teach.¹⁴ Nevertheless, the Madison Substitutes' health care is also linked to the Madison Teachers' contract, and, while requiring a 10% premium contribution for the indemnity plan, provides for full payment of the HMOs.¹⁵ The link to the Teachers' contract, the status quo, is therefore supported.

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 (rather than through a PPO) by the Board. This will have real, salutary effects on cost increases even according to the Board's witnesses.¹⁶ 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.¹⁷

¹³The Association cites several arbitrators' awards, namely Vernon in Lake Geneva Elementary, Dec. No. 26826 (1992), Miller in Crawford County (Highway Department), Dec. No. 26529-A (1991), and Zeidler in Seneca CAP, Med/Arb-3002, (1985) wherein non-represented employees were deemed inappropriate comparables for represented employees.

¹⁴Association Brief, pp. 5-8.

¹⁵Association Brief, p. 24 and citations included therein.

¹⁶TR(Accountant/Bookkeepers), p. 490.

¹⁷Arbitrator 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.¹⁸

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 Teacher's unit, particularly with respect to health premiums, but also that the Association is willing to deal with cost.¹⁹ The Substitutes' contract mirrored the Teachers' contract for health insurance from 1969 through the current contract, which includes the "me, too" clause. Whenever cost containment measures were negotiated between the MTEA and the Board for Teachers, they were incorporated into the Substitutes' contract. During negotiations for the current Teachers' contract, 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 Substitutes.

The Association contends that the Employer's proposal will be ineffective in controlling the rising cost of health care. It also contends that the Employer has offered no quid pro quo for the Substitute Teachers' 5% contribution. It cites other arbitrators' rejection of premium contributions which change the status quo for lack of an adequate quid pro quo.²⁰ When arbitrators did award in favor of the Employers' (generally 5%) insurance contribution proposals, they did so when the union was recalcitrant toward efforts to deal with the

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

¹⁸The 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. 22.

¹⁹Association Brief, pp. 18-20.

²⁰Arbitrator 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.

problem.²¹ The Association has made good faith efforts to rein in these costs. Historically, the Substitutes have received increases at about the same rate or a percent less than the Teachers, with the exception being 1988-89 when the Substitutes "bought" dental insurance and the subsequent year when they settled before the Teachers²² In the first year of the contract in dispute, the stipulated wage increase is also a percent less (the Teachers are not settled for 1992-93), so 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. Regular substitutes who work the maximum contract days (180) would earn only \$17,500 for the year; clearly they 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.

Discussion and Opinion

The Statute requires the Arbitrator to consider the aforementioned criteria in making an award. The criteria cited by the Parties as pertinent to this decision are internal (e.), external (d.), 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 and external comparability factors are then addressed, followed with 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 costs of health care, particularly for the Indemnity plan. The Board's contention that the

²¹citations were omitted.

²²Association Brief, pp. 28-29 and TR pp. 25-26.

"me, too" clause is only 1 contract old is accepted, but the facts of this case--past contracts and the Board's practice of continuing to pay the full premium for 76% (\pm) of its employees--convince the Undersigned that the Board must provide a compelling case for its proposal, that the proposal is a remedy or has intrinsic merit, and that it offers an adequate quid pro quo or has clear support among the comparables.²³

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.²⁴ 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 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--but it is not doing it according to the Association (and the Undersigned, as discussed below)--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

²³see 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.

²⁴Board Brief, p. 15, BX 12.

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.²⁵ A paucity of evidence to this possibility is noted. The Board doesn't 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.

Public sector comparables

The Board's assertion that the state's ten largest school districts' substitute teachers are an appropriate comparable pool for consideration on this issue in dispute and that such comparisons clearly favor the Board's position is not accepted by the Arbitrator. The Board's evidence (BX 5) clearly shows that there are wide variations in the categorization of substitute teachers among the ten, making direct comparisons very difficult. Moreover, Milwaukee's Regular substitute teachers are shown to be paid \$95.88/day and \$99.72/day during the two years when most of the other districts pay \$120 ± for longer term substitutes. Again, requirements for pay categories vary significantly, so the Arbitrator does not necessarily conclude that the Regular Substitutes are "underpaid." The Arbitrator does agree that the rates for Day-to-Day substitutes appear higher in the MPS. These pay differences have been declining and will continue to do so under this contract. Day-to-Day employees are not eligible for employer-paid health care in the MPS, however, and are not at issue. The Substitutes who are eligible are nearly full-time teachers ("140-180 days on average"). Testimony also has shown that there is a significant number of Substitutes who become regular teachers. Milwaukee is undoubtedly unique in this regard: that due to its size, it can count on a substantial number of leaves/absences over any given period, and requires a large cadre of essentially "floating" teachers. Whether these Regular Substitutes should have health insurance has already been established; that the Board's offer provides a quid pro quo for its offer based on the Board's comparisons has not.

The Association's assertion of the link to the Teachers' unit for such health care provisions is, for the most part, upheld by evidence and testimony. The parties have not historically based their bargaining on comparisons with the "big 10." The tie in of health insurance with the Teachers as maintained by the Association is not contradicted. The "me, too" clause is further

²⁵The 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.

evidence of this. The Board's assertion of the appropriateness of linking these negotiations to the Classifieds is rejected for at least two reasons. First, the Board argued and testified 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 Substitutes (who are in the Certificated group of its categorization scheme) a wage of 4% when the classified employees settled for 3% and a 5% insurance contribution. The "additional 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. Second, the facts presented by the parties (UX 10 and BX 3) which show the internal wage settlement pattern during the past decade do not support the Board's position. In most years, the Substitutes' settlements were closer to the established pattern of the Certificated employees than to the Classified employees.²⁶

Other factors and issues

The Employer's argument that employee contributions to health insurance are common in the private sector is noted, as is the Association's objections to the data presented based on proximity and representation of employees. Also noted is 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 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 Board perhaps makes the best case by pointing out that the provision is taken from the Teachers' contract. 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 also is not highly supportable. By the very nature of substituting for teachers, there would be no benefit to the Employer for this provision 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, and since neither provision is outrageous or sufficiently repugnant to the public interest, the Arbitrator's

²⁶the Arbitrator estimated that the dental provision was worth about 2% in 1988-89.

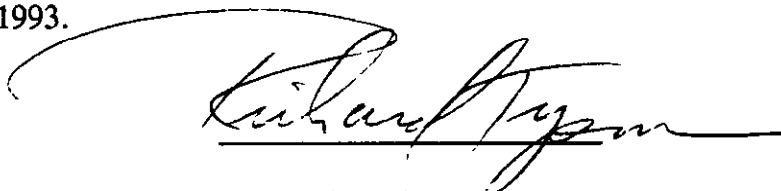
findings on the health care issue will govern this award.

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 Teachers Education Association is to be incorporated into the 1991-92 Collective Bargaining Agreement with the Milwaukee Board of School Directors.

Dated this ²⁴~~7~~th day of June, 1993.

A handwritten signature in cursive script, reading "Richard Tyson", written over a horizontal line. The signature is fluid and extends to the right.

Richard Tyson,
Arbitrator

**MTEA Final Offer
(Substitute Teachers)**

RECEIVED
DEC 23 1991

December 20, 1991

*** WISCONSIN EMPLOYMENT *
RELATIONS COMMISSION**

- A. Duration January 1, 1991 to and Including December 31, 1992**

- B. Health Insurance**
 - Employe Opt Out Bonus**
 - Outpatient Precertification**
 - COB vs. MOB**
 - Major Medical**
 - Vision Benefits**
 - "Me Too" Clause**
 - Dental Provisions**
 - Retirement Notice**

- C. Salary Application/Schedule**

TENTATIVE AGREEMENT

MTEA (Substitute Teachers)

Part I, Section C(1)

Modify Part I, Section C(1) to read as follows:

1. This contract shall continue in full force and effect as binding on the parties from January 1, 1991, to and including December 31, 1992. Salary shall be retroactive to January 1, 1991. Newly adopted language and fringe benefits are not retroactive unless specifically stated to be. All old language in the contract shall be retroactive. The Board and the MTEA, for the life of the contract, each voluntarily and unqualifiedly waives the right and each agrees that the other shall not be obligated to bargain collectively with respect to any subject or matter referred to or covered in this contract or with respect to any subject or matter not specifically referred to or covered in this contract, except as otherwise provided herein.

Board

MTEA

Date

↑

**TENTATIVE AGREEMENT
MTEA (Substitute Teachers)**

Part III

Insert a new Section to Part III to read as follows and renumber subsequent sections:

Effective January 1, 1992, any employe who elects not to enroll in, or to drop, the indemnity health insurance plan or any negotiated health maintenance organization by virtue of being covered by another employer's health plan shall receive a payment of five hundred dollars (\$500) per year prorated on a 10 month basis. If (a) the employe's coverage under the other employer's health plan is cancelled, or (b) there is an increase in the amount of premium dollars which must be paid by the employer or his/her spouse under the other health plan, or (c) there is a reduction in the level of benefits provided by the other health plan, the employe may enroll in the indemnity health insurance plan, single or family as appropriate, on an open enrollment basis, provided an application for health coverage is received by MPS employee benefits within 31 calendar days after such event occurs. Such coverage shall be retroactive to the date such event occurred. Voluntary cancellation of coverage by the other employer's subscriber while continuing to be actively employed by that employer does not constitute cancellation of other insurance. These employes shall retain the right to re-enroll in the indemnity health insurance plan or any negotiated health insurance maintenance organization during the annual September open enrollment period.

Board

MTEA

Date

**TENTATIVE AGREEMENT
MTEA (Substitute Teachers)**

Add a new paragraph to Part III, Section G to read as follows and reletter subsequent sections:

- k. Effective January 1, 1992, the indemnity health insurance plan shall be modified to include the requirement that employes precertify the outpatient surgery and outpatient diagnostic procedures listed below. The employe or his/her representative must telephone the precertifying agency in advance and provide that agency with the name, address and business phone number of the physician performing the procedure. Effective November 1, 1992, if the employe fails to comply with the obligation stated above, only eighty percent (80%) of the normal coverage otherwise in effect will be paid by the insurance administrator, and the employe will be required to pay twenty percent (20%) of the normal coverage up to a maximum penalty of two hundred dollars (\$200).

The above precertification requirement shall not be required when it is necessary to perform one of these procedures on an emergency basis. Emergency shall mean:

Services and supplies for the treatment of a sudden onset of a medical condition manifesting itself by the sudden and severe symptoms of a condition when treatment is rendered immediately after the onset of such symptoms. Provided, however, that such condition as finally diagnosed was such that, in the opinion of the physician, the absence of medical attention could reasonably result in:

- a. permanently placing the member's health in jeopardy,
- b. causing other serious medical consequences,
- c. causing serious impairment to bodily functions, or
- d. causing serious and permanent dysfunction of any bodily organ or part.

The interpretation of this definition shall be based on the definition per se and shall not include any prior practices or precedents.

Outpatient Diagnostic Procedures
Requiring Percertification:

Cardiac Angiography (examination
of heart via a tube)

Colonoscopy (examination of
bowel via a tube)

Cystourethorscopy (examination of
uretha or bladder via a tube)

Knee Arthroscopy (examination of
knee via a tube)

Outpatient Surgery Procedures
Requiring Percertification:

Bunionectomy (removal of bunion)

Carpal Tunnel (repair of nerve on wrist)

Cataract Removal

Dilation/Currettage (scraping of uterus)

Hammertoe Repair (repair of deformed toes -
second through the fifth toe)

Laparoscopy (examination of the abdomen via a tube)

Upper GI Endoscopy (examination of upper intestinal tract via a tube)

Septoplasty (repair of nasal septum)

Strabismus Repair (eye muscle surgery)

Tonsillectomy/Adenoidectomy (removal of adenoids or small tonsil tags)

Tympanotomy (ear drum incision)

Board

MTEA

Date

**TENTATIVE AGREEMENT
MTEA (Substitute Teachers)**

Part III, Section G

Add a new paragraph e. to Part III, Section G to read as follows:

- e. Effective January 1, 1992, the indemnity health insurance plan shall be modified for active employees so that the coordination of benefits provision to be administered in accordance with OCI Alternative 3 (Maintenance of Benefits). The provision shall be administered in exactly the same manner it was administered by Aetna Life & Casualty Company prior to August, 1990.

Board

MTEA

Date

**TENTATIVE AGREEMENT
MTEA (Substitute Teachers)**

Amend the contract to read:

Effective January 1, 1992 the major medical shall be two hundred thousand dollars (\$200,000) with a major medical deductible of fifty (\$50)/ one hundred fifty dollars (\$150).

Board

MTEA

Date

**TENTATIVE AGREEMENT
MTEA (Substitute Teachers)**

Part III Section G

Add a new paragraph j to Part III, Section G to read as follows and reletter subsequent sections:

j. Effective January 1, 1992, the Board shall pay the full premium, single or family as appropriate, for participation in the United Wisconsin Insurance Company (UWIC) vision plan described below:

Participants may only obtain benefits from providers, including ophthalmologists listed in the UWIC "Directory of Participating Vision Care Providers", as amended by UWIC from time to time.

The vision plan shall be provided on the same basis to all active employe participants in the indemnity health insurance plan and to all participants, including retirees, in any of the HMO options offered by the board.

<u>Benefits</u>	<u>Frequency</u>	<u>Covered Amount</u>
Exam	Once every 12 months	Paid in full
Frame	Once every 12 months	\$20 acquisition cost (approximately \$40 to \$60 frames at no cost to employee)
Standard Lenses (glass or plastic to size 58)	One pair every 12 months	Paid in full

Type:

- a. Single focus
- b. Bifocal
- c. Trifocal
- d. Lenticular

Tints (Solid Rose 1 & 2)

Dispensing (Professional) Service	Once every 12 months	Paid in full
Contact Lenses (in lieu of frames and lenses)	One pair every 12 months	\$100

Board

MTEA

Date

**TENTATIVE AGREEMENT
MTEA (Substitute Teachers)**

Part III, Section G(1)

If during the term of the 1991-92 (substitute teacher) contract, the Board negotiates changes in the MTEA (teacher) contract that involves matters addressed in Part III, Section G(1) and (2) of the MTEA (substitute teacher) contract, such changes shall be incorporated into the MTEA (substitute teacher) contract.

Board

MTEA

Date

TENTATIVE AGREEMENT
MTEA (Substitute Teachers)

Part III, Section H Dental Insurance

Increase the maximum benefit per participant per calendar year as follows:

Effective January 1, 1991 \$1300

Effective January 1, 1992 \$1500

Increase the Orthodontic maximum per participant

Effective January 1, 1991 \$1300

Effective January 1, 1992 \$1500

Effective January 1, 1991, the Board shall pay up to thirty-eight dollars per month for the family plan and twelve dollars toward the single plan of prepaid group dental insurance. The Board and the MTEA shall meet to negotiate the carriers. Each year prior to the renewal, the Board and the MTEA shall meet to review the carriers. A change in rate of more than ten percent (10%) shall result in consideration of exclusion of the carriers.

Negotiating Note: If the amounts quoted in Part III, Section H 2 do not reflect (93.9%) of the family premium and 97.4% of the single premium, the Board contributions will be adjusted to reflect such percentages in subsequent years.

Board

MTEA

Date

TENTATIVE AGREEMENT

MTEA (Substitute Teachers)

Modify the contract and add a new paragraph to read as follows:

If the employees described above shall have seventy percent (70%) or more of the maximum allowable full-day accumulation of sick leave, they shall be allowed to continue in the health insurance plan or one of the health insurance maintenance organization plans with the board paying the full premium at the rate in existence for the health insurance plan at the time of retirement.

Those employees retiring at the end of their regularly scheduled work year, shall be allowed to continue in the health insurance plan or one of the health maintenance organization plans with the board paying the full premium at the rate in existence for the health insurance plan on either June 30 or July 1, whichever is higher, provided such employe has submitted his/her written resignation on or before April 1.

original

proposed

*added to current
p. 16 #4*

Board

MTEA

Date

**TENTATIVE AGREEMENT
MTEA (Substitute Teachers)**

Appendix A

1991 Salary Schedule*

Title	Salary
Day-to-Day Substitute	\$83.52
Regular Substitute	\$95.88

APPLICATION OF 1991 SALARY RATE:

The 1991 daily rates shall be effective as of January 1, 1991, payroll as follows: the daily rate for day-to-day substitute teachers shall be eighty-three dollars and fifty-two cents (\$83.52). The daily rate for regular substitute teachers shall be ninety-five dollars and eighty-eight cents (\$95.88).

1992 Salary Schedule*

Title	Salary
Day-to-Day Substitute	\$86.86
Regular Substitute	\$99.72

48

APPLICATION OF 1992 SALARY RATE:

The 1992 daily rates shall be effective as of January 1, 1992, payroll as follows: the daily rate for day-to-day substitute teachers shall be eighty-six dollars and eighty-six cents (\$86.86). The daily rate for regular substitute teachers shall be ninety-nine dollars and seventy-two cents (\$99.72).

*Substitutes assigned to social worker assignments which last longer than the regular teacher day shall receive an additional twelve and a half percent (12.5%) of their daily day-to-day or regular substitute teacher rate of pay for each day of such assignment.

Board

MTEA

Date