ARBITRATION OPINION AND AWARD

In the Matter of Arbitration

Between

HAMILTON SCHOOL DISTRICT

And

WISCONSIN COUNCIL 40, AFSCME, AFL-CIO

CASE 29
NO. 50369
INT/ARB 7151
Decision No. 28095-A

Impartial Arbitrator

William W. Petrie
217 South Seventh Street #5
Post Office Box 320
Waterford, WI 53185-0320

Hearing Held

Sussex, Wisconsin
September 9, 1994

Appearances

For the District

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For the Union

WISCONSIN COUNCIL 40,
AFSCME, AFL-CIO
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BACKGROUND OF THE CASE

This is a statutory interest arbitration proceeding between the Hamilton School District and Wisconsin Council 40, AFSCME, AFL-CIO, with the matter in dispute the terms of an initial labor agreement between the parties covering a bargaining unit of Teacher Aides employed by the District.

The parties met in negotiations after their initial exchange of proposals on November 16, 1993 and, after their failure to reach a complete agreement, the Union on January 18, 1994 filed a petition with the Wisconsin Employment Relations Commission seeking arbitration under Section 111.70(4)(cm)(7) of the Wisconsin Statutes. After preliminary investigation by a member of its staff, the Commission on June 20, 1994 issued certain *findings of fact, conclusions of law, certification of results of investigation and an order requiring arbitration*, and on July 5, 1994 it issued an *order appointing arbitrator*, directing the undersigned to hear and decide the matter.

An interest arbitration hearing was scheduled before the undersigned on September 9, 1994 in Sussex, Wisconsin, at which time considerable preliminary mediation took place, and the parties, by mutual agreement, significantly modified their previously certified final offers, and they agreed that the term of the initial agreement would be two years, covering July 3, 1993 through June 30, 1995.[1] Both parties received full opportunities at the

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[1] The parties have agreed that the following provisions shall be contained in their initial labor agreement, as provided in both final offers: the AGREEMENT (or preamble) section; Article 1, Section 1.01, entitled **RECOGNITION**; Article 2, Sections 2.01 and 2.04 entitled **Union Business** (note punctuation error in Employer proposed Section 2.04), Sections 2.02 and 2.03, entitled **Bulletin Boards**, Sections 2.01 and 2.04 entitled **Meeting Rooms**, and Sections 2.03 and 2.05 entitled **Union Officials**; Article 3, entitled **DUES DEDUCTION AND FAIR SHARE**, Section 3.01 entitled **Representation**, Section 3.02 entitled **Membership Not Required**, Section 3.03, entitled **Dues Deduction**, Section 3.04, entitled **Fair Share Deduction**, Section 3.05, entitled **Administration**, Section 3.06, entitled **Inadvertence or Error** (note typographical error in Employer proposal), and Sections 3.07 and 3.08 entitled **Indemnification and Hold Harmless Provision**; Article 4, entitled **DEFINITION OF EMPLOYEES**, Section 4.01, entitled **Regular Full-Time**, Section 4.02, entitled **Regular Part-Time**, and Sections 4.03 and 4.04, entitled **School Year**; Article 5, entitled **PROBATIONARY PERIOD**, Section 5.01, entitled **Length of Probation**, Section 5.02 entitled **Completion of Probation**, and Section 5.03, entitled **Seniority**; Article 6, entitled **GRIEVANCE AND ARBITRATION PROCEDURE**, Section 6.01, entitled **Definition of a Grievance**, Section 6.02, entitled **Time Limitations**, Section 6.04, entitled **Steps and Procedures** (with the exception of Steps 1 and 3), Section 6.05, entitled **Selection of the Arbitrator** (with the exception of the numbering of Sections 6.08 and 6.09); Article 7,

hearing to present evidence and argument in support of their respective positions, various specific changes in their exhibits and final offers were thereafter reviewed and approved by them on a post-hearing basis and submitted to the Arbitrator, and both parties then closed with the submission of post-hearing briefs, the last elements of which were received by the Arbitrator on December 21, 1994. Due to a period of arbitral medical recuperation, the parties were notified that the normal statutory time period for the completion of the decision and award could not be met.

THE FINAL OFFERS OF THE PARTIES

Copies of the amended final offers of the parties were exchanged and distributed to the Arbitrator on a post-hearing basis, with the final offer of the District distributed by regular mail on October 13, 1994, and that of the Union distributed by regular mail on October 17, 1994. The respective final offers, hereby incorporated by reference into this decision, can generally be divided into so-called *economic* and *non-economic/language* proposals.

(1) The *economic* items in issue principally include the following: the wage structure, wage increases, and availability of longevity pay in the agreement; funeral leave; early retirement health insurance; health insurance premiums; paid holidays; long term disability; deductions from sick leave; and supplements to worker's compensation pay.

(2) The *non-economic/language* items in issue principally include the following: bargaining unit work; changes in carriers; early

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entitled **SENIORITY** (with the exception of the Union's use of the plural and the past tense in Section 7.03 A and B); Article 8, entitled **FILLING VACANT POSITIONS**, Section 8.01, entitled **Vacancies**, Section 8.02, entitled **Job Posting**, Section 8.03, entitled **Posted Information**, and Section 8.06, entitled **Union Copies**; Article 9, entitled **LAYOFF/RECALL**, Section 9.01, entitled **Layoff Procedure**, Section 9.03, entitled **Recall Procedure**; Article 10, entitled **MANAGEMENT RIGHTS**; Article 11, entitled **HOURS OF WORK**, Section 11.01, entitled **Work Day**, Section 11.02, entitled **Work Week**, and Section 11.03, entitled **Hours of Work**; Article 12, entitled **OVERTIME AND COMPENSATORY TIME**, Sections 12.01, entitled **Time and A Half**, and Section 12.02, entitled **Compensatory Time**; Article 14, entitled **WAGES**, Section 14.01, entitled **Wage Agreement**, Section 14.01, entitled **Pay Period**, Section 14.03, entitled **Mileage**, and Section 14.05, entitled **Snow/Emergency Conditions**; Article 15, entitled **INSURANCE**, Section 15.02, entitled **Group Life Insurance or Life Insurance**; Article 16, entitled **RETIREMENT**; Articles 17 and 19, entitled **SICK LEAVE**, Sections 17.01 and 19.01, entitled **Sick Leave**, and Sections 17.02 and 19.02, entitled **Lay Off**; Articles 18 and 19, entitled **FAMILY AND MEDICAL LEAVE**; Articles 20 and 21, entitled **MILITARY LEAVE**; Articles 21 and 23, entitled **JURY DUTY LEAVE** and **JURY DUTY**; Articles 22 and 25, entitled **SAVINGS CLAUSE**; Articles 23 and 26, entitled **DURATION OF AGREEMENT**, Sections 23.01 and 25.01, entitled **Effective Dates**, and Sections 23.02 and 25.02, entitled **Bargaining Schedule**; Article 24 and Section 26.03, entitled **JOB ACTIONS** (with the exception of the Union's use of sub-headings entitled "A. No Strike" and "B. No Lock-Out"

retirement health insurance; changes in shift; emergency leave; enrollment; fair share; notice of layoff; placement and progression on the wage scale; reduction of full time positions; and job posting and selection.

THE ARBITRAL CRITERIA

Section 111.70(4)(cm)(7) of the Wisconsin Statutes directs the Arbitrator to give weight to the following arbitral criteria:

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. Comparisons of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services.

e. Comparisons of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees generally in public employment in the same community and in comparable communities.

f. Comparisons of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees 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 employees, including direct wage compensation, vacation, holidays. 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 hearing.

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."

POSITION OF THE UNION

In support of the contention that its is the more appropriate of the two final offers before the Arbitrator, the Union emphasized the following principal considerations and arguments.

(1) By way of introduction, that the following considerations should be determinative in these proceedings.

(a) The Teacher Aides have organized to bargain with the Employer, they seek improvements in their wages, hours and conditions of employment, and that this organization is a repudiation of the status quo ante.

(b) That employees negotiating their first contract are not limited to the same pattern of settlement in existing bargaining units.

(c) That arbitral opinions differ as to whether a group of newly organized employees can expect to be brought up to scale in one contract, or whether they should achieve scale only over a longer period of time.

(d) That the Union has taken a cautious approach in the impasse at hand, and is seeking reasonable progress in the initial contract with much to accomplish in future negotiations.

(e) That internal and external comparisons are the most critical arbitral criteria in the case at hand.

(f) That cost of living considerations should not have as substantial impact as normal in an initial settlement.

(g) That, with low wages, minimal fringe benefits and no contract language, those in the bargaining unit have little to trade except their talents and labor.

(h) That the Employer's anticipated status quo arguments should be carefully examined in these proceedings, versus the Union's pursuit of comparable benefits levels.

(i) That the Employer's anticipated arguments relating to legislatively imposed budget restraints and caps, should be carefully examined in these proceedings.

(j) That internal comparisons with other bargaining units should be persuasive in such areas as fair share, changes in shifts, placement and progression on the salary schedule, changes in insurance carriers, early retirement concerns, long term disability coverage, availability of group dental coverage, observance of weekend holidays, worker's compensation issues, funeral leave, additional leave and emergency leave.

(2) That Wisconsin interest arbitrators do not normally place significant weight upon internal comparisons between teachers and support staff.[2]

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[2] Citing the following decisions: Arbitrator Krinsky in Hamilton School District, Dec. No. 27924A, 7/27/94; Arbitrator Baron in Chippewa Valley VTAE, Dec. No. 26224A, 5/30/90; Arbitrator Fleischli in Parkview School District, Dec. No. 23184A, 8/26/86; Arbitrator Kessler in Eau Claire School District, Dec. No. 27161A, 6/6/92; Arbitrator Krinsky in Madison VTAE, Dec. No. 18358A, 6/17/81; Arbitrator Rice in Fort Atkinson School District, Dec. No. 27352A, 12/16/92; Arbitrator Yaffe in Manitowoc School District, Dec. No. 22915A, 4/11/86; Arbitrator Fleischli in Racine Unified School District, Dec. No. 21810A, 5/25/85; Arbitrator Grenig in Middleton-Cross Plains School District, Dec. No. 24092A, 7/2/87; Arbitrator Kerkman in School District of Port Washington, Dec. No. 18726A, 2/16/82; Arbitrator Miller in Mosinee School District, Dec. No. 24917A, 5/2/88; Arbitrator Weisberger in Eau Claire VTAE, Dec. No. 23046A, 6/24/86; Arbitrator Baron in Benton School District, Dec. No. 24812A, 2/16/88; Arbitrator

(3) That the Union principally relies upon external comparisons in support of its position on wage rates, health insurance contributions and paid holidays.

(a) That while it prefers broader based comparisons, the Union has no objection in these proceedings to any of the school districts used for comparison purposes by the Employer.

(b) That the Hamilton School District has an above average mill rate, is close to the average full time student population, and has a lower than average cost per pupil.

(c) That the five additional comparable school districts urged by the Union, have average property values per student closer to those in Hamilton than eight of the twelve comparables urged by the Employer.

(4) That the new emphasis and added importance of *external rather than internal comparisons* in an *initial agreement*, has been particularly well described in a decision by Arbitrator Frank Zeidler.[3]

(5) That Wisconsin interest arbitrators do not apply a *status quo ante burden on the proponent of change* in an initial collective agreement, that the merits of the parties' positions should be considered in initial contracts, that external comparisons are particularly important, that catch-up is an important consideration, that so called too much too fast arguments should be rejected, and that application of the status quo ante test in future bargains is a legitimate concern in the negotiation of an initial agreement.[4]

(6) That Employer inability to pay arguments were rejected by Arbitrator Krinsky in a previous Hamilton School District interest arbitration, wherein he found other arbitral criteria to be determinative.[5]

(7) That various considerations favor the wage increase component of the Union's, rather than the Employer's final offer.

(a) That external wage comparsions favor the Union's wage proposals for both years of the agreement and for each step

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Michelstetter in Fond du Lac School District, Dec. No. 23063A, 6/27/86; and Arbitrator Imes in Hamilton School District, Dec. No. 24054A, 5/1/87.

[3] Citing the decision of Arbitrator Zeidler in School District of Waukesha, Dec. No. 18391, 4/28/81.

[4] Principally citing the following decisions: Arbitrator Friess in Mellon School District, Dec. No. 26309A, 7/29/90; Arbitrator Malamud in Village of East Troy, Dec. No. 27176A, 9/21/93; Arbitrator Chatman in Crivitz School District, Dec. No. 24217A, 7/14/87; Arbitrator Zeidler in School District of Waukesha, Dec. No. 18391A, 4/28/81; Arbitrator Baron in Merton School District, Dec. No. 24812A, 2/16/88; Arbitrator Stern in Maple Dale-Indian Hill School District, Dec. No. 27400A, 2/18/93; Arbitrator Malamud in City of Eau Claire, Dec. No. 27855A, 10/4/94; Arbitrator Petrie in Police Department of City of Washburn, Dec. No. 27778A, 7/5/94; and Arbitrator Yaffe in Arrowhead Union High School District, Dec. No. 27823A, 8/26/94.

[5] Citing the decision of Arbitrator Krinsky in Hamilton School District, Dec. No. 27924A, 7/27/94.

of the wage progession, when compared to the lowest possible average of comparable school districts: while use of the low average is not a routine method of computing comparisons, it is intended to show that the Hamilton Teacher Aides are underpaid by comparison to even the lowest rates in effect in comparable school districts; that the Employer proposed start rate of $6.00 is $1.25 lower than the average among comparables; that the Employer proposed increase of $.25 in the start rate would cause those in the bargaining unit to fall further behind; and that the Union's wage proposal would allow those in the unit to achieve some progress among comparables.

(b) That the $5.25 per hour start rate has been frozen for at least the last two years.

(c) That placement of employees with three to fourteen years at the three year step is reasonable: that the majority of comparable schools have an automatic progression extending at least three years; that Teacher Aides in the District would receive $9.00 per hour effective July 1, 1993, compared with the lowest average of $8.75, under the Union's final offer; that the fourteen employees hired after July 2, 1978, currently average $7.85 per hour, or $.90 below average.

(d) That although the parties differ radically in their pay schemes, each offer would provide very close to the average pay for those employees with fifteen years of service as of July 1, 1993.

(e) That the Union proposed single longevity step is more reasonable than perpetuation of subjective individual longevity: that the Union is proposing one $.35 longevity step after fifteen years, as opposed to perpetual longevity; that the Union offer provides less in maximum pay than that of the Employer, but it is proposing what it believes is a workable foundation for the future based upon reasonable progress on the initial agreement; that the Employer is proposing no concrete plan for systematizing its salary schedule and it cannot even predict when employees might achieve equal pay; that the Employer's position perpetuates an existing system that it cannot logically defend because it cannot explain the rationale of how and why such an employee is paid in relationship to others in the unit with similar qualifications and duties; and that the position of the Union relative to this item is the one which was most likely to have evolved from voluntary agreement between the parties.

(f) Left to its own devices, that the Employer has not limited secretarial and clerical catch-up increases because of Wisconsin Act 16: that the District increased secretarial rates by 5.37 percent where they were shown to be underpaid on the basis of comparison; that the same rationale should be applied to Aides; that other groups of District employees, including teachers, custodians, and secretaries, have not been shown to have had wage/salary freezes.

(8) That four paid holidays per year represents the norm for teacher aides.

(a) Using the Employer's external comparison pool, that eleven of twelve provide paid holidays for teacher aides with an average of four per year.

(b) That paid time off is a significant benefit, and the Employer's failure to make an offer on this item represents a significant economic disadvantage for employees.

(9) That no comparable school district expects full-time aides to contribute up to $476.35 per month towards family plan health insurance.

(a) That the Employer's total is more than six times the amount required by the average comparable school district offering teacher aides group health insurance coverage.

(b) That the Union's proposals of a fifteen percent contribution is higher than the average employee contribution.

(c) That the Union has not asked for special coverage, in that the Employer has the right to choose the carrier and it retains ability to control costs.

(d) That the Employer's final offer represents an attempt to single out the aides for inferior health benefits.

(10) That the Employer has not been asked to share any of the costs of group dental insurance enrollment. That employees have asked for the ability to enroll under the group plan at their own expense, the Employer long ago initiated group dental insurance for employees, and the Union is unaware of any reason why it opposes group enrollment in dental coverage.

(11) That bargaining unit work should first be offered to bargaining unit personnel.

(a) That the Union's language provides for the Employer to have fully qualified employees to work as teacher aides, disputes are avoided because the Employer is not faced with questions of so-called overlap duties.

(b) That the Employer has been unwilling to compromise on even the most basic request of all, the privilege of doing work, thus potentially depriving bargaining unit employees of badly needed wages.

(12) That the Union's job selection proposal is more reasonable and practical than that of the Employer.

(a) That the *head and shoulders* standard for a job award is more than applicable to a bargaining unit which consists of one classification and one pay rate.

(b) That arguments applicable to a more diverse work force do not apply in the case at hand.

(c) That employer determinations of employee qualifications are normally respected unless they are shown to be arbitrary, capricious or discriminatory.

(d) That the Employer has broad latitude to determine what the job qualifications are in addition to evaluating employees qualifications.

(13) That the Union's notice of layoff proposal is a reasonable request.

(a) That the thirty day advance notice proposal is qualified by the proviso that it be provided *if possible*.

(b) That the school system knows its staffing in advance of August 1 for the coming school year; indeed, many systems start the regular school year in August.

(14) That the proposed prevention of arbitrary reductions in full-time positions for the purpose of reducing benefits is primarily related to *employee wages* and not to *operational functions* of management.

(15) That the Union will not permit individual bargaining, and the Employer proposed retention of discretion to place new employees above the base hourly rate is a per se refusal to bargain each and every time that it is invoked. That the Union has no interest in waiving representational rights.

In summary, that the position of the Union is favored by the following major considerations: its proposed improved wages are well within the voluntary perimeters established in bargaining by comparable districts, the Union proposed salary structure and automatic progession represent common practice, and there is no appropriate basis for continuation of individual establishment of wages; that internal comparison is appropriate on various secondary issues; that external comparisons are the predominant factor in support of the Union's position on wages, holidays and family health insurance, the three major issues; that it has been well established in the District that Wisconsin Act 16 considerations should be given less weight than external comparables where the need for catch up is established; and that Employer arguments based upon a too much too soon theory should be rejected.

POSITION OF THE BOARD

In support of the contention that its is the more appropriate of the two final offers before the Arbitrator, the District emphasized the following principal considerations and arguments.

(1) By way of introduction, that the following considerations should be determinative in these proceedings.

(a) That in these initial contract negotiations, the District has made significant language and monetary concessions which have converted a three page informal agreement to a twenty-three page formal collective bargaining agreement.

(b) That the District's final offer would entail total monetary package increases of 5.4% in the first year, and 13.74% in the second year of the agreement.

(c) That the Union is seeking blockbuster concessions, including a new *5 step salary structure, expanded health insurance,* including new benefits such as *long term disability insurance, holiday pay, worker's compensation payouts,* and unlimited and expanded *paid funeral leave.*

(d) That the calculable costs of the Union's final offer would entail total package increases of 17.56% in the first year, and 49.02% in the second year of the agreement.

(e) That the Union's attempt to gain such major gains in a first agreement is completely unreasonable, is inconsistent with the state-imposed caps of 3.2%, and would require diminished services to the children of the District.

Pursuant to the above considerations, that the final offer of the Union should be rejected, in favor of arbitral selection of the final offer of the District.

(2) That the issues presented within the framework of the final offer of the District, include the following:

(a) Whether providing non-members of the Union with an *explanation of their legal rights to challenge the fair share dues* certified by the Union is reasonable?

(b) Whether basing the standard for selecting applicants to fill vacant positions upon *seniority* and *relatively equal qualifications,* is reasonable?

(c) Whether *maintaining an increasing three-step salary structure* is reasonable?

(d) Whether *increasing by 1994-95 the District's health insurance contribution for full-time employees from $100 per month worked to $175 per month for twelve months,* regardless of months worked, is reasonable?

(e) Whether expanding emergency leave benefits *to include grandchild in the definition of an immediate family,* is reasonable?

(3) That the issues presented within the framework of the final offer of the Union, include the following:

(a) Whether basing the standard for selecting applicants to fill vacant positions upon *seniority* and *significantly better qualifications,* is reasonable?

(b) Whether changing the District's past practice by *implementing a new, five-step increasing salary structure and by adding longevity payments,* is reasonable?

(c) Whether a significant change in the District's past practice with respect to health insurance contributions of $100.00 for each full month of employment for full-time employees to 100% of single health insurance and 85% of family health insurance for 12 months, and prorated amounts for part-time employees, and the addition of long term disability insurance are reasonable?

(d) Whether adding *emergency leave for illness in the immediate family, unlimited paid funeral leave for death in the*

immediate family (including grandchildren, aunts, uncles, nieces and nephews), and *four new paid holidays*, is reasonable?

(e) Whether compensating affected employees for the difference between their regular pay and worker's compensation pay for up to three months, is reasonable?

(4) In applying the intraindustry comparison criterion, that the Arbitrator should consider various arbitral decisions cited by the Employer, and should utilize the primary external comparables urged by the District.

(a) In City of Brookfield (Police), WERC Dec. No. 14395-A, in August of 1976, that Arbitrator Raskin utilized *population, geographic proximity, mean income of employed persons, overall municipal budget, total complement of relevant department personnel,* and *wages and fringe benefits paid such personnel;* in School District of Mukwonago, WERC Dec. No. 16363-A, in October of 1978, that Arbitrator Mueller considered *geographic proximity, average daily pupil membership and bargaining unit staff, full value taxable property,* and *state aid;* in City of Two Rivers (Police), Case No. XXVI, No. 25740, MIA-483, that Arbitrator Haferbecker considered both geographic proximity and population.

(b) In the case at hand, that the Arbitrator should utilize a primary intraindustry comparison pool consisting of Arrowhead, Cedarburg, Germantown, Hartford, Kettle Moraine, Menomonee Falls, Mequon-Thiensville, Muskego-Norway, New Berlin, Oconomowoc, Pewaukee and Slinger.

(c) That the District proposed pool of comparables is consistent that utilized by Arbitrator Krinsky in the District's most recent arbitration with the Custodians,[6] and that it is the most appropriate based upon *geographic proximity and size, levy rate, equalized value* and *state aid.*

(d) That arbitral consideration of the geographic proximity and size criteria favors the position of the District, in that *four proposed comparables are contiguous to Hamilton* (Arrowhead, Germantown, Menomonee Falls and Pewaukee), and *the remaining eight are geographically proximate and roughly the same distance from Hamilton.*

(e) That arbitral consideration of the pupil enrollment and full-time staff criteria favors the position of the District; that District Exhibit #13(b) shows enrollments ranging from 1,350 to 4,568, with an average of 3,067, versus Hamilton's current enrollment of 2,967, and full-time staffs ranging from 85.7 to 295, with and average of 201.43, versus Hamilton's average staff of 185.6.

(f) That arbitral consideration of the levy rate, equalized value and state aid criteria favors the position of the District: Hamilton's levy rate of $20.21/$1,000 is the second highest in the comparable group, and is significantly higher than the average of $16.61/$1,000; Hamilton's

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[6] Citing the July 27, 1994 decision of Arbitrator Krinsky in Hamilton School District, Case 27, No. 49266, INT/ARB 6889, which is excerpted in Employer Exhibit #11 and reproduced in full in Union Exhibit #67.

equalized valuation per pupil of $250,316 is $135,983 lower than the average among comparables; Hamilton, thus, has lower community resources and higher property tax burdens than the comparables, which is reflected in its receipt of $1,170.05 per pupil in state aid, the fifth highest among the comparables.

(5) That the Union has proposed seventeen comparables, including the twelve urged by the Employer plus Elmbrook, Hartland-Lakeside, Hartland-UHS, Mukwonago and Merton Jt. 9; that these five districts should not be included in the primary intraindustry comparison pool in these proceedings.

(a) That Union Representative Michael Wilson testified at the hearing that the Union was in agreement that the comparables cited by Arbitrators Krinsky and Imes would be an appropriate pool of districts.[7]

(b) Additionally, that there is no need for the Arbitrator to consider such *distant districts* as Hartland-Lakeside, Hartland-UHS and Merton Jt.9.

(c) Additionally, that the Elmbrook and Mukwonago districts should be excluded on the bases of *size*, *wealth* and *lack of proximity*.

(6) That the Union's final offer is unreasonable for an initial collective agreement, in that its proposals are *over-reaching* and it has *failed to offer appropriate quid-pro-quos*. That the District's final offer is more reasonable for the following reasons: first, it is more modest than the Union's; second, it maintains the strong pattern of *internal comparability*; third, it *maintains its rank among external comparables*; and fourth, it meets the *needs of the community* while recognizing the legislatively imposed *levy limits* and movement in the *consumer price index*.

(a) That the position of the District in the case at hand is supported by the decisions and awards of various Wisconsin interest arbitrators, principally those involving *initial agreements*.[8]

(b) That the proponent of change normally bears the burden of justifying the need for such change and support among comparables.

(c) That Union's can normally expect to achieve modest gains, rather than blockbuster settlements, in initial agreements.

(d) That a *very persuasive basis* must normally be established for *changes in the status quo*, whether such status quo ante has evolved from past negotiations or from the unilateral actions of an employer.

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[7] Citing Hearing Transcript at page 49.

[8] Principally citing: Arbitrator Briggs in School District of Butternut, WERC Dec. No. 27313-A, 3/93; Arbitrator Petrie in Shioctin School District, WERC Dec. No. 27635-A, 12/93, and various cases cited therein; Arbitrator Johnson in Kewaskum School District (Auxiliary Personnel), WERC Dec. No. 26484-A, 12/90); and Arbitrator Petrie in Genoa City School District, WERC Dec. No. 27066-A ,3/92.

(e) That *appropriate quid pro quos*, should normally be advanced in support of *proposed new language or innovative benefits.*

(f) That the District's *wage and benefit proposals* are more equitable than those advanced by the Union; that the Union is proposing significant deviations from the status quo by demanding costly increases in salary and benefits, but it has failed to meet its burden of providing persuasive evidence in support of its demands, and has failed to provide an appropriate quid pro quo.

(g) That the District's *total package offer* is comparable to the internal settlement pattern, while the Union's proposal is excessive: that the total package cost of the District's final offer is 5.42% in 1993-94, and 13.73% in 1994-95, somewhat above internal comparables; that the total package cost of the Union's final offer is 17.56% in 1993-94, and 49.02% in 1994-95, far in excess of internal comparables; that the Union is demanding 18.23% *salary increase* in 1993-94, compared to a 2.1% increase for teachers and a 4.78% increase for custodians; that arbitrators should avoid settlements which significantly deviate from established internal patterns.[9]

(h) That the District's ability to raise revenue to cover costs is restricted by legislatively imposed revenue limits, providing for a revenue increase of 3.2% for 1993-94, and for an increase of approximately $1.1 million more in 1994-95 than in 193-94: that the Union's offer is inconsistent with the economic constraints placed upon teachers and administrators by the Wisconsin Legislature in 1993; that the District's teachers received a Qualified Economic Offer of 3.8% for 1993-94 and 1994-95; that salary increases for administrators are limited to 2.1% for 1994-95; although those in the bargaining unit are not covered by the same law, that equitable considerations dictate comparable settlements.

(i) That the District cannot afford the Union's wage and benefits demands, and if required to accept them the money would have to be taken, disproportionally, from other equally important school operations.

(j) That the Union's demands would cost the District $663,387.91 in 1994-95, which figure far exceeds the $254,445 in available funds.

(k) Unlike the Union's proposal, that the District's *final wage offer* maintains the three step salary structure status quo, meets the needs of the community, and maintains the District's wage rank among the comparables: that the District proposes to increase salary to $6.00 at the first level, $6.50 at the second level, and $7.00 at the third level for 1993-94, with a $.25 increase at each step for 1994-95, and employees off the salary schedule would receive adjustments to a minimum of $7.35 for 1993-94; that the Union proposes to deviate completely from the status quo, with a new five step salary schedule starting at $7.00, with incremental $.50 increases to $9.00, and with a longevity rate of $.35 beyond the schedule for 1993-94, and it

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[9] Citing Arbitrator Flaten in Wisconsin Professional Police Association -- Law Enforcement Employee Relations Division, WERC Dec. No. 27594-A, 8/93.

proposes increases of $.50 at each step and for the $.35 longevity rate for 1994-95; that although the past practice of the District has been to hire and place new employees at step one of the salary schedule, there have been instances when individuals with unique qualifications have been placed above the normal beginning rate, which practice is comparable to that used in teacher placement; that the District's wage proposal maintains the previous three-step salary structure and includes an approximate 17% increase at the base, from $5.00 to $6.00; that the Union proposes a five-step salary structure, an approximate 29% increase in the base for 1993-94, and the placement of all new employees at the bottom of the salary schedule; that the placement of all new employees at the bottom of the salary schedule is contrary to the interests and welfare of the public, is unreasonable, and would not accommodate the needs of the children in the District; that the District's proposal maintains the historically high ranking at the top of the salary schedule while slowly increasing the ranking at the bottom; that the Union's proposal greatly distorts the traditional ranking among external comparables, in that it pushes salaries at the bottom of the scale too fast, and it drops the District's ranking at the top from 4th of 12 in 1992-93, to 11th of 12 in 1993-94.

(l) That *the District's insurance proposal* is reasonable, while that of the Union is both excessive and unaffordable; for *regular full-time employees*, that the District reasonably proposes a fixed dollar contribution of $150.00 per month toward single or family health insurance *for each month worked* in 1993-94, and a contribution of $175.00 per month *for all twelve months* for 1994-95; that the Union proposes that for both 1993-94 and 1994-95, the District contribute 100% toward single and 85% toward family coverage, with pro-rated contributions for *regular part-time employees*, and with full payment of premium cost for long term disability insurance; that the Union's attempt to achieve a 6651.86% increase in insurance benefits in the initial agreement is preposterous; that the District cannot reasonably afford to provide such an increase in benefit levels without significantly reducing the number of aides.

(m) That the District's final wage proposal is supported by arbitral consideration of movement in *the consumer price index*: between 1992 and 1993 that the CPI rose by 3.6% for urban wage earners and clerical workers in Milwaukee; that the District's final offer includes a total package increase of 5.42% for 1993-94; that the Union proposes a 1993-94 total package increase of 17.56%.

(7) That the District's *fair share* and *emergency leave* proposals are reasonable, while the Union's *funeral leave*, *emergency leave*, *worker's compensation* and *holiday pay* proposals are extremely costly and significantly deviate from past practice.

(a) That the District has previously provided aides with *emergency leave for serious illness or death in the immediate family*; while the District has agreed to an expanded definition of immediate family, the Union continues to demand a broad and separate funeral leave benefit, which is unjustified by comparisons or other considerations.

(b) That the District proposes to retain the status quo in the area of *worker's compensation*, while the Union demands

differential pay for up to three months and full pay for absences of three days or less.

(c) In the area of *holiday pay* that the Union seeks four additional paid holidays, which represents both over-reaching and an unjustified and significant deviation from past practice.

(d) That the District's proposal to provide employees with an internal mechanism to challenge the *fair share* amount certified by the Union, should be accepted by the Arbitrator; that the Union's proposal for a provision indicating its agreement to abide by all state and federal laws relative to fair share and dues deduction is inadequate under the circumstances.

(8) That the Union proposals regarding expanding *bargaining unit work, filling vacant positions, noticing upcoming layoffs, shift changes* and *mandating the numbers of full-time positions*, significantly deviate from past practice without offering any commensurate quid pro quo.

(a) That if the *bargaining unit work proposal* were adopted without negotiated terms for implementation, disputes would arise from the administrative nightmare thus created.

(b) That the *proposal for filling vacant positions* is overly broad; the District has proposed a relatively equal standard while the Union is seeking a head and shoulders concept, thus significantly diminishing District discretion and achieving a gain it could never have achieved over the bargaining table.

(c) That the *notice of layoffs proposal* is administratively unreasonable, it represents over-reaching, and there is no evidence of the need for such a change.

(d) That the proposals regulating *shift changes* and *reduction of full time positions* are needless, fail to consider the needs of the children, and contrary to the interests and welfare of the public, and are not justified by any quid pro quo.

In summary, that the District's final offer is more reasonable, it reflects wage and benefits levels consistent with internal and external comparables, and it recognizes legislatively imposed levy limits; the Union proposals regarding emergency leave, funeral leave, worker's compensation, holiday pay and insurance benefits represent costly deviations from the status quo, and its non-monetary proposals represent changes in the status quo which are not supported by proof of compelling need and often ignore the interests and welfare of the public.

FINDINGS AND CONCLUSIONS

Prior to reaching a decision and rendering an award in these proceedings, the undersigned will offer certain preliminary observations

relating to the *nature of the interest arbitration process*, including the significance of the large number of impasse items in issue in these proceedings, the *normal application of the statutory arbitral criteria in Wisconsin*, including the makeup of the primary intraindustry comparison group, and the *significance of the status quo ante in the final offer selection process*. Thereafter the various *components of the final offers of the parties* will be separately considered, beginning with individual attention directed to the wages, the group insurance and the holiday pay components of the final offers, and, finally, the more appropriate of the two final offers will be selected and ordered implemented by the Arbitrator.

The Nature of the Interest Arbitration Process

As has been emphasized by the undersigned in many prior proceedings in Wisconsin and elsewhere, an interest arbitrator operates as an extension of the parties' normal collective bargaining process, and his or her normal role is to attempt to put the parties into the same position they would have occupied but for their inability to reach complete agreement at the bargaining table. In attempting to do so, the interest neutral will closely examine the parties' *past practice* and their *negotiations history* (both of which fall well within the scope of Section 111.70(4)(cm)(7)(j) of the Wisconsin Statutes), in the application of the other statutory criteria. This principle is well discussed and described in the following excerpt from the widely respected and authoritative book by Elkouri and Elkouri:

> "In a similar sense, the function of the interest arbitrator is to supplement the collective bargaining process by doing the bargaining for both parties after they have failed to reach agreement through their own bargaining efforts. Possibly the responsibility of the arbitrator is best understood when viewed in that light. This responsibility and the attitude of humility that appropriately accompanies it have been described by one arbitration board speaking through its chairman, Whitley P. McCoy:
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> > 'Arbitration of contract terms differs radically from arbitration of grievances. The latter calls for a judicial determination of existing contract rights; the former calls for a determination, upon consideration of policy, fairness, and expediency, of what the contract rights ought to be. In submitting their case to arbitration, the parties have merely extended their negotiations - they have left to this Board to determine what they should in negotiations, have agreed upon. We take that the fundamental inquiry, as to each issue, is: what should the parties themselves, as reasonable men have agreed to? ... To repeat, our endeavor will be to decide the issues, as upon their evidence, we

> think reasonable negotiators, regardless of their social or economic theories might have decided them in the give and take of bargaining..."[10]

The undersigned notes at this time that when *an extremely large number of impasse items* is presented to an interest arbitrator in parties' *initial contract negotiations*, in conjunction with arbitral authority limited solely to the *selection of the final offer of either of the parties in toto*, as in the case at hand, it may be virtually impossible to render a decision which reflects the settlement the parties might have or should have reached during their failed or incomplete contract negotiations. This conclusion is particularly true when the body of impasse items includes not only economic items, but also significant numbers of so called *non-economic* or *language items*; in such cases it is much more difficult to focus upon and to attach meaningful significance to the relative merits of the various individual impasse items on bases separate and distinct from consideration of the impasse as a whole, and interest arbitrators in such cases may thus place greater weight on broad and general considerations in applying the various arbitral criteria.

The Application of the Statutory Criteria

While the Wisconsin Legislature has not prioritized the various arbitral criteria contained in Section 111.70(4)(cm)(7) of the Statutes, it is widely recognized by interest arbitrators everywhere that *comparisons* are normally the most frequently cited, the most important, and the most persuasive of the various arbitral criteria, and the most persuasive of these are normally the so-called *intraindustry comparisons*. These considerations are addressed as follows in the respected book by Irving Bernstein:

> "a. Intraindustry Comparisons. The intraindustry comparison is more commonly cited than any other form of comparsions, or, for that matter, any other criterion. Most important, the weight that it receives is clearly preeminent; it leads by a wide margin in the first rankings of arbitrators. Hence there is no risk in concluding that it is of paramount importance among the wage-determining standards...."[11]

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[10] Elkouri, Frank and Edna Asper Elkouri, How Arbitration Works, Bureau of National Affairs, Fourth Edition - 1985, pp. 104-105. (footnotes omitted)

[11] Bernstein, Irving, The Arbitration of Wages, University of California Press (Berkeley and Los Angeles), 1954, pg. 56.

While the makeup of primary intraindustry comparison groups is frequently in issue in interest proceedings, the Employer has urged that such a group in the case at hand should consist of the following school districts: Arrowhead, Cedarburg, Germantown, Hartford, Kettle Moraine, Menomonee Falls, Mequon-Thiensville, Muskego-Norway, New Berlin, Oconomowoc, Pewaukee and Slinger, the same group utilized by Arbitrator Krinsky in the District's recent arbitration with the custodians. While reserving the right to urge the future use of a seventeen rather than a twelve district pool, the Union has indicated that it has no objection to the use of this primary intraindustry pool in these proceedings. Accordingly, the undersigned has concluded that the twelve referenced school districts comprise the primary intraindustry comparison pool in these proceedings.

The Significance of the Status Quo Ante in a First Contract

In this area the undersigned is faced with the argument of the Employer that the Union, as the proponent of significant change, has the burden of establishing a *very persuasive basis* for its proposal. The Union, relying upon the fact that there is no *negotiated* status quo ante, submits that its certification constituted a repudiation of the District's *unilateral* past practices, and it urges that the normal standards governing changes in the status quo ante should not be applied in these proceedings. In the following excerpts from a prior decision, the undersigned addressed the very similar arguments of other parties:

> "...it is clear that Wisconsin interest arbitrators attempt to operate as *extensions* of the bargaining processes, they normally attempt to put parties into the same position they would have occupied but for their inability to reach agreement at the table, they normally closely consider the status quo ante, either past practice or negotiatiated, and they normally attempt to avoid *substituting* themselves for the bargaining process by giving either party what they would not have been able to achieve at the bargaining table. In public sector interest disputes, however, where the parties lack the ability to strike or to lock-out in support of the bargaining objective, neither party should be able to frustrate the bargaining process by intransigence, and interest neutrals must be somewhat more flexible in considering demands for change from *either party*; to completely reject innovation or change, would be to doom the frustrated proponent of change from ever gaining such goal(s) in either the negotiations or the statutory interest arbitration processes, even though such change was fully justified by other considerations. Even in dealing with public sector disputes, however, interest neutrals normally require *a very persuasive basis* to be established in support of any demand to add new language and/or new or innovative benefits, and some form of *quid pro quo* may also be

> required in support of the selection of an offer containing significant changes or innovations; in addressing the *quid pro quo element*, interest neutrals should consider the type of give and take bargaining which might have enabled the parties to have voluntarily reached agreement on the disputed item(s).
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> * * * * *
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> 4. While the Association is quite correct that differences exist between previously negotiated provisions and those in existence at the time that a union organizes a work force, this is a far cry from concluding that there is no status quo ante in such a situation; indeed, employers also do not have the right to unilaterally withdraw or rescind previous policies, wages, and/or benefits, and to engage in 'start from scratch bargaining' in such cases."[12]

On the same bases referenced above, the undersigned has preliminarily concluded that the Union, where it is the proponent of significant change in the status quo in the case at hand, retains both the *burden of proof* and the *risk of non-persuasion*, even though the quantum of proof required to establish the requisite *persuasive basis* for such change may be less than would have been the case in connection with a negotiated status quo ante; in this connection it is also emphasized that no authoritative or persuasive basis has been advanced in support of the Union's unqualified assertion that its certification as the bargaining agent should automatically repudiate, nullify, or otherwise offset the normal arbitral significance of the status quo ante.

Finally, the undersigned notes that the proponent of language changes or additions, which normally cannot be quantified/costed on the same bases as so called economic items, generally has the responsibility for presenting more than mere rhetoric or argument in support of such proposals.

The Wage Increase and Wage Structure Impasse Items

In these areas, the final offer of the Employer includes the following elements:

(1) Retention of the three step wage structure during the term of the of the labor agreement.

(2) Effective July 1, 1993, that Step 1 increase to $6.00 per hour, Step 2 to $6.50 per hour, and Step 3 to $7.00 per hour.

(3) Effective July 1, 1994, that Step 1 increase to $6.25 per hour, Step 2 to $6.75 per hour, and Step 3 to $7.25 per hour.

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[12] See the decision of the undersigned in Shiocton School District, Case 10, No. 47058, INT/ARB-6389, December 31, 1993, at page 19.

(4) That employees beyond Step 3 of the salary schedule and earning more than $7.00 per hour in 1992-93 and more than $7.25 in 1993-94, will receive average increases of 3.9%.

(5) That employees beyond Step 3 of the salary schedule and earning less than $7.00 per hour in 1992-93, will received adjustments to $7.15 per hour. Those beyond Step 3 and earning less than $7.25 per hour in 1993-94, will receive adjustments to $7.35 per hour.

In these areas, the final offer of the Union includes the following elements:

(1) Adoption of a five step wage structure during the term of the labor agreement.

(2) Effective July 1, 1993, that the Probation Step of the wage structure go to $7.00 per hour, Step I to $7.50 per hour, Step II to $8.00 per hour, Step III to $8.50 per hour, and Step IV to $9.00 per hour.

(3) Effective July 1, 1994, that the Probation Step go to $7.50 per hour, Step I to $8.00 per hour, Step II to $8.50 per hour, Step III to $9.00 per hour, and Step IV to $9.50 per hour.

(4) That effective after fifteen years of service, employees receive $.35 per hour in *longevity pay*.

The primary difficulty in utilizing the above referenced information in evaluating the positions of the parties on wages, lies in the fact that a very large percentage of bargaining unit employees have been and apparently will continue to be paid at levels above those specified in the wage structure. As shown in Employer Exhibit #1, Appendix A, for example, 28 of the 35 bargaining unit employees in 1993-94, and 30 of 35 in 1993-94, would be "*off schedule*" with the selection of the final offer of the Employer; accordingly, the theoretical maximums and minimums in the wage structures are of far less significance than would have been the case if those in the unit were being uniformly compensated within such minimums and maximums.

In light of the above considerations, the undersigned has concluded that meaningful consideration of the wage components of the final offers can only be undertaken by examining the projected straight time hourly wages for those in the bargaining unit for each year under the two offers.

(1) Under the Employer's final offer, the *total straight time wages per hour* paid to those in the bargaining unit would increase from $261.60 in 1992-93 to $279.15 in 1993-94 (+ 6.71%), and to $292.76 in 1994-95 (+ 4.88%); perhaps more meaningfully, the *average hourly wage of those in the bargaining unit* would apparently increase from approximately $7.47 in 1992-93, to $7.98 in 1993-94 (+ 6.83%), and to $8.36 in 1994-95 (+ 4.76%).

(2) Under the Union's final offer, the *total straight time wages per hour* paid to those in the bargaining unit would increase from $261.60 in 1992-93, to $309.30 in 1993-94 (+ 18.23%), and to $332.15 in 1994-95 (+ 7.39%); perhaps more meaningfully, the *average hourly wage of those in the bargaining unit* would apparently increase from approximately $7.47 in 1992-93, to $8.84 in 1993-94 (+ 18.34%), and to $9.49 in 1994-95 (+ 5.54%).[13]

While precise wage data in exactly the same form as the above is not available for all of the districts in the primary intraindustry comparison pool, the available data are more than sufficient for use in comparing the final wage offers of the parties in these proceedings. Employer Exhibit #45 shows average wage increases for 1993-94 ranging from 4.24% in Menomonee Falls to 7.59% in Oconomowoc, with an approximate overall average of 5.37%, and average wage increases for 1994-95 ranging from 3.0% in Arrowhead and Cedarburg to 3.91% in Germantown, an approximate overall average of 3.3%. While only eight district averages are reported for 1993-94 and only three for 1994-95, the figures shown for the two years are significantly closer to the wage components of the final offer of the Employer than to those of the Union.

What, however, of the Union's argument that the District lags badly at the minimum wage rates for Aides, and its use of comparisons based upon the minimums of the rate ranges? The Union is quite correct that wage increases in excess of the normal external comparables may well be justified in situations where a significant measure of *catch up* is required; its arguments would carry significant weight if, for example, significant numbers of those in the bargaining unit were congregated at the bottom of the rate range for the Teacher Aide classification. To the contrary, however, and as discussed above, the significant majority of those in the bargaining unit are not near the minimum of the wage rates and, in point of fact, the large majority are being paid on *off schedule* bases.

The undersigned will next note that the weight normally placed upon *the cost of living criterion* varies significantly with the rate of change in consumer prices, increasing in importance during periods of rapid escalation in living costs, and declining in importance during periods of relative

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[13] Figures extracted from cost information contained in Employer Exhibit #1, Appendix A, and in Employer Exhibit #4.

stability. Without unnecessary elaboration, the undersigned notes that present and anticipated changes in the CPI are below the wage components of the final offers of both parties, and they more closely support the lower final wage offer of the Employer. Arbitral consideration of the cost of living criterion, therefore, clearly favors the wage increase component of the final offer of the District, but this criterion is not entitled to the same weight as the comparison criterion.

On the basis of all of the above, the Impartial Arbitrator has preliminarily concluded that consideration of the evidentiary record and the arbitral criteria, principally intraindustry comparisons and cost of living considerations, clearly and persuasively favors the wage component of the final offer of the District, rather than that of the Union, including the Union proposed adoptions of longevity pay and a five step wage structure.

The Health Insurance, Holiday Pay, Long Term Disability Pay, Worker's Compensation Supplement, and Paid Funeral Leave Impasse Items

In these remaining economic impasse areas, the parties principally differ as follows:

(1) The Union seeks Employer payment of 100% of *health insurance premiums* for single coverage for full-time employees and 85% of such premiums for family coverage.

The District offers to contribute $150.00 toward single or family health insurance premiums for each full month worked, effective July 1, 1993, which figure will increase to $175.00 per month on a twelve month basis, effective July 1, 1994.

(2) The Union proposes that those in the bargaining unit receive *paid holidays* for New Year's Day, Labor Day, Thanksgiving Day and Christmas Day.

The District makes no *holiday pay* proposal.

(3) The Union proposes up to three days of paid absence for traveling to and attending the funeral following the death of a member of the immediate family, identified as *husband, wife, daughter, son, step-child, mother, father, step-parent, brother, brother-in-law, sister, sister-in-law, mother-in-law, father-in-law, son-in-law, daughter-in-law, grandmother, grandfather and grandchildren* and one day of paid absence to attend the funeral of an *aunt, uncle, niece or nephew.*

The District proposes that emergency leave be available following death in the immediate family, defined as *husband, wife, daughter, son, mother, father, brother, sister, mother-in-law, father-in-law, grandmother, grandfather, and grandchild.*

The Employer proposes up to two days per year of *paid emergency leave*, while the Union proposes three days per year of such paid leave.

(4) The Union proposes Employer purchase of *long term disability insurance* providing 90% benefits for up to a sixty day period.

The District makes no proposal in this area.

(5) The Union proposes *worker's compensation supplements* that would provide employees absent due to work connected illness or injury with full pay for absences of three full days or less, and with full pay through supplementing worker's compensation benefits, for a maximum period of three months from the commencement of the illness or injury.

The District makes no proposal in this area.

While it is quite clear that the health insurance premiums and the holiday pay proposals of the Union are the most important remaining economic impasse items, it is appropriate to combine all five items for arbitral consideration. The Principal considerations advanced by the parties in connection with these items are the following.

(1) The District principally cites the *increased total package costs* for the two years, alleged *overreaching by the Union in an initial agreement*, and the significance of *State imposed spending caps upon the District*.

(2) The Union principally urges that the Employer's *ability to pay based arguments should be rejected by the Arbitrator*, that *external comparisons favor its positions on paid holidays and payment of insurance premiums*, and that no unusual significance should be attached to the fact that this proceeding involves the parties' first agreement.

In addressing the above described positions of the parties, the Arbitrator finds that the major single impediment to arbitral adoption of the final offer of the Union is the sizable increases in total package costs which would be necessitated by adoption of its demands.[14] Employer Exhibits #4 and #5 document *total package increases* of 17.56% during the first year, and 49.02% during the second year of the proposed agreement, under the Union's final offer, as opposed to similar increases of 5.42% and 13.73% under the Employer's final offer. While a final offer entailing extremely large total package increases in an initial agreement should not be dismissed on the basis of this consideration alone, most notably in cases of demonstrated need for

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[14] The undersigned fully agrees with Arbitrator Krinsky's treatment of the revenue cap issue in Hamilton School District, Dec. No. 27924A, 7/27/94, at page 4.

catch up, the advocate of such increases must present a persuasive case for their adoption. While the Union has cited persuasive intraindustry comparisons in support of the paid holiday component of its final offer, similarly definitive evidence is lacking in connection with the remaining economic elements of its final offer. Its medical insurance comparisons and related anecdotal arguments, for example, show disparities but they are not as comprehensive and persuasive,[15] and relatively little definitive evidence has been advanced in support of the bereavement pay, the long term disability and the worker's compensation supplement components of its final offer.

On the basis of all of the above, the Impartial Arbitrator has preliminarily concluded, despite evidence in support of the holiday pay and the insurance components of the Union's final offer, that the final offer of the Employer is clearly favored in the combined areas of health insurance, holiday pay, long term disability pay, worker's compensation supplemental pay, and paid funeral leaves. Stated simply, the Union has failed to make the requisite persuasive case for the combined improvement/addition of the economic items.

The Remaining Contract Language/Non-Economic Impasse Items

Under this combined heading are the remaining impasse items involving language to be contained in the initial agreement, principally consisting of the following: the proposals of both parties relating to *fair share challenges*; the Union's proposal relating to so-called *bargaining unit work*; the proposals of both parties relating to *seniority preference in the filling of job openings*; the Union's proposal relating to *notice of layoff*; the Union's proposal limiting *changes in shift starting times to avoid the payment of overtime*; the Union's proposal limiting *reduction in full-time positions for the purpose of reducing benefits*; the proposals of both parties addressing *the initial placement and the subsequent wage structure progession*

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[15] The insurance summary material contained behind the Health Insurance Premium tab in the Union's post hearing brief is drawn from various employer and union exhibits. Of the eleven reported districts within the primary intraindustry comparison group, three apparently do not offer comparable health insurance, five provide family coverage without employee contribution, and three require monthly employee contributions ranging from $15.00 to $319.14 per month.

of employees; the Union's proposal regarding *changes in health insurance carriers*; the Union's proposal addressing the availability of *health insurance coverage for early retirees*; the Union's proposal for the availability of *employee paid group dental insurance*; the proposals of both parties relating to *emergency leave*; and the Union's proposal for limited *use of accumulated sick leave to provide additional emergency leave*.

As referenced earlier, the Wisconsin interest arbitration process is designed to minimize both the economic differences between the parties and the number of residual impasse items, by utilizing preliminary mediation and certified final offers, and by limiting the authority of arbitrators to selection of one of the final offers in toto, and it is quite clear that the system has not operated in a fully effective manner in the dispute at hand. While each of the parties has presented individually persuasive arguments in connection with various individual language impasse items, no comprehensive case has been made for the selection of the final offer of either party in toto on these items. Accordingly, the Impartial Arbitrator has preliminarily concluded that determinative weight should not be placed upon the positions of the parties on the above described *remaining contract language/non-economic impasse items*.

Summary of Preliminary Conclusions and Selection of Final Offer

As addressed in greater detail above, the Impartial Arbitrator has reached the following summary, principal preliminary conclusions.

(1) The primary focus of a Wisconsin interest arbitrator is to try to put the parties into the same position they would have occupied but for their inability to achieve a complete settlement at the bargaining table.

When an extremely *large number of impasse items* is presented to an interest arbitrator in parties' *initial contract negotiations*, in conjunction *with arbitral authority limited solely to selection of the final offer of either of the parties in toto*, it may be virtually impossible to render a decision which approximates the settlement the parties might have or should have reached during their failed or incomplete contract negotiations.

(2) Although the Wisconsin Legislature has not prioritized the various arbitral criteria contained in Section 111.70(4)(cm)(7) of the Wisconsin Statutes, the *comparison criterion* is normally the most important and persuasive of the various criteria, and the so-called *intraindustry comparison* is normally regarded as the most important of the various comparisons.

The *primary intraindustry comparison group* for use in these proceedings consists of the following school districts: Arrowhead, Cedarburg, Germantown, Hartford, Kettle Moraine, Menomonee Falls, Mequon-Thiensville, Muskego-Norway, New Berlin, Oconomowoc, Pewaukee and Slinger.

(3) The *proponent of change in the status quo ante* must normally make a very persuasive case for change.

The Union, as the proponent of significant change in the non-negotiated status quo ante, retains both the *burden of proof* and the *risk of non-persuasion,* even though the quantum of proof required to establish the requisite persuasive basis for such change may be less than would have been the case in connection with a negotiated status quo ante.

(4) Arbitral consideration of the evidentiary record and the arbitral criteria, principally *intraindustry comparisons* and *cost of living considerations,* clearly and persuasively favors the wage increase component of the final offer of the District, rather than the Union proposed wage increases and changes in the wage structure.

(5) Despite evidence in support of the *holiday pay and health insurance* components of its final offer, the Union has failed to fully support the significant total package increases associated with the totality of its economic demands. Accordingly, the final offer of the Employer is clearly favored in the combined areas of health insurance, holiday pay, long term disability insurance, worker's compensation supplemental pay, and paid funeral leave.

(6) Arbitral examination of the evidentiary record and the arbitral criteria, indicates that no determinative weight should attach to the positions of the parties on the remaining contract language/non-economic impasse items.

Based upon a careful consideration of the entire record in these proceedings, and a review of all of the statutory arbitral criteria, the Impartial Arbitrator has preliminarily concluded that the final offer of the District is the more appropriate of the two final offers, and it will be ordered implemented by the parties.

AWARD

Based upon a careful consideration of all of the evidence and arguments, and a review of all of the various arbitral criteria provided in Section 111.70(4)(cm(7) of the Wisconsin Statutes, it is the decision of the Impartial Arbitrator that:

(1) The final offer of the District is the more appropriate of the two final offers before the Arbitrator.

(2) Accordingly, the final offer of the District, hereby incorporated by reference into this award, is ordered implemented by the parties.

WILLIAM W. PETRIE
Impartial Arbitrator

March 10, 1995