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WISCONSIN EMPLOYMENT  
RELATIONS COMMISSION

STATE OF WISCONSIN  
BEFORE THE ARBITRATOR

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In the Matter of the Petition of	:	
	:	
MADISON TEACHERS, INC.	:	
	:	Case 215
To Initiate Arbitration Between	:	No. 48323 INT/ARB-6664
Said Petitioner and	:	Decision No. 27612-C
	:	
MADISON METROPOLITAN SCHOOL DISTRICT	:	
	:	
-----	:	

Appearances:

Madison Teachers Inc. by John A. Matthews, Executive  
Director and Douglas P. Keillor.  
Madison Metropolitan School District by Susan Hawley,  
Labor Contract Manager.

ARBITRATION AWARD

The parties have been unable to agree upon the terms to be included in their contract for the period October 16, 1992 through October 15, 1994. On November 16, 1992, Madison Teachers Inc. ("MTI" or "Union") filed a petition with the Wisconsin Employment Relations Commission ("Commission") wherein it alleged that it had been unable to negotiate a successor to the agreement which had expired on October 15, 1992, with Madison Metropolitan School District ("District" or "Employer"). Based upon the record, the petitioner in this proceeding is MTI. However, it should be noted that the bargaining unit is sometimes called the United Substitutes Organization, which represents 499 substitute teachers employed by the District. After the petition for

arbitration pursuant to Wis. Stat. 111.70(4)(cm)6 had been filed, Commissioner Herman Torosian conducted an investigation and determined that the parties remained at impasse. The undersigned was appointed to act as the arbitrator by an order from the Commission dated April 27, 1993. After proper notice, an arbitration hearing was conducted at Madison, Wisconsin on July 13, 1993. Both parties presented written exhibits and sworn testimony into evidence during the course of the hearing. The record of the proceeding was closed at the conclusion of the hearing on July 13, 1993, and the briefing schedule was established. The hearing transcript was distributed on July 20, 1993 and initial briefs were received by the undersigned on August 17, 1993. On that same day, the undersigned received correspondence from the Commission requesting "that you take no further action pending Commission determination as to whether the dispute, or a portion of the dispute, continues to be subject to interest arbitration." On that date, the Commission also requested the parties to file their written position statements, with the Commission as to how, if at all, amendments contained in 1993 Wisconsin Act 16, impacted upon this pending arbitration proceeding. The parties filed their reply briefs according to the briefing schedule. They were exchanged on September 7, 1993 by the arbitrator.

Thereafter, the parties responded directly to the Commission's investigation and participated in a hearing at the direction of the Commission. On April 6, 1995, the Commission entered a findings and order which provided as follows:

The District's final offer for the period July 1, 1993-October 15, 1994 is not a qualified economic offer within the meaning of Sec. 111.70(1)(nc), Stats., and nonstatutory provision Sec. 9120(2x) of 1993 Wisconsin Act 16.

Because the District's final offer for the period July 1, 1993-October 15, 1994 is not a qualified economic offer, all matters submitted to arbitration pursuant to Sec. 111.70(4)(cm), Stats., continue to be subject to arbitration.

Interest Arbitrator John C. Oestreicher shall proceed to issue an award in which he selects the final offer of the District or the final offer of MTI.

#### ISSUES IN DISPUTE

The parties agree that the primary issue in this proceeding is the Teachers' request that the District, which presently makes no contribution toward health insurance for substitute teachers, be required to begin making contributions for those substitutes who qualify under the Union's offer. The offer provides that:

In any school year, where a substitute works eighty (80) days (any part of a day equals one day) or more, he/she shall receive District premium contributions, as provided in the "teachers" Collective Bargaining Agreement, for either the single or family health coverage the following school year, if continuing as a substitute teacher. The 1992-93 school year shall be used as the first qualifying year.

Those eligible would have a choice of coverage under either the W.P.S. Dane County Health Maintenance Program (HMP 90) or under a conventional program (WPS 1202). Substitutes who do not qualify for premium contributions from the District could enroll in either plan if they paid their own premiums.

The Union proposed a 4.35% wage increase for the first year and a 3% increase for the second year compared to the District's 4% and 3% offer over the two years.

The Union proposed that substitute teachers who work the same assignment on the days before and after a holiday, convention day, or a snow day be paid for the day off.

The Union proposed that substitute teachers who work as homebound teachers, would have their pay increased to an hourly rate, based upon the long term rate of pay, after seven consecutive days of homebound teaching.

#### THE TEACHERS' POSITION

INTERNAL COMPARISONS - The Union said that five of the ten criteria set forth in Sec. 111.70(4)(cm)7 Stats., pertain to this dispute. They are: 1) interests and welfare of the public and ability of the District meet the costs, 2) a comparison of the wages and conditions of these employees with the wages and conditions of employment of other employees performing similar services, 3) the foregoing comparison for these employees and others generally in public employment in the same and in similar communities, 4) the Consumer Price Index and, 5) the overall compensation presently received by these employees.

The Union said that "the only appropriate internal comparable employees' are other certified teachers." It reviewed sections of the Wisconsin Administrative Code, the predecessor contract, the District's Handbook for Substitutes and testimony and argued that, "the only group of employees in the District

performing similar services to substitute teachers are regular teachers. It argued that Substitute Teachers are required to hold at least a Bachelors Degree and be certified, they are required to perform "any and all duties and responsibilities of a regular teacher." The Union pointed to an exhibit that showed the District had settled 1993-94 contracts with three bargaining units: Custodial at 4.30%, Food Service at 4.30% and the Teachers' at 4.35%. It argued that these settlements demand that it's offer for 4.35% rather than the District's 4% offer be awarded. It criticized the Board's suggestion that the Board's final proposals for settlement to three bargaining units involved in arbitration proceedings are appropriate as evidence of internal settlements. MTI said that only its offer would maintain the historical relationship between wages paid to substitute teachers and regular teachers. The Board's offer would increase the disparity between these wage rates. It said that even more disturbing, the District's offer would increase the disparity between daily substitute pay and long-term substitute pay for members within this unit.

MTI pointed to exhibits which showed that teachers receive employer contributions for health insurance if they work 50% of the time. Clerical/technical employees, educational assistants, custodial employees and food service workers are eligible for contributions if they work a minimum of 19 hours a week. Long term substitute teachers may be eligible for this benefit if they meet certain conditions. It said that "all District bargaining

units, with the sole exception of that of substitute teachers, receive employer contributions toward health insurance." It called this "an extreme internal inequity." The Union said that 25% of the substitute teachers would receive a benefit worth between two thousand and five thousand dollars a year if they belonged to any other of the District's bargaining units. MTI reviewed the testimony of one of its members who said that she had considered taking a lower paying non-professional position as an educational assistant in order to gain the employer contribution for health insurance. The Union argued that the witness "should not be forced to make that choice."

The Union referred to an exhibit which summarized the number of paid holidays received by members of the District's bargaining units. It said that its offer would provide equity for substitutes with full-time teachers. It argued that even if this proposal is adopted, both teachers and substitute teachers would receive fewer paid holidays than the members of other bargaining units.

The Union said that while its offer for wages, health insurance and holidays for substitute teachers is consistent with wages and benefits received by teachers and other employees of the District, the Employer's offer would result in further wage erosion and continue existing inequities. It pointed to the District's estimate that the increased cost of MTI's offer would be only two tenths of 1% more than the cost of the District's

offer. It said this amount is insignificant when compared to the good which would result from the benefit being provided.

EXTERNAL COMPARISONS - MTI said that, although internal comparisons with regular teachers in Madison are the most appropriate, it had provided external comparisons "so as not to ignore the statutory criteria." It said that the appropriate external comparison should be with "the four largest school districts in the state, in which substitute teachers are unionized." It noted that the District had suggested the eight school districts contiguous to Madison, only one of which is unionized as comparables. The Employer also has presented data comparing Madison with the ten largest school districts, less than half of which are unionized.

The Union reviewed traditional standards recognized by arbitrators in establishing comparability and argued that, it is most appropriate to compare Madison to Milwaukee, Green Bay and Kenosha. It argued that these larger urban districts have "diverse student populations lending to the similarity of the duties performed by employees." It said Madison ranks second of these four in enrollment and equalized value. The Union reviewed testimony that Madison has a diverse student population. In some instances, teachers in Madison face problems similar to problems confronting teachers in the inner-city of Chicago. Another witness described behavioral problems she associated with concentrations of poverty in city schools. Madison along with Milwaukee and Kenosha and two other school districts, are

eligible for special state aids because they are high poverty districts. The Union said that the foregoing phenomena are found only in large urban school districts, therefore, the four largest unionized districts in the state are the most appropriate external comparable group.

MTI said that "it is a generally accepted arbitral standard that comparisons should be based on similarly sized districts." It said that the contiguous districts cited by the District as comparable are smaller and have much less revenue base than Madison. It argued that in addition to their dissimilarity for other reasons, the general non-existence of union representation is significant. "The latter causes a void of organized labor to enable an equal voice with management in establishing wages, hours and conditions of employment." The Union noted that only one of eight contiguous districts is organized. It cited a series of comments from previous arbitration decisions where arbitrators spoke favorably of comparisons of districts with collective bargaining agreements to one another rather than with districts in which the employer alone sets the rates.

The Union downplayed the relevance of labor market comparisons. It argued that the evidence presented by the District, that thirty-five of the substitutes had taken assignments in contiguous districts, showed only that employment in nearby districts was a matter of "economic survival in the life of a substitute teacher, especially when one has no employer contribution toward health insurance." It noted that nearly half



of the substitutes had applied for regular teaching positions with the District. "These individuals are continuing to substitute for the District in hopes of receiving a regular teaching position."

The Union said that data from its proposed external comparables is of little assistance in this proceeding, because it is inconclusive. Of the three other comparables "one settled higher, one settled lower, and one is not settled. One of these districts provides health insurance and two do not." The Union said that internal comparability with teachers who perform the same tasks, have the same responsibilities and have the same license and education requirements, is the best comparable.

INTEREST OF THE PUBLIC - MTI argued that the public interest requires an adequate supply of substitute teachers. It said that the childrens' education suffers when no substitute is available. It pointed to exhibits which it said showed the District's frequent failure to provide substitute teachers which places additional burdens upon regular teachers and which ultimately impacts on the quality of education. It argued that these matters are "significant to the interest and welfare of the public." The Union argued that its proposal would attract and retain qualified substitutes. The health insurance aspect of its offer provides an additional incentive for substitute teachers to remain in the pool and to accept work when they are called, "so as to achieve the 80 day threshold for benefits."

MTI reviewed evidence which it said showed a high turnover in the substitute pool. Seventy-six percent of the current members of the pool began employment in the last 3 years. Only 6% of the substitutes who seek regular teaching contracts receive them. The majority of the substitutes take their talent elsewhere leaving the District with a shortage of substitutes. The shortage results in some classes not being covered and an additional expense of recruiting, screening and hiring new substitutes. The Union cited testimony of one of the District's witnesses that it is difficult to maintain an adequate pool of substitutes, because, "a significant number of substitutes 'become disenchanted and go off and sell shoes or fry hamburgers'." The Union argued that if substitute teachers received health insurance, like every other employee who works 19 hours a week, substitutes would stay in education where they are needed.

MTI reviewed information relating to problems arising out of high health insurance costs and those individuals who have no health insurance. It said, "the public has decided it is unacceptable to have their fellow Americans without health insurance. It is seen as a basic right, a necessity." The Union said that, the national trend is reflected locally and with substitute teachers, over 16.6% of which have no health insurance. It said that curtailed school spending imposed by the state's budget does not reflect the public's interest. Locally, there is strong support for a high level of services.

The Union noted that the District had not taken the position that it was unable to pay the cost of MTI's offer. It said Madison had the second highest equalized value among the comparables. Equalized value is a measure of the District's ability to pay. Madison has the highest equalized value per student among comparables, "58% greater in 1992-93 than second place Green Bay, and 80% greater than the average of the districts." It cited a survey of 129 metropolitan areas which indicated that homes in Madison showed the seventh highest increase in value in the nation, "as regards the median sale price (9.3%); nearly twice the national average."

The Union said that "Madison workers received the highest percentage increase and the second highest annual salary as compared to the three other metropolitan areas." It was first in average total income per tax return in 1991 among the four districts. Madison's unemployment rate is the lowest in the state.

The Union said that the fact that its total offer exceeds increases in the consumer price index is not relevant in this proceeding. One element included in the CPI is the cost of health care. Substitutes have been bearing that cost far too long. "It is not possible to provide equity for the substitute teachers without a total package which exceeds the CPI." The cost of living for a substitute teacher in Madison includes paying the entire cost of health insurance premium. One witness earned \$9,931 for 102 days of teaching in 1992-93. "Her health

insurance cost was \$6,540; 70% of her gross wages." This is a cost not borne by any other District employee, and by no other public employee in Madison. The Union argued that there are "tens of thousands who meet the nineteen hours per week or half time threshed for coverage."

MTI said the statutory criteria for considering "overall compensation" includes vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits. The substitutes do not receive any of these items. The Union said that it is so common for these benefits to be included in bargained contracts that they are enumerated in the statute. It criticized the District's attempt to make an argument about overall compensation by "costing" sick leave provided for Madison's substitutes. It said that "to include the daily pay of an absent teacher in the costing of the financial impact of the substitute sick leave provision, is absolutely ludicrous."

The Union said that it had not offered "quid pro quo" for the addition of health insurance contributions because there is nothing to give. "How can the substandard achieve equity if concessions are extracted?" The Union's proposal for a 3% increase during the second year would cause the employees to share in the cost of the program during the year in which it came into effect. The average earnings of those substitutes who testified was \$10,472, these earnings do not permit offering quid pro quo equivalent to the cost of the benefit.

This was the first union in the state, and one of the first in the nation, to organize substitute teachers. There are not very many organized substitute units, external comparability is relatively meaningless. Over the years, substitute teachers have had to choose between food, clothing and health insurance; many do not have health insurance. No other public employee in Madison, who meets the worktime threshold, has to make this choice. "The District has forced the substitute teachers to attempt to achieve the deserved equity through the only avenue possible; arbitration." The Employer's offer is unreasonable because it "continues to allow the exploitation of this single group of employees...in a manner detrimental to the interest and welfare of the public."

THE DISTRICT'S POSITION

The District, after stating that the major issue in this case is MTI's proposal to require the District to make health insurance contributions for eligible substitute teachers, summarized the total cost of the two offers. That summary is as follows:

	<u>District's Offer</u>	<u>MTI's Offer</u>
<u>1992-93</u>		
Wages	\$73,320	
Wages/Paid Days		\$98,903
<u>1993-94</u>		
Wages	\$58,750	
Wages/Paid Days		\$59,456
Health Insurance	_____	<u>\$477,949</u>
Total Cost	\$132,070	\$636,308

The District stated that the \$477,949 cost for health insurance contributions was a conservative estimate based upon the assumption that 80% of the eligible substitutes would take advantage of the benefit, further, that a high percentage of those who accepted the benefit would choose the lower cost option. It estimated "the actual cost of MTI's 1993-94 offer could exceed 27.12% total package.

The District said that those statutory criteria relating to interests of the public and ability to pay, comparisons of wages and benefits with employees performing similar services, cost of living considerations and evaluation of the employees' overall compensation are most relevant in this case.

QUID PRO QUO - The District said that the Union's health insurance proposal will cost almost one-half million dollars and increase substitute costs "for the following school year by 27.12%." It said that arbitral precedent requires, "in a case like this where the Union is asking for that significant an increase in one year, the comparables must indicate the need for a change." It reviewed a series of prior arbitration decisions. One arbitrator had discussed the fact that, "quid pro quo may be required to justify the proposed elimination of a substantial change in an established, existing and defined policy or benefit." Other arbitrators had outlined the burden placed upon a party to arbitration who is requesting a change in the status quo to establish the need for change and offer quid pro quo; other arbitrators evaluated the adequacy of proposed quid pro quo

offerings. The District argued that the 1% salary concession MTI had implied was quid pro quo for health insurance contributions is worth "less than \$20,000 - a far cry from the nearly half-million dollar cost of MTI's health insurance proposal!" It cited additional arbitral precedent that change should be imposed by arbitration only if "the condition sought to be changed is unreasonable or contrary to generally accepted standards." The Board argued that only Milwaukee pays health insurance premiums for its substitutes and that situation "differs significantly from the Madison District."

CPI - The Board cited statutory criteria which indicate that the average consumer prices for goods and services should be considered by arbitrators. It said that most recent CPI data showed increases of 3.2% between 1991 and 1992 and 3% from April, 1992 through April, 1993. It noted a downward trend from August, 1992 through April, 1993. The District said both of the parties' offers exceed CPI increases. It cited a previous arbitration decision to support its argument that these factors support the Employer's offer. The Board argued that the Union's total package offer costing 27.12% in 1993-94 is clearly not consistent with statutory criteria.

EXTERNAL COMPARABILITY - The District said that it had provided data from two different sets of school districts to illustrate its position relative to the statutory criteria for "other employees performing similar services." It said that the only appropriate comparable districts are eight contiguous

districts which surround Madison. It said that these are the districts in which the employees in this bargaining unit would look for alternative, similar employment. It cited evidence that a number of Madison's substitutes "did substitute in adjacent school districts on a regular and frequent basis." The District noted MTI's position that, these school districts are not comparable because the substitute teachers in these districts are not unionized and because the districts are smaller than Madison. It cited comments by arbitrators from seven prior cases in which those arbitrators found that it was inappropriate to exclude comparables on the basis of unionization, and found the geographic proximity to labor markets is an appropriate consideration in determining comparability.

The Board said that no contiguous school district contributed toward health insurance premiums for substitute teachers. The Board pointed to evidence comparing wage and salaries in Madison and in the contiguous districts. It said that this data shows that Madison pays excellent salaries to its substitute employees. Over a 4 year period, Madison salaries have ranked number one. The range of salaries for 1992-93 is from \$79.24 a day in Madison to \$57 a day in Oregon. The average daily rate is \$63.24, that is \$16.00 less than Madison's rate. Madison substitutes are eligible to earn higher long term substitute pay rates in less time than substitutes in other districts. "The average number of days for long term rate is 10.9 days compared to Madison's 7. Madison's long term rate has



ranked number one for the last four years. The range for long term pay is \$123.43 in Madison to \$75.00 a day in Monona Grove. The average long term rate of \$109.12 is \$14.31 less than Madison's long term pay rate.

The second set of comparisons is between Madison and the other largest school districts in Wisconsin. The District said that it is the second largest school district in the state. It provided comparative data for the largest ten school districts in Wisconsin, which it concluded supports the Employer's offer. Madison's daily pay has ranked third of ten for the past four years; it will remain third during 1992-93. Madison's requirement that a substitute work only seven consecutive days to reach long term substitute pay is second only to Green Bay. In Milwaukee, it takes 15-20 consecutive days to reach the long term substitute rate of pay. Madison's long term pay rate has consistently ranked second. It will be third in 1992-93, displaced from second "by only 50¢ per day." The Board argued that Madison's substitute wage rate and long term wage rate are higher than the average for all metropolitan school districts. It said that this leadership position "does not lend any justification to an argument that Madison" should provide health insurance contributions.

The Board said that only Madison, Milwaukee and Green Bay have any health insurance benefits. Green Bay's benefit is limited to 25 substitutes being permitted to enter the group plan at their own expense if they are not eligible for any other group

plan. Only four Green Bay substitute teachers participate in that plan. In Madison, substitutes may enter the plan, at their expense, after a 30 day waiting period. The Madison Board makes premium contributions for those substitutes who work for a full semester and have elected to participate in the health insurance plan.

The District said that the Milwaukee School District is the only district that contributes toward substitute teachers' health insurance premiums. MTI's proposal is similar to Milwaukee's program "in that substitutes are eligible to enroll in the plan when they have worked 80 days or more in the previous year." Milwaukee contributes 100% to health insurance premiums for both single and family plans, for both teachers and substitute teachers. The Board argued that Milwaukee's situation is different than Madison's, because, in Milwaukee, most regular substitutes work 140 to 180 days in a school year. In Madison, those substitute teachers who worked more than 80 days in 1992-93, averaged 118 days; eleven worked more than 150 days. "Only one worked between 160 and 169 days." The District explained that many substitutes who work a full semester or work under a temporary contract receive health insurance contributions. "Most of the Madison School District substitute teachers who teach a long period of time have their health insurance contributions already paid for by the Madison School District." It argued that, MTI would like to ignore those facts, because it "wants the arbitrator to compare the Madison School District to Milwaukee."

The Board cited comments from a previous arbitration decision to the effect that, Milwaukee is unique because of its size, it requires a larger number of substitutes who act like "a large cadre of essentially floating teachers." It said Milwaukee's substitutes are allowed to refuse only four assignments in a year. "They are required to be available to work in any school on any day of the school year, whereas Madison's substitute teachers are not prohibited from placing restrictions on their availability." Nearly one half of Madison's substitutes had restrictions in one year.

OVERALL COMPENSATION - The Board said that substitute teachers in Madison receive additional benefits which must be considered. It said that their ability to participate in the District's group health and dental plans at their own cost gives substitutes the benefit of the group's rating, with some cost impact on the District. It said that, the substitutes' ability to accumulate one day of sick leave for every 20 days worked is a significant benefit which is not generally available in comparable districts. Only Milwaukee and Waukesha have any kind of sick leave benefit. Waukesha limits the benefit to long term substitutes. The Board said that during 1991-92, substitutes took 436 days of sick leave at a total cost of \$39,681 and an average cost of \$91.01. It said that "the total estimated daily cost for the absence of one teacher in the Madison School District if a substitute declares a sick day, is conservatively estimated at \$366.22. The Board said that substitute teachers

had received additional benefits through the stipulations in this proceeding. It reviewed the agreements which will allow employees tax savings for pre-tax medical deductions from salary, reimbursement for loss or damage to personal property, increased the class covering rate from \$11 to \$13 and increased the hourly rate for lunch supervision from \$8.50 to \$9.10 an hour.

INTERNAL COMPARABILITY - The Board said that its offer to substitute teachers is consistent with its offer to other bargaining units. It is identical to offers made to the Educational Assistants unit and the Clerical/Technical unit. The Board's offer to the custodial unit is slightly less because that unit's contract extends beyond the others' contracts by six months. The Board is planning a downward trend in employee wage increases. All of these units have requested interest arbitration. It started teacher negotiations by offering a wage freeze. Its offer to the teachers would permit about two thirds of the teaching staff experience movement of \$1,170 on the salary schedule.

PUBLIC INTEREST - The Board said that it had, based upon pressure from the Governor and Legislature, voted to freeze its "property tax rate." This would permit a 5% increase in school taxes and a 4.9% budget increase. "To achieve that goal the District had to cut \$4,000,000 from its current services." It said that the local community is concerned about rising taxes and the need to control costs. The Board's cuts were made in a manner calculated to "attempt to keep as many cuts as possible

away from the students." The budget contained increases in salary and benefits. It included some across-the-board cuts and other considerations "trying to hold down some of the cost of salary and benefits. ...MTI is asking for an almost unconscionable increase...of nearly half a million dollars for a benefit which is not found in any of our comparable school districts."

The Board denied the Union's argument that other employees of the district receive health insurance contributions. It said no substitute employee receives insurance contributions. It said that MTI had tried to confuse the issue by referring to employees in the teacher's unit who are considered regular employees. Addendum employees report to the District's schools on a daily basis and have a regular assignment as do floating educational assistants. These employees "have regular hours and regular assignments and a regular expectation of a salary on each day of the school year." The Board pointed out that persons with coaching positions and other non-faculty personnel filling extra duty positions, under the teacher's contract, are treated the same way as substitutes and do not receive health insurance contributions. The Board said that all districts need substitute teachers. When substitutes are hired, they know that their status is different from that of a regular teacher. They are informed that they may not be called to work very frequently. It said that the District tries to provide excellent health insurance benefits to its employees on staff. It "should not be

additionally burdened by having to pay health insurance premiums contributions for substitute employees who are only hired on an on-call, sporadic basis."

#### REPLY BRIEFS

The Union said that the status quo insofar as it is relevant to this preceding is unjust, unconscionable and inequitable because: the Employer contributes toward health insurance for every other employee group, but not the substitutes; over 16% of the substitutes have no health insurance; those who have coverage must pay the majority of their earnings for health insurance premiums. It said that the status quo denies these unionized substitutes the right to strike and relegates them to a "legalistic, technocratic process rife with words like 'status quo' and 'quid pro quo' and 'comparability.'" The status quo in the instant matter includes a bargaining unit of substitute teachers with virtually no fringe benefits and very limited annual earnings potential." MTI said that for many years it has attempted to bargain for the same health insurance benefit which the District has provided to every other employee group. Each time the District has refused to grant the benefit. "Arbitration is the only avenue available."

The Union said that the arbitrator has a unique role in public sector interest arbitration proceedings. "Health insurance is a major cost item, the cause of many strikes in the private sector." Health insurance is this union's number one

priority. Being unable to strike, the Union has come to arbitration to submit its "proposals of equity."

The Union said that cases which had been cited by the District, when read in their entirety, lend support to the Union's position. It reviewed a series of cases from which it argued that health care costs are a significant mutual problem for all parties. They are external, unanticipated, beyond the parties' control, and a significant problem for employees. It cited arbitral discussion which emphasized that under those circumstances, quid pro quo may not be necessary. It argued that, from the facts of this case and previous decisions, internal comparability and equity constitute a condition which requires a change; the Union's offer would provide the remedy at a cost of "two tenths of one percent (.2%) of the District's total budget, an insignificant amount compared to the benefit provided." Citing previous decisions, MTI argued that "internal inequities have developed among the employer's own employees that should not stand and must be addressed." The District has paid "too little for too long."

MTI reiterated its arguments that the most appropriate group for purposes of comparison is the Madison Teachers' Unit. It said that it had identified only seven school districts in Wisconsin with unionized substitute teachers. Because of geographic and other dissimilarities, external comparisons are relatively meaningless. It cited prior arbitration cases to support its arguments that internal comparables are preferable.

It argued that in the event this unit is to be compared with other school districts, it should be compared to other similar unionized districts and not with contiguous districts. It cited prior arbitral discussions to support its positions on these matters. In its conclusion, MTI stated that:

It is disillusioning and disappointing that the District has chosen to follow the low road of bulwarism in dealing with its substitute teachers. Arbitration, in the matter before the arbitrator, is the only means available to produce a fair and equitable settlement, when negotiations failed. Providing a fair and equitable settlement is just what interest arbitration was intended to do, when enacted by the Wisconsin Legislature. Adoption of the District's final offer would continue the inequitable "status quo" to the detriment of the workers and indeed to collective bargaining in the public sector.

In its reply, the District argued that there is no merit to the Union's assertion that substitute teachers are comparable to regular full-time and regular part-time teachers. It emphasized that regular teachers work a set schedule and have an expectation of continued employment and a guaranteed number of days under their contract. "Substitutes, on the other hand, are on call and do not have a regular expectation of employment even on a daily basis." The Board reviewed differences between the teacher's and the substitute's collective bargaining agreements to support its arguments that the two groups are not comparable. It argued that the Wisconsin Administrative Code defines a substitute teacher as one who temporarily occupies the position of an absent teacher. "Their key function is to substitute in for a regular teacher



and, therefore, their benefits and collective bargaining provisions vary greatly from that of a regular teacher." It emphasized that no substitute employees of the District receive health insurance contributions. Coaches who are not faculty members are not considered regular employees of the District and receive no health insurance contributions, even though they work for an entire season.

The District said that MTI had inappropriately cited three dated internal settlements to support the arguments that internal settlements support its offer. Two of those contracts had already expired and the third was heading for arbitration. Those settlements "took place during previous economic times." It denied that there ever has been any "historical relationship" between substitute daily rates and teacher wage rates or long term substitute rates of pay. It said that MTI's wage rate analysis had ignored the higher daily pay rate that is in effect for substitutes with more than five years of experience. "All of the rates in the substitute contract were arrived at in voluntary settlements."

The Board said that all regular employees of the District receive health insurance contributions; no substitute employees receive this benefit. It said that a substitute who testified "could, in fact, become an educational assistant by applying for that position." That regular position would result in a health insurance contribution because it is a regular position. If the

substitute teacher chooses to work as a substitute in the Madison area, "she must accept the compensation for that position."

The Board denied the Union's argument that substitute holiday pay should be comparable to teacher's holiday pay. It should not have to pay holiday pay for persons who are not regular employees who do not work on holidays. It said that, the Union had admitted that under the MTI proposal, "a substitute teacher could work as few as four days during the entire year and still be paid for convention days and as few as six days during the year and still get paid for three holidays. It said this would be nonsense.

The Board denied that MTI's offer would bear insignificant cost. It said that nearly a half million dollars is extremely expensive. There would be no benefit or increased productivity for the District.

The Board restated its objection to limiting external comparables to other unionized districts. It said that "even if we use only the four large districts referred to by the Union, only one of the four districts offers premium contributions or health insurance and that is the Milwaukee District." It noted that Racine, the third largest District, does not contribute to health insurance.

The Board responded to MTI's interest of the public argument by stating that, "there is nothing in the record to indicate that the District does not have an adequate supply of substitute teachers." It explained the reasons that in some instances it is

difficult to get exactly the right substitute for an open position. "Except for a few days during the school year during exceptional situations, the District does not have problems with filling the substitute positions that the District determines is necessary to fill." It denied the Union's argument that substitutes would not take other jobs if they received health insurance contributions. Under the Union's proposal, many substitutes would not be eligible for health insurance contributions. Most substitutes take other employment because they need a steady income.

The Board noted the Union's arguments about rising health care costs and problems of the uninsured. It admitted that these problems exist. "However, the District is not a social welfare agency nor is it a government agency responsible for health or welfare programs." In response to the argument that, in Madison, the public supported a budget which would maintain the level of service, the Board said, that means that the public wants to maintain the level of educational programs and not a percentage level of wages. It said that "it is not relevant whether the Madison School District has an ability to pay an offer." The question is which offer is more reasonable. The Board said that the reason that Madison has the second highest equalized value is because it is the second largest school district in the state. Districts with high equalized value receive less state aid than districts with lower values. The Board said that the Union had

completely ignored "Racine in any of these large district comparison exhibits."

The Board criticized MTI's cost of living analysis. It said that total package costs should be considered. It responded to the Union's criticism of its sick leave benefit analysis by arguing that only Madison offers this benefit. It admitted that substitutes in Madison do not receive other benefits, but said that, substitutes in other districts do not receive benefits either. The Board repeated its argument that the Union had failed to offer quid pro quo for its health insurance request. It said that it was absurd for the Union to say that it had nothing to offer in return for health insurance contributions. The Board argued that it pays the substitutes for the time that they actually work. "What the Union is requesting in this case is unreasonable considering the times and the comparable data."

#### DISCUSSION

The history of this proceeding demonstrates the parties' inability to resolve their dispute over whether or not the Employer should be required to make contributions toward health insurance premiums for those substitute teachers who would qualify for that benefit under MTI's offer. Both of the parties have admitted that the other unresolved issues are secondary. From the evidence, it is clear that there is no way that the parties' differences about this issue could have been resolved through negotiation. It has been often said that arbitration is not a substitute for the bargaining process, and that, a party

should not expect to achieve through arbitration what the party could not obtain through the bargaining process. On the other hand, since public employees in Wisconsin do not have the right to strike, arbitration is the only process available for resolving this dispute. Both parties suggested that the statutory criteria relating to the interests and welfare of the public, comparisons of wages and benefits of these employees with other employees performing similar services and an evaluation of the overall compensation including wages, benefits and the continuity of service are particularly relevant to the issues presented in this case.

EXTERNAL COMPARABLES - Both of the parties noted that arbitrators have often found that the ten largest school districts in Wisconsin are appropriate external comparables in school district employee arbitration cases. Both parties then argued that those districts should not be considered comparable in this case. The evidence presented by the parties was intended to support their respective positions that either the eight school districts contiguous to Madison (District's position), or the four largest unionized school districts in the state (MTI's position) are the most appropriate external comparables. There is very little evidence relating to the other nine largest school districts in the record. Arbitrators recognize that after they have selected a pool of external comparables in an arbitration proceeding, the parties or future arbitrators may believe that a precedent has been established. Because of the nature of the

issue in this case, it has not been necessary to select a set of comparable districts. Neither party's argument that its proposed comparables are most appropriate has been convincing. All of the data presented by both parties relating to external comparisons has been considered.

COST OF THE OFFERS - During the 1991-92 base year, the District paid the total sum of \$1,883,000 in wages under the terms of its expired agreement with these substitute teachers. Additional funds were paid to substitute teachers who qualified for temporary contracts under the Teacher Collective Bargaining Agreement. This evaluation is concerned only with the effect of the two offers in this proceeding upon the base cost which was paid to substitute teachers under the expired contract. The District's offer would increase the base by 4% or \$75,320 in 1992-93 and by an additional 3% or \$58,750 during 1993-94. The total package cost of the Union's offer would increase the base by 5.25% or \$98,903 during the first year and by 27.12% or \$537,405 during 1993-94. The greater \$23,583 first year cost of the Union's offer includes \$6,591 more in wages and \$16,992 more in "benefits" for holiday pay, snow days and convention days. The greater second year cost of MTI's offer is \$502,238. That difference is comprised of \$6,788 for wages, \$17,501 for benefits and \$477,949 for contributions toward health insurance premiums. The two year difference of \$47,872 between the cost of wages and benefits has been sufficient to cause many negotiations to end up in arbitration. That difference pales in comparison to the one

year \$477,949 cost of the Union's request for health insurance contributions. The following analysis is, therefore, primarily directed toward this issue.

HEALTH INSURANCE CONTRIBUTION - The record does not establish definitively how many members of the bargaining unit would benefit from the health insurance part of the Union's offer. Ms. Hawley stated that there were approximately 350 members in the unit. Mr. Matthews said that the unit represents 499 substitute teachers, of which 355 received compensation at some point during the 1992-93 school year. Some of these substitutes qualified for health insurance contributions through temporary contracts under MTI's Teachers' Contract. The parties agreed that 112 members of the bargaining unit would have benefited from the proposed health insurance benefit if it had been in effect during the 1992-93 school year. The cost of the proposal, \$477,949.00, divided by the number of substitute teachers who would have benefited, reflects an average cost of \$4,267 for each of the substitute teachers who worked more than 80 days during 1992-93. Available data does not reflect exactly how many days each substitute worked. Based upon the data in Board Ex. #10, the greatest possible number of days that could have been worked by these 112 substitutes was 13,708 days during the school year. Those numbers indicate that the average number of days worked by each substitute was 122 days. This is close to the mean, calculated from that exhibit, of approximately 119 days for the year. Based upon the foregoing, it appears that the

approximate \$478,000 cost to the District would result in approximately a \$35 daily benefit to each eligible substitute teacher, for each day of work. Under the MTI offer "any part of a day equals one day."

It is not possible to determine the average or median annual income for the 112 substitute teachers who would qualify for health insurance contributions under the MTI offer. During base year 1991-92, the per diem rates for those substitutes who did not qualify for health insurance contributions were \$76.19 a day for substitutes with less than 5 years with the District, \$79.24 for those with over 5 years and \$118.68 a day for substitutes with long term substitute contracts. These wage rates would be increased by 4.35% for 1992-93 under MTI's offer. In that instance, the low rate would be \$79.50 and the high rate would be \$123.84 during 1992-93. The average daily health insurance benefit of \$35.00 would be equal to 44% of the lowest daily substitute pay rate and 28% of the long term substitute daily pay rate.

COMPARISONS WITH EMPLOYEES PERFORMING SIMILAR SERVICES - The Union argued that the only appropriate comparison, under this standard, is with the District's "regular teachers." Substitute teachers have similar educational qualifications and professional status and perform similar functions to regular teachers in the Madison School District. The Employer has hired some of these individuals to act as substitute teachers over periods of many years. These facts indicate that most of the members of the unit



are qualified to be hired as regular teachers in the Madison School District. From the testimony of seven of the members of this bargaining unit, it appears that they have performed many of the functions and duties that are performed by regular teachers. That conclusion, based in part upon anecdotal testimony does not, however, support the finding that the hours and conditions of employment affecting the members of this 499 person bargaining unit are comparable to the hours and conditions of employment of Madison's regular teachers. The fact that, for whatever reason, these individuals have not been hired as regular teachers and belong to a separate bargaining unit is presumptive evidence of differences between the two units.

MTI represents 3378 employees of the Madison Metropolitan School District. It does so through four separate bargaining units. Copies of contracts between the Board and MTI for three of those bargaining units are in the record. Neither party saw fit to include the teachers' contract in the record. Each of the four MTI bargaining units were organized in accord with Chapter 111 Wis. Stats.; their contracts were arrived at under the provisions of 111.01(3) which provides that:

Negotiations of terms and conditions of work should result from voluntary agreement between employer and employee. For the purpose of such negotiation an employee has the right, if the employee so desires, to associate with others in organizing and bargaining collectively through representation of the employe's own choosing, ...

Three of the units represented by MTI have successfully negotiated for a wide range of fringe benefits, including health insurance premium contributions, which this unit has not been able to achieve through negotiations. In the words of MTI's representative "The status quo in the instant matter includes a bargaining unit which has attempted, for many years, to gain the health insurance benefit which the District has provided to every other employee group, by mutual agreement. Each time the employee group in the instant matter has proposed an employer contribution toward health insurance, such has been met by refusal."

The District argued that the reason that the other bargaining units have been able to negotiate more favorable benefit packages is because the condition of their employment is that of regular employees as opposed to that of substitute employees. It would have been helpful if the teachers' contract had been placed in evidence. The MTI Supportive Educational Employees' Contract (Ux-7) defines regular hours for all full-time employees as 7 hours and 45 minutes daily Monday through Friday. It also defines regular school year employees "whose annual employment is based on 10 months...". The Union's contract for Educational Assistants defines "educational assistants who work nineteen hours or more hours per week" as regular full-time educational assistants. Educational assistants "receive notice of the probable number of hours of their assignment and locations prior to June 1st of the current school

year" (Ux-8). Those two contracts for regular employees of the District also contain varying fringe benefit packages which include health insurance contributions. The MTI contract for substitute teachers contains no reference to hours of employment. The substitutes' contract provides for fewer fringe benefits than the other two contracts. The District noted that substitute teachers have the right to restrict their availability by refusing assignments at certain schools, designating days that they are available for work, designating the time of day that they are available to work and designating the grade levels or subject matter they are willing to teach.

The foregoing matters constitute different requirements relating to hours and conditions of employment relating to regular employees on the one hand and substitute teachers on the other. Those conditions differ dramatically. The differing conditions appear to have resulted in the regular employees' bargaining units having been able to negotiate substantially better fringe benefit packages than the substitute unit has been able to negotiate. While the teachers' contract is not in evidence, the record does establish that the District's teachers are regular employees of the District. The weight of the evidence establishes that the reason that there are differences in the benefit packages, including contributions for health insurance, negotiated on behalf of the District's regular employees and the benefit packages negotiated on behalf of these substitute teachers, is because there are differences in hours

and in the conditions of employment for regular employees and substitute employees. There is not sufficient evidence in the record to justify the conclusion that substitute employees who are employed on parts of eighty or more days during the course of a year, and who have the right to restrict their availability for job service are "entitled to receive" health insurance contributions as a mandated benefit of their employment. The Union, having the burden of proof, has failed to establish that substitute teachers are comparable to regular teachers or other regular employees in the Madison School District.

Both parties appear to have made some strategic decisions regarding what information they wanted to put into evidence in this proceeding. Neither party presented fringe benefit information for the other ten largest school districts in the state. The Union presented some maximum and minimum substitute wage data relating to 1990-91 through 1992-93 for the Green Bay, Kenosha and Milwaukee school districts. That data appears to indicate that either of the wage offers in this case would maintain Madison's position as third in minimum wages and second in maximum wages among those districts during 1992-93. The Union did not present any comparative data to support its holiday, convention day, snow day or home bound teacher compensation proposals. Nor did it argue the merit of these proposals. The District presented comparative wage and health insurance data for the ten largest school districts and for the eight districts that are contiguous to Madison. That information showed that Madison

substitute wages generally ranked third out of the ten largest districts in 1992-93. Its wages were the highest among contiguous districts. In both comparisons, Madison's substitutes received wages that were considerably above the average.

Evidence about 1992-93 settlements in other school districts is very incomplete. Based upon Employer Exhibits #57 and #60, it appears that increases in minimum substitute wage rates in the other 9 large school districts ranged from 4.5% in Kenosha and Waukesha to no increases in Sheboygan and Eau Claire. The average increase was 2.42% compared to wage offers of 4.35% and 4% by the parties in this proceeding. Long term substitute rates were increased by an average of 3.3% in these districts. Substitutes with the lowest wage rates in the 8 districts contiguous to Madison experienced a range of increases from zero in Waunakee, Monona Grove and Oregon to increases of 30% in Verona and 16% in DeForest. The average minimum substitute wage increase was 5.8% in the eight contiguous districts. The long term wage rate increase in these districts ranged from none in Monona Grove to 6.7% in Oregon; the average increase was 3.5% at this level. The Union's wage data for the three largest unionized districts is consistent with the Employer's data. Wage only increases were 1.5% in Green Bay, 4% in Milwaukee and 4.5% in Kenosha in 1992-93. Kenosha's substitutes received a 4.46% increase in 1993-94. From the foregoing, it appears that either of the wage only offers in this proceeding would result in substitute teachers in Madison receiving 1992-93 wage increases

which are in excess of average increases received by teachers in the largest metropolitan school districts, districts contiguous to Madison and the other three large unionized school districts.

When the cost of the Union's proposed health insurance contributions are included in the package cost of its 1993-94 offer, that offer appears to be excessive. There is no evidence that any school district granted wage and benefit increases to its substitute teachers unit which approaches the cost of MTI's proposal. Its effort to compare the benefits received by substitute teachers in Milwaukee with substitute teachers in Madison is not convincing because comparative data was not presented. Other than the facts that Milwaukee's substitutes have traditionally received higher wages, received health insurance contributions and received a 4% increase in 1993-94, there is little information about that unit in the record. Conditions of employment in Milwaukee (ER EX #80 pp 19-25) appear to be more onerous than in Madison. The Milwaukee contract which provides higher wages than the Madison contract, and which provides health insurance contributions which are not included in Madison's contract, appears to have evolved over time. The fact that substitutes in Milwaukee receive better wages and benefits than substitutes do in Madison, does not support the conclusion that the wages and benefits negotiated over time in Madison are deficient. The relationship between wages and benefits in Milwaukee and Madison will be maintained under the Board's offer. Evidence does not support the adoption of the Union's offer,

which would impose significant cost upon this employer in order to provide Madison's substitute teachers with a benefit that is not received by any similar substitute's unit other than Milwaukee.

OTHER CRITERIA - Both parties argued that the criteria relating to the interests and welfare of the public and the financial ability of the District to meet the costs of the proposals for settlement supported their offer. The District's evidence that it has a sufficient number of qualified substitute teachers to meet its requirements is convincing. It does not seem likely that, if the District is required to dramatically improve the benefits that it provides for those substitutes who are currently working 80 or more days a year, a larger pool of substitutes for more marginal employment opportunities will follow. It would serve the public interest if everyone had health insurance. However, it does not follow that this employer should contribute almost one-half million additional dollars a year toward health insurance premiums for the benefit of 112 part-time employees. The Madison School District does have the ability to pay the cost of MTI's offer, under the cost control limits imposed by the Wisconsin Legislature. However, it appears to be more in the public interest to permit the District to evaluate and allocate the expenditure of available funds according to its perception of the public good than to impose a continuing cost of nearly one-half million dollars a year through a change in the status quo in this proceeding.

Each party argued that the overall compensation criteria supported its position. Neither party presented total package cost or benefit comparisons for either internal or external comparables. Based upon the evidence, it appears that both parties engaged in hyperbole. Neither the argument that this District is a leader in paying wages and benefits, nor the argument that the District has paid too little for too long, is supported by the record.


#### CONCLUSION

The Union described its frustration over having not been able to obtain Employer contributions for health insurance through the bargaining process over a period of years. Most of the District's other employees and all of its regular employees receive this benefit. The Madison School District's refusal to provide the insurance benefit to substitute teachers reflects the policy of every other school district about which evidence was introduced, except for Milwaukee. It is not possible to tell from the record in this case if substitute teachers in Milwaukee obtained insurance contributions because their wages, hours and conditions of employment better justify the benefit or if the receipt of health insurance contributions by Milwaukee's substitute teachers is an anomaly. The record does not support the conclusion that substitute teachers who work on parts of 80 or more days in a school year are entitled to receive health insurance contributions as an incident of their employment.



The total cost of the MTI offer substantially exceeds the total cost of other settlements in the Madison School District and in those other school districts which the parties cited as comparable. Based upon the foregoing conclusions and other comparisons required by law, the offer of the Employer is selected as the most reasonable offer. It shall be incorporated into the parties 1992-94 collective bargaining agreement.

Dated at Madison, Wisconsin, this 5th day of May, 1995.

  
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John C. Oestreicher  
Arbitrator