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STATE OF WISCONSIN  
EMPLOYMENT RELATIONS COMMISSION

STATE OF WISCONSIN  
BEFORE THE ARBITRATOR

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In the Matter of the Petition of	:
	:
NORTHWEST UNITED EDUCATORS	:
	:
	:Case 34
	:No. 46574 INT/ARB 6224
To Initiate Arbitration	:Decision No. 27374 - A
Between Said Petitioner and	:
	:
TURTLE LAKE SCHOOL DISTRICT	:
	:
	:

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Appearances:

Northwest United Educators by Kenneth J. Berg,  
Executive Director

Turtle Lake School District by Weld, Riley, Prenn  
and Ricci, S.C., by Kathryn J. Prenn, Esq.

**ARBITRATION AWARD**

Northwest United Educators filed a petition with the Wisconsin Employment Relations Commission, on November 18, 1991, wherein it requested the Commission to initiate arbitration pursuant to Sec. 111.70(4)(cm)6 of the Municipal Employment Relations Act. The Commission caused an investigation to be conducted by a member of its staff. After the parties submitted their final offers, an impasse was declared on August 2, 1992. The parties selected the undersigned from a panel of arbitrators; that selection was confirmed by appointment of the Commission on September 28, 1992.

The arbitration hearing was scheduled for December 2, 1992, at the school district office. A final effort to mediate settlement of the dispute was conducted at that time; it was not successful. The arbitration session was held and the record was closed on December 2, 1992. Initial briefs were exchanged through the arbitrator on January 25, 1993. Reply briefs were received and exchanged on February 8, 1993.

### DISPUTED ISSUES

The prior contract expired on June 30, 1991. Both of the offers in this proceeding would extend the terms of that agreement with stipulated modifications including annual 5% on call wage increases through June 30, 1993. The principal issues which the parties have been unable to resolve is language relating to the responsibility for payment of health and dental insurance premiums, and three other issues. According to the Board's cost estimate, the Union's health insurance proposal would cost \$16,516 more than the Board's offer over the two year term of this contract. A disagreement over dental insurance premium payments would not have any financial impact during this contract period. There are also disagreements about the Board's proposals to modify contract terms language relating to liquidated damages for teachers breaching contracts and teacher's personal leave days. These changes would have no fiscal impact upon the district.

### POSITION OF NORTHWEST UNITED EDUCATORS

Northwest United Educators, hereinafter referred to as NUE or the Union, said that there are three issues proposed by the District in this proceeding which are changes to the status quo. It said that the District has failed to meet its burden for changing the status quo, and therefore, the Union's offer is more reasonable on each issue. The issues are: responsibility for

Health Insurance premiums, changing the liquidated damages provision relating to teachers who break their teaching contracts and the teachers' right to use personal leave time. The Union noted that there is a language difference relating to the payment of dental insurance. The Union said that the position of both parties on dental insurance is almost identical.

The Union stated that all three of the disputed issues involved proposed changes in the status quo. It stated that "arbitral dicta" established the necessary burden of proof to justify a change in the status quo as follows: 1) Does the present contract language result in a condition requiring change? 2) Will the proposed contract language resolve the matter? 3) Would the proposed change impose an unreasonable burden upon the other party?

NUE said that the District is attempting to change the status quo regarding the payment of health insurance premiums. Commencing with February 1, 1985, the District paid the full health insurance premium for both single and family coverage for the following twelve month period. That practice was continued through February 1, 1988. Starting in February 1989, when the premium was increased to \$81.09 for single coverage and \$226.51 for family coverage, employees contributed \$9.67 toward single coverage and \$18.34 for family coverage. These contributions continued for a five month period through June 30, 1989. Commencing with July 1, 1989, the District adopted a self-funded plan with the term of the plan coinciding with the term of the NUE contract. In March of 1990, when the 1989-1991 contract between these parties was settled, Union members received back pay to reimburse them for premium overpayments which they had been required to make between July 1, 1989, and March 31, 1990. The Union cited exhibits and summarized their content to show that between July 1, 1987 and June 30, 1988 the employer paid the full health insurance premium. From July 1, 1988 through June 30, 1989, the premiums were fully paid by the employer during seven months and employees contributed toward the premium for a

period of five months. The Union summarized its position saying, "These calculations established the following pattern:

1987-88 -- District pays full premium for single and family

1988-89 -- District pays an average of 94.1% single and 94.4% family

1989-90 -- District pays full premium for single and family

1990-91 -- District pays 89.9% of single and family premiums."

It argued that the parties had agreed to cap employee contributions for health insurance at 20% during the second year of the contract on two successive occasions. The Union said that its offer is consistent with this cycle, providing for the employer to pay the full premium in year one and capping the employee contribution at 15% during the second year of this contract period. "The District's proposal to implement an automatic 5% employee co-pay provision in the first year of the contract can only be viewed as a change in status quo. NUE cited a prior arbitration decision which it stated arose out of very similar circumstances. In that case, the arbitrator found a district was attempting to change the status quo. The arbitrator found in that case that the district "would for the first time in ten years succeed in obtaining a contractually specified dollar cap lower than the known present health insurance premium." In that case, the arbitrator looked to the district for a compelling reason to achieve the change through arbitration rather than through bargaining.

The Union said that, "for several years, school districts and unions have agreed to caps on premiums for the second year of two-year contracts." It said that the parties are attempting to control health costs, and the cap becomes the ceiling the District is willing to spend. The Union argued that is not the same as having the employees pay a known share of premium cost, which is what the District is proposing in this proceeding. It

argued that the District is saying that, since the agreed upon 1990-1991 cap did not cover increased premium cost, the employees have agreed to pay the increased premium in years to come. The Union said that its employees had only agreed to share premium cost if those costs exceeded a certain level during the second year of a two-year contract. The employees did not agree to "pay a fixed amount in perpetuity."

NUE anticipated that the Employer would argue that the Union proposed a 15% cap for the second year of the contract after it knew that cap would cover the full increase in premium cost. It responded to the anticipated argument by noting that a 20% cap had been agreed upon for the two previous contracts. The fact that the Union's proposed 15% cap provides enough funds to pay the full premium does not change the agreed upon concept whereby a cap is operative during the second year of the contract.

The Union argued that the Employer had not shown any compelling need for the proposed change and had not offered quid pro quo for the change. It reviewed the wage increases granted to Turtle Lake Teachers during 1991-1993 with average increases among 14 other Lakeland Conference schools deemed comparable. NUE concluded that benchmarks, except BA Max, at other schools increased at a higher percentage than in Turtle Lake. "NUE's proposal at Schedule Max of 5% is 1.1% and \$310 lower than the average increase of the other 14 schools at that category.

Turtle Lake has one of four self-funded health insurance programs in the fifteen district Lakeland Conference. Two of the other self-funded districts will pay the full premium through 1992-1993. A third district will pay 98.9% of the 1992-1993 premium because the 15% cap was less than the 16.1% premium increase. With the foregoing exception, self-funded districts have always paid the full premium cost. No self-funded district pays a fixed percent of premium as proposed by the District in this case. An additional problem with the District's offer is that "premium sharing" is untenable in a self-funded program. Premiums are so fluid in a self-funded program it is not possible

for the Union to know what it is sharing. The District controls the process including the reserve fund with no obligation to disclose information.

The Employer is attempting to accomplish a structural change in the contract. This should be done by voluntary agreement rather than through arbitration. It cited a prior arbitration decision which stated that the change from a flat dollar limitation to a percentage limitation constituted a change in the structure of a contract. That arbitrator held in that case that the proposal would result in a change in the status quo and should not be approved by the arbitrator except in extraordinary circumstances. The Union reiterated its position that the District had failed to justify its proposal to move to a fixed percentage for health insurance contributions.

The Union outlined three changes in the liquidated damages provision of the contract which are contained in the Employer's offer. 1) The amount assessed against a teacher who breaks a contract after July 1, would be fixed at \$200. 2) After August 1, the amount would go to \$400. The existing contract establishes damages at 1½% of the teacher's salary anytime after July 1. 3) The Board could waive the penalty at its sole discretion. The Union argued that this language proposes to change the status quo. It reviewed evidence that only one or two resignations had been submitted over a three year period, and argued that such few incidents do not indicate a need for change. Nor has the District shown that its proposed change would resolve the perceived problem. The District has not offered quid pro quo for this proposed change, which should be done through a voluntary agreement rather than through arbitration.

NUE said it viewed the Employer's proposal to restrict the use of personal leave in the same way it viewed the liquidated damage issue. The Board offer would deny teachers personal leave on a designated parent-teacher conference day. The Union said that no need has been established to support the change and no quid pro quo had been offered. The Union summarized its position

by arguing that all three changes that the District had proposed are changes in the status quo. It stated that the Union's position was more reasonable and urged that the Union offer be adopted.

In its reply brief, the Union denied that its proposal would result in a greater change to the status quo than the Employers' offer. It argued that the dollar cap for health insurance in the last two contracts had been arrived at by the District's agreement to pay 100% of the premiums during the first year of the contract. During the second year of those contracts, the Employer agreed to pay up to a specified additional amount toward increased premiums. Only if the premium increased beyond that cap did the employees have to contribute toward the premium. The Employer is attempting to change that practice. Its offer would mandate that the employees pay 5% of the premium during the first year of the contract. This proposal would change the cycle by which the Employer pays 100% during the first year and up to a specific cap during the second year of the contract. The Employer's proposal is not a slight change as it is attempting to portray.

The Union disputed the Employer's assertion that "except for 1989-1990, the yearly dollar amounts . . . have always resulted in less than full District payment of premiums." It pointed to a Union exhibit which it said demonstrated that the Employer had paid 100%, not 99%, of the premium during the 1987-1988 school year. The Union argued that this fact supported its position that the parties had established a cycle where the employer had agreed to pay the full premium the first year and a capped amount of premium during the second contract year. The Union argued that "the status quo is a cycle of full/cap" employer contributions. It denied that its offer of a 15% cap during the 1992-1993 contract year was an effort to depart from this established practice.

The Union disputed the Employer's argument that the Union's proposed dental insurance language could result in an increased employer contribution toward dental premiums during a hiatus period. It argued that its proposal was consistent with its health insurance proposal and potentially more restrictive than the employer's offer. The Union concluded by arguing that the employer had not demonstrated any need to change the status quo with regard to either liquidated damages or personal leave. The Union stated that its position is far more reasonable and should be awarded by the arbitrator.

#### THE DISTRICT'S ARGUMENT

The Employer stated that, "There can be no question that the health insurance issue is the overriding issue in this proceeding." The other matters are "of only minor significance when compared with the parties' dispute with respect to health insurance." The Board argued that the Union proposal regarding health insurance would result in a far greater change in the status quo than the Employer's offer. It stated that its offer, "of dollar amounts equal to 95% of premiums," is a continuation of past practice. "With the exception of school year 1989-1990 when the District switched to self-funded health insurance, the yearly dollar amounts specified in previous contracts have always resulted in less than full District payment of premiums." With the exception of 1989-1990, teachers have contributed toward health insurance premiums for the past four years. The Union's offer calls for "dollar amounts which result in full District payment of health insurance premiums, a clear change to the status quo practice of less than full District contribution." The only reason the District paid 100% of the premium in 1989-1990 is because a change in carriers resulted in decreased premium rates. The following year when premiums increased in an amount more than contracted dollar amounts, the parties went back to cost-sharing. During the last year of the expired agreement,



teachers contributed 11% toward health premiums. The Union's offer calling for 100% District payment, with no employee contribution would be a significant change in the status quo. The Board argued that its offer would slightly change the form of the District's contribution by stating that contribution in dollar amounts equal to a percentage. Its offer would not change the effect of the existing practice which requires an employee contribution. The Union's offer eliminating employee contributions would result in a far greater change to the status quo.

The Board cited two previous decisions in which arbitrators discussed proposals to modify established benefit packages. In the first case the arbitrator stated, "Any analysis of the final offers of the parties relative to change must be undertaken on the basis of substance, rather than mere form." It also cited a recent case which it said was strikingly similar to the present case. In that case, the arbitrator found that a proposal which would eliminate employee contributions toward health insurance was more drastic a change to the status quo than a proposal which changed the employees' contribution from fixed dollar amounts to a percentage of premium. The Board reiterated its position that its offer contained a minimal change in form but no change in substance. The Employees offer would drastically change the substance or effect of the status quo.

The Board argued that the Union knew the amount of the 1992-1993 premium before it made its offer. It knew that its offer would result in the elimination of cost sharing. For that reason, the Union has proposed to change the status quo relating to health insurance premium contributions. The Board argued that the Union has failed to meet the burden of proof that is required to obtain that change through arbitration. It then reviewed the three-prong test, which arbitrators have adopted as a measure, to justify adopting proposals which would result in changing the status quo. The Employer stated that in each instance its offer met the test and the Union's offer did not.

Does the present language give rise to conditions that require change? The Board argued that Turtle Lake health insurance premiums have increased by 196% in the past ten years. Premiums have increased by 88% between 1989-1990 and 1992-1993. The District's proposal to require a 5% contribution is reasonable in light of increased cost and the fact that Turtle Lake benefits are superior to benefits in many comparable districts. Many comparables require 80/20 co-pay and require payment toward prescription drugs. The maximum out-of-pocket expense for Turtle Lake teachers is \$300 a year. The Board stated that these teachers enjoy a greater benefit at lesser expense than most of the comparable districts. The Employer stated that arbitrators have recognized the validity of employee cost-sharing health insurance premiums in face of rising health care costs. It cited prior arbitrators having said that: government employer contributions to health insurance premiums, because of cost levels and increasing costs, distinguish this benefit from other benefits and requires separate analysis; shared premiums and family deductibles are the most effective method of cost control; and, the current trend is in the direction of greater employee contributions to health insurance costs. The Board stated that its offer, which continues modest premium cost-sharing is a reasonable response to rising premiums. Its offer would result in a 5% contribution compared to 11% during the last year of the expired contract. There can be no justification for the Union's offer which eliminates cost-sharing.

Does the proposed contract language remedy the condition? The Board stated that, "arbitrators have recognized that employee contribution to the cost of insurance plans is a valid method of cost containment." It cited a series of previous decisions in which arbitrators stated: employees sharing premium payment constitutes a reasonable approach designed to increase awareness to the high cost of health care. Any action by the parties mutually to reduce health costs is in the public interest.

Mutual action is more likely with teachers directly participating in costs. The cost-sharing proposal of the employer does nothing to contain overall insurance costs, but is a reasonable response for the cost of a shared problem. Having employees participate with employers in providing health care is fair, and may have educational benefits. The Board said that its proposal is a reasonable remedy to the continued skyrocketing of health costs. The Union's proposal completely ignores these costs of 38% and 15% premium increases incurred during this contract period.

Does the proposed contract language impose an unreasonable burden upon the other party? The Board answered this question with an emphatic no! It said that its offer asked no more of the teachers than was requested of internal and external comparables and area private sector employees. The Employer noted that the parties had agreed that the fourteen other school districts in the Lakeland Conference constitute the appropriate external comparables. Both parties' exhibits compare health insurance contributions in these comparable districts. The exhibits are in general agreement regarding the level of district contribution toward premium costs in other districts. The most compelling evidence of the reasonableness of the District's offer is contained in an Employer exhibit which shows the trend toward employee contributions toward premiums in the Lakeland Conference. The Board argued that more of the comparable districts have implemented cost-sharing each year. The number of districts has quadrupled between 1987-1988 when two schools cost-shared, to 1992-1993, when the number was eight. Turtle Lake cost-shared during each of those years except for 1989-1990. The Union's offer is unreasonable because it runs contrary to the trend.

The Employer said that in addition to those eight comparables which will have cost-sharing in 1992-1993, four of the six remaining comparables have a cap which limits the employer's contribution. Twelve of the fourteen comparables have either actual employee contribution or language reflecting caps

on the district's contribution level. The Employer's offer improves the teacher's position by increasing the District's contribution to 95% which is consistent with comparable contributions.

Other conference schools with employee contributions agreed to those contributions in exchange for 5% per cell wage increases. That is the same increase agreed upon between the parties in this contract. Eight comparables either continued or implemented employee cost-sharing during 1992-1993 in exchange for wage increases of 5% or less. Thus, the Board's offer cannot be said to impose an unreasonable burden.

The Board said that NUE had to justify its position that the teachers in this proceeding should receive a 5% on cell increase plus a reduction of their insurance contribution from 11% to 5%, while other districts in the conference represented by this union settled for 5% or less wage increases plus employee contributions to health insurance. The Union's position is particularly puzzling when one recognizes that Turtle Lake salaries are higher than almost all of the other districts, with Turtle Lake at or above third out of fifteen districts with respect to six of seven benchmarks.

The Employer cited a prior arbitration decision which noted that, "in the area of insurance benefits, a uniform internal pattern is particularly persuasive." It cited an Employer Exhibit which showed that all of the District's other employee groups are required to contribute toward health insurance coverage. If the Union's final offer were to be adopted, the teachers would be the only group of employees within the district who would not contribute toward health insurance premium costs.

The Board pointed to data that it had collected by surveying 107 private sector employers who have 10 or more employees in Barron and Polk Counties. That data showed that the vast majority of those businesses which offer health insurance, granted smaller wage increases than the Turtle Lake District and required substantial employee contributions toward health

insurance premiums. Few employers paid 100% of premium. Those that do pay the premium often require substantial deductibles. The largest employer in the area has a \$3,200 out-of-pocket employee deductible.

The Union argued that its offer was most reasonable compared to both internal and external comparables and to private sector business in the Turtle Lake area.

The Board responded to the Union argument that it had not offered a quid pro quo by saying: 1) The Union offer would change the status quo more than the Board's offer. 2) There is no need to offer quid pro quo if a genuine need has been shown and there is strong support among comparables. 3) The Employer has in fact offered a quid pro quo because during 1990-1991 teachers paid 11% of their premiums. This offer requires only a 5% contribution. The Board concluded that its offer relating to health insurance is more reasonable than the Union's offer and should be adopted.

The District stated that the disagreement over dental insurance premiums is a secondary item. The dispute arises out of the Union's proposal to change existing language which is currently stated in specific dollar amounts to require the employer to pay "the actual cost of the premiums for 1991-1992 and pay up to a 15% increase stated in dollars for 1992-1993." The Board said that the clear pattern among comparables is 100% district payment of dental insurance premiums. Both offers in this proceeding will result in the Employer paying 100% of the dental premium. The Board recognized the fact that there was no practical effect arising out of the different language during this contract period. It stated its concern that the Union was proposing to change status quo language. It also stated, "The District suspects that the Union believes its proposed language would result in an increase in District contribution during the hiatus period should the premiums for the second year of the contract increase less than the 15% provided for by the cap." That interpretation would result in the Employer being

responsible for the increase in 1993-1994 dental premiums up to an amount of 115% of 1991-1992 premiums. The Union has shown no reason or support for its proposed change to the status quo. The District's offer which maintains the status quo with regard to dental insurance is more reasonable.

The Board stated that there are also two minor language issues relating to liquidated damages and personal leave which are disputed. The District proposes to revise the damage language to provide for a straight dollar penalty of either \$200 or \$400 as opposed to the present language which provides for a penalty of 1½% of the teachers salary. The District argued that the change is required, because, during the past three years, three teachers resigned or contemplated resignation up until the start of school. During the 1990-1991 school year, a special education teacher resigned two weeks after classes had begun. The following year a teacher resigned immediately before the start of classes. This year a teacher was undecided until the day school started. Those circumstances make it difficult for the administration to hire or plan to hire qualified replacements. The Board said that its proposal which increases penalties for resignations which occur after August 1, is a reasonable change in light of the recruitment difficulties late resignations cause for the administration. It said that a majority of comparable districts have liquidated damage clauses more similar to the Board's offer than the current practice. Eight comparables provide for straight dollar penalties compared to only one district which provides for a penalty based upon percent of salary. Four districts provide for increased penalties for late resignations. This Union agreed to the same language in a 1991-1992 settlement with the Shell Lake School District. The Board stated that it had demonstrated the need for this change and a pattern of support for it.

The Employer said that it had experienced a problem with a teacher who had utilized personal leave to attend state football playoffs on a parent-teacher conference day. "The District

believes that its proposal is a reasonable way to address the problem which, frankly, it has been unable to address in any other way." Current leave language does not permit the administrator to deny leave requests. The District has been forced to request this change through arbitration since the Union was unwilling to solve the problem during negotiations. The Employer cited a previous arbitration decision which stated that "arbitration allows the parties to bring in proposals without the need to show a quid pro quo, but to rely principally on comparisons or a demonstrated need for change to justify a change." The Board stated that its offer is a reasonable proposal which effectively addresses demonstrated problems.

The District argued that the interests and welfare of the public do not support the Union's offer. The Board's offer incorporating wages and benefits is in line with the level of increases given to comparable teachers and private sector employees. Turtle Lake is located in Polk and Barron Counties. These counties depend heavily upon farming. Twenty percent (20%) of Turtle Lake is rural with 30% of the District's workers employed in farming, fishing or forestry. These counties depend heavily upon milk production. The farm economy is declining and milk prices have nosedived to levels below ten years ago. Corn prices are also down. Unemployment in these counties is consistently 1-2% above the state average. The difficulties farmers have experienced has affected almost all other business in the area. The District asserts that the prevailing economy in which the District operates must be a factor in the determination of this dispute.

Polk and Barron County property taxes have increased sharply while the value of land in the School District is increasing at a much slower rate than in comparable districts. Equalized value has decreased 3.5% over the past four years. At the same time the District's tax levy has increased 10.5%, the fourth highest increase in the fifteen school district conference. The Board argued that comparisons of the two offers to CPI increases also

supported the Employer's offer. While both offers greatly exceed the increase in the cost of living, the District's offer more closely approximates the increase in the CPI.

In its reply brief the Board argued that the Union's argument that "past practice" has been full premium payment during the first contract year and a cap during the second year is neither accurate nor appropriate. It argued that past practice is useful in grievance arbitration when contract language is ambiguous. Past practice is not applicable in interest arbitration where all contract provisions are on the table as negotiable items. It cited a number of modifications in the terms of contracts to support its argument.

The District argued that the Union's alleged facts were in error. Specifically, the Board argued that it had not paid 100% of the health insurance premium during 1987-1988. It argued that the Union exhibit did not contain sufficient information to calculate 1987-1988 contributions toward premiums. The exhibit which outlined monthly premium payments during the period in question does not align with contract year 1987-1988. The presentation of that data is further complicated by the fact that prior to the 1989-1990 school year, the anniversary date for health insurance contracts was in February, while, the school contract year commences on July 1. The Board reviewed the data and concluded that the Union argument which stated that the Board had paid 100% of the 1987-1988 premium was in error. The Board reviewed the data contained within the Union exhibit and calculated the Board's contributions toward health insurance premiums through the periods of the contract terms. It concluded that the District had paid 99% of the school year 1987-1988 premium and 88.8% of the school year 1990-1991 health insurance premium. It stated further that the reason the District paid 100% of the 1989-1990 premium was because the District switched to a self-funded plan during that period; the health insurance premium did not decrease. It concluded this argument by stating



that in every year except 1989-1990, teachers contributed toward their health insurance premiums.

The Board argued that arbitral authority cited by the Union, where teachers had not contributed to premiums for 10 years, is distinguishable from facts in this case where teachers have contributed during three of the past four years. It argued that the Union's assertion that "for several years, school districts and unions have agreed to caps on premiums for the second year of a two-year contracts" is an assertion unsupported by any evidence. It stated that the Union's argument that, by agreeing to second year employee contributions brought about by a cap the employees had not agreed to "pay part of the premium in years to come" was also a bare assertion.

It noted that the Union is asking the employer to pick up the employee's 11% contribution from the 1990-1991 school year as well as the 38% increase in premium costs experienced in 1991-1992. It stated that the District had never faced such a large increase in insurance costs as it did in 1991-1992. The Board is agreeing to make up a sizeable portion of the 11% contribution gap from 1990-1991 in return for the Union contributing 5% during the new contract period.

The Board criticized the Union's having compared the Turtle Lake offers to only three other self-funded conference districts to the exclusion of the remaining conference schools. It also criticized the suggestion that, because Turtle Lake has a self-funded plan, the premium is so fluid that it is next to impossible for the Union to know what it is sharing. The Board stated that it does not control the process or the reserve fund. It said "self-funded plans are highly regulated programs under state statutes." Any suggestion that the District can manipulate or divert funds is misleading. The Board argued that its final offer is the more reasonable offer before the arbitrator.

## DISCUSSION

The issue in this proceeding is the question whether Association members should be required to contribute 5% toward the total cost of health insurance premiums. The other differences are minor and taken together would not warrant the status of a secondary issue in this dispute. The Union has predicated its position upon the argument that the Board's offer would result in a change in the status quo. The Board alternately denied this charge and argued that the Union's offer would result in a far greater change in the status quo than the Board's offer. Each of the parties expended a great deal of effort in characterizing what it perceived as the status quo. The Union insists that over the years a pattern has been established where the Employer agreed to pay 100% of the health insurance premium during the first period of the contract, and agreed to limit the amount of the District's exposure for increased premium cost during the second contract period. During the last two contracts the Employer agreed to pay 100% of the previous years' cost plus a percentage increase during the second year. This summary appears to be accurate.

The Board insists that the pattern has resulted in teachers contributing toward the cost of health insurance premiums during each contract year since 1987-1988 except for 1989-1990. That was an unusual year, because during that year the District converted from a third party insurer to its self-funded plan. This summary also appears to be accurate. The evidence and arguments about whether the cap was stated in terms of dollars rather than percent of increase or arrived at by a percent of increase and stated in dollar terms appears to be immaterial to the issue in dispute. It is material that during each of the two previous contract cycles, these parties have negotiated their relative responsibility to pay for the increasing cost of health insurance. It is also material that the monthly cost of the health insurance premiums increased from approximately \$53 for

single coverage and \$148 for family coverage on July 1, 1987, to \$105 single and \$283 family on June 30, 1991. Those increases totalling 195% over four years and the previous contracts have resulted in teachers contributing 11% toward the cost of health insurance premiums at the expiration of the last contract. During June 1991, single teachers contributed \$11.70 and teachers with family coverage contributed \$31.50 toward their respective health insurance premiums.

During the hiatus, since the contract expired on June 30, 1991, health insurance premiums increased by 38% to \$145 for single and \$391 for family coverage in 1991-1992. During 1992-1993 they have increased by an additional 14.9% to \$167 single and \$450 for family coverage. The cap contained in the 1989-1991 contract would limit the employer's contribution toward premiums to \$93.60 for single and \$252 for family coverage during 1992-1993. The terms of that contract would require the teachers to contribute \$73.40 and \$198 monthly for single and family coverage respectively after July 1, 1992.

From the record in this case, it is apparent that during the period when health insurance premiums were stable, after February 1985 and a period of time which is in dispute, the employer paid 100% of the premium cost. After premiums began to increase in 1987-1988, the employees, because of contract language were exposed to some degree of cost-sharing. Changing the anniversary date of the insurance contract, and converting to a self-funded plan, temporarily contained insurance cost increases and resulted in the District agreeing to refund the teachers' contributions toward premiums in 1989-1990. Contract language and escalating costs resulted in teachers contributing 11% of premium cost during 1990-1991. Health insurance cost increases and employee contributions toward maintaining this benefit have been the subject of bargaining between these parties during the previous two contract negotiations. Because of the magnitude of insurance cost increases experienced in the District, that subject had to be confronted during present contract negotiations. When the

disagreement over the parties' relative responsibility to contribute toward these increased costs precluded the parties from successfully negotiating a contract, the matter became the issue in this arbitration proceeding. It would be improper to find that either of the two offers would result in a change in the status quo ante. The historical background of this disagreement requires evaluation of which of the offers is the more reasonable in the circumstances which exist herein.

The parties have agreed that the other 14 Lakeland Athletic Conference Schools are comparable for the purpose of comparison in this proceeding. All of those comparables have settled 1991-1992 contracts. The undersigned attempted to compare the wage offers, health insurance offers and total package costs of the offers in this proceeding with comparable data from comparable districts. That analysis is incomplete because neither party presented 1989-1990 wage data or 1991-1993 cost data for the comparables. The parties did submit some summaries of data which proved to have limited value for purposes of analysis.

The Union argued that the benchmarks for the comparables increased at a higher percentage than in Turtle Lake except at B.A. Max during 1991-1992 and at B.A. Min. and B.A.-7 during 1992-1993. The District argued that it wanted "the same deal which was struck in the majority of other conference districts -- a 5% wage increase with a 5% employee contribution to health premiums." Since there was no 1990-1991 wage data presented, it was not possible to evaluate whether either of those assertions was inaccurate. An extremely tedious review of 1991-1993 contracts for the comparable districts (NUE Exhibits 12-25) indicated that Birchwood and New Auburn settled for on cell increases of 4.5% and 5% during 1991-1992. On cell increases ranged from 4.75 at Birchwood to 6.5% in Minong with nine districts receiving 5% increases in 1992-1993. In 1992-1993 Clear Lake granted increases of 4.75 at the top of the scale and 6.37% at the bottom, and it added two additional steps. Weyerhaeuser granted 5% at the top and 4.68 at the bottom and

added one step in 1992-1993. Winter increased wages by 4.3% at B.A. Min. and 8.4% at Schedule Max. It is reasonable to conclude that 1991-1993 wage increases in Turtle Lake are in line with those increases which were received by teachers in comparable districts during the same period.

Data for the comparables' health insurance costs and school district and employee contributions toward those costs were provided in NUE Exhibits #4 and 13-25 and Employer Exhibits #31 and 32. Information from those exhibits has been set out on Table I which follows.

TABLE I.

Contributions Toward Family Premiums

	1991-1992			1992-1993		
District	District	Teacher	%	District	Teacher	%
Birchwood	\$385	\$22	5	\$439	\$23	5
Bruce	422			480		sub. to cap
Cameron	365	29	7.3	416	33	7.3
Clayton	400	21	5 *	429	23	5 *
Clear Lake	386		*	446		sub. to cap *
Flambeau	400			432		
Lake Holcombe	385			439		sub. to cap
New Auburn	367	22	5.8	415	26	5.8
Northwood	312			439		
Prairie Farm	391			451	5	cap = 1% *
Shell Lake	363	15	4	419	17	4
Siren	445	23	5	445	23	5
Weyerhaeuser	322			379	8	cap = 2%
Winter	352	19	5	408		wage adj.
Average	\$378	\$22	5.3	\$431	\$20	4.4
Turtle Lake						
NUE	\$391			\$450		
Board	\$372	\$20	5	\$427	\$22	5

\* Districts with front end deductibles.

NOTE: The arbitrator has noted the fact that the District pays a lesser percent toward single coverage in Cameron and a greater percent in Winter. For the most part, the Table is an accurate depiction of relative contributions by employers and employees.

The table shows that during 1991-1992, the fourteen comparable districts contributed an average of \$378 a month toward health insurance premiums. The teachers in those seven districts which required contributions paid an average of \$22 a month; these contributions were equal to 5.3% of total premiums in those seven districts. During 1992-1993, the fourteen districts paid an average of \$431 each month. Teachers, in the eight districts which required employee contributions, paid an average of \$20 a month which was equal to 5% of the total premium in those districts. The teachers' 1992-1993 contributions in Prairie Farm and Weyerhaeuser were each caused when current year premiums increased above the 15% and 17.5% caps. Current year increases in Bruce, Clear Lake and Lake Holcombe were less than the 20%, 17.5% and 15% caps in those districts; therefore, no teacher contributions were required. At least three districts have front end deductibles; of those Clayton requires teacher contributions of 5%, while the other two are subject to capped increases. It appears that teachers in Winter will receive an upward salary adjustment during 1992-1993. This increase was triggered by the fact that health insurance costs, under a new carrier in 1992-1993, increased by less than the 15% cap. This appears to be similar to the way Turtle Lake handled a similar situation in 1989-1990.

The foregoing analysis indicates that both of the offers are reasonable when compared to the wage and fringe benefit packages received by teachers in comparable school districts during 1991-1993. Of fourteen comparables, seven districts required teacher contributions and seven did not during 1991-1992. During 1993-1993, eight comparables required teacher contributions, two of which were triggered by caps. The teachers in one district will receive a wage adjustment because health insurance premiums, under a newly adopted plan, have increased by less than the 15% cap which the parties considered when they negotiated the wage and benefit package. Further comparison indicates that during 1991-1992, the average comparable Board paid \$378 per month

contrasted to this Board's offer of \$372 and the Union's offer which would require the Board to pay \$391. During the second year, comparable boards have paid \$431 a month compared to this Board's proposed \$427.50 and the Union's \$450. Under the Board's offer, teachers would contribute an average of \$21 per month over the two year contract period; which is exactly what contributing teachers paid in approximately 50% of the districts which required contributions. Approximately 50% of the districts did not require any teacher contribution. From the foregoing, it is not possible to say that either of the offers is the most reasonable.

The Employer noted that a previous arbitrator in a recent case said, "What is troubling about the Association offer is that it reduces the contribution required of the employee at a time when the trend within the state and nationally is to increase the employee's contribution toward health insurance costs. This is a very negative factor in the Association's proposal." Those observations appear to be applicable to the present case. The Association has agreed that under the two previous contracts, the District paid the full premium during the first year of the contract and the teachers contributed during the second year. It argued that those contributions of 5.9% single and 5.6% family in 1988-1989 and 11.1% single and family in 1990-1991 came about only because premium increases exceeded the 20% cap during those contract years. That argument is valid. However, each of those contracts recognized that both of the parties had an obligation to contribute toward the additional cost of increased health insurance premiums. The problem with the Association's argument in this case is not that there is something wrong with the proposal to limit the teachers' exposure with a second year cap. The problem with the Union's offer is that it passes all of the increased costs of health care that have occurred during the past three years off to the Employer. That result runs contrary to previous agreements between these parties and to the trend among comparable school districts in this proceeding.



These parties agreed to their 1989-1991 contract. In that document, the District agreed to pay the cost of health insurance premiums up to a maximum of \$2,520 per year for the family plan during 1989-1990. That contract also provided that during 1990-1991 the Districts' contribution for family coverage would be increased to \$3,024 at a maximum. That amounted to an agreement for the Board to pay \$210 a month during the first year and up to a 20% increase to \$252 per month during 1990-1991. Among the comparables in 1989-1990, only four districts required some teacher contributions ranging between 5% and 7.3% (family). That year ten comparable district boards paid 100% of the premium. During the second year of that contract, 1990-1991, Turtle Lake premiums increased to \$283.50 per month, a 35% increase. This resulted in the teachers contributing 11.1% toward the 1990-1991 premium cost. During 1990-1991, teachers in five of the comparable districts contributed between 5% and 8.1% of the premium cost. That year nine of the comparable district boards paid 100 percent. Relevant data for the current contract period is set out on TABLE I. That data shows that the trend toward teacher contributions increased in both years of the current contract period. During 1991-1992, teachers contributed in seven comparable districts; during 1992-1993, teachers made contributions in eight districts.

Health insurance premium cost has continued to increase in Turtle Lake. The family premium which was \$210 in 1989-1990, and \$283.50 in 1990-1991, rose to \$391.50 during 1991-1992, and is now \$450 per month. The NUE offer would result in the Employer picking up the entire premium increase which has grown by \$240 a month since these parties entered into their 1989-1991 contract. The Board would be required to pick up the entire \$31.47 teachers are paying by virtue of the last contract plus all subsequent increase totalling an additional \$166.50 each month for family plan members. (Note of the 41.30 FTE in the bargaining unit, 29 employees have the family plan and 10 have single coverage. In order to simplify this discussion, data relating to the family

plan has been discussed. This data is also representative of data for single coverage cost.) Thus, the NUE offer runs contrary to the trend which had developed in Turtle Lake, for teachers to make some contribution toward premiums. The Union offer also runs contrary to the trend in comparable school districts. That trend has resulted in teachers in eight of fourteen comparable districts contributing an average of \$20 a month toward health insurance premium costs. Teachers in a ninth comparable district are subject to front end deductibles.

The District's offer will result in the teachers in Turtle Lake contributing \$22 a month toward family coverage and \$8.35 toward single coverage. These contributions are reduced from \$31.47 and \$11.70 required under the terms of the expired contract. The Board's offer with regard to health insurance and wages is found to be more reasonable when considering the wages, hours and conditions of employment offered to teachers in Turtle Lake compared to the wages and benefits agreed to in other school districts in the Lakeland Conference.

The Board offered evidence that its administrators are required to contribute 5%; and, the District's support staff contributes 7% toward premium costs. This comparison among internal comparables also supports the Employer's offer.

The Board presented evidence that it made a substantial effort to obtain information from private sector employers who employ 10 or more persons in Barron and Polk Counties. Arbitrators are loathe to rely upon unilaterally initiated survey data for the reason that it is hearsay evidence. In many instances the sources from which the information has been received may have been arbitrarily selected, and the raw data is not subject to verification or investigation. Some of those problems affect the weight which may be given to Employer Exhibits 34 and 35. Nonetheless, the data provided from those 40 employers who identified themselves and responded to the Board's survey is impressive. The Board provided a copy of each of the responses to the questionnaire that it sent to a list of the 107

employers who have 10 or more employees working in Barron and Polk Counties. The 13 anonymous responses have not been considered. The data indicates that the employees involved in this proceeding will have received more generous wage and benefit adjustments than the vast majority of the private sector employees represented in the survey, under either of the two offers in this proceeding. That realization combined with regional economic conditions favors the Employer's offer.

There are three other issues which the parties have not been able to resolve. The parties agree that there will not be any 1991-1993 financial impact if the Union's proposed change in dental insurance language is adopted. Both offers provide that the District will continue to pay 100% of the premium cost for dental insurance during this contract period. The District indicated that it opposed the change because it believed that future interpretation of the Union's proposed language might place the District at a bargaining disadvantage during future contract negotiations. The Union denied that there was any basis for the District's concern. It stated that the reason for the proposed change was to "accept a similar standard that proposed for health insurance premiums which provides a formula for determining a formula for the second year only." Since the Union's proposal will not have any effect during the present contract period, there is no need to consider that proposal further herein.

The District proposed changes in the contract relating to two administrative matters. In both instances the Union argued that the Board had failed to demonstrate the need for these proposed changes in existing contract language. It resisted the Board's proposals as unnecessary changes in the status quo without any offer of quid pro quo. Arbitrators would prefer not to rewrite administrative procedures during the course of an interest arbitration proceeding. The process, however, does not give the arbitrator any choice in the matter. In this case, the argument over whether a teacher breaking a contract should be

penalized 1½% after July or be penalized \$200 after July 1, and \$400 after August 1 of the contract appears to be a tempest in a teapot. The arbitrator believes that, the District barely sustained a reasonable case for the proposed change. It seems reasonable that a teacher who places the administration in a quandary to find a replacement shortly before school starts should be subject to a greater penalty than one who resigns earlier. However, the existing 1½% penalty is greater than the \$200 which would be exacted under the proposed language and in many instances the existing penalty is greater than the proposed \$400, which would be imposed for late resignations. It seems doubtful that either the existing language or the proposed change will have any motivational or deterrent affect upon teachers who have signed contracts and decide to leave the district for any reason. In spite of the foregoing observations, the arbitrator believes that the Administration having identified a problem area has made a modest proposal. That proposal, if adopted, will not unreasonably affect the Union or its members in any adverse way.

The same cannot be said for the District's proposal to prohibit the use of personal leave on designated parent-teacher conference days. Existing contract language makes the exercise of personal leave subject to the approval of the district administrator. There has not been sufficient evidence presented to demonstrate any need for the proposed prohibition. The arbitrator prefers the Union's position on this matter.

It has been noted above that this dispute is about teacher contributions toward the premium cost to maintain Turtle Lake's self-funded health insurance program. When the two offers were compared as if in a static position against the existing practices in fourteen comparable districts, there was no way to say that either of the offers was the more reasonable. When evidence of past practices between these parties, trends among comparables, and other public employees is added to the equation, the Board's offer is more reasonable. That conclusion is confirmed by data relating to wages and benefits granted in the

private sector in this community. Because health insurance contributions are the dominant issue in this proceeding, the offer of Turtle Lake School District shall be incorporated into the 1991-1993 collective bargaining agreement between these parties.

Dated at Madison, Wisconsin, this 19th day of February, 1993.

  
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John C. Oestreicher, Arbitrator