STATE OF WISCONSIN

Before

SOLOMON B. LEVINE
Arbitrator

In the Matter of the Interest Arbitration	
between	Case 24 No. 53384 INT/ARB-7779 Decision No. 28724-A
WISCONSIN COUNCIL 40, LOCAL 60, AFSCME, AFL-CIO	
and	
OREGON SCHOOL DISTRICT (Educational Assistants)	

APPEARANCES:

For the Oregon School District: Douglas E. Witte, Melli, Walker, Pease & Ruhly, S.C., 119 Martin Luther King, Jr. Blvd., Madison, Wisconsin.

For the Wisconsin Council 40, Local 60, AFSCME, AFL-CIO: Thomas Larsen, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 1734 Arrowhead Drive, Beloit, Wisconsin.

INTRODUCTION

On November 16, 1995 Wisconsin Council 40, Local 60, AFSCME, AFL-CIO (hereafter referred to as the "Union") petitioned the Wisconsin Employment Relations Commission (WERC), stating that an impasse existed between it and Oregon School District (hereafter referred to as the "District" or "Employer") in their collective bargaining over an initial

agreement, to last for three years, covering a collective bargaining unit of educational assistants The Union had been certified in 1994 as the exclusive collective bargaining representative of the unit, which consists of all regular full-time and regular part-time educational assistants employed by the District. Approximately 69 persons were members of the unit.

Following attempts to mediate by WERC, by May 1,1996 the parties had submitted their final offers. On May 8,1996 WERC certified that the parties were at an impasse and ordered them to proceed to interest arbitration in accordance with Sec. 111.70 (4) (cm) 6. and 7. of the Municipal Employment Relations Act (MERA). On May 29, 1996 the undersigned was appointed arbitrator by the WERC to issue a final and binding award, resolving the impasse between the parties by selecting either the total final offer of the Union or the total final offer of the District.

As mutually agreed to, the parties appeared at a hearing on Tuesday, September 24, 1996 in the Oregon School District Services Offices, 200 North Main Street, Oregon, Wisconsin, beginning at 10:00 a.m. Each was offered full opportunity to present oral and written testimony, including examination and cross-examination of sworn witnesses. A verbatim transcript of the hearing was made and received by the arbitrator on October 25, 1996. By agreement at the hearing , both parties submitted initial briefs and reply briefs. All briefs reached the arbitrator by January 29, 1997, at which time the record was closed.

One witness testified at the hearing: Roger Price, Business Manager, Oregon School District.

It should be noted that Oregon School District covers not only the town and village of Oregon but also the town of Brooklyn and a portion of the city of Fitchburg. According to the District's 1996-1997 budget estimates, slightly more than 3,000 pupils are enrolled in the District. (Er. ex. No. 3, p. 2) The Union represents several separate collective bargaining units of support staff, namely, the custodians, food service workers, secretaries, and educational assistants, in all about 160 employees. The teachers belong to a separate collective bargaining unit represented by the Oregon Education Association. The unit of educational assistants first gained the right to bargain collectively following a representation election in 1964. As already noted, collective bargaining commenced in November 1995.

THE FINAL OFFERS

The parties stipulate that they have reached tentative agreement on all terms of their first collective bargaining agreement with two exceptions as explained below. This three-year agreement would take effect as of July 1,1994 and continue through June 30, 1997. The two matters of disagreement deal with provisions for retirement through a Tax Sheltered Annuity (TSA) plan and for the steps and level of a salary structure. (See appendix.)

The final offer of the Union regarding retirement provides that employees scheduled at

least 600 hours per year would participate in a TSA plan, with the District adding to the employee's salary placed in an employee's tax sheltered annuity an amount calculated as follows:

1994-1995	3% of earnings
1995-1996	6% of earnings
1996-1997	9% of earnings

The Union's final offer also proposes a minimum salary schedule for each of the three years, divided into classifications of licensed and non-licensed educational assistants. Each of these classifications would have a starting wage rate and then receive specified increases in each of the succeeding four years of service. Also, the minimum salary schedule would be raised by a specified amount each year of the collective bargaining agreement. No employee, licensed or non-licensed, on or off the schedule, would receive less than a 4% raise for 1994-1995, less than a 2% raise for 1995-1996, and less than a 2% raise for 1996-1997.

The final offer of the District includes the following for the TSA plan:

1994-1995	no change in any contribution made to an individual employee's account
1995-1996	3.1% of earnings
1996-1997	3.8% of earnings

The District's final offer also proposes a minimum salary schedule divided into the two classifications of licensed and non-licensed educational assistants. For each of the three years, the starting rates for each classification would be the same as those proposed by the Union, but there would be raises of a specified amount similar to the Union's proposed increases after one, two, and three years of service but only after two, five, and ten years of service. Thus, the highest rates on the 1996-1997 schedule would be reached after four years of service in the Union's proposed schedule, while they would be attained upon ten years of service under the District's proposed schedule. No employee, licensed or unlicensed, on or off the schedule, would receive less than a 3.8% raise for the first year of the collective bargaining agreement, 2% for the second year, and 2% for the third year.

Initially the parties were also in disagreement over the wording of the union recognition clause to be contained in the agreement. At the hearing and in the briefs, both parties gave assurances to the arbitrator that this matter is no longer in dispute even though it still appears in their final offer statements. (Tr. pp 7-9,11; Er. br., p.1, fn.1)

The parties do not disagree over the cost estimates of the total packages. Based on the "cast forward" method of estimation, the total annual cost of each package is as follows:

	Union	District
1994-1995	10.51%	3.89%
1995-1996	6.38%	3.79%
1996-1997	6.79%	3.81%

Taken together, the total difference in cost for the three years is approximately $203,000. (Er. ex. No.18)

APPLICABLE STATUTORY CRITERIA

As the parties began to engage in their first collective bargaining late1994 and early 1995, the State of Wisconsin embarked upon revising the law regarding interest arbitration. On July 29, 1995, the newly passed 1995 Wisconsin Act 27 went into effect, adopting , among other things, a new Sec.111.70 (4) (cm) 6. and 7. of the MERA. These revisions changed the criteria or factors to be considered by the arbitrator in an interest arbitration such as the instant case.

Subd.7 of the 1995 Act established "factor given greatest weight." This states: "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 legislative or administrative officer, body or agency that places limitations on expenditures that may be made or revenue 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 panel's decision."

Subd.7 g. of the Act established "factor given greater weight." This states: "In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall consider and shall give greater weight to economic conditions of the municipal employer than to any of the factors specified in subd.7 r."

Subd. 7 r. of the Act listed "other factors considered." These are essentially the criteria set forth in the previous interest arbitration law under MERA. Each is taken up later. Although the law does not rank "other factors" in any particular order, prominent among them are factors of comparability with employees performing similar services, with other public employees generally, and with private employees generally, and of the cost of living.

At the hearing and in the briefs, neither party registered objection to following the new criteria or factors established by the1995 Wisconsin Act 27. As mentioned, even though collective bargaining for a new agreement in the instant case had begun before the Act went into effect, the petition for interest arbitration was filed after its effective date.

THE "GREATEST WEIGHT" FACTOR

The state law which places limitations on expenditures that may be made or revenues that may be collected by a municipal employer is Wisconsin Act 16 adopted in 1993. This law "capped per pupil expenditures derived from general (state) aids and from certain tax levies." (See American Arbitration Association Case 51 390 00496 95S, Harvey A. Nathan, Arbitrator, p.16). Under the caps set by the state, school districts were allowed to increase per pupil revenue by $190 in 1993-94 (or rate of inflation, whichever was higher), by $194.37 in 1994-95, $200 in 1995-96, and $206 in 1996-97.

1993 Wisconsin Act 16 also made notable changes in impasse procedures for collective bargaining units of professional teachers, especially establishing "Qualified Economic Offers" (QEO). If a school district made a QEO that consisted of an increase in total compensation over the base year, including fringe benefits, of at least 3.8% per year, the district could avoid interest arbitration on all economic issues. (Idem.,Nathan p. 17)

The cap set for the annual increase in per pupil costs multiplied by average enrollment over the previous three years, along with other variables, helps determine the limit on how much revenue a district may collect and the amount of expenditures a district may make in the given year. If expenditures exceed this limit, the district must go to a referendum for authorization to spend the excess. As the District argues in the instant case, the limitations set by 1993 Wisconsin Act 16 have forced school districts to be extremely prudent in budgeting revenues collected, especially with regard to expenditures for salaries and fringe benefits as they take up 75 to 80% of the total. (Er. br. p.10-15). According to Arbitrator Nathan, "All of the District's financial needs must be examined with an eye on the realities of the per pupil caps put in place by the state government." (op.cit., Nathan, p.50)

The District claims that the wage increase in its final offer "takes into account the impact of the state imposed revenue caps on the District's overall budget." Its total proposal, the District states, "reflects an effort to balance competing demands not only from all of its employees for more money and better benefits but also demands for improved maintenance, more initiatives, more investment in technology and numerous other demands including those of the taxpayers to control spending and to operate a fundamentally and fiscally sound school district." (Er. br. p.2) In the District's estimation, the Union's final offer would require cuts in other programs and services unless there are authorizing referenda. Further, since this is an initial agreement, it holds that a pattern will be set for the future, which will be difficult to fund in light of the annual revenue caps.

As the District points out, with the per pupil revenue caps announced by the state, the amount of new money allowed for the District for each of the three years is approximately 3.03% (Er. br. p 10). While the state makes no requirements as to how that money may be allocated, or even for collecting all or some of the allowable increase, the District states that it has chosen to increase spending by all of the 3.03% for each of the three years. According to the District, during the three years the new money has been allocated in varying percentage

increases from 0% to 50.98% among the various categories of expenditure categories; and the allocations to the categories have varied from year to year. (Er. br. pp. 12-13). All of this, the District claims, is based on careful thought and planning, such as the use of multi-year budgeting; and as a result, in order to maintain quality education, each category of expenditure must receive funding at least from time to time even though unfunded some years.

Categories of expenditures listed by the District in its budget issued each year and most relevant for the instant case include: salaries, fringes, initiatives, utilities, pupil travel, interest expense, insurances, technology, maintenance and operations, transfers, balance or miscellaneous, contingency, and community service. However, it should be noted that there are still other ways of categorizing the District's expenditures. (Er. ex. Nos.1-6; Un. ex. Nos. 7-11)

For each of the three years, the District states, it has budgeted as a matter of Board of Education policy a 3.8% increase for the categories of salaries and fringes. Thus, it notes, all other categories of expenditures together received less than 3.03% per year of new money. (Er. br. p.15) In contrast, the District points out, the Union's final offer would require even less new money for the other areas without suggesting where the cuts should be made. (Er. br. p.16)

While the District's budget reports indicate an excess of revenues over expenditures, or a budget fund balance or "equity", of $172,390 for 1994-95, $522,999 for 1995-96, and $365,976 for 1996-97, the District denies that these are uncommitted "surpluses," claiming that that term is a misnomer. (Un. ex. No. 8; Er. br. p.17) According to the District, these excesses were not planned and, in fact, help to decrease some expenses, particularly interest payments for funds borrowed as the result of an uneven monthly cash flow, and to improve the District's bond rating. Referring to Arbitrator Nathan's analysis in the Madison teachers case, the District argues that permanent increases in salaries and fringe benefits in the future should be met by new money rather than unspent fund balances. (Er. br. p. 20) If that new money exceeds what is permitted under revenue caps, the District is not optimistic that it would gain public support through referenda. The District reiterates: "If the salary and fringe benefits costs are increased the amount of money for other programs will be lessened even further." It maintains that offering even 3.8% wage and fringe benefit increase packages each of the three years has required careful budgeting and decreases in other categories.(Er. br. p.21)

For its part, the Union has little to say in its initial brief regarding the "greatest weight" factor. It does emphasize that the the District has had a budget "surplus" for each of the three years, and claims that it was even larger than shown on the report for 1995-96 because the initial budget planned on a deficit of $100,000 that did not materialize. One reason for the increases in the District's fund balance, the Union holds, is that the bargaining unit in the instant case has not had a general wage increase since July 1993. (Un.br. p.7)

In reply, the District points out that there have been only a few interest arbitration cases which have been decided using the new statutory criteria of 1995 Wisconsin Act 27 and that in those decisions there was often no reasoning given for ignoring the "greatest weight" factor. Where there was such reasoning, the District points out, either the financial difference between

the final offers was considered insignificant or the Union's final offer could be paid out of budget fund balances without any significant adverse affects on the district budgets. (Er. rep. br. pp. 2-3) The District argues that the $203,000 cost difference over the three years between the final offers in the instant case is far larger than in the other cases, requiring the District to make "significant reallocations of budget priorities." (Er. reply br. p. 3)

The District estimates that its budget fund balances provide far less leeway for granting the Union's final offer than would be expected for the average district in Wisconsin. These balances, according to the District, are 6.78% of its budget for 1993-94, 7.25% for 1994-95, 9.23% for 1995-96, and 10.27% for 1996-97 -- considerably below the 14% to 17% range cited as recommended by the Department of Public Instruction (DPI). Any further decrease in these percentages, the District implies, would run the risk of incurring deficits, as the District did prior to 1993-94. (Er. rep. br. pp.3-4) As it is, the District says, these balances are already lower than shown in the budget reports because they do not include increases for either the units of secretaries and the educational assistants, both of which were in interest arbitration. With the recent award in favor of the secretaries, the District calculates that the fund balance is already $165,000 less than shown in the report. (Er. rep. br. p. 5)

The District alleges that the situation is even more stringent than estimated because the costing does not include two additional holidays and the provision of both health insurance and the TSA plan in the new collective bargaining agreement for the educational assistants. (Er. rep. br. p.7) In the District's judgment, the final offer of the Union would require the District to spend more than is permitted and drive the District's fund balance " to an unacceptable" level. (Er. rep. br. 9)

In the Union's reply brief, explicit mention is made of the expenditures cap imposed by the state on school districts. (Un. rep. br. p.2) The Union argues that the District has accumulated sufficient resources to meet the Union's final offer. It further maintains that the "greatest weight" factor is irrelevant for a district which accumulates enough to meet union final offers and is still able to generate significant surpluses each year. It states: " While the revenue caps limit the ability to raise new monies, it does not prevent the District from expending funds it already has." Also, it holds that unlike a case involving the teachers, who account for a majority of a district's budget, the instant case involves a very small part of the total budget. (Un. rep. br. p.3)

The arbitrator finds that neither party prevails with regard to the "greatest weight" factor. Both have taken strong positions, but neither is entirely convincing in their arguments. While the District makes threatening noises about cutting other budget items and even running deficits, it does not point out the concrete steps it would actually have to take should the Union offer be selected. It is not possible for the arbitrator to speculate as to the District's likely budgetary action in the future, especially as increases in per pupil costs and total budgets have been rising each year, as well as unplanned annual budget fund balances continue. Certainly, the District's final offer is far more cautious than the Union's, but it also could be much too low. The District may have a strong point in claiming that the budget fund balances are already below the safety

margins recommended by the DPI. However, it fails to explain the rationale for the DPI recommendation and how it applies to the instant case. The warnings the District makes are hypothetical.

With the more burdensome Union proposal than the District offer, especially for the first year, the arbitrator agrees with the District that the Union should show how its offer may impact future budgets. The Union has not demonstrated in concrete terms that its proposal, even though affecting a small proportion of the District employees, will not threaten the budget fund balances so adversely that other deserving areas of the budget will have to be unduely cut back or sacrificed. Those estimates are lacking in the Union's argument as well as in the District's. Its argument also is hypothetical.

Since each party essentially engages in unfounded speculation as to the budgetary outcome should the other party's offer prevail, the arbitrator concludes that the revenue and expenditure caps as the factor of greatest weight favors neither.

THE "GREATER WEIGHT" FACTOR

There is no evidence that the Oregon School District suffers from such adverse economic conditions that it faces a financial crisis. Indeed, the District appears to be enjoying the level of economic well-being for which Dane County as a whole is well known. Unemployment and inflation rates are at historically low levels. The District itself has reasonably high income levels, property values, and per pupil expenditures. (Un. ex. Nos. 5, 6, 11) Neither party argues that District economic conditions are either deteriorating or overheating.

In its brief, the District appears to discount the importance of its economic conditions by saying that "whether a particular school district has a robust economy or a poor economy makes no difference under the revenue caps." (Er. br. p.26) It emphasizes that even with a robust economy the District has no more than 3.03% of new money to spend. Thus, the District returns to its argument under the greatest weight factor that adopting the Union offer would result in cuts in other budgetary areas. It does not discuss how this factor is of greater weight than the "other" factors.

The Union makes virtually no reference to local economic conditions in its brief other than to note the budget fund balance "surpluses" in each of three years, the increases in general state aid and equalized value, and decrease in the property tax mill rate. (Un. br. p. 7)

While data on economic conditions in the District are extremely sparse, there is no reason to believe that any financial stringency would emerge from that factor unless there were a serious unforeseen downturn in the local economy. The arbitrator concludes as a result that the current economic conditions favor the larger package of the Union rather than the smaller package of the District. They are strong enough to accommodate the Union's proposal.

OTHER FACTORS

As already mentioned,Subd. 7 r. of the 1995 law lists ten additional factors (a to j) for consideration by the arbitrator. None is to receive as much weight as either the revenue caps or economic conditions. However, the statute is not clear whether, taken together, they can outweigh either or both of those factors. Each of the other factors is examined in turn below.

1. "The lawful authority of the municipal employer." (7 r.a.)

Neither party has taken a position on this factor other than the District noting that its lawful authority is affected by the revenue caps and qualified economic offers. The arbitrator finds that this factor favors the final offer of neither party.

2. "Stipulation of the parties." (7 r. b.)

As stated by both parties, all other provisions of the collective bargaining agreement but one have been stipulated . The one exception is the clause on union recognition, which both parties agree is not a matter for arbitration, since there is agreement on the substance even though the wording in the final offers is different. (Tr. pp.7-9, 11) The arbitrator finds that this factor does not favor one party's final offer or the other's.

3. "The interests and welfare of the public and financial ability of the unit of government to meet the costs of settlement." (7 r. c.)

The District maintains that each final offer has to be considered in light of the revenue caps and the effect upon the District's bond rating if expenditures exceed revenues. It also points out that it has had no difficulty in attracting and retaining qualified educational assistants. (Er. br. pp.31-32)

The position of the Union regarding this factor is that the District has treated the educational assistants unfairly compared to other groups in the District's employ and that the District has sufficient resources, now and in the future, to meet the Union's final offer. The Union claims that in the instant case revenue caps and spending limits are irrelevant in light of the budgetary surpluses accumulated by the District and the smallness of the educational assistants unit. It also holds that the QEO provision in the statute was not intended to serve as policy for all school employees in addition to the teachers. (Un. rep. br. pp.1-4)

In the opinion of this arbitrator, neither party squarely addresses the issue of the interests and welfare of the public, while the issue of financial ability has already been discussed under the greatest weight factor. Thus, as in the case of the greatest weight factor, this factor favors neither party.

4. "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 employees performing similar services." (7 r. d.)

The District interprets this factor as dealing with the issue of "external comparables", that is, the choice of other school districts for making comparisons with the final offers in the Oregon School District. It claims also that the 1995 statute aims to change the system of interest arbitration from one "driven by comparables." (Er. br. p.32)

The parties are sharply divided over the question of which external comparables should be chosen. The District maintains that the most appropriate external comparables are the school districts, whether organized by a union or not, whether in or out of Dane County, that are contiguous to the Oregon School District, excluding the Madison Metropolitan School District, since it is so large, and the Belleville and Albany School Districts, since they are so small. It would also include as secondary comparables several districts which are not contiguous but both unionized and non-union members of the athletic conference to which the Oregon School District belongs. Several of these are outside Dane County. (Er. ex. No.22)

For its part, the Union holds that only the unionized school districts in Dane County, which includes the Madison district, should make up the comparable group. (Un. ex.No. 5).

In the parties' respective configurations for the comparables, there is an overlap of only three school districts outside of the Oregon district (McFarland, Monona Grove, and Verona).

It appears that much of the disagreement over the choice of comparables is based on the question of what is the relevant labor market. While no precise answer can be given to this question, the arbitrator is of the opinion that in the instant case the role of the Madison district is overwhelming in affecting the labor market in question and, therefore, the external comparables should include Madison. On the other hand, the arbitrator also believes that all contiguous districts, whether unionized or not (including Belleville and Albany), whether in or out of Dane County, exert an influence on Oregon's labor market and should be included in the group. Therefore, the positions of both parties in this matter are rejected. Each party proposes a group unduly biased toward its own final offer. What is needed is agreement by the parties upon some mix of each party's configuration of districts. Lacking such an agreement and the relevant data, neither party prevails regarding this factor.

5. "Comparison of the 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." (7 r. e.)

The District focuses here on comparisons with other groups in the District's employ, notably the teachers, food service and custodial employees, nonrepresented employees, and the secretaries. It maintains that the educational assistants receive the same benefits and employment conditions as the other groups, but that their wages vary with skills. The District emphasizes that its final offer of approximately a 3.8% yearly increase package is about the same as or more than

the packages received or offered to other support staff as well as the teachers and administrators. It rejects the Union's comparison with the unit of Oregon village hall personnel because of the lack of job descriptions for such employees. (Er. br. pp.42-43)

The position of the District in regard to this factor appears to be based to a considerable extent upon the policy decision of the Oregon School Board to provide each group of employees with about the same increase package of 3.8% per year. This percentage increase appears to be derived from the 3.8% package specified in the 1993 statute for QEOs for teachers. The District argues that this increase represents the State's public policy for all school employees. (Er. br. p.22-23-) It also claims that its final offer is generous in that a 3.8% package increase exceeds the 3.03% of new money under the formula for revenue caps and that as a result other budgetary areas, notably technology, have had to be cut to make room for the increases in salaries and fringe benefits. (Er. rep. br. pp.5-6)

In response, the Union asserts that its final offer only brings the educational assistants closer to the wage and benefit levels of the other employee groups. It notes that for the first time the educational assistants will receive both health and retirement benefits although still behind most of the others with respect to the latter. (Un. rep. br. pp.1-2) It rejects the idea that QEO requirements apply to support staff units as having no statutory basis. (Un.rep. br. p.4) The Union also takes issue with the District's cost estimates for 1995-1996 and 1996-1997 for the food service and custodial employees units, claiming that they are too low and utilize methods of estimation different from the "cast forward" method applied to the costing for the educational assistants.

The arbitrator slightly favors the Union final offer in regard to this factor of internal comparisons. He agrees that there is no statutory basis for a policy of 3.8% package increases for all groups of school employees in addition to the teachers. There can be variations in the size of packages among the employee units just as there can be variations in percentage allocations to other budgetary items. There is no tight relationship between the revenue caps and total compensation for selected employee units, especially when they are relatively small. Each collective bargaining unit may be treated differentially in light of history and experience. It is clear that the educational assistants have lagged behind the other groups to an unfair degree both with respect to wage levels and levels of retirement benefits. The Union offer corrects this inequity, especially with regard to the TSA plan, more than does the District offer.

6. "Comparison of the 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 comparable communities." (7 r. f.)

Neither party offered evidence or argument in regard to this factor. It favors neither.

7. "The average consumer prices for goods and services, commonly known as the cost of living." (7 r. g.)

For this criterion, the District utilizes the Consumer Price Index for urban wage earners and clerical workers and shows that from 1988 to the first half of 1996, the average annual increase in the index has dropped from 5.3% to less than 2.9%. In the three years in question in the instant case, the District further points out, the average increase has been between 2.5% and 2.9%. Thus, the District argues that, since the increase represented by its final offer as a package is much closer to, but still above, the rise in the cost of living than is the Union's, its offer should be favored. Citing opinions in other arbitration cases, the District also maintains that the total package cost, rather than wages alone, is the appropriate method to measure the value of a final offer against the cost of living because the latter includes items in the total package. It emphasizes that the District offer is one to 2.5% above the Consumer Price Index. (Er. br. pp. 44-45; Er. rep. br p. 6)

Again, in response, the Union takes issue with the District in utilizing the cost of the total compensation package as a measure against the cost of living, especially in the case of a first collective bargaining agreement where many of the provisions are adopted on the basis of attaining equality with other groups. The Union prefers to use increases in take home pay for this factor, as held in still other arbitration cases. (Un. rep. br. p. 6)

In the arbitrator's view, this is a non-issue in the instant case as both final offers more than adequately meet the increases in the cost of living. The statute does not specify that the final offer closer to the cost of living should be favored.

8. "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." (7 r. h.)

The District points out that the educational assistants bargaining unit compares favorably in overall compensation and benefits with other employees performing similar work in the District and in other communities. It stresses the considerable gains that have been made since the time before the educational assistants were unionized. Most notable, the District says, are two additional paid holidays, health insurance, the TSA plan, just cause after 90 work days with a grievance procedure, union leave for conferences, and fair share and dues deduction. (Er. br. pp.45-46)

For its part, the Union makes no direct reference to this factor. However, without offering any analysis, the Union maintains that, even with the Union's final offer, the educational assistants will continue to lag behind other groups in the School District's employ. (Un. rep. br. p. 2)

The arbitrator finds that the weight of argument favors the District in regard to this factor.

9. "Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings." (7 r.i.)

As noted earlier, the changes made by the passage of 1995 Wisconsin Act 27 altered the criteria to be used in interest arbitration. These have been discussed.

Another development was the issuance of an interest arbitration award on November 18,1996 in the case of the Union vs the District regarding the secretaries collective bargaining unit (Case 24, No.53384 INT/ARB-7779, Decision No. 28724). The outcome of that case has had no bearing on the instant case, since the factors used were those of the previous statute.

The arbitrator finds that this factor favors neither party.

10. "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." (7 r. j.)

The arbitrator finds no other such factors and therefore this factor as a whole favors neither party.

CONCLUSION

Few of the statutory factors clearly weigh in favor of one final offer or the other. In analyzing the greatest weight factor, both parties fall short in supporting their respective positions with concrete evidence as to future outcomes. Since the parties' respective arguments are so hypothetical, the greatest weight factor is ruled out as a decisive consideration in the instant case. With two exceptions, all the "other" factors, too, carry no weight in favor of one party or the other because they either lack supporting data or they equally favor both parties.

Only three of the factors, therefore, support the final offer of one party over the other's. First, the greater weight factor favors the Union, since economic conditions in the District's jurisdiction continue to strengthen the District's ability to pay as in the case of the budget fund surpluses of the past three years. Of the two "other" factors, one, overall compensation, favors the District; while the other, the internal wage and benefit comparisons, prevails for the Union.

These conclusions narrowly support the final offer of the Union.

AWARD

The Union's final offer is selected.

Repectfully submitted March 10, 1997

SOLOMON. B. LEVINE

APPENDIX

FINAL OFFER OF THE UNION FOR CHANGES TO THE COLLECTIVE BARGAINING AGREEMENT BETWEEN THE OREGON SCHOOL DISTRICT AND LOCAL 60, AFSCME, AFL-CIO (Educational Assistants Bargaining Unit)

2 March 1996

The Union reserves the right to make additions, modifications amendments, deletions or corrections to these proposals No agreement is final until approved by ratification by the membership No portions of these proposals shall be deemed a waiver of any existing rights, all proposals regarding existing rights are merely attempts to codify existing conditions Unless otherwise provided all proposals cover all members of the bargaining unit

1. The tentative agreements of the parties.

2. Article 3, Recognition; to provide as follows:

"Pursuant to a representation election held under 111.70, the employer recognizes the Union as the exclusive bargaining representative of all regular full-time and regular part-time educational employees employed by the Oregon School District, excluding managerial, supervisory, confidential and all other employees, pursuant to WERC certification (Decision No. 28179-A) dated 31 October 1994 as amended 24 November 1995 (Decision No. 28179-B). The scope of the bargaining unit is subject to determination by the WERC. This provision is set forth to describe the bargaining representative and the bargaining unit covered by the terms of this Agreement.

3. Article 12, Salary and Classification, Insurance and Retirement (6. Retirement)
   1994-95 3% of earnings
   1995-96 6% of earnings
   1996-97 9% of earnings

4. Wage Schedule as follows:

1994-95 Minimum Salary Schedule

Class	Start	1 year	2 years	3 years	4 years
Licensed	6.80	6.90	7.20	7.60	8.10
Non-Licensed	5.95	6.05	6.35	6.75	7.25

1995-96 Minimum Salary Schedule

Class	Start	1 year	2 years	3 years	4 years
Licensed	6.94	7.04	7.34	7.74	8.24
Non-Licensed	6.08	6.18	6.48	6.88	7.38

1996-97 Minimum Salary Schedule

Class	Start	1 year	2 years	3 years	4 years
Licensed	7.09	7.19	7.49	7.89	8.39
Non-Licensed	6.22	6.32	6.62	7.02	7.52

Minimum increase for 1994-95 = 4%
Minimum increase for 1995-96 = 2%
Minimum increase for 1996-97 = 2%

5. Term of Agreement from 7/1/94 through 6/30/97.

MELLI, WALKER, PEASE & RUHLY, S.C.

JOSEPH A. MELLI
JACK D WALKER
JAMES K PEASE, JR
JAMES K. RUHLY
THOMAS R CRONE
PHILIP J BRADBURY
JOANN M HART
SUSAN C SHEERAN
DOUGLAS E WITTE
DANA J ERLANDSEN
CHRISTOPHER B HUGHES
LISA A POLINSKE
DEVON R BAUMBACH

ATTORNEYS AT LAW
SUITE 600 INSURANCE BUILDING
119 MARTIN LUTHER KING, JR BOULEVARD
P O BOX 1664
MADISON, WISCONSIN 53701-1664
(608) 257-4812
TELEFAX (608) 258-7470

JOHN H SHIELS
(1910-1995)

February 27, 1996

Mr. Thomas L. Yaeger
Wisconsin Employment Relations
Commission
14 West Mifflin Street
P.O. Box 7870
Madison, WI 53707-7870

Re: Oregon School District
(Educational Assistants)
Case 24, No. 53384 INT/ARB-7779

Dear Mr. Yaeger:

Pursuant to your request the District hereby clarifies its Initial Final Offer which was hand delivered to you on February 13, 1996. The parties have a tentative agreement on all issues except the following (I have indicated where in the proposed Collective Bargaining Agreement, dated February 12, 1996 the District's position can be found):

1. Article III - Recognition, page 2.

2. Article XII - Salary And Classification, Insurance and Retirement. The wage scale and grid on page 14 is the District's proposal.

3. Article XII - Retirement. The District proposes the percentages set forth at pages 16-17 of its proposal as the amount of retirement contribution.

If you have any questions about this clarification, please do not hesitate to contact me.

Very truly yours,

Douglas E. Witte

DEW/lgs

cc: Roger Price
Thomas Larsen

should be restrained by a court, the remainder of this Agreement shall not be affected thereby, and the parties shall enter into collective bargaining for the purpose of arriving at a mutually satisfactory replacement for such Article or Section.

Article III. Recognition

Pursuant to a representation election held under 111.70, the employer recognizes the Union as the exclusive bargaining representative of all Educational Assistant employees employed by the Oregon School District, excluding supervisory, managerial, confidential and all other employees. The scope of the bargaining unit is subject to determination by the WERC. This provision is set forth to describe the bargaining representative and the bargaining unit covered by the terms of this Agreement.

Article IV. Management Rights

1. Except as otherwise specially provided or limited by the express provisions of this Agreement, the Employer retains and reserves unto itself, without limitations, all powers, rights, authority, duties and responsibilities conferred upon and vested in it by law.

2. The foregoing reservations of rights includes, but is not limited to the right:

--to direct all operations of the school system;

--to hire;

--to introduce new or improved methods;

--to maintain the efficiency of the school district operations;

--to establish reasonable work rules and schedules of work;

--to promote, transfer, assign and supervise employees on positions within the school system;

--to suspend, discipline or discharge employees consistent with other provisions of this agreement;

--to layoff employees

--to take action necessary to comply with state or federal law;

--to contract out for goods or services provided the Union receives advance written notice of such proposed action if it affects unit employees' wages, hours, and conditions of employment. The Employer agrees to bargain the impact of such contracting.

If snow day(s) is required to be made up, employees will be expected to work and will receive compensation in the form of returned sick leave day(s).

g. Jury Duty

Employees called for jury duty will be granted leave. There shall be no deduction from any accumulation of sick leave for time spent on jury duty. This leave will be at full pay less the amount of pay received from the court. If the amount of pay received from the court is greater than full pay, the employee is entitled to the greater amount.

Article XII. Salary and Classification, Insurance and Retirement

1. Salary and Classification.

1994-95

		0	0 1	0.3	0.4	
	start	1 year	2 year	5 year	10 year	min
Lisc	6 80	6.80	6 90	7.20	7 60	3.80%
Non-L	5 95	5.95	6 05	6 35	6 75	3.80%

1995-96

		0	0.1	0.3	0 4	
	start	1 year	2 year	5 year	10 year	min
Lisc	6.94	6.94	7 04	7.34	7.74	2.00%
Non-L	6.08	6.08	6.18	6 48	6.88	2.00%

1996-97

		0	0.1	0.3	0.4	
	start	1 year	2 year	5 year	10 year	min
Lisc	7.09	7 09	7.19	7 49	7.89	2.00%
Non-L	6 22	6.22	6 32	6.62	7.02	2.00%

2. Payday

In accordance with district payroll practices, wages will be paid on alternate Fridays. Payments will be made through automatic deposit, with notice of deposit received in sealed envelopes.

When Friday is a legal holiday, payment will be made on the first non-holiday before the payday.

3. Overtime/Call-in Pay

a. Employees required to return to the work site after completion of their workday (or on day not scheduled to work) shall receive a minimum of two (2) hour's pay

rsons in Wisconsin, the Board reserves the right to reopen the provisions of the contract which provide for health insurance for employees.

(4) The employer will fund the deductible (100/200) in 1994-95. Thereafter the deductible will be the responsibility of the employee.

b. Group Life Insurance

The Board agrees to pay up to maximum of 50% of the cost of a life insurance plan similar or equal to the plan in effect as of July 1, 1994.

c. Dental Insurance

The Board agrees to pay 90% of the premium for a single or 90% of the premium for a family for dental group insurance plan similar or equal to the plan in effect as of July 1, 1994.

d. Long Term Disability Insurance

The Board agrees to pay 100% of the cost per person per month for a long term disability insurance similar or equal to the plan in effect as of July 1, 1994.

e. Insurance Committee

The Insurance Committee will study health and dental options. This committee will be composed of the following representatives: Board of Education-1; Oregon Education Association-6 Association members; Administration-1; AFSCME-1; Educational Assistants-1; Food Service-1; Custodial-1; Secretaries-1; Retirees-1; Central Office-1; Personnel-1. The Committee will develop recommendations to the BOE, AFSCME, & OEA Negotiations Teams.

5. Early Retirement

Employees with a minimum of ten years seniority and who reach age 55 on or before the day of retirement, will be provided full health and dental insurance benefits for three years or to age 65, whichever comes first. All coverages are contingent upon the carrier's willingness to provide said coverage.

6. Retirement

Employees scheduled at least 600 hours per year may elect to participate in a Tax Sheltered Annuity plan by contributing a minimum of $5.00 per paycheck. The District will add to the employee's salary to be put in the employee's tax sheltered annuity an amount calculated to the % of earnings as follows:

1994-1995 same as per contract

19[illegible] 1996	3.1%
199[illegible]-1997	3.8%

The District Office should be notified prior to the start of the next contract year of any changes in participation in this program.

If any of the support staff group is joined into the State Retirement System, the employee's represented in this agreement will be included.

The retirement contributions above will be allocated to meet the employee's and employer's contribution at the combined percentage in place at the time of implementation. The balance of the contribution required will be the responsibility of the employee.

Article XIII. Grievance Procedure

1. Grievance. A grievance is defined as a complaint regarding the interpretation or application of a specific provision of this Agreement.

2. Procedure. An earnest effort shall be made to settle any differences informally between the employee(s) and immediate supervisor. Grievances shall be processed in the manner set forth below. Time limits set forth shall be exclusive of Saturdays, Sundays, and holidays. If a grievance is not filed or appealed within the time limit stated, it will be considered resolved. Time limits may be waived by written agreement of the parties. All employer responses will be in writing.

   Step 1. The employee shall file the grievance in writing with the Administrator/Director within fifteen (15) days of the date of the event giving rise to the grievance or knowledge thereof.

   The grievance shall include:

   - circumstances upon which the grievance is based
   - the issue(s) involved
   - provisions of the Agreement allegedly violated
   - the remedy sought
   - the aggrieved employee's signature

   Step 2. If the grievance is not settled to the grievant's satisfaction at Step 1 within fifteen (15) days from the date the written response was received from the Administrator/Director, the grievant or the Union may appeal the grievance in writing with the Educational Assistant Coordinator.