

BEFORE THE ARBITRATOR

In the Matter of the Petition of

ARROWHEAD SCHOOL DISTRICT EMPLOYEES' UNION, LOCAL 3833, AFSCME, AFL-CIO

To Initiate Arbitration Between Said Petitioner and

Case 16 No. 52766 INT/ARB-7668 Decision No. 28625-A

ARROWHEAD SCHOOL DISTRICT

Appearances:

Sam Froiland, Staff Representative, appearing on behalf of the Union.

Robert Butler, Staff Counsel, Wisconsin Association of School Boards, appearing on behalf of the Employer.

INTEREST ARBITRATION AWARD

Arrowhead School District Employees' Union, Local 3833, AFSCME, AFL-CIO, (herein "Union") having filed a petition to initiate interest arbitration pursuant to Section 111.70(4)(cm), Wis. Stats., with the Wisconsin Employment Relations Commission (herein "WERC"), with respect to an impasse between it and Arrowhead School District, (herein "Employer"); and the WERC having appointed the Undersigned as arbitrator to hear and decide the dispute specified below by order dated February 5, 1996; and the Undersigned having held a public hearing, followed by an evidentiary hearing in Hartland Wisconsin, on April 25, 1996; and each party having filed post hearing briefs, the last of which was received June 24, 1996.

ISSUES

This matter involves the parties' July 1, 1995, to June 30, 1997, collective bargaining agreement to succeed their first collective bargaining agreement which expired June 30, 1995. The following is a summary of the issues presented. The parties final offers on file with the WERC constitute the statement of the issues.<sup>1</sup>

1 During the course of the hearing, the Employer waived its argument that it was not required to arbitrate this dispute under Sec. 111.70(4)(cm), Wis. Stats. and consented to arbitration of this matter.

REPRODUCED FROM ORIGINAL

1. Subcontracting. The Union proposes to add to Article 2, Parts H through J, the following (underlined) subcontracting provision: "To introduce new or improved methods or facilities, to determine the location, methods, means and personnel by which school system operations are to be conducted, including the right to determine whether goods and services are to be provided or purchased as long as bargaining unit employees are not laid off nor suffer a reduction in hours." The Employer opposes any change in the current management rights provisions.

## 2. Holidays.

(a) The Union proposes to increase the current nine holidays provided in Article 14, Section 14.01 for full year full and part-time employees, by making the half day holidays for Christmas Eve and New Year's Eve each full day holidays. The Employer proposes to maintain the current 9 holidays.

(b) The Employer proposes to change Article 14 by adding the following Section 14.06, Holiday Eligibility, in its entirety: "In order for eligible employees, as set forth in sec. 14.01 and Sec. 14.02, to receive compensation for the holiday(s) the employee must work or be on an approved vacation the last scheduled work day preceding the holiday and the first scheduled work day after the holiday. An employee will receive holiday pay if the employee is on an administratively approved emergency leave the last work day scheduled preceding the holiday and the first scheduled work day after the holiday. The employee will receive holiday pay if the employee is on sick leave and is able to submit a physician's statement demonstrating that he/she was unable to attend work due to illness on the work day scheduled immediately preceding and/or following the holiday." The Union opposes the addition.

## 3. Hours.

(a) Starting Times for Maintenance and Custodial Employees: The Employer proposes to increase the starting time windows for day shift and night shift from the current 5:00 a.m. to 8:00 a.m. (day) and 2:00 p.m. to 4:00 p.m. (night) to end at 10:00 a.m. and 6:00 p.m., respectively. The Union opposes this change.

(b) Double Time for Sundays: The Union proposes that custodial and maintenance employees who work on Sundays be paid double time. The Employer opposes this change.

4. Change of Health Insurance Carrier: The Union proposes to add section 20.09 which reads "The Employer may change carrier(s) for any particular insurance, however the level of benefits shall not be reduced." There is no current provision in the contract covering this subject. The Employer opposes the proposal.

5. Wages: The current salary schedule is attached and marked Appendix A. The Union proposes a 3.5% across-the-board increase in each year, effective July 1, 1995 and July 1, 1996. It also proposes that the wage rates for all positions except custodial and maintenance positions be increased by \$.50 per hour each year effective on January 1, 1996, and January 1, 1997. The Employer proposes differing wage adjustments to different classifications. The Employer's wage proposal is attached and marked Appendix B. The Employer costs 1994-5 base year as \$1,499,795, total cost. It costs its total increase for 1995-6 as \$92,983 (6.20%) and 1996-7 as \$85,058 (5.34%). Wage increases for those years alone are 3.64%, 5.10%). It costs the Union's offer as \$127,105 (8.4%) and \$123,188 (7.57%). The Union did not provide costing data, but did dispute the base year calculation. Using the Employer's data as corrected, it would calculate the Employer's proposed first year total package as \$71,629 or 4.7%, while it would calculate its first year total package as \$105,751 or 7%.

#### BACKGROUND

This is the second collective bargaining agreement between the parties. The parties spent considerable effort negotiating their first agreement and ultimately reached impasse. They arbitrated that impasse before Arbitrator Yaffe who made his award in August, 1994. Each party in that dispute proposed a three year July 1, 1992 to June 30, 1995, agreement. There were an extensive and wide ranging number of issues involved in that matter which it is not necessary to reiterate here. Among those issues were some issues which have an impact in this proceeding in addition to the overall wage increase. They are holidays, subcontracting, weekend call-in and overtime, health insurance and maintenance of standards. The Employer in that case proposed to reduce the number of holidays which full-year employees had theretofore had from 10.5 to 9, and to grant school year employees (who had not had holidays) 4 holidays. The Union proposed to grant full year employees 10.5 holidays and school year employees 5 holidays. The Employer proposed a broad ranging management rights provision. The Union proposed that management rights include only subjects which do not require discussion or concurrence by the Union. It also proposed that the Employer would have the right to subcontract as long as work historically performed by unit employees and the hours of unit employees were not affected. The Union and Employer both proposed a one-hour minimum for weekend building checks. The Union proposed that weekend hours be paid at double time, while the Employer proposed that they be at time and one-half. Prior to the award, the Employer did not provide a health insurance benefit for full-time, school year employees. The Employer did provide it for full-time, full year employees. Both parties proposed granting a benefit (at different levels of benefit) effective for the 1994-5

school year for full-time school year employees.<sup>2</sup> In fact, the award came down after the beginning of the school year and the Employer did not implement the plan until about three months of the agreement had expired. The result was a windfall savings discussed more below. In that case, the Union sought substantial "catch up" increases for this unit. Arbitrator Yaffe used the comparability group which the parties agree is appropriate: Elmbrook, Germantown, Hamilton, Hartford UHS, Hartland/Lakeside, Kettle Moraine, Menomonee Falls, Merton Joint District No. 9, Mukwonago, Muskego-Norway, New Berlin, Oconomowoc, Pewaukee, Slinger, and Waukesha. [These units are all organized.] As to wages and total package Arbitrator Yaffe found that custodians were substantially underpaid, kitchen aides were close to the bottom of the range of comparables, clericals and instructional aides were paid substantially less than the bottom of the comparable range. He found that the Employer's approach retained those rankings while the Union's brought them to average during the term of that agreement. As to the Employer's ability to pay, Arbitrator Yaffe found that the cast forward method was not likely to be reliable because there had been substantial turnover in the unit. He also rejected the Employer's actual cost method because there had been an increase in the number of positions in the unit and that fact was likely to have inflated the costs unfairly. He suggested that the parties cost by using a representative sample of employees who stayed in the unit and cast that limited group forward. He concluded that there was a legitimate basis for the Union's argument that increases here might exceed those elsewhere because the wage rates here were significantly behind those elsewhere. Nonetheless, he concluded that the overall cost of the Union's proposal to mainstream employees right away was "too much too soon." He adopted the Employer's offer as the "least unreasonable."

In September, 1994, Dr. Lodes met with the Union concerning his effort to get the Union to agree to an immediate pay increase for the building secretaries and for the food service personnel. The Employer made a proposal to the Union shortly thereafter concerning these wages. The Union considered the matter and determined that it would not agree to a wage increase for specific positions outside a resolution of the appropriate wage rates for all unit employees. Thereafter, the two building secretaries quit. The Employer determined that it was unable to hire sufficient employees to field a food service. It entered into a contract with Marriott Management Corporation in July, 1995, effective for the 1995-6 term and renewable for up to four additional terms. Under the agreement, Marriott was to obtain its non-management staff from the employees of the Employer, if available and provide its own when not available. At the end of

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2 The Union also proposed the same language it is now proposing as to health insurance carrier.

the contract employees were to be given the option to return to the Employer. Under the Agreement, Marriott guaranteed the Employer a minimum annual financial return of \$10,200 and reimbursement of any deficit up to its management fee.

Prior to October, 1995, the Employer sought to switch the then current health insurance plan from a full indemnity plan to a managed point-of-service plan. The Union agreed to this change and the parties entered into a written side letter memorializing this agreement. The side letter provided that savings were to be applied to wages and benefits. It provided in relevant part:

It is further agreed by the parties that the savings generated from the union's agreement to switch to the point of service will go into wages and/or benefits for the bargaining unit. It is further agreed that the parties have not resolved any other wage or language issues by the terms of this side agreement and that the parties are free to continue to negotiate and/or arbitrate anything outside of this side letter of agreement

The Union alleges the cost savings in the unit as a result of this change are \$3,000 per month.

The focus of the Union's position in this case is its "catch up" argument. It argues that the vast majority of the unit employees in virtually all of the unit's classifications, except maintenance and custodial, are substantially underpaid. This is why it is proposing an additional \$.50 per hour for these other classifications in the middle of each contract year. Thus, in its comparison groups the contract-end, maximum rate for the following groups has the following relationship to the next lowest paid school district and the average of the school districts with comparable classifications:

	next lowest	average
Secretary/Clerical	-\$1.87	-\$4.21
Food Service	+\$0.10 <sup>3</sup>	-\$3.04(excl. Mn. Fal.)
Teacher Aide	-\$1.21	-\$2.21(excl. Ham.)
Bus Drivers	n.a.	-\$2.15

It further notes that the Employer's offer will further widen the wage gap between these comparable groups. It notes that custodial-maintenance employees work 34.02% of the total number of hours worked by the entire unit, teacher aides 25.49%, clerical 22.96%, food service 9.09% and bus drivers 8.44%. The Union also argues that its proposed wage increases for the custodial-maintenance group is average, while the Employer's offer unfairly penalizes senior employees by granting them only about 1.5%, about half of the average increase.

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<sup>3</sup>It is \$1.39 below the next lowest, Pewaukee.

The essential position of the Employer is that it has made the best offer that it can make and still stay within the revenue limits imposed upon it by Sec. 121.91, Stats. The student population is growing at a significant rate. This results in increase personnel costs, building costs, transportation costs and other costs. Second, the district is continuing to incur substantial increased costs with respect to special education. Thus, its essential argument is that under the interest and welfare of the public criterion, the offer of the Employer must be accepted. It also argues that its total package offer exceeds the cost of living and the size of other total package increases in other comparable school districts, other governmental employers and private employers. The Employer also relies upon the internal comparison criterion and the fact that the Legislature has effectively limited teacher and administrator wage and benefit increases by statute to 3.8% for the proposition that unit employees equitably should have the same limitation.

The Employer acknowledges that there are some positions in this unit which are underpaid. It argues that it has structured its offer in such a way as to accord the support staff employees with as comparable wage rates as possible underneath the constraints of the revenue limit and its other needs. In this context, the Employer argued that its wage offer was superior to that of the Union. Its offer adequately, addresses "catch up" increases for the specific positions which the Employer has had difficulty in hiring and otherwise gives unit employees a sizeable general increase. In this regard, the Employer submitted wage schedules from comparable districts together with job descriptions in order that the comparisons are accurate. The Employer notes that all maintenance and custodial classifications are, at least, comparably paid, if not better paid, than average. It uses wage comparisons for the 1995-6 year to the comparable schools which in its view show that its offer substantially resolves the specific problems in the unit. It requests that the arbitrator give specific weight to these comparisons because most of these units are settled for 1995-6. In its view, the Union's offer is too much too soon, does not account for the Employer's limited ability to increase funds, and provides excessive increases in the wrong places. It also argues that its proposal results in wage rates which are comparable to similar jobs in the private sector and in government in Waukesha County. It offers studies from the Department of Industry, Labor and Human Relations for both of these propositions. The Employer appears to argue that while comparable school districts may pay higher wages for the affected unit jobs, the Employer's wage rates for these jobs are consistent with the private sector in Waukesha County.

#### DISCUSSION

The decisional standards which are applicable to this matter

are set forth in Section 111.70(4)(cm) as follows:

- a. The lawful authority of the municipal employer.
- b. Stipulations of the parties.
- c. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.
- d. Comparison of wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes performing similar services.
- e. Comparison of wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes generally in public employment in the same community and in comparable communities.
- f. Comparison of wages hours, and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes in private employment in the same community and in comparable communities.
- g. The average consumer prices for goods and services, commonly known as the cost of living.
- h. The overall compensation presently received by the municipal employes, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- i. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- j. Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact finding, arbitration, or otherwise between parties, in the public service or in private employment.

The arbitrator may apply those standards which he or she deems appropriate and is free to assign whatever weight to each standard as he or she determines is appropriate. As part of the overall change in school funding in Wisconsin, 1993 Wisconsin Act 16 changed the standards in Section 111.77(4)(cm) and stratified them as follows:

7. Factor given greatest weight. In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall consider and shall give the greatest weight to any state law or directive lawfully issued by a state legislature or administrative officer, body or agency which places limitations on expenditures that may be made or revenues that may be collected by a municipal employer. The arbitrator or arbitration panel shall give an accounting of the consideration of this factor in the arbitrator's or panels' decision.

7g. Factor given greater weight. In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall consider and give greater weight to the economic conditions in the jurisdiction of the municipal employer than to any of the factors specified in subd. 7r.

7r. Other factors considered. In making any decision under the arbitration proceedings authorized by this paragraph, the arbitrator or arbitration panel shall also give weight to the following factors:

- a. The lawful authority of the municipal employer.
- b. Stipulations of the parties.
- c. The interest and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.
- d. Comparison of wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes performing similar services.
- e. Comparison of wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes generally in public employment in the same community and in comparable communities.
- f. Comparison of wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes in private employment in the same community and in comparable communities.
- g. The average consumer prices for goods and services, commonly known as the cost of living.



h. The overall compensation presently received by the municipal employes, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

i. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

j. Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact finding, arbitration, or otherwise between parties, in the public service or in private employment.

Those standards do not apply in this proceeding because they become effective after the date that this case was filed. The fact that they were changed in part to correct the prior effects of arbitrators' reasoning under the former standards is relevant to this proceeding.<sup>4</sup> In correcting those standards, the Legislature concluded that arbitrators' awards had relied too heavily upon comparability in establishing teachers' wages without adequately considering other factors. Thus, they concluded that this had caused teachers' and administrators' wages to rise faster than other employees' wages. By emphasizing the legal authority of the Employer in these standards, it was also the purpose of the Legislature to insure that the decisions of arbitrators did not result in wage increases which unduly pressured school districts to exceed their statutory revenue limits.

At this point in time, it remains to be seen how arbitrators will view the "greatest weight" standard. Will they apply it on a basis close to a strict proportion of the allowable revenue growth? As discussed more below, the Legislature came close but did not go that far in setting limits on teacher and administrators increases. Will they apply it, in itself, as an ability to pay standard? Certainly, at the extremes that kind of interpretation could leave the standard with little or no meaning. If not, will arbitrators as a whole allow a combination of lesser standards to outweigh the "greatest weight" standard.

#### SUBCONTRACTING

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<sup>4</sup>Pre-Final Report, "Recommendations for Successor Law to Sec. 111.70(4)(cm) and (7m)" by the Council on Municipal Collective Bargaining, @p. 22. The council was 'abolished before it issued a final report.

## Positions of the Parties

The Union argues that the Employer unilaterally subcontracted food service operations during collective bargaining for this agreement. Of the eleven food service workers who worked for the Employer in 1994-5, five remained in 1995-6. This was highly inequitable to unit employee: four of the five were hired by the subcontractor. These employees lost access to the Wisconsin Retirement System when they were effectively forced to work for a private employer. The Union also relies upon comparisons to the agreements of comparable districts. It uses comparisons to 31 other school districts with respect to this issue. 14 provide protection from layoff, demotion or reduction in hours. Three require bargaining the effects of the decision. One limits subcontracting to second shift cleaning at one school. While ten contracts contain no specific language, they do not contain language effectively waiving the legal requirement to collectively bargain. Thus, those provisions are better than the current structure of this agreement (Article II, Section J which authorizes the Employer to unilaterally determine the methods, means and personnel by which school system operations are conducted) which effectively waives the Employer's duty to bargain about subcontracting. Only two of the thirty-one contracts contain the language such as that at Arrowhead. It notes that the proposed provision does not prevent subcontracting, but merely protects the interests of unit employees if the Employer does subcontract.

The Employer argues that the Union has failed to establish the elements necessary to change the status quo:

- a. There is a need for a change
- b. That the proposed language meets the identified need without undue hardship on the other party.
- c. The proposing party has offered an adequate quid pro quo for the proposal.

It argues that the only situation in which it hired a subcontractor was for the food service when it was unable to hire a sufficient number of employees to provide a minimum food service. It did this only after it attempted to negotiate a pay increase to attract employees with the Union and after exhausting all other reasonable alternatives. It then only hired the subcontractor to manage existing unit employees. It further argues that the comparables are relatively split on the subcontracting issue.

## Discussion

The Union has expressed a legitimate concern that the absence of protective subcontracting language and the existence of a broad management right might effectively waive its right to

even negotiate over a proposed subcontract. The problem which underlies this proposal is that the Employer was unable to hire sufficient employees to provide a minimum food service, one of its essential functions. The parties reached impasse on the issue as to whether food service wages would be increased even if the general wage increase for other employees was not resolved. While impasses do occur, the primary fact is that the parties relationship was such that they were not able to even mutually agree to a prompt use of impasse procedures to resolve it. The result of this award is that the Union will receive the general catch-up increase it needs. Nonetheless, the Union's specific wage proposal keeps the starting pay for food service workers at a level which is still possibly below an effective hiring rate. The specific subcontracting proposal does not have an exception guaranteeing the Employer a right to have a minimally adequate source of food service. Thus, the combination of the two proposals leaves open the possibility that the Employer still may not be able to field a minimally adequate staff for its food service program. There no longer is any legitimate reason for that potential. The Undersigned will not recommend a proposal which appears to have a likelihood that the Employer will not be able to minimally staff a bargaining unit function. Accordingly, the Employer's proposal is preferred on this issue.

#### HOLIDAYS

##### Positions of the Parties

The Union relies upon comparison to other comparable school districts. 12 of the fourteen districts have more holidays. The vast majority have ten holidays. The Union also notes that prior to the initial collective bargaining agreement, calendar year employees received 10.5 holidays which the Employer successfully reduced in the first arbitration between the parties. The Union did not specifically address the day before/day after requirement.

The Employer argues that the Union's proposal to increase holidays is an increase from the present benefit. The Employer argues that the average number of holidays for full time employees among the comparables is 9.7 days for full-time employees. However, the benefit here of 9 days for the full-year part-time employee exceeds the average of the comparables which is 7. Further, the Union has not proposed an adequate quid pro quo for this increased benefit.

The Employer also argues that its proposal to limit holiday pay to those who are present the scheduled work day before and the day after a holiday is appropriate and represents the past practice of the parties. The Employer argues that its proposal is necessary to insure accountability to the taxpayers that sick leave is not abused. Eleven of the 26 comparable units have

similar language.

#### Discussion

I don't agree with the Employer that a "quid pro quo" is required for economic benefit items which normally consist of a general increase or to establish a minimum level of benefits. The Union's proposal is both. It is heavily favored by the comparisons to the practices in comparable districts.

The Employer's position is favored on the day before/day after issue. It represents a codification of current practice. There is no excuse for sick leave abuse. This provision reduces conflict by clearly stating the parties' agreement in a form which provides a labor arbitrator with fairly precise guidance on the issue.

#### HOURS

The Employer argues that it needs the proposed flexibility in hours to staff the girls' locker room. The Employer notes that some of the custodial employees sought the increased leeway. The Union did not specifically address this issue.

The facts on this are not clear. The difficulty the Employer has had is that it lacks sufficient same-sex employees to clean the girls' locker room. It is not clear how much discussion the parties have had on this issue. A party making a proposal needs to show three elements; 1. that there is a problem; 2. that the problem is not adequately addressed in the collective bargaining agreement; 3. that its proposal is a reasonable method of addressing the problem. Assuming for the purposes of decision, that the Employer has not been able to staff this specific cleaning assignment without paying excessive overtime costs, this specific proposal is way over broad and would permit wholesale rescheduling of the entire unit. I note that if the Employer had made a proposal targeted at permitting it to assign the one or two people needed, it would have been appropriate to this situation.

#### DOUBLE TIME

##### Positions of the Parties

The Union seeks to restore a benefit which existed prior to the parties last contract and which the Union lost in the arbitration leading to that agreement. Further, eight of the fourteen comparable districts pay double time for work on Sundays.

The Employer argues that the rate it is now paying for Sunday work is beyond that required by the Fair Labor Standards Act. The Employer believes that the present proposal is

supported on the basis of comparability and fiscal responsibility. The average of the comparables is to compensate custodians at one and sixth tenths their normal rate for Sunday work. The cost of the additional compensation for these employees impacts on the scheduling of the extracurricular events and increases the costs for using the school facilities on weekends.

#### Discussion

As stated above, the party seeking to change existing language must first show a change in circumstances creating a problem not addressed by the agreement. Final offer interest arbitration carries with it the possibility of winning or losing items which would not otherwise have occurred. The mere fact that that has occurred is not sufficient to warrant a change. There is no testimony that there has been a change. The comparable school districts have split practices. The Union submitted its exhibit 7, a letter dated March 25, 1996, which demonstrates that custodians worked 375 hours on Sundays in 1995 and are on the way to working about the same hours in 1996. It wasn't clear what the prior practice was prior to the last agreement, but the evidence indicates that this work is fairly regular. This is an issue which depends heavily upon the parties' specific practices. There is not enough evidence in this record to conclude that a provision of this type is warranted with the school district at this time.

#### CHANGE OF CARRIER

##### Positions of the Parties

The Union argues that its position is necessary to protect unit employees' benefits during the term of the agreement. The Employer has stated that it would bargain over any changes, but has stopped short of stating that it would not unilaterally reduce benefit levels. The Union again relies upon its group of 31 other collective bargaining agreements. Only six fail to provide contractual language protecting the level of benefits.

The Employer argues that the Union's proposal is a major alteration in the status quo. The Union has not demonstrated any need for the change in the current language. The last time the parties changed insurance carriers, the Employer negotiated with the Union as to the change of carriers. The parties reached a written side letter of agreement with respect to the change. Superintendent Lodes testified that the Employer would confer with the Union over any future changes. Further, the Union has not proposed any quid pro quo for the proposed change. Finally, the Union's proposal restricts the Employer's ability to find comparable insurance at reduced rates. While the Employer admits that the comparables are split on this issue, few of them have

language as restrictive as that proposed by the Union.

#### Discussion

The indication is that after the expiration of the prior agreement, but during negotiations for the current agreement, the Employer proposed a change in health insurance plan. The Employer met its statutory obligation to bargain with the Union. The Union agreed to the change in health plan provided the savings were applied to wages. Although the parties reached agreement, the situation is one in which the interests of unit employees in their insurance plan was not fully addressed in the prior agreement. Most of the comparable districts have some form of contract language providing some level of protection. Most do not go as far as the provision provided by the Union. In this case, it appears to me that the Union's position is closest to the preferable position.

#### WAGES

The Union's main argument in this case is that a substantial portion of this unit is underpaid and that this unit is seriously in need of a major pay adjustment for most classifications. This argument is well taken when viewed in light of comparisons to the maximum wage rates for similar employees in similar school districts and even when viewed with comparisons to the private sector. The history of many of these positions also strongly suggests that they are seriously underpaid.

Both parties use the same external group of 15 comparable school units which was established by Arbitrator Yaffe in the prior arbitration award between the parties: Elmbrook, Germantown, Hamilton, Hartford UHS, Hartland/Lakeside, Kettle Moraine, Menomonee Falls, Merton Joint District No. 9, Mukwonago, Muskego-Norway, New Berlin, Oconomowoc, Pewaukee, Slinger, and Waukesha. These are all organized districts.

#### 1. aides

##### certified aides

The teacher aides work approximately 25.5% of the hours worked by the entire unit. There are two forms of teacher aides: those who are certified and those who are not. For the 1994-5 school year Arrowhead paid \$7.82 to start and \$8.25 at the maximum, for both certified and non-certified aides. Fourteen of the comparable districts including Arrowhead have certified aides. The average starting pay is \$8.55 per hour, while the average maximum pay is \$10.10. Arrowhead is ninth in this group at the start and thirteenth at the maximum. Hamilton is substantially lower than Arrowhead, but the next higher pay at the maximum is Slinger at \$9.46, or \$1.21 per hour more. All of

the remaining districts are at \$9.95 per hour or more at the maximum rate.

The Employer took the position that it paid its certified aides far more than comparable positions in the private sector. It offered wage survey data by the former Department of Industry, Labor and Human Relations for the purposes of comparison with similar positions in the private sector. The Union objected to the admission of this data as hearsay and not having any probative weight. I agree with the Employer that this data is useful when adequate job descriptions, and survey information are provided to adequately analyze the information. This information is gathered in a learned and systematic way, in part, for the purpose of assisting employers in setting wage rates. Thus, this is the type of information public and private employers rely upon in determining wage rates. It is also important to note that employer's rely upon this data as it is presented [even if it contained errors]. This is not to say that there may not be difficulties in applying the information because there may not be comparable private positions.

I don't agree at all with the Employer's assertions that its maximum wage rate for certified aides is comparable or better than that in comparable private sector jobs. The Employer relied upon the home health care aide for its private sector comparison. The reported average starting rate for a home health care aide during the 1995-6 year was \$6.40 per hour and median wage was \$7.88. This was far below either party's 1995-6 offer. However, the home health care aide is a highly physical job which requires only 75 hours training in order to obtain registration. See, HSS Sec. 129.10, et seq. The Employer has never alleged that it ever used the home health care aide comparison for the purpose of determining the wage rate of the certified aide. By contrast the certified aide position requires either the completion of a two year child development program or a combination equaling 3 years experience or 3 years of college, Wis. Admin. Code Sec. PI 3.39. I note that many of the people the Employer has employed as certified aides have left when they have completed their education and become certified teachers. Thus, many appear to be in a progression towards a professional degree.

The turnover data supplied by the Employer also reflects a serious problem both in the quality of people hired and the retention of good employees. Of the 16 certified aides asked to return for 1995-6, one quit for a long term substitute teacher position. Of the 16 certified aides asked to return for 1994-5, 4 did not return. Two, possibly three, left for other jobs. One left to become a student teacher. Of the 16 certified aides asked to return for 1993-4, 6 of the 16 did not return. 1 was fired, 2 left for teaching, 1 for maternity reason, 1 quit to stay home and 1 offered no reason for leaving. The information for prior years shows a significant number of people asked not to

return. Given the small number of positions this is a highly excessive amount of turnover and discharges. I discredit the contradictory testimony offered at the hearing to the effect that retention of employees has not been a problem in non-food service positions. I conclude that there is a major wage disparity for certified educational aides.

#### non certified aides

Similarly, non-certified aides are seriously underpaid. The 1994-5 wage rate for non-certified aides is \$7.82 per hour start, \$8.25 maximum (4 year progression). Arrowhead ranks 8th among the comparables at the starting salary. The average starting salary is \$8.25 per hour. Arrowhead is the lowest paying of the comparables at the maximum. The next lowest is Slinger which is \$8.50 per hour (3 year progression), followed by Waukesha which is \$8.80 per hour (2 year progression). The average of the comparison group \$9.79 (average 6 year progression). Although the non-certified group is not as seriously underpaid as the certified group, the Union's offer is closest to appropriate. Thus, employees who work 25.55 of the hours in this unit are seriously under paid. The Union's proposal is necessary to establish minimally adequate wage rates.

## 2. Clerical Positions

### Building Secretary/Office Staff

The clerical group performed about 23% of the unit's hours in 1994-5. The 1994-5 comparisons, Arrowhead pays \$7.87 per hour to start for building secretary and \$8.30 per hour maximum after four years. Of the eleven comparable districts (including Arrowhead) which have a comparable position, Arrowhead is the lowest paying district of all of the districts. At the starting rates it is \$.37 per hour behind the next lowest, Slinger and \$1.27 behind the next lowest, Waukesha. It is \$2.28 behind the average starting rate. It is \$1.87 behind the next lowest paying maximum rate, Slinger (3 year progression) and \$2.48 behind the third lowest, Hartford (5 year progression). It is \$3.49 behind the average with an average 6 year progression.

The Employer has conceded that its building secretaries are underpaid. It compares the Building Secretary position with the DILHR classification of Executive Secretary. The Arrowhead job description is very similar to the DILHR description for this position. The 1995 wage rate reported by DILHR for the Executive Secretary is \$10.69 per hour to start, \$12.73 mean and \$12.41 median. The pay for the less demanding position of Secretary is \$9.53 per hour start, \$11.37 mean, and \$12.22 median. The Employer's proposal for 1995-6, is to create a new position entitled Building Secretary. The Building Secretary would still be paid \$9.05 to start, \$9.49 maximum. The Building Secretary is



paid significantly less than in the private sector in Waukesha.

The Employer also keeps the classification of "office staff." Under its 95-6 proposal the office staff would start at \$8.05 and the maximum would be \$8.49. The Union's comparisons show that this position is the lowest paid among the comparable districts, \$1.87 below Slinger and \$4.21 per hour below the average. The Employer's proposal represents a 2.3% increase for the office staff at the maximum. This would leave the office staff positions seriously underpaid. Five of the eight positions would remain in the office staff classification. On a percentage basis, the Employer's proposal is on the low side and on a cents-per-hour basis it is substantially lower than comparable districts' increases. The Union's proposal for 1995-6 would place these positions at \$9.09, still over \$1.00 below the lowest rate for 1994-5.

This wage rate problem for these positions was dramatically highlighted when the Employer lost a total of 3 secretaries in the 1995-6, school year. The Employer had sought to retain 2 of these long term and valued secretaries and had sought a mid-term wage increase to retain them.

The Union alleged that the Employer's proposal is aimed at playing favorites and shortchanging turnover of senior staff. This is a second contract between these parties and the relationship has had a contentious start. There is no evidence as to what the job descriptions will be for the position of building secretary versus the position of office staff. Neither the Employer's proposal, nor the Employer's presentation suggested what the progression, if any, would be between the two positions. There was no direct testimony as to who would be assigned to what classification, except that it appears that those who have been building secretaries would be in the higher classification while those who have been attendance and accounts receivable secretaries would remain in the lower classification. The costing shows eight employees in the current office staff classification of which 3 are in the building secretary range. The small number of people alone in this classification raises serious questions as to why the Employer after its long practice to the contrary would want to separate the classification. There is no consistent practice among the comparable school districts, but ones with fewer clerical employees have fewer distinctions. The rationale expressed by the Employer is based upon the fact that two valued senior building secretaries left and, therefore, it needs to target its proposal to this problem. However, the turnover data also indicates that that the number of non-building secretary office staff who have left for private sector jobs has been just as great over the last few years. Two of the eight are non-building secretaries office staff who are currently at maximum rate. Based upon the available evidence, I don't believe the Employer's proposal is an appropriate method of allocating

its wage increases in this group. The Union's offer is clearly preferred for this classification.

#### Clerk/Typist

Similarly, Arrowhead is one of the lowest paying districts among its comparables for its clerical staff positions. For 1994-5, it paid \$7.76 per hour to start, and \$8.19 maximum after four years. It ranked eleventh of 12 comparable school districts at the starting rate, the next higher being Hartland-Lakeside at \$8.21 per hour, and the average is \$8.97. It is the lowest paying district at the maximum, the next highest being Slinger at \$9.81 (3 year progression), and the average is \$10.52 (average 6 year progression).

The Employer compared its clerical staff position with the clerk-typist in the February, 1996 DILHR survey. A job description was not provided for this position. That survey reported a clerk-typist average starting pay at \$7.54 per hour, \$8.63 mean, \$8.46 median. This comparison would support the Employer's position. As noted above, the DILHR survey reported the pay for the position of Secretary is \$9.53 per hour start, \$11.37 mean, and \$12.22 median. The Employer proposes to raise the clerical wage rate to \$7.95 per hour to start and \$8.38 maximum for the 1995-6 school year. Thus, the other comparison would support the Union position. The evidence is insufficient without the job descriptions to make a useful comparison with respect to the private sector data.

The evidence of turnover does not reflect any unusual amount of turnover. The preponderance of the evidence indicates that these positions are underpaid, but this situation may be less urgent. Nonetheless, the Union's proposal is closer to being appropriate with respect to this classification.

### 3. Food Service

#### cook

The combined food service positions perform 9% of the units overall hours per year in 1994-5. Both parties concede that the food service work group is substantially underpaid by any standard. The 1994-5 Arrowhead wage rates for cooks was \$4.73 per hour to start and \$7.24 maximum (6 year progression). Of the eleven (including Arrowhead) comparable districts with this position, Arrowhead is the lowest paying district. At the starting rate, Kettle-Moraine is the next lowest paying at \$6.53 per hour and the average starting pay is \$7.69 per hour. Hartland-Lakeside is the next lowest paying at the maximum. It pays \$8.41 per hour (4 year progression). The average of the group is \$9.18 per hour.

The DILHR 2/96 survey provides that for cooks in institutions, the average starting rate is \$6.27 per hour, mean \$7.64, median \$7.74. The Employer proposes that cooks receive \$6.25 to start and \$8.50 maximum. The Union proposes for 1995-6, \$5.39 to start and \$7.99 maximum. For 1996-7, the Employer proposes \$6.70 start and \$8.67 maximum, while the Union proposes \$6.07 start and \$8.76 maximum.

#### food service helpers

The parties also agree that the food service helpers are substantially underpaid. The 1994-5, Arrowhead wage rates for Food Service Helper is \$4.51 per hour start and \$6.90 maximum (6 year progression). Among the 12 comparisons, it is the lowest paying at the starting wage rate: the next higher, Merton, pays \$5.55 per hour to start. The average starting rate is \$6.54 per hour. Arrowhead is also the lowest paying at the maximum, the next higher is Slinger, \$6.96 per hour (3 year progression) and the average is \$8.16 (7 year average progression). The Employer's proposal for 1995-6 would yield \$6.00 start and \$7.92 maximum. The Union's proposal for 1995-6, would yield \$5.16 start and \$7.64 maximum. The Employer's 1996-7 proposal would yield \$6.46 start and \$8.09 maximum. The Union's 1996-7 proposal would yield, \$5.83 start and \$8.40 maximum

#### turnover history

The continuous and wholesale turnover of people in these positions, together with the Employer's inability to hire enough people to perform this service make it clear that this is a critical problem. While both parties proposals ultimately make significant improvements, it appears that the Employer's offer is preferable on the starting rates and the parties's offers are both appropriate for the maximum rates. The Employer's offer in this group on the whole appears preferable because it addresses the critical hiring problem while the Union's offer may not be adequate to attract staff. Combined with the Union's offer on the subcontracting issue which might prohibit the Employer from subcontracting when it cannot find enough workers to staff its food service program, the Union's offer may well leave the Employer in a position in which it may not be able to adequately staff its food service operation. This is a serious concern about the allocation of the Union's overall package.

#### 4. Maintenance Positions

##### Building Custodian

The custodial/maintenance group performs about 34% of the hours the unit performed in 1994-5. The parties agree that Building Custodians are paid comparably to other school districts, but the Employer contends that those rates are high

when compared to similar jobs in the public and private sector. The 1994-5 Arrowhead wage rate for Building Custodian \$11.84 per hour to start and \$14.12 per hour after five years. The Employer ranks 8 out of 14 comparables (including Arrowhead) at the beginning. The average starting rate is \$11.74. It ranks sixth at the maximum. The average maximum rate is \$13.71. The average is \$13.90 without Slinger which pays \$11.00, substantially less than anyone else. The Employer has not demonstrated that this classification is overpaid.

The Employer's 1995-6 proposal would raise the maximum rates from \$14.12 to \$14.34 (1.6% increase) and for 1996-7 would raise the maximum rates from \$14.34 to \$14.84 (3.5% increase). The Union's proposal would raise the maximum rates for 1995-6 from \$14.12 to \$14.61 (3.4% increase). The Union's 1996-7 proposal would raise them \$15.13 (3.6% increase). Eleven of the comparable districts have settled for 1995-6. The parties proposal for 1996-7 are essentially the same. The average wage rate increase is about 3.3%. The Union's proposal for Building Custodians is a proposal which is closer to an appropriate general increase for this classification.

#### Cleaner

There are three cleaners listed on the costing of which 2 are at the maximum. Currently they receive \$9.06. The Union's proposal would increase this to \$9.38 and \$9.70 in respective years. The Union does not claim that these employees are underpaid. The Employer proposed to substantially increase these wages in the first year to \$10.25 and \$10.61 (3.5% increase in the second year). The average of the comparisons shows that the Employer's offer would make the general cleaners the highest paid cleaners of those comparisons. There is no explanation in the record why the Employer has chosen to do this. There has been no unusual turnover in this group. Either offer as to this group is acceptable. The Union's offer is closer to appropriate for the majority of the custodial/maintenance group.

#### 5. Bus Drivers

The bus drivers work 8.44% of the total hours. There has been frequent turnover of bus drivers over the years. There are no comparable positions in the comparable districts. Some catch-up increase might be appropriate, but the Union's position on this group is too much too soon. I would move cautiously with respect to a group which because most of the comparable school districts do not have their own bus drivers. Overall, it is impossible to determine which offer is preferable.

#### TOTAL ECONOMIC PACKAGE

The Employer has heavily relied upon the fact that its offer

exceeds the value of the consumer price index. It also exceeds its offer to its teachers and the averages of settled comparable school districts by comparing the value of total packages. All of this is not seriously contested by the Union. These are standards used in determining the value of a general (cost of living type) wage increase. Further, the use of percentage standards is misleading when a bargaining unit is substantially paid less than comparable. The vast majority of positions in this unit are paid substantially less than other similarly situated positions and in many cases far less than the minimum amount appropriate for the specific classification. Correcting the wage inequities which exist in these positions requires a total package which is larger than a general increase alone would be. I also note that there are serious inequities in the way each party allocated its wage package among the various positions. I don't agree that either allocation is appropriate. However, the Union's offer is the only appropriate offer to correct the vast majority of significant wage inequities. It is no longer appropriate to attempt to make this adjustment in a piecemeal fashion because this unit's wages are too low to afford time to make that approach. The turnover alone makes that approach highly impractical. Further, a piecemeal approach would require the parties to agree to an on-going workable approach over the next few agreements. The parties have not demonstrated that they have the willingness to do so in their bargaining thus far. Finally, a piecemeal approach is likely to result in repeated final offers which exceed the 3.8% standard applied to teachers. It appears highly unlikely that the Employer would agree to do that.

What remains is the Employer's argument that it cannot fund the Union's proposal and remain within its statutory budget limitations. 1993 Wisconsin Act 13's revenue limitations on school districts have been subsequently amended and are primarily contained in Sec. 121.91, Stats. Under the amended statute, for 1995-6, the Employer is permitted to increase its per pupil revenue by \$200 (3.1% increase) and for 1996-7 it is permitted to increase its per pupil expenditure by \$206 (also 3.1% increase). Sec. 121.91, also provides for an increase or decrease in funding based upon an increase or decrease in the number of students. It moderates fluctuations in revenue for the number of students by requiring the districts to use an average of the three years September enrollment. The Employer is permitted a forty-five student increase for 1995-6 (\$298,440 total additional revenue increase) The Employer anticipates it will be allowed an additional 39 student increase for 1997-8 (\$266,682). It is the Employer's contention that its enrollments have been rising steadily and that these sums are less than the actual increase in enrollment and, therefore, less than the amount it needs to provide additional program for its actual increased number of students.

The parties' positions varied greatly as to what authority the arbitrator has to consider the Employer's statutory revenue limit in this proceeding. Therefore, it is important to articulate what my authority is to consider that limit under the current (old) arbitration standards cited above. As noted above, although the new standards do not apply to this proceeding, they are part of the legislative history surrounding the adoption of revenue limits. One of the reasons why they were changed was to insure that wage increases do not unduly pressure school districts to exceed the revenue limits. The essential philosophy underlying this structure and provision is an assumption that salaries should rise only in fair proportion to the additional revenue allowed to school districts by the Legislature. The specific standards which apply to considering the impact of legal restrictions on the Employer's funds are Sec 111.70(4)(cm)7.a. (lawful authority of the municipal employer), 7.c. (including both interests and welfare of the public and ability to pay), and 7.j. (other factors). The better view of the lawful authority standard is that it is not merely confined to considering whether a specific proposal would result in a violation of law, but whether a specific proposal makes unreasonably difficult an employer's compliance with law. It also permits specific direct consideration by the arbitrator of the public purpose behind a law affecting collective bargaining issues. Any proposal which requires an employer to reallocate a greater proportion of its budget to wages tends to affect its ability to comply with spending restrictions. Arbitrators in this state, including Arbitrator Yaffe in the prior award between the parties, have long considered under 7.c., the impact economic proposals would have on the ability of an employer to provide an appropriate level of services and other factors relating to the Employer and public's ability to pay. Under that same standard arbitrators have also considered the interest and welfare of the public in maintaining the highest practicable level of program for their students. They have also considered the public's interest in having a reliable work force. Arbitrators have considered "other" factors as well. An example of a factor often considered in the private sector which applies here is that negotiators in the private sector often consider productivity increases. Unlike the new standards, the weight to be accorded to any one arbitral standard is left entirely to the arbitrator. It is also important to note that the current prevailing view in interest arbitration is that the party which alleges inability to pay, difficulty in paying or that it would have difficulty meeting its revenue limits must bear the burden to persuade the arbitrator by a preponderance of the evidence that its position is correct.

The Employer provided the Union and the Arbitrator with its "actual costing" of the parties' proposals which essentially replaces employes in the 1994-5 costing with their successors and ordinarily carries forward their hours. It is further adjusted by positions which the Employer deleted from the bargaining unit

and positions added to the bargaining unit. It continues to cost vacant positions which the Employer states it intends to fill as if they were filled. It costs replacement employees' health insurance at family plan even though their predecessor may have had single plan. It is unknown if the successors all will actually take family coverage. It also shows some hours adjusted for reasons which were not explained in the record. The reason why the costing shows the offers of the parties as higher than the roll forward method is that this method shows additional family plan coverage and substantial net additional positions and hours. The addition of positions and hours is not something proposed by the Union or a consequence of the Union's proposals, but rather the result of the Employer's choice to add services. The Employer also submitted its budget and supporting testimony that the impact of that costing would result in the Employer exceeding its 1995-6 maximum statutory budget by \$25,267, and its 1996-7 maximum statutory budget by \$43,733, if the Union's offer were adopted.<sup>5</sup> If the Employer's offer were adopted this costing shows that the Employer would be approximately at statutory maximums in each year. Because the Employer only presented conclusory testimony relating the costing to the statutory limits and did not present the actual computations, the record lacks any effective way to verify that conversion. The Employer then presented extensive detailing as to the budget cuts it has made to meet the statutory revenue limit. It merely provided testimony solely stating that it had made these cuts and that it, therefore, did not have the reasonable ability to reallocate its budget to meet the Union's offer, without having to make what it believed was undue budget cuts. It did not explain why each of the items it gave priority to in its budget was more important than meeting the Union's proposal.

A second problem with the Employer's costing in addition to the fact that the Employer's offer includes increased hours and positions is that it does not fully account for partial year costs. There are two issues which I would cost differently under this method of costing. First, the health insurance costs which occurred under the Employer's successful bid to have its 1993-1995 contract offer adopted in arbitration. Under that proposal the Employer proposed to grant full-time school year employees health insurance for the first time in 1994-5. In fact, Arbitrator Yaffe's award came down too late to implement the benefit for the full year. The Employer therefore obtained a

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plus \$6,000 additional costs for ASEEC special education costs to its member schools for 1995-6. Plus feeder schools will be billed an additional \$14,679 for ASEEC services for 1996-7. The Employer would be required to pay its portion of these costs. This additional money would also be outside the Employer's statutory maximum according to its costing.

windfall savings of \$21,354. The Employer's base costing for 1994-5 costing for both its roll forward and "actual" method is the same. This costing assumes the actual rather than the full-year expense. This affects this dispute in a number of ways. First, the Employer obtained a one-time windfall savings of \$21,354, reducing its employment costs in this unit below what it expected to pay. Those funds could and should be available to pay for one-time costs during the term of this agreement. Second, the Employer's costing method unduly inflates the value of the Union's proposal for this year by lowering the base year. Third, Arbitrator Yaffe's award reflects that the Employer took the position in that case that it had funded its full health insurance proposal with on-going funds (by having represented that adopting its proposal would not have required the Employer to exceed the statutory revenue limitations). Thus, the continuing costs of the health insurance program as it was in effect in 1994-5 should be already covered in the Employer's continuing budget and should not require funds from its 1995-6 revenue limit increase.

Using the same reasoning, it is important to account for the delayed cost impact in 1997-8 which the Union's mid-year 1996-7 \$.50 per hour increase will have when it actually functions for a full year in 1997-8. Thus, if nothing changes the Employer will experience an increase of \$19,213 in wages and about \$4,000 in additional costs for fringe benefits.

One of the Employer's essential positions is that the revenue limit and other supporting law mean that the Union should be entitled to what it views as a fair proportion of its allowable growth under Sec. 121.91, Stats. In its view, this should be the same percentage as the allowable per student increase (3.1%) in each year<sup>6</sup>, or, at most, the 3.8% maximum increase effectively allowed by law to teachers and administrators. This view has merit as an important consideration if employers as a whole are going to be able to continue to meet their statutory obligations. I don't believe that 3.1% is a reasonable standard in view of the fact that the Legislature itself allowed teachers the greater percentage of 3.8% and the Legislature viewed teachers as unduly successful under prior law. The Union doesn't seriously dispute that even if the Employer's roll forward method of costing is adjusted for the 1994-5 health insurance and another adjustment is made for the savings in health insurance which occurred as the result of

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<sup>6</sup> The Employer's presentation also assumes that any increase in its revenue due to an increase in the number of students is properly not considered for wage increases even if staff is not similarly increased, but assumes that if there is a need to increase the amount of staff beyond the statutory limit the same should be considered before wages.



the Union's agreement to change health plans, the Union's total package offer would still far exceed 3.8% in each year.

I don't believe it is correct in this case to limit the Union to a 3.8% total package. First, the Legislature did not apply that QEO limit to non-professional employees. Historically, those employees did not fare as well as the professionals overall. Further, these employees often form a much smaller proportion of the Employer's overall budget than the others. Also, these employees are generally lower paid and their labor economics are much more likely to be substantially different than that of professional employees. Here the professionals are about 76% of its personnel budget while this unit is about 16% of its personnel budget.<sup>7</sup> Indeed, the difference between the parties' 1995-6 offers is merely .3% of the Employer's overall budget. The available evidence in this case is that historically unit employees did not receive the same percentage wage adjustments as teachers. The Employer in this case received substantial additional money for an increase in its number of students. When wages are substantially below minimum for comparable positions, it may be appropriate to give those increases priority before increasing other programs. Finally, as discussed below, there are significant turnover savings, savings from positions which the Employer voluntarily eliminated and other potential sources of revenue and savings which the Employer did not consider.

The Employer is correct that it has experienced substantial budgetary pressure requiring it to make very difficult choices. Some of these factors are not directly caused by this bargaining unit. The district is growing at a rate not adequately provided for in the funding formula. Second, the district has incurred substantially increased special education costs due to its legal obligation to provide special education services to students. The special education funding was not directly addressed in the parties' presentations; however, the evidence does indicate that the Employer is supplementing whatever special education money it is receiving with funds from its general revenue. The Employer added one full-time psychologist to ASEEC resulting in a 22.5% increase in this area of the Employer's budget. It has had other increases in ASEEC related costs. However important these needs for additional services are, and they are vital, unit employees have already demonstrated in the extra-ordinary turnover in this unit that they will not remain in jobs which pay less than a minimally adequate wage. Any application of the statutory standards has to deal with the practical realities of this specific situation.

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<sup>7</sup> The personnel budget is approximately 80% of the Employer's total general fund budget.

The Employer made it difficult to find specific evidence as to how much the Union's offer affects its ability to meet its revenue limits because it did not provide the mathematical derivation of how it concluded from its "actual" costing that the Union's offer caused it to be over its revenue limits. Nonetheless, there are some specific examples which show that the Union's offer does not, in fact, make it unreasonably difficult for the Employer to comply with those limits. It is important to note that these examples are merely examples of what the Employer has the authority or ability to do, and do not constitute recommendations as to what should necessarily be done.

There are strong examples which indicate that the Union's offer will not cause the Employer to exceed its revenue limits for the 1995-6 year. The Employer alleged based upon its "actual" costing that the Union's offer would "cause" it to exceed its revenue limits by \$25,267. This is a one-time amount.<sup>8</sup> First, as noted above, the Employer received a windfall savings of \$21,354 for health insurance costs contracted for, but not paid, in 1994-5. That amount should and could have been applied to offset the one-time excess in 1995-6. I also note that the Employer has erroneously costed the 1994-5 base year on the basis of the lower amount for health insurance and, therefore, treated \$21,354 of the Union's 1995-6 proposal as an "increase" when it was in fact a cost covered by the parties 1992-5 collective bargaining agreement and the Employer's prior funding.

Second, in a similar light, the Union voluntarily agreed to a change in the health insurance plan for 1995-6. I construe the parties' collective bargaining agreement (side letter quoted above) to be an agreement to apply those costs to wage increases in addition to the Employer's increased revenue under Sec. 121.91. I have not given this a specific value because other examples have much more weight.

Third, the Employer's "actual" costing for 1995-6 shows a "vacant" custodian position with a cost of \$31,660 for 1995-6. In fact, this position was vacant virtually throughout 1995-6 and remained unfilled at the time of hearing. This one-time cost saving should be applied to 1995-6, or if enough money is otherwise saved by the above, as a one-time offset to the amount the Employer alleges the Union's offer exceeds its revenue limit for 1996-7.

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<sup>8</sup> Expenditures by a school district are either one-time such as buying a new bus or continuing such as paying wages. Once the Employer hires someone or grants them a wage increase. It must repeatedly pay their wages and, therefore, repeatedly levy taxes each year to pay that salary.

Fourth, the Employer's actual costing carries forwards the wages for four food service employees; Bastian, Calvin, Singsheim and Durant. This totals \$27,009 in wages for 1995-6, slightly higher in 1996-7. The Union alleges that these employees were not then employees of the Employer, but employees of Marriott. The parties agreed that food service was under a separate budget. However, in the past, the Employer has had to supplement the food service budget with general revenue funds. Because the Employer did not provide a specific mathematical translation from its actual costing to its argument that the actual costing resulted in it being over statutory limit, it is impossible to tell on this record whether the Employer assumed that these positions were essentially funded in whole or in part from the general fund. Because the Employer has the burden of persuasion on the inability issue, these funds for 1995-6 should be treated as available on a one-time basis in 1995-6 or a later year, for the purposes of decision.

The Union's offer would not make it unreasonably difficult for the Employer to comply with its 1996-7 statutory revenue limit. The Employer alleges on the basis of its "actual costing" that the Union's 1996-7 offer will cause it to be \$43,733 over its 1996-7 statutory revenue limit. This amount would be a continuing amount which would have to be paid in every year thereafter if no change in revenue or unit wages and benefits occurred. Further, as noted above, the Union's proposal for a \$.50 per hour mid-year increase would increase that amount by another \$23,000 in 1997-8 (total \$66,733). The total would be continuing in each year thereafter if there were no changed circumstances. First, it appears from the above, that there were more than enough one-time savings which could be carried over from 1995-6, to pay for the Union's 1996-7 proposal on a one-time basis, but not to pay the continuing costs.

Second, in any event, one of the sources of revenue which is available to the Employer to offset funding limitations are its student fees. The Employer is understandably reluctant to pass on fee increases to students. These fees for 1995-6, were book fees of \$45, extra-curricular fees of \$50 and parking fees of \$70. Dr. Lodes indicated for 1996-7 it had raised these fees to \$50, \$53 and \$70 respectively. This produced \$12,385 additional which the Employer has used for unspecified other purposes. Even raising the book fee an additional \$1.00 and raising the other fees in essentially the same proportion as the total book fee was raised would result in about \$5,000 of money which would continue year to year to fund the Union's proposal. Raising these fees an additional 5% in 1997-8, would provide about \$8,951 of continuing additional money which could offset the impact of the Union's proposal.

Third, another source of potential money is the elimination of the vacant custodian position discussed above. That would

save an additional \$34,000 in 1996-7 and is a continuing amount. Although I agree with the Employer that if an offer tends to require an employer to eliminate an existing position in its base costing year, it is likely that the offer tends to conflict with the purpose of funding limitations, the specific facts of this case make that not unreasonable. First, the extreme nature of the catch-up situation including the high turnover in vital positions gives the Union's proposal a high level of importance. Second, experience in labor relations teaches that when an employer has a position vacant for nearly a year, it is likely that the position can be easily eliminated.

Fourth, the Employer's "actual" costing shows some positions voluntarily eliminated by the Employer. These funds are applied to total wage costs. The Employer's "actual" costing shows a net increase because it has chosen to add positions and hours to the unit. The Union correctly argues that I am not bound by the Employer's budgeting priorities and they must be evaluated by evidence presented in this case. The following are some examples of the additional hours and positions which the Employer has listed in this unit alone:

additional hours for support staff in		
position number	position	
19	student supervisor, about 1,000 more hours	\$12,534
	880 additional food service hours	\$5,280
80	1 new bus driver position	\$7,095
total		\$24,909

The Employer's summary testimony gives these costs higher priority than the Union's wage proposal and, therefore, concludes that it is the Union's proposal and not these costs which are causing the Employer to exceed its statutory minimums. There has been no allegation that the Employer would be unable to meet its minimum program requirements without these positions. The Employer, therefore, could chose to give unit wages higher priority than these increased positions and hours.<sup>9</sup>

The Union submitted evidence of the local economic conditions and the ability of the local taxpayers to pay. The revenue limits imposed by Sec. 121.91 were imposed without regard to the ability of the local taxpayers to fund increased taxes. Nonetheless, the statute authorizes a school district to seek a referendum to authorize additional spending beyond those limits if the school district chooses to do so. Arrowhead has the

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<sup>9</sup> I note that the Employer is able to meet the Union's offer without reducing its undesignated fund balance to any significant degree.


second highest per capita family income among its comparable school districts. Arrowhead has an adequate property tax base. Its mill rate is average among the comparables. It is, therefore, reasonable to note that Arrowhead has a reasonable ability to seek passage of an authorizing referendum if it concluded that it needed to obtain funds for the purpose of adding additional staff, beyond the increases revenue allowed by statute for increasing enrollment.

In summary, the Union's position is heavily supported by the comparable wage rates and this unit needs a significant wage adjustment in many positions to reach wage rates which are comparable to the minimum wages paid for those positions by others. The interest and welfare of the public includes having a stable, reliable work force. The Employer has the reasonable ability to meet the Union's offer. Finally, the Union's offer does not cause the Employer to be unreasonably able to meet its Section 121.91 revenue limits. Accordingly, the Union's offer is adopted.

#### AWARD

That the parties' collective bargaining agreement include the final offer of the Union.

Dated at Milwaukee, Wisconsin, this 23d day of August, 1996.

  
Stanley H. Michelstetter II  
Arbitrator

1994-1995 SUPPORT STAFF WAGE SCHEDULE

1993-94 Insurance Rates	
DENTAL	
LTD	480%
LIFE	.030%
Single	\$290
Family	\$846
HEALTH	
Single	\$2,972
Family	\$7,179
Retirement Premium	12.200%

1994-95 Office Staff, Supervisor, Clerical and Project Director Salary Schedule						
		STEP				
		1	2	3	4	5
A	OFFICE STAFF	7.87	7.98	8.09	8.19	8.30
B	STUDENT SUPER	7.82	7.92	8.03	8.14	8.25
C	CLERICAL STAFF	7.76	7.87	7.98	8.09	8.19
D	PRKNG/HALL SUP	7.89	8.50	9.11	9.73	10.34
E	PROJECT DIR	8.77	8.88	8.99	9.09	9.20

1994-95 Custodial/Maintenance Salary Matrix							
		CLASSIFICATION					
STEP	I	II	III	IV	V	VI	VII
1	5.72	9.55	11.15	11.85	11.84	11.50	11.50
2	6.49	9.99	11.31	12.28	12.30	12.24	12.47
3	7.02	10.43	11.91	12.71	12.75	12.99	13.44
4	8.06	10.87	12.30	13.14	13.20	13.73	14.42
5	8.29	11.31	12.69	13.57	13.66	14.47	15.40
6	9.06	11.75	13.06	14.00	14.12	15.21	16.36

# Appendix B

1995-96  
BASE + 1

LTD	0.46%		
LIFE	.023%		
DENTAL	ANNUAL		MONTHLY
Single	\$300		\$24.96
Family	\$812		\$67.66
HEALTH	POS 10/1/95		
Single	\$2,545		\$212.09
Family	\$6,031		\$502.58
WRS Prem	12.30%		

## BOARD'S OFFER

		STEP				
		1	2	3	4	5
AA	BLDG SECRETARY	9.05	9.16	9.27	9.38	9.49
A	OFFICE STAFF	8.05	8.16	8.27	8.38	8.49
B	STUDENT SUPER	8.00	8.11	8.22	8.33	8.43
C	CLERICAL STAFF	7.95	8.05	8.16	8.27	8.38
D	PRINCIPAL SUP	8.08	8.60	9.31	9.94	10.55
E	PROJECT DIR	8.96	9.07	9.19	9.29	9.40

STEP	CLASSIFICATION						
	I	II	III	IV	V	VI	VII
1	8.50	9.70	11.32	12.22	12.34	12.95	14.12
2	9.00	10.15	11.49	12.62	12.74	13.45	14.62
3	9.50	10.59	12.10	13.02	13.14	13.95	15.12
4	9.75	11.04	12.49	13.42	13.54	14.45	15.62
5	10.00	11.49	12.88	13.82	13.94	14.95	16.12
6	10.25	11.94	13.27	14.22	14.34	15.45	16.62

STEP	CLASSIFICATION	
	I	II
1	6.00	6.35
2	6.20	6.54
3	6.63	7.03
4	7.06	7.52
5	7.49	8.01
6	7.92	8.50

STEP			EXTRA CURRIC
	I	II	
1	5.72	7.90	6.36
2	5.89	7.97	6.51
3	6.06	8.37	6.81
4	6.23	8.77	6.99
5	6.40	9.17	7.24
6	6.57	9.57	NA

	1994-95 TOTAL SALARY	1995-96 TOTAL SALARY	% SALARY INCREASE	1994-95 TOTAL SALARY & BENEFITS	1995-96 TOTAL SALARY & BENEFITS	% SALARY & BENEFITS INCREASE
ADMIN SEC	\$62,400	\$64,234	2.94%	\$89,357	\$90,582	1.37%
AJOS	\$291,428	\$408,808	4.44%	\$519,490	\$582,109	12.05%
OPER & MAINT	\$523,653	\$537,904	2.72%	\$744,443	\$757,041	1.69%
FOOD SRVC	\$57,017	\$61,884	8.19%	\$85,125	\$74,459	14.33%
BUS DRIVERS	\$71,242	\$73,368	3.01%	\$81,372	\$88,587	8.87%
TOTALS	\$1,105,738	\$1,146,019	3.64%	\$1,499,795	\$1,592,778	6.20%

1996-97 Insurance Rates

LTD	0.48%		
LIFE	.026%		
DENTAL	ANNUAL	MONTHLY	
Single	\$315	\$26.25	
Family	\$853	\$71.05	
HEALTH			
Single	\$2,871	\$222.52	
Family	\$8,330	\$527.52	
WRS Prem	12.60%		

BOARD'S OFFER

1996-97 OFFICE STAFF, SUPERVISOR, CLERICAL AND PROJECT DIRECTOR SALARY SCHEDULE

		STEP				
		1	2	3	4	5
AA	BLDG SECRETARY	9.45	9.57	9.68	9.79	9.90
A	OFFICE STAFF	8.41	8.52	8.63	8.73	8.84
B	STUDENT SUPER	8.35	8.47	8.58	8.69	8.80
C	CLERICAL STAFF	8.30	8.41	8.52	8.63	8.75
D	PRKNG/HALL SUP	8.43	9.08	9.72	10.38	11.02
E	PROJECT DIR	9.36	9.47	9.58	9.69	9.81

1996-97 CUSTOCIAL/MAINTENANCE SALARY MATRIX

STEP	CLASSIFICATION						
	I	II	III	IV	V	VI	VII
1	8.80	10.04	11.72	12.64	12.77	13.40	14.81
2	9.32	10.50	11.89	13.06	13.18	13.82	15.13
3	9.83	10.98	12.52	13.47	13.59	14.44	15.84
4	10.09	11.43	12.93	13.88	14.01	14.95	16.16
5	10.35	11.88	13.34	14.30	14.42	15.47	16.68
6	10.61	12.35	13.73	14.71	14.84	15.99	17.20

1996-97 FOOD SERVICE SALARY MATRIX

STEP	CLASSIFICATION	
	I	II
1	6.46	6.70
2	6.55	6.89
3	6.77	7.17
4	7.21	7.87
5	7.65	8.17
6	8.09	8.67

1996-97 TRANSPORTATION SALARY MATRIX

STEP			EXTRA CURRIC
	I	II	
1	6.83	8.08	6.48
2	6.01	8.13	6.74
3	6.18	8.54	6.94
4	6.35	8.95	7.13
5	6.53	9.35	7.38
6	6.70	9.76	NA

	1995-96 TOTAL SALARY	1996-97 TOTAL SALARY	% SALARY INCREASE	1995-96 TOTAL SALARY & BENEFITS	1996-97 TOTAL SALARY & BENEFITS	% SALARY & BENEFITS INCREASE
ADMIN SEC	\$84,234	\$87,125	4.50%	\$90,582	\$94,947	4.82%
AIDS	\$408,808	\$429,050	4.95%	\$582,109	\$612,405	5.20%
OPER & MAINT	\$537,904	\$559,424	4.00%	\$757,041	\$790,263	4.39%
FOOD SRVC	\$61,684	\$67,131	8.83%	\$74,459	\$81,281	8.13%
BUS DRIVERS	\$73,388	\$77,360	5.41%	\$88,587	\$93,643	5.71%
TOTALS	\$1,146,019	\$1,200,090	4.72%	\$1,592,778	\$1,672,518	5.01%