BEFORE THE ARBITRATOR

In the Matter of the Petition of	
SCHOOL DISTRICT OF BLOOMER	Case 27 #45593
	INT/ARB-6017
To Initiate Arbitration Between Said Petitioner and	Decision #27407
NORTHWEST UNITED EDUCATORS	

ARBITRATION AWARD

Appearances:

Steven L. Weld, Weld, Riley, Prenn & Ricci, S.C., Attorneys at Law, P.O. Box 1030, Eau Claire, WI 54702-1030, for the School District of Bloomer.

Alan D. Manson, Executive Director, 16 West John Street, Rice Lake, WI 54868, for the Northwest United Educators.

The School District of Bloomer, hereinafter referred to as the District, and the Northwest United Educators, hereinafter referred to as the NUE, having between February 5, 1991 and April 19, 1991 met on three occasions in efforts to reach an accord on the terms of a collective bargaining agreement to succeed an agreement which expired on June 30, 1991, covering all regular full-time and regular part-time educational support employes, including secretaries, aides, hot lunch, custodial and maintenance employes employed by the District, but excluding supervisory, managerial, professional, confidential, and other employes, which unit is represented for the purpose of collective bargaining by the NUE.

On April 19, 1991 the District filed a petition with the Wisconsin Employment Relations Commission, hereinafter referred to as the WERC, requesting that the latter agency initiate arbitration pursuant to Sec. 111.70(4)(cm)6 of the Municipal Employment

Relations Act, and following an investigation in the matter, conducted by a staff member of the WERC on November 19, 1991 and June 22, 1992, which investigation reflected that the parties were deadlocked in their negotiations. Thereafter, and by September 21, 1992, the parties filed their final offers, and on September 24, 1992 the WERC issued an Order wherein it determined that the parties were at an impasse in their bargaining, and therein the WERC certified that the conditions for the initiation of arbitration had been met, and further, wherein the WERC ordered that the parties proceed to final and binding arbitration to resolve the issues existing between them. Thereafter the parties advised that they had selected the undersigned to serve as the Arbitrator from a panel furnished to them by the WERC, and on October 15, 1992 the WERC issued an Order appointing the undersigned as the Arbitrator to resolve the impasse existing between the parties by issuing a final and binding award, by selecting either of the total final offers proferred by the parties to the WERC during the course of its investigation.

Pursuant to arrangements previously agreed upon, the undersigned conducted hearing in the matter on December 7, 1992 at the offices of the District, Bloomer, Wisconsin, during which the parties were afforded the opportunity to present evidence and argument. The hearing was not transcribed.

The Arbitrator received the initial briefs filed by the parties by February 2, 1993, and same were exchanged on the following date. Reply briefs were received by February 18, which

were exchanged by the Arbitrator on the same date, and on said date the Arbitrator notified counsel for the parties that the record herein was closed as of February 18, 1993.

Background

During their negotiations with respect to the provisions to be included in their new collective bargaining agreement the parties executed a stipulation setting forth various deletions and/or revisions of, as well as additions to, various provisions which had been included in their 1988-91 agreement, and which were to be incorporated in their 1991-93 agreement. Said stipulation pertained to some fourteen items set forth in ten Articles. An agreement was also reached on new wage schedules applicable to the employes in the bargaining unit. Further, there were no issues with regard to twelve of the Articles in the 1988-91 agreement, and the parties agreed that the provisions therein be incorporated in their 1991-93 agreement.

The Issue

The issue involved herein, for the Arbitrator's determination, relates to "Article XII - Insurance", which in the 1988-91 agreement read as follows:

> "A. Health Insurance: The District agrees to pay toward health plan coverage for employees pursuant to the following schedule:
>
> 1. Twelve-month full-time employees: Up to $205.27 per month toward the family health plan coverage and up to $93.09 per month toward the single health plan coverage. For the 1988-89, 1989-90 and 1990-91 contract years, these dollar

amount will be revised to reflect the actual total premiums for those years.

2. Effective July 1, 1986, all other employees regularly scheduled to work between four (4) and seven (7) hours per day during the school year may elect to participate in the family or single plan coverage with the Board contributing each month, twelve months a year, on a pro-rata basis equal to the ratio of the work hours scheduled for the employee to 1,260 hours.

B. Dental Insurance: Effective July 1, 1988, the district shall put into effect a dental insurance plan for employees not currently covered which shall be consistent with the plan in effect for the teachers and shall be administered under the terms of Section A of ARTICLE XVII.

C. General Provisions:

1. Change of Carrier: The Board may, from time to time, change the insurance carrier or self fund health care benefits if it elects to do so, provided substantially equivalent or better benefits are provided.

2. No Claim: No employee shall make any claim against the District for additional compensation in lieu of or in addition to the cost of his/her coverage because he/she does not qualify for the family plan.

D. Long-Term Disability: Effective July 1, 1989, the Board will purchase a long-term disability insurance policy that will be identical to the plan in effect for the District's teaching staff."

The final offer of the District sets forth the following:

"Unless indicted in the attached Stipulation of Tentative Agreements or Final Offer, the Terms of the 1988-91 collective bargaining agreement shall remain unchanged.

1. ARTICLE XVII - INSURANCE Revise paragraph A.1. to read as follows:

   Twelve-month full-time employees: In 1991-92, the employer will pay 98% of the family and single premiums; in 1992-93, the employer will pay up to 115% more than it paid for the family (annualized) premium in 1991-92. The employer may change carriers only between WPS, WEAIT, and Blue Cross/Blue Shield. A no fee IRS 125 plan will remain in effect for insurance premium payments. The Board will pay 100% of a family premium if both spouses work for the District.

2. ARTICLE XVII - INSURANCE Revise paragraph B to read as follows:

   Dental Insurance: The coverage will be consistent with the plan in effect for the teachers in June of 1991. Effective July 1, 1991, the employer will pay up to $45.00 per month for the dental insurance premium and up to $51.75 per month in 1992-93. The plan shall be administered under the terms of Section A of Article XVII."

The final offer of NUE proposes the following:

"Unless indicated in stipulations between the parties or the final offer below, the terms of the 1988-91 collective bargaining agreement shall remain unchanged.

1. Article XVII - Insurance, part A-1: Change "$205.27" to "$314.66" and change "$93.09" to "$140.59" and change "1988-89, 1989-90, and 1990-91" to "1991-92 and 1992-93."

The Cost of Health Insurance Generated by Both Offers

There are twenty-eight employes in the bargaining unit, seven of whom, all having family coverage, work at least 2080 hours per year. Part-time employes working less than 2080 hours, but more than 1260 hours during the school year (six under the family plan and two having single coverage) are treated as full-time employes for the purpose of premium payments. Premium payments for employes

working less than 1260 hours are pro-rated, based upon the number of hours worked by them during the school year.. Four of such employes have family coverage, while two have single coverage. Two employes, who work more than 160, but less than 2080 hours, have opted not to be covered by the health insurance, and six employes, each of whom work less than 1260 hours, have also opted for no health insurance coverage.

The premium rates for health insurance coverage changes in December of each year, thus resulting in two premium rates during any one school year. The following tabulation reflects the health insurance premium costs generated by each of the offers for family coverage applicable to the 13 employes who work more than 1260 hours per school year:

	Total Premium	District Contribution	Employee Contribution
1990-91 Base Year	$ 3,461.72	$ 3,461.72	$ -0-
	District Offer		
1991-92	$ 4,522.61	$ 4,432.16	$ 90.46
1992-93	$ 5,429.69	$ 5,079.90	$ 349.79
	NUE Offer		
1991-92	$ 4,522.61	$ 4,522.61	$ -0-
1992-93	$ 5,429.69	$ 5,429.60	$ -0-

An exhibit submitted by the District (District Ex. 5), not contested by NUE, reflects the health insurance premium costs assumed by the District generated by each of the offers as follows:

	NUE Offer	District Offer
1991-92	$ 77,640.53	$ 76,087.72
1992-93	92,475.32	87,028.59
Totals	$ 170,115.85	$ 163,116.31

In order to permit employes to utilize pre-tax dollars to pay a share of the premiums the District has implemented a Section 125 plan, and it is part of the District's offer. Therefore an employe's contribution toward the health insurance premium will be paid with monies which are not subject to federal, state, and FICA taxes.

The Dental Insurance Issue

The issue with regard to dental insurance is manifested by the difference in language proposed in each offer. The District's offer provides coverage consistent with the dental insurance plan in effect for teachers in the employ of the District. The NUE offer would continue the language set forth in the expired agreement between the parties. Each of the offers would require the District to pay 100% of the dental insurance premium, with the District's language specifying dollar amounts, which are equal to the full premium. The NUE's proposed language specifies the payment of the actual amount of the premiums.

Despite the difference in language the costs relating to dental insurance premiums to the District are identical under each of the offers. Thereunder, the District pays the entire premium costs for dental insurance for employes working 1260 hours or more during each school year.

The premium costs to the District for dental insurance, for the two year of the agreement involved herein compared to the premium costs of the 1990-91 school year are reflected as follows:

School Year	Total Cost	% Increase	% Decrease
1990-91	$ 9,044.67	-	-
1991-92	9,100.58	0.62	-
1991-93	8,761.71	-	3.72

During the course of their bargaining the parties reached agreements on increases to be granted to employes for the two years of the 1991-93 agreement, pertaining to wage increases, dental insurance, long-term disability insurance, FICA and WRS. During the hearing the District submitted an exhibit, uncontested by NUE, reflecting the total costs of said benefits, as well as the costs of life insurance premiums generated by each of the offers of the parties. Said exhibit reflected the following:

	District Package Includes District Offer On Health Insurance		NUE Package Includes NUE Offer On Health Insurance	
Year	Dollars	% Increase Over Previous Year	Dollars	% Increase Over Previous Year
1990-91	$450,832.27	N/A	$450,832.27	N/A
1991-92	503,915.74	11.77 %	505,468.55	12.12 %
1992-93	532,312.48	5.64 %	537,759.21	6.39 %

It should be noted that the District's offer on health insurance would generate a 27.97% increase in premium costs for the 1991-92 school year, and an increase of 14.38% for the 1992-93 school year. NUE's offer would increase the District's health

insurance premium costs by 30.58% and 19.11% for each of said years.

The Composition of the Bargaining Unit

The unit consists of employes assigned to the following classifications:

Classification	Number of Employees Working 1260 Hours or More During Contract Year	Number of Employees Working Less than 1260 Hours During Contract Year
Custodian	6	-
Cleaner	1	3
Certified Aide	3	1
Aide	2	1
Secretary	2	-
Bookkeeper	1	-
Head Building Secretary	2	-
Cook	-	6

The Statutory Criteria

Section 111.70(4)(cm)7 of the Wisconsin Statutes sets forth the factors to be considered by the arbitrator in an interest arbitration proceeding as follows:

> "a. The lawful authority of the municipal 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 proposed settlement.
>
> d. Comparison of wages, hours and conditions of employment of the municipal employes involved in the arbitration proceeding with the wages, hours and conditions of employment of other employes generally in public employment in the same community and in comparable communities.

e. Comparison of wages, hours and conditions of employment of the municipal employes involved in the arbitration proceeding with the wages, hours and conditions of employment of other employes performing similar services.

f. Comparison of wages, hours and conditions of employment of the municipal employes involved in the arbitration proceeding with the wages, hours and conditions of employment of other employes 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 municipal employes, 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, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment."

The Statutory Criteria as Viewed by the Parties

a. The lawful authority of the District

Neither party questions the lawful authority of the District with respect to the issues involved herein.

b. The stipulations of the parties

As reflected earlier herein the parties, during their bargaining reached agreements, and stipulated thereto, on various additions, revisions, and/or deletions to the following Articles to be included in their 1991-93 bargaining agreement:

III - Union Rights	XVIII - Retirement
IV - Fair Share	XX - Longevity - Personal Leave
V - Grievance Procedure	XXII - Duration
IX - Temporary Employees	XXIII - No Strike Agreement
XI - Leaves	"Nases Side Letter"

Wage Increases

The parties agreed to continue the various other provisions contained in their expired bargaining agreement.

c. Interests and welfare of the public and the financial ability of the District to meet the costs of the offers

In support of its contention that the costs of its offer is the more reasonable with respect to the interests and welfare of the public, the District points out that it experienced only a 3.34% increase in its equalized value of land situated in its borders during the last five years, while its mill rate has increased by 28.42% during the same period, and further that its costs per student has experienced an increase of 33.64% during the last four years, while the aid per member has not kept pace with that increase.

The NUE makes no specific argument with respect to this criteria. However, it claims according to its calculations, the total dollar difference between the two offers for the two year period involved ranges from approximately $7500 to $8000.

d. Comparison with other employes generally in public employment in the same community and in comparable communities

The District produced an exhibit reflecting data relating to

health insurance premium sharing by employes in the employ of Barron, Chippewa, Dunn, Eau Claire and Rusk counties, and the cities of Altoona (Eau Claire County), Bloomer and Chippewa Falls, both in Chippewa County. The District points out that six of said municipal employers have labor agreements which require employe contributions to health insurance premiums ranging from 3% to 20%.

NUE makes no comment, either in its initial or reply briefs, with respect to this statutory criteria as it applies to neighboring counties and cities.

The District points out that the teachers in its employ, 90 in number, also represented by the NUE, voluntarily agreed in their 1991-94 bargaining agreement, to the exact language which the District proposed in its final offer to the support staff employes, relating to insurance premium contributions by employes. The District contends that said internal pattern is the most significant measure of the reasonableness of its offer regarding premium cost sharing by both the District and its support staff employes. It cites awards of various arbitrators who have recognized the need for such consistency among employes of the same municipal employer.

The District also argues that the claim of NUE that the support staff and the teaching staff have always been differently treated with respect to the sharing of insurance premium costs is contrary to reality. It contends that it has paid the full premiums for the employes in both the teacher and support staff units during the school years from 1985 through 1991, and that its

offer to pay 98% of the premium costs for the support staff for the 1991-92 school year, and the cap of 115% of said costs for the 1991-93 school year, is identical to the sharing of such costs with its teachers during the same school years. It contends that the need to establish and maintain such internal consistency resulted in the change in the language of its offer from the language in the previous support staff bargaining agreement. It points out that its offer to limit its right to change carriers to three specified carriers, is also consistent with the similar provision in the teacher agreement. It also contends that the sharing by employes of the costs of health insurance premiums constitutes a reasonable response to the skyrocketing costs of such premiums, and that the contributions of employes to such premium costs does not impose an unreasonable burden upon the support staff employes.

The NUE characterizes the District's offer on cost sharing of premium payments as a changing of the status quo without providing a quid pro quo, and as such the offer of the District fails to meet the substantial tests established by arbitrators for making a major change in a major provision of the labor agreement. It contends that the emphasis placed by the District on the internal comparables is diminished when considering the following three factors, as set forth in the brief of the NUE:

> "If the Employer finds it unconscionable for one group of employes to have better fringe benefits than another, and thus unconscionable for the ESP staff to have higher health insurance payments than the teachers, is it not equally unconscionable that the support staff do not have access to an early retirement plan like the one in effect for the teachers....

> A second factor which diminishes the value of internal comparison on this issue is the clear distinctions in the makeup of the two bargaining unit staffs. The ESP insurance language is distinct from that of the teachers in that the ESP language establishes 1260 hours as the basis for the proration of health insurance payments. The teacher contract provides for prorated insurance benefits but does not base them on a specific number of hours. NUE Exhibits 26 and 45 provide statistics which show that, among other facts, 12 of the 28 ESP bargaining unit members work less than 1260 hours per year. This is a much higher percentage of part-time employes than among the teaching staff. In addition, the range of hours in the ESP unit (from 450 to 2232) goes far beyond the range of teacher hours. The 2232 hour per year total is achieved by five custodians who work compulsory overtime on a regular basis. Thus, it can be seen that there are distinctly different needs in these units, which have historically been addressed by distinctly different insurance provisions, tailored to meet the specific needs of different bargaining units, in the two separate contracts. These underlying demographic and hours-of-work factors are not changing, and thus there is no compelling reason to change the health insurance provisions which have been established to respect these particular circumstances.
>
> The third reason for diminishing the value of internal comparisons on this issue is that there is a perfectly acceptable and valid set of normal comparables available -- i.e., the athletic conference schools in the Middle border and Heart O'North Conferences..... This is particularly fitting in this case due to the long-established disparate bargaining histories of the Bloomer teachers and ESP respectively on the insurance issue. It is for this reason that NUE believes the Arbitrator should discount the Employer's proposed set of comparables, which apparently consist of a self-serving selection of a combination of some area schools and a variety of non-school district employers."

NUE concludes its initial brief by characterizing the District's offer as an attempt to compel the ESP staff to "accept the new and non-standard teacher insurance provision without the benefits of a three year contract, or an identifiable quid pro quo, or the equalization of other fringe benefits including the health insurance early retirement plan, would not be the type of agreement

which would have been reached in voluntary negotiations, and therefore, that NUE's proposal to make minimal changes in the established health and dental insurance provisions of the contract is to be preferred."

e. Comparison with other employes performing similar services

A significant portion of the briefs filed by the parties relate to this statutory criteria, involving support staff personnel employed by other school districts. NUE argues that its final offer is supported by its set of comparables, consisting of districts included in the athletic conferences known as the Middle Border, and the other as the Heart O'North, pointing out that the instant District was a member of the latter conference when its last agreement was settled, and that presently it is now a member of the Middle Border Conference.

Said conferences consist of the following school districts:

Heart O'North Conference		Middle Border Conference	
Barron	Hayward	Amery	Durand
Chetek	Ladysmith	Baldwin-Woodville	
Cumberland	Maple	Bloomer	Ellsworth
Spooner		Mondovi	New Richmond

NUE introduced various exhibits claiming they reflect that in the 1992-93 school year, seven of the nine districts having settled for said school year, in said combined conferences, including Baldwin-Woodville, where the support staff has no bargaining agent, pay the full premium for full-time employes. It indicates that the Amery agreement considers employes who work at least 1,350 hour per

year as full-time employes, and that in Ellsworth employes who work 1,820 hours per year are considered full-time employes. NUE further indicates that five of the eight districts in the Heart O'North conference provide full health insurance premium payments paid by the employers, and of the remaining three districts in the latter conference, one district pays 95% of the premium, while two the districts pay 97.2% of the premium.

With respect to this criteria the District argues that the most comparable pool consists of 14 similar school districts situated within a 30 mile radius of the Bloomer district, all located in the counties of Barron, Chippewa, Dunn, Eau Claire and Rusk, as follows:

County:				
Barron	Chippewa	Dunn	Eau Claire	Rusk
Barron	Cadott	Boyceville	Altoona	Weyerhauser
Cameron	Cornell	Colfax	Fall Creek	
Chetek	Lake Holcombe	Elk Mound		
Prairie Farm	New Auburn			

The District summarizes its position as follows:

"The District based its comparables on numerous factors typically given consideration by arbitrators in a support staff arbitration -- geographic proximity (relevant labor market), size, and equalized value. The Union, conversely, relies solely on athletic conference makeup. Under normal circumstances, particularly in teacher cases, athletic conference membership is an appropriate barometer of comparability. But here, where the District was recently removed from one conference, and where discussions are currently taking place regarding moving it again in the near future, athletic conference comparisons simply are not as valid. Moreover, arbitrators have recognized the reality of the labor market with respect to support staff employees. Geographic proximity becomes far more important in support staff cases because people simply do not relocate to get support staff positions. The

Union's comparables, encompassing an area over 130 miles from north to south wholly disregards this critical fact."

NUE characterizes the District's 14 district comparables as follows:

"It consists of 14 school districts in a 30 miles radius of Bloomer selected on an undefined 'similar sized' basis which apparently serves the single purpose of excluding the neighboring School District of Chippewa Falls. The Employer's proposed set of comparables certainly does not fit the standard athletic conference used by most arbitrators; nor does it accurately reflect the local labor market standard emphasized by the Employer in its main brief... In its brief the Employer acknowledges that on two of its 14 selected comparables are larger than Bloomer (which is another reason why Chippewa Falls, which is larger, should have been included). The Employer argues that Bloomer is one of the smaller schools in the Heart O'North or Middle Border conferences, the conferences proposed for comparability by NUE, and therefore that the Employer's comparables are similarly valid.

Rarely has there been a more blatant attempt to rig a convenient set of comparables. Not only is the Employer excluding a neighboring school which would add some much needed balance to the already unconventional non-conference grouping, but the Employer suggests that conference grouping are not valid in this case on the basis of the fact that Bloomer changed conferences, and even that it may change conferences again. If such arguments had been adopted in the past by arbitrators, the primacy of athletic conference comparables, would not have occurred. Larger schools, whether measured by student enrollment or size of professional staff, tend to receive higher levels of compensation than smaller schools; thus it is directly in the interest of the Employer to persuade the arbitrator in this case to adopt an unconventional set of external comparables which appear to have been selected in order to make the Bloomer employees appear to have above average compensation.

Districts have switched athletic conferences in the past, and when this has occurred close to an arbitration proceeding arbitrators have tended to use the conference in which the school district was a member for primary comparisons purposes, until such time as the transition is complete to the new conference, when that conference becomes the primary set of comparables."

f. <u>Comparison with other employes in private employment in the same community and in comparable communities</u>

During the course of the hearing the District introduced an

exhibit (District Ex. 42) which reflected the premium costs for health insurance provided to employes employed by some 45 private sector employers located in Chippewa County, the location of the District, and the amount of premium payments (dollar and percentage wise) made by the employers and their employes. Said exhibit specifically identified 19 employers by name, while the remaining 26 employers were merely identified as being "anonymous". NUE did not object to the introduction of said exhibit. The District then sought to introduce a supplemental exhibit (District Ex. 42A), which specifically identified a portion of the "anonymous" employers. The District desired to preserve the confidentiality of the names of said employers, indicated that such was the desire of the employers who had divulged their names to the District at the time such information was obtained in the survey conducted by the District. NUE objected to the receipt of the later exhibit, specifically to the maintaining the confidential nature of such information. The Arbitrator reserved ruling thereon and requested that the parties file written arguments relating to such issue. After the receipt and consideration of the arguments, the Arbitrator, on January 8, 1993, issued his ruling thereon, wherein he denied the receipt of the proposed exhibit into evidence. A copy of the Arbitrator's ruling, consisting of five pages, is attached hereto as Appendix A.

f. <u>The cost of living</u>

The District claims that its offer is closer to the increases reflected in the Consumer Price indices for the years 1991 and

1992, appropriate for non-metropolitan urban areas, as demonstrated in the following tabulation:

CPI July 1991 - 4.00 % Increase

1991-92	District Offer	NUE Offer
Wages only	9.33%	9.33%
Total Package	11.77%	12.12%

CPI July 1992 - 3.10 % Increase

1992-93		
Wages Only	4.17%	4.17%
Total Package	5.64%	6.39%

The NUE makes no substantive argument with respect to the cost of living criteria.

i. Changes in any of the foregoing circumstances during the pendency of the proceeding

It should be noted that NUE forwarded a copy of an interest arbitration award involving among other issues, the amount of health and dental insurance premium contributions by employes in the employ of the Barron school district, included among the districts claimed to be comparable by NUE. Said award was issued after the instant Arbitrator had closed the record herein, and therefore, this Arbitrator refused to consider said award, as reflected in a letter to the parties, dated March 8, 1993, a copy of which is attached hereto as Appendix B.

Discussion

The monetary difference generated by each of the offers relates to the amount of health insurance premium payments to be

assumed by the District. District Ex. 5 reflects that the NUE offer, which would require the District to pay the full amount of the premiums, the sum of $170,115.85 for the two year term of the agreement. Under its offer the District's share of the costs of such premiums would total $163,116.31, or $6,999.54 less than the sum which would be generated by the NUE's offer. The latter amount is a relative minor difference when compared to the cost to the District of the wage increases mutually agreed upon by the parties during their negotiations. Such costs total $711,093 for the two years of the 1991-93 agreement.

NUE argues that the District's offer, in requiring unit employes to share in the payment of health insurance premium costs, would constitute a change in the status quo without providing a quid pro quo therefore. Under the expiring agreement the amounts of premium payments required to be made by the District were set forth. Said amounts constituted the "actual total premiums", thus 100% of the premium costs. Further, the language therein implied that such costs could change during the term of that agreement.

The offer of the NUE would require the District to continue to pay 100% of the premium costs, by setting forth therein the actual amounts of the full costs of said premiums. The District's offer changes that requirement, as indicated previously herein. The premium costs for health insurance did not remain in "status quo". They have risen considerably in the two year term of the agreement involved herein. Even the offer of the District requires it to pay a greater premium than it was required to pay under the expiring

agreement, when it was required to pay 100% of the premium. The "status quo" no longer exists, as a result of the increase in premium costs, which resulted from factors outside the control of the District. Under such circumstances this Arbitrator is not persuaded that the District must provide a "quid pro quo" over and above its offer, which requires it to make health insurance premium payments in amounts over and above the amounts it was required to pay under the expiring bargaining agreement between the parties.

With respect to the criteria set forth in ss. 7d. of the statute the parties propose different outside comparable groupings of employes in their attempt to convince the Arbitrator to select one of the groupings proposed by them as the most appropriate comparable group. The Arbitrator has reviewed the record, as well as the arguments and briefs of the parties in regard thereto, and he is inclined to reject all of said outside groups as the more comparable, primarily because of their shortcomings expressed by the parties in voicing their objections thereto. Rather the Arbitrator is inclined to consider the teachers in the employ of the District as the most appropriate comparable group. The District's teachers are also represented for the purposes of collective bargaining by the NUE. The employes in both units are covered by the same insurance plan. Prior to the 1991 school year the District paid the full premium for health insurance for its full-time teachers who opted to be covered by such insurance. The NUE and the District voluntarily agreed upon the provisions in their 1991-94 teacher bargaining agreement, which included a change

in the premium pick up by the District. The District's offer to the support staff is identical to the premium pick up agreed to voluntarily by the teachers.

NUE opposes the selection of the internal teacher unit as the appropriate comparable group, contending that: (a) the support staff does not have access to an early retirement plan, which is available to the teachers; (b) the employes in each of the units have historically been covered by distinctly different insurance provisions "tailored to meet the specific needs of the different bargaining units"; and (c) there has been a long standing disparate bargaining history involving the teacher and support staff unit.

The 1991-94 agreement covering the teachers contains the following provision relating to health insurance available to early retirees:

"ARTICLE XVIII - EARLY RETIREMENT

1. Early retirement benefits shall be available to unit members over 59 years of age and who have at least 15 years of service to the District.

2. All applications shall be filed with the Superintendent not later than April 15.

3. Upon early retirement, unit members of this program shall be entitled to one year of Board paid health insurance at the rate in effect for teaching staff members:

   A. For each seven (7) year of service to the District;
   B. For each thirty (30) days of accumulated, unused sick leave.

4. Health insurance payments shall be made monthly for a maximum of six (6) years or until the employee becomes eligible for Medicare, whichever occurs sooner.

5. If a unit member dies before this benefit is exhausted, the surviving spouse shall be eligible for continued coverage under the provisions set out above."

Data reflected in certain of the District's exhibits indicate that four of the six employes in the support staff unit, who work at least 2080 hours per year, will, during the term of the 1991-93 agreement, have been employed more than fifteen years. There was no evidence adduced as to whether any of said employes would have reached the age of 59 during the term of said agreement, or as to whether any of said four employes would have opted for early retirement. No evidence was adduced to indicate that NUE had proposed that the 1991-93 support staff agreement include a provision similar to that contained in the teacher agreement with respect to providing health insurance for support staff employes upon retirement, similar to the provision contained in the teacher agreement. The only significant difference relating to payment of health insurance premiums by the District for teachers and support staff personnel, as reflected in the Arbitrator's review of the bargaining agreements covering the employes in both units since 1985, involved part-time teachers vis-a-vis part-time support staff personnel. Health insurance premium payments by the District for part-time teachers were pro rated bases upon the proportion of time the teachers were contracted for. Support staff employees who worked at least 1260 hours during any one school year, from at least the 1985 through the 1991 school years, paid no proportion of the costs of health insurance premiums. Thus it is apparent that part-time support staff employes, who worked at least 1260 hours

per year, experienced a greater benefit than did part-time teachers. The distinctions in the makeup of the two bargaining units, and/or the fact that there is a much higher percentage of part-time support staff employes than part-timers among the teaching staff, and/or the fact that some of the support staff work compulsory overtime on a regular basis, do not constitute a sufficient basis to reject the District's teacher unit as the more comparable group. Nor does the fact that in the past there were differences in the two agreements pertaining to the language with reference to possible changes in insurance carriers persuade the Arbitrator to reject the teacher unit as the more comparable, especially since the District's offer with regard to the possible change of insurance carriers is now consistent with the provisions in the teacher bargaining agreement, and the contents of the "side letter" incorporated in that agreement by reference.

In summary, the Arbitrator concludes that (1) neither offer has a serious impact on the interests and welfare of the public; (2) the District's offer favors the criteria relating to its ability to meet the costs involved, and also it is closer to the rise in the consumer price index for the two year period involved; and (3) the teachers of the District constitute the more appropriate comparable grouping.

Therefore, upon the basis of the above and foregoing, the undersigned issues the following:

AWARD

The final offer of the District is deemed to be more acceptable towards meeting the statutory criteria se forth in Sec. 111.70(4)(cm)(7) of the Municipal Employment Relations Act, and therefore, the proposals contained therein shall be incorporated into the 1991-93 collective bargaining agreement between the parties. Further, said agreement shall incorporate the matters and changes agreed upon by the parties during their bargaining, together with the provisions of the previous agreement which remain unchanged, either by the District's final offer, or by mutual agreement during bargaining.

Dated at Madison, Wisconsin this 13th day of April, 1993.

Morris Slavney
Arbitrator

BEFORE THE ARBITRATOR

In the Matter of the Petition of	
SCHOOL DISTRICT OF BLOOMER	
To Initiated Arbitration Between Said Petitioner and	Case 27 No. 45593 INT/ARB - 6017 Decision No. 27407
NORTHWEST UNITED EDUCATORS	

RULING ON ADMISSABILITY OF DISTRICT EXHIBIT 42A

During the course of the hearing in the instant interest arbitration proceeding, conducted on December 7, 1992 at Bloomer, Wisconsin, involving the educational support staff employed by the School District of Bloomer, hereinafter referred to as the District, which staff is represented by Northwest United Educators, hereinafter referred to as the NUE, Stephan L. Weld, counsel for the District, introduced a number of exhibits in support of its final offer, among them being District Ex. 42, which reflected the results of a survey conducted by said counsel's law firm among forty-five (45) private sector employers located in Chippewa County responding to said survey. Their responses indicated, among other matters, data indicating the amount of premium costs for health insurance covering their employes for the year 1992. Said data also reflected the contributions toward said costs made by the employers and their employes. District Ex. 42 specifically identified nineteen (19) employers, while the remaining twenty-six (26) employers were each identified as "Anonymous". Alan Manson, the NUE Executive Director, who represented the NUE at the hearing, voiced no objection to the introduction of said exhibit.

The District then moved to introduce District Ex. 42A, which was intended to supplement District Ex. 42, by specifically identifying some of the employers identified as "Anonymous" on District Ex. 42. At the same time the District indicated that it desired to preserve the confidentiality of the names of some of the employers appearing on District Ex. 42A who were previously identified as being "Anonymous". Counsel for the District sought to preserve such confidentiality by releasing proposed District Ex. 42A only to the Arbitrator and to the NUE Regional Director in order that the proposed exhibit would not be deemed a "record subject to disclosure under the Wisconsin Public Records Law".

The representative of the NUE declined to make any commitment to maintain the confidentiality of the proposed exhibit. The Arbitrator reserved his ruling on the admissability of said exhibit, and the parties were requested to file written arguments relating thereto. By December 23, 1992, the Arbitrator received the positions of the parties, reflected in their correspondence to the Arbitrator.

The District's position was set forth as follows:

> "It is our belief that no legitimate interest would be served by the exclusion of this documentary evidence on the basis of the NUE's argument that it had a constructive lack of access to the actual names of the employers listed as "anonymous" in District Ex. #42. NUE not only had constructive access, but actual access to the names, provided it complied with the reasonable request that it maintain the confidentiality of the information set forth in District Ex. #42A.
>
> * * *
>
> It should be abundantly clear that the District has done nothing in this instance to "frustrate" the arbitration

process. Instead, the District, acting in good faith, devised what it felt was a reasonable accommodation between the NUE's right to know the precise identities of those employers surveyed versus the employers' justifiable expectation that the stipulation of anonymity (at least in terms of mandatory disclosure under the Public Records Law) would be safeguarded by the District. One also must consider the fact that arbitrators are required by statute to consider private sector comparables. Consideration of that set of comparables had been frustrated by an inability of the parties to develop quantifiable data for the arbitrator's consideration. The District has now provided quantifiable data.

Nor has the NUE been "prejudiced" when all relevant factors are taken into account. In that regard, there are essentially two reasons why the NUE would want to know the identity of each "anonymous" employer. The first reason would be verification that the information set forth in the exhibit is accurate. The second reason would be to identify any distinctions in the characteristics of a given employer (or its workforce) that would call into question the notion that such employer is in any sense comparable to the District. While both reasons may be valid as an abstract proposition, we must not lose sight of the fact that the NUE's refusal to maintain the confidentiality of District Ex. #42A is strictly a matter of its own volition. As Mr. Manson noted at the hearing, the NUE is under absolutely no legal obligation to disclose anything. Thus, having made a deliberate choice to not honor the condition of receipt, the NUE should not be heard to complain that its nonreceipt of District Ex. #42A is prejudicial."

The NUE, identifying the District as the "Employer", argues as follows:

"The Employer has requested that it be allowed to submit exhibits for the record which are submitted under a pledge of confidentiality. That is, the Employer apparently has made a pledge of confidentiality to individuals or organizations from which the data on that exhibit has been obtained, and the Employer wishes to have the union and the arbitrator agree to honor that pledge of confidentiality.

While it is not absolutely clear what this would mean in terms of actions, permitted or prohibited, by the arbitrator or the union, NUE believes that such a request

should be rejected. The reasons for this position are that NUE believes the interest arbitration process in Wisconsin under Statute 111.70 is open to the public, and, as such, all testimony and materials presented at the public hearing are part of the public record. NUE believes this is so because the District obtains, at the hearing, a copy of all exhibits and thus they become part of the public record.

Furthermore, the pledge of confidentiality made by the Employer to various sources cannot reasonably be extended to NUE. NUE cannot in good faith assure the Employer that its members, which include 26 individuals in the bargaining unit here represented, plus 90 teachers in a companion bargaining unit in the same District, as well as 2700 individuals in the same local in northwest Wisconsin, and 50,000 union members statewide -- will not have a legitimate need for such information in the future.

It seems that if the Employer is going to submit data to support its final offer, and if that data may be used by the Arbitrator in making an award, that it is appropriate that the collective bargaining process be kept open so that others, who may wish to read and learn from the events in this case, will have access to all the relevant information which was used in this case. Thus, NUE contends that information submitted to the Arbitrator in the form of exhibits in interest arbitration must be done so in a manner which will allow the parties to freely investigate, discuss, and rebut the material in the processing of the case, as well as being free to review, study, and if appropriate in the future, publicize all of the relevant evidence in conjunction with the ultimate award."

The interest arbitration provisions of the Municipal Employment Relations Act, Sec. 111.70(cm), among other things, sets forth that the final offers of the parties are considered to be public documents, ss. 6.a.; that upon petition of at least five citizens of the jurisdiction served by the municipal employer involved, the arbitrator shall hold a public hearing for the purpose of providing the opportunity of both parties to explain and present supporting arguments for their positions, and thus provide

the members of the public to offer their comments and suggestions, ss. 6.b; and ss.6.d. authorizes the arbitrator, either upon his own motion, or at the request of the parties, prior to the issuance of the arbitration decision, to conduct an open meeting for the same purposes set forth in ss. 6.b.

Further, as set forth in Sec. 111.70(cm)7, the arbitrator, in issuing the decision, shall give weight to various factors set forth in said section. Included among said factors is "the interests and welfare of the public".

This Arbitrator concludes that the public interest in an interest arbitration proceeding is such that any proposed evidence which is limited only to the eyes of the Arbitrator and to the eyes of the individuals presenting the case for the municipal employer and for the municipal employees involved, and not available for possible public scrutiny, will not be received into the record, even where neither party objects to the receipt thereof.

Therefore, the exhibit identified as District Ex. 42A be, and the same hereby is, not accepted into the record herein.

Dated at Madison, Wi this 8th day of January, 1993.

Morris Slavney
Arbitrator

Appendix A-5

MORRIS SLAVNEY
ARBITRATOR

4820 TOKAY BOULEVARD
MADISON, WISCONSIN 53711
TELEPHONE (608)271-9105

March 8, 1993

Steven L. Weld
Attorney at Law
P. O. Box 1030
Eau Claire, WI 54702-1030

Alan D. Manson
Executive Director, NUE
16 West John Street
Rice Lake, WI 54868

Re: School District of Bloomer and Northwest United Educators
Case 27 No. 45593 INT/ARB 6017

Gentlemen:

By letter, dated February 18, 1993, upon the receipt of the reply briefs filed by you in the instant matter, I advised that the record therein was deemed closed as of that date.

Some two weeks later, and on March 3rd, I received from Mr. Manson a copy of the arbitration award issued on February 26, by Arbitrator Imes, involving the Barron Area School District. In his covering letter Mr. Manson indicated that he was submitting said award in accordance with Sec. 111.70(4)(cm)7, which, according to Mr. Manson, requires the Arbitrator to consider "changes in the foregoing circumstances during the pendency of the arbitration proceedings".

Before responding thereto I awaited a possible response from Attorney Weld. I have today received Attorney Weld's letter, wherein he indicated that the Imes award was tardy and should not have beensubmitted to me. He contends that his client is in a dilemma inasmuch as I have been put on notice of the award, and therefore he responded to various portions of the Imes award.

Be advised that since that award was received some two weeks after the record in the instant matter was closed, and that award was issued on a date one week after the record was closed, I will not consider same in issuing my award involving the Bloomer District and its Support Staff, which by the way is in the midst of being prepared.

ms:t

Sincerely,

Morris Slavney

Morris Slavney

Appendix B