BEFORE THE ARBITRATOR

AUG 14 1997

In the Matter of the Arbitration Between

MADISON TEACHERS, INC.

and

MADISON METROPOLITAN
SCHOOL DISTRICT

Case 271
No. 54438
Int/Arb-8018
Decision No. 28907-A

Appearances: Lee Cullen for the Union
Cullen, Weston, Pines & Bach

Ann L. Weiland for the District

Before: Fredric R. Dichter, Arbitrator

DECISION AND AWARD

On January 21, 1997, the Wisconsin Employment Relations Commission, pursuant to Sec. 111.77(4)(b) of the Municipal Employment Relations Act, appointed Fredric R. Dichter to serve as arbitrator to issue a final and binding award. The matter involves an interest dispute between Madison Teachers, hereinafter referred to as the Union and the Madison Metropolitan School District, hereinafter referred to as the District. Hearings were held on April 2, 3 and 15 1997 at which time the parties presented testimony and exhibits. Following the hearing the parties elected to file briefs and reply briefs. Those briefs have been received by the arbitrator. The arbitrator has reviewed the testimony, exhibits and briefs and cases cited by the parties in reaching his decision.

ISSUES

The parties reached agreement on most of the items to be

included in the successor agreement. The following are the outstanding issues certified for resolution.[1]

The UNION OFFER:

Wages
$.50 across the Board increase 1996/97.
$.50 across the Board increase 1997/98.

Position Description
Add to Article IV, Section S, a sub-section 3. which would read "Educational assistants who are involuntarily reassigned to positions requiring DPI certification will have the fee for same paid by the District."

Joint Study Committee
Add to Article VIII a new Section H to read:
The parties shall each appoint four (4) individuals to a joint committee which will have as its purpose assessing turnover and retention problems within the bargaining unit. The committee will examine established factors influencing turnover and retention rates and will make recommendations to MTI and the Board of Education identifying specific strategies to alleviate both recurring and retention of individuals in bargaining unit positions. Said recommendations shall include initiatives concerning recruitment, orientation, training, working conditions, and other initiatives such as professional advancement credit. The committee shall complete its work and report its recommendations to MTI and the Board of Education not later than May 1, 1998."

THE DISTRICT OFFER

Wages
Increase Steps 1-4 $.45 1996-97
Increase Steps 5-13 2.95% 1996-97
Eliminate Step 1 and move all educational assistants at Step 1 to Step 2 effective 8/15/97. All moved employees will have a new anniversary date of 8/15/97.
Increase all steps 2.95% 1997-98.

HEALTH INSURANCE

Article VII, Section B(8) shall be modified to read:
The Board shall offer the educational assistants the option of

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[1] The District also had proposed changing the Title of Handicapped Children's Assistants (HCA) to "Special Education Assistant." During the hearing the Union stipulated to that change. That stipulation is incorporated into this Decision and Award.

membership in any one of the local health maintenance organizations contracted by the District.Once contracted, the District will not cancel an HMO offering without mutual agreement with the Union. The Board shall pay the premiums up to the amount paid for the regular group hospital and surgical insurance but shall not be required to pay any more to such health maintenance organization than it is required to pay under provision VII-B-4.

STATUTORY CRITERIA

The parties have not established their own procedure for resolving impasse over the terms for a new collective bargaining agreement. They have agreed to binding arbitration under the Municipal Employment Relations Act. Section 111.70(4)(cm)7 provides that an arbitrator consider the following in reaching a decision:

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

Section 7g then reads:

> 'Factor given greater weight'...The arbitrator shall consider and give greater weight to economic conditions in the jurisdiction of the municipal employer than to any of the factors specified in subd. 7r.

Section 7r sets forth the other factors an arbitrator must consider:

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

BACKGROUND

The Union represents four different bargaining units in the District. The teachers's Unit is by far the largest. The Union represents substitute teachers in a separate bargaining unit. The third bargaining unit consists of clerical employees. The last unit is the unit involved in this dispute. The unit is comprised of "Educational Assistants". There are 504 employees in the Unit. The main classifications within the Unit are Regular Educational Assistants(EA's), Handicapped Children's Assistants's(HCA'S) and Nursing Assistants. Most of the employees in the unit are employed in the first two classifications. There are 202 regular EA's and

252 HCA's.

All four of the units participate in the Wisconsin Physician Services"(WPS) Health Insurance Plan. All employees in the four bargaining units are required to pay 10% of the premiums for either single or family coverage. The District pays the remaining 90%. The employees also pre-pay a deductible of $250 for single coverage and $500 for family coverage. The deductible is taken from the employees pay check pro-rated each month. In addition to the WPS plan, employees in all of the units have the option of joining the "Group Health Care"(GHC) Health Maintenance Organization. Over 50% of the employees in this bargaining unit have chosen this alternative. This is the only bargaining unit where the number of employees enrolled in the HMO exceeds the number enrolled in WPS. No other HMO is authorized under this or any of the three other Collective Bargaining Agreements. Employees are permitted to annually change their choice of plan. They may go from the WPS Plan to the GHC Plan or visa-versa.

The hourly wages for the employees in this bargaining unit are the lowest of the four bargaining units. In addition, a large percentage of the employees in the unit work part-time. The average number of hours worked by employees in this unit is 26.2 hour per week. All of the employees work is confined to the school year.

All of the above has had a direct impact upon the amount of turnover within the bargaining unit. Since 1992, over 1/2 of the bargaining unit has left, and over 80% of those that left quit, rather than retired. In 1995-6, 64 employees resigned. The median

length of service of those that resigned is under 2 years. The resignation rate is higher than any other bargaining unit in the School District. The percentage of voluntary quits that come from resignations rather than retiring is also the highest among the bargaining units.

The District and the Union each did surveys of teachers that work with HCA's, the HCA's themselves and former HCA's. While other areas of concern were raised by the respondents to the survey, pay was listed as the second worst aspect of the job, and the prime factor in people leaving their position. In each of the groups surveyed, low pay was cited as the largest reason for the turnover.[2] Testimony at the hearing highlighted the correlation between pay and decisions to leave. It is the prime reason people enter "the state of looking." There is a correlation between the length of employment and the likelihood that one will leave. The longer one is employed, the more their wages grow, and the less likely that they will leave. Conversely, employees recently hired that receive the lowest pay are the ones most likely to consider leaving. Here, the statistics confirm the testimony. Many of those that left their positions were the shorter term employees at the bottom of the wage scale.

Both parties have recognized that there is a turnover problem. Their proposals endeavor to address that issue, although they differ substantially as to the manner in which they do so.

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[2] Unfortunately, but not unexpectedly, the number of responses received from former HCA's was very low. It would be informative to know the precise reason that each HCA left.

DISCUSSION

Wages

In 1995, the starting wage for a regular educational assistant was $7.43 an hour. The wages rise to a maximum of $10.30 for an employee at the beginning of year 13, without longevity. The HCA wage begins at $7.91 and rises to $10.76. Employees also receive longevity increments. A 3% longevity increase is first given at year 13. Longevity rises to 11% at year 27. Thus, the maximum wage that could be earned by an EA is $11.43 and the maximum for an HCA is $11.94.

As discussed earlier, there has been considerable turnover within the bargaining unit. The average wage of the employees is consequently lower than might be expected. The average wage for all of the regular EAs is $8.74. The median wage is $8.35. This figure corresponds to the wages paid at Step 5. The average wage for the HCAs is $9.18, and the median wage is $8.82. That is also the wage paid at Step 5. 36 of the 204 regular EAs are at step 1 and 3 EAs receive the maximum wage with longevity. 64 EAs are in Step 1 and 2. 42 HCAs are at Step 1 and only 1 is at the maximum. 75 HCAs are at Steps 1 and 2. The total number of Educational Assistants for al classifications at Step 1 is 82. The total at the maximum is 6.

There is no disagreement between the parties as to the cost of each sides proposal. The difference in cost in the two proposals over the two year period to be covered by this agreement is $250,594. The Union's offer is approximately $100,000 more the first year and approximately $150,000 more the second year. Under

the District's offer, employees would receive between a $.25 and a $.45 per hour increase the first year and between $.24 and $.34 per hour increase the second year, except new employees would start at what is now Step 2. The new hire rate would be $8.36 for 1997-8. The Union proposal would increase wages $.50 for everyone. Those receiving longevity would get up to a maximum increase of $.56.

Each of the criteria set forth in Section 111.70(4)(cm)(7) will be examined if that criteria applies to this case. The position of each party, as necessary, on each Statutory criteria will be set forth during the discussion of that criteria. Most interest arbitrators since the passage of the new law have examined the factor to be given the greatest weight first, then the greater weight and then the other criteria. This is a unique case. The proposals of both parties seek to address a specific problem, turnover. The Union proposal varies from the normal percentage across the board increase to a flat amount across the board. Such a proposal gives the lower paid employees a greater percent increase than those at the top of the scale. Similarly, the District proposal provides a combination flat increase with a percentage increase. Because of the unique nature of this issue, I am going to address the other criteria first and then the greatest weight criteria. While I will still give that criteria the value it is accorded by Statute, I believe that addressing the issue in the manner I have described is appropriate here.

Greater Weight

Position of the Association

These same parties were involved in an interest arbitration for the teacher bargaining unit one year ago. The economic conditions have not changed since that arbitration. The exhibits offered in that case were similar to the ones offered here. Arbitrator Nathan found that the economy in Madison was excellent. That has not changed. This factor favors the Union's proposal. There is high employment and low unemployment. The value of houses have increased. All indicators point toward a continued strong local economy,

The local economy benefits from local expenditures. Increased wages for the educational assistants keeps the money within the local economy. The Union's proposal enhances the local economy and thus is favored under this criteria.

Contrary to the assertion of the District, the job growth in the City of Madison is comparable to the job growth in the rest of Dane County. Both have grown a little over 2%. The District when discussing this factor, compared the pay of educational assistants in Madison with the pay of educational assistants in other Districts. This is not the place for that comparison. The appropriate measurement under this criteria is the overall pay levels in Madison as they compare to other communities. Those pay levels compare favorably.

Position of the District

The economy in Madison is good. It is not as good as it was.

The Union's own exhibits show that the creation of new jobs were less in Madison than in the comparable communities.

The wage increases proposed for the EAs is twice as large as the overall average increases for all jobs in Madison. The average increase is slightly above COLA. The Union's proposal here exceeds COLA by a considerable amount. The Board's offer more closely follows the wage pattern in Madison.

The Union points to the high equalized property value in Madison to support its argument. That is not a proper indicator. The District, like all District's in the State, operates under a cap. No matter what the value of property might be, the District is still limited in what it can spend. The property value can play no part in a determination of this factor.

Analysis

The Act requires an arbitrator to evaluate the local economic conditions in the jurisdiction in question. Arbitrator Nathan found just one year ago that the economy in Madison was strong. He noted that unemployment was at 2%. Its jobless rate was among the lowest of all Metropolitan Districts. Job growth was increasing and the buying power of households was very strong. Real estate values were high. I do not find that any of that has changed.

I agree with the Union that the exhibits do show that the job growth in Madison compares well with the rest of Dane County. I also agree with their conclusion that property value is a factor to be used in assessing the economic strength of the community. While the District is correct that property value does not translate into

increased revenue, that is not the test under this factor. The question here is whether the economic conditions that exist would prevent the type of increases that are being sought by the Union. If, for example, other factors favored one proposal over the other, but the economy of the community was suffering more than in those comparable jurisdictions, this factor would favor the other proposal. This is then to be given greater weight than any of the other individual factors.

One cannot conclude that the economy in Madison is suffering. It is still voted the best place in America to live. It still has among the lowest jobless rates, and the strongest buying power. Property values are still high. All of this leads to the inescapable conclusion that there is nothing in the Madison economic situation that would negate an otherwise appropriate wage increase. As Arbitrator Nathan stated "the Union's package will not unfavorably impact the robust economic health being experienced by the Madison area and MMSD." The economy would support the Union's higher proposal.

External Comparables

The parties have previously had interest arbitration in this bargaining unit. Arbitrator Ziedler found the School Districts within Dane County to be the primary comparables. The District's within Dane County used were; McFarland, Middleton, Monona Grove, Sun Praire and Verona. The ten largest school districts within the State were secondary comparables. He noted that there was conflict between the two factors often used to determine comparability,

proximity and size. Madison is by far the largest district in Dane County. Conversely, cities like Green Bay, Milwaukee, Racine and the like are close in size, but not geographically near Madison. Arbitrator Ziedler concluded that the best comparables were the ones within the geographic area, and that the secondary list were those districts that were of similar size to Madison. In the most recent interest arbitration between these parties, Arbitrator Nathan used the ten largest districts for comparison, not the contiguous districts.

In this case, the District offered evidence concerning the contiguous districts for comparison purposes. The Union offered both the contiguous and the ten largest districts. Comparability comes into play in this case in two different ways. One relates to turnover, the other is the more traditional use of comparables to correlate the wages and wage increases offered by the parties to the wages and wage increases that others have received. For this latter purpose, it is appropriate to consider both sets of comparables, in the same manner that Arbitrator Ziedler did. As to the turnover question, only the contiguous districts will be examined. Madison is competing with these other contiguous jurisdictions for the same employee market. An employee interested in the type of work performed by the employees here may chose among the local Districts for the best wage package. All of the districts are within a reasonable distance of Madison, and the individual may very well already live in one of the surrounding communities. Madison is much less likely to be competing with Milwaukee, Eau

Claire and the other large District's for these employees. Most individuals in those areas will not want to migrate to Madison for employment, especially since lower paying, part-time work is involved.

Position of the Union

There has been extensive turnover within the bargaining unit. None of the other jurisdictions has had this problem to the extent that Madison has. This turnover is the result of low pay. That is what was demonstrated by the survey responses. Low pay is the prime reason individuals chose to leave their employment. Where there are other job opportunities, as there are in Madison, employees are even more likely to leave. That is what has occurred in this District.

The cost of high turnover adds an additional cost burden to the District. The District must employ substitute teachers to replace HCAs. These costs would be lowered if the Union's proposal were accepted. There are also non-monetary costs associated with the turnover. That is the loss suffered by the students of the aide that has left.

The turnover problem is best addressed by the Union's wage proposal, and by its offer for a joint committee. The Board's offer only addresses the first three years of employment. It does nothing to lower the rate of turnover for those employees with a longer length of service. 19% of the employees that have left fall within that category. This is even more evident in the second year proposal which is a straight percentage increase for all steps.

A review of both the contiguous districts and the ten largest districts demonstrates that the Union's offer is preferable. Madison is the leader in all job classifications except for the EA classifications. There it ranks fourth or fifth. The wages of the employees here has fallen when compared to the other contiguous jurisdictions. The wages when compared to the ten largest districts show that Madison trails those districts. All of the above supports the Union's offer.

Position of the District

Arbitrators traditionally look to certain "benchmark" steps on a wage schedule. The beginning wage, the top wage without longevity and the top wage with longevity are those benchmarks. The wages at the benchmarks for Madison compare favorably with the wages offered in the contiguous school districts. It is at the top for both of the last two benchmarks. There is no basis for granting wage increases that expand the differential even further.

The proposal of the District is not unprecedented in this bargaining unit. The combination of a set amount of money and percentage increases was agreed upon by the parties in their 1979-81 agreement. The proposal to eliminate a step has been made to improve the entry level for employees. Other Districts have done the same. This is an appropriate way to address the problem that confronts the District.

In comparing the wages of jurisdictions, the entire benefit package should be considered and not just the wages. The District offers the best health insurance package of all the comparable

districts. The hours required to be eligible or the contribution required of the employee is greater in each of the other districts. The total benefit package offered by the District is second to none. That remains true under the District's offer.

Analysis

Both parties offered extensive exhibits showing the wages paid by the comparable jurisdictions and the wages that Madison employees would receive under each side's proposal. The District compared the entry level, the maximum wage without longevity and the maximum wage with longevity with Madison's rates. The Union offered a schedule showing the wages at each year of service, all the way to the top, and then showed a weighted average based upon the actual step placement of the employees in this bargaining unit. Each side suggests that its method is best. The District noted that Arbitrator Ziedler found that "a comparison of maximums within the steps without longevity is a better method of judging..." He found that using longevity has too many variables. I partially agree with Arbitrator Ziedler. I agree with him that longevity is not a good basis for comparison, because the number of years that it takes to first obtain and then to maximize that benefit varies within localities. I also agree that the top rate without longevity is relevant. However, I also believe that a comparison of wages at the levels leading to the maximum is also important. Not only can the time that it takes to obtain longevity increases vary, but the number of years that it takes to get to the top rate without

longevity varies.[3] One also needs to know what someone who has worked three or five years earns when compared to someone that worked three or five years elsewhere? This is also an appropriate comparison to make.

I disagree with the Union that a weighted average should be used in making comparisons.[4] Unfortunately, the Union weighted Madison, but did not weight the other jurisdictions. It can be assumed that the other jurisdictions do not have their employees evenly spread among the steps. Thus, the real situation in Madison is compared to a model everywhere else. If a true weighted comparison were to be used, the average wage of Madison would be compared to the average wage of the other districts. I am not suggesting that such an exercise is necessary, but only pointing out that the methodology suggested by the Union has defects. Therefore, I will not use the weighted average here.

It is interesting as the Union noted that Madison ranks first in so many job classifications, but only ranks in the middle or lower in the classifications in this bargaining unit. My job, however, is not to analyze the entire history of this unit. I must ascertain what has happened to Madison vis-a-vis the other Districts over the period from the last agreement through 97-8. As

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[3] In some jurisdictions, the top wage may be reached in 5 years or 10 years. Here, it is reached at year 13.

[4] The Union ascertained the number of employees at each step and weighted that step to reflect the actual numbers of employees in that step. It then ranked that weighted step against the average wages paid at that same step of the other jurisdictions within Dane County.

was stated earlier, and as the Union correctly pointed out, comparability in this case has two uses. One addressing turnover, and the other the more traditional use. I will for the moment attempt to address just the traditional purpose of comparables, although some reference to the other purpose cannot be avoided.

In 1995-6 out of the 6 Dane County comparable districts, Madison had the next to lowest starting wage for regular EA's. It was 4 of 6 for HCA's. Two of the Districts have not yet reached agreement for 1996-7 or 97-8.[5] Excluding the two that have not settled, Madison ranked three of four for EA's and HCA's for 1996-7 under both proposals. In 1997-8 it would rank 3 of 4 under both proposals for EA's. For HCA's, the Union's proposal would keep Madison at 3 of 4. The District proposal would place the District at 4 of 4. McFarland had been $.28 below Madison in 1995-6, but would be $.03 ahead in 1997-8.[6]

The following chart shows the wage increases received by employees in the three jurisdictions with agreements for the two years in question here, and for Madison. I have compared the raises at entry level, year 3, 5 and 12. Since most of the turnover is in the first three years, a comparison at that point is appropriate. I have chosen year 5 since it is the average length of time of

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[5] Of the two not settled, 1 ranked above and 1 ranked below Madison. Middleton even with no new wage in 1996-7 would still pay more than the wage in both proposals.

[6] The parties have offered comparisons for the two district's that have not settled, Middleton and Monona Grove using a hypothetical 3% increase. I find using such hypothetical is too speculative, and I will only use the four that settled.

employees in the bargaining unit, and the cutoff point for year 1 under the District proposal. Year 12 is the maximum without longevity.[7]

	MTI	BOE	McFarland	Sun Prairie	Verona	Average
1996/7						
Step 1-	.50	.45	.63	.38	.45	.49
Step 3-	.50	.45	.67	.38	.45	.50
Step 5-	.50	.25	.72	.38	.45	.52
Step12-	.50	.32	.35	.40	.26	.34
1997/8						
Step 1-	.50	.47	.62	.32	.50	.48
Step 3-	.50	.26	.64	.32	.50	.49
Step 5-	.50	.27	.67	.32	.50	.50
Step12-	.50	.32	.30	.35	.26	.30

*This chart uses HCA rates for comparison.

McFarland added more to their schedule all the way through Step 7. Verona used Step 5 as the cutoff. It is after those points that the wage increases proposed by the District are roughly the same as those offered by the others in 1996-7. In 1997-8 the entry rate would increase under the District proposal by roughly the same amount as it does in the comparables. The wages then fall behind the comparables until the steps are reached where the smaller increases are given in McFarland and Verona. My wage analysis would have been skewed if I had only used the entry and Maximum rates suggested by the District. A review at the various steps that I have listed better demonstrates what has been done elsewhere as it compares to the proposals here.

The District notes that the entry rate was raised in the other

[7] The District offered a chart with some of those benchmarks, however, they compared all six jurisdictions in 1995-6, and only the four for subsequent years. A comparison that uses the same districts throughout gives a truer picture.

jurisdictions, if they were not already sufficiently high, like they were in Sun Prairie. Obviously, the districts in the County have also recognized the difficulty in finding candidates for these positions. The average wage increase for the entry level of the comparables is between the parties proposals for both years. It is closer to that of the Union the first year, and slightly closer to the District's the second year. At step 3, the average is the same as the proposal of the Union the first year and $.01 less the second year. The District proposal at Step 3 is much less than the average the second year. At step 5, the Union's proposal is much closer for both years. At step 12, the wage offer of the District is much closer both years.

What do all these figures mean? The Union's wage proposal when compared with the contiguous comparables under the traditional use of this factor is slightly favored. While it is skewed at the top end, it more closely represents the average wage increases of the comparables at the early years of employment. In 1996-7, it is much closer at Step 5 and a little closer at Step 3. Even at the entry level it is closer. The entry level in the District's proposal the second year of the agreement is $.01 closer, but $.23 less at Step 3 and 5. The Association's proposal is in line with that of the comparables. It should be remembered that I am charged with the responsibility of fashioning a contract for 1996-8. For those two years, most of the cost of the proposals will come from the early steps. Thus, while the Union's proposal is too high for the experienced EA, that is not where most of the money is going. For

those that will receive most of the increase, the Union's wage is either better or the same as the District's proposal. That is not to diminish the significance of the inflated wages at the top that the Association has proposed. This money is permanently added to the schedule. At some point, especially if the turnover problem is resolved, employees will start receiving this wage. The District will then incur costs beyond what it should. Therefore, the Union's proposal for the top of the scale has a defect, although the effects of the defect will not for the most part be felt during the two year term involved in this case.

The Union presented a chart showing the wage trend from 1992-3 through 1997-8. A review of that chart lends further support to the Union's proposal. The employees are not today where they were in 1992 when compared to the other Dane County Districts. While they are still ahead at the high end, the amount of difference has changed. Looking at rank is helpful, but it does not give the whole picture. If they were much higher before, are they still that much higher today? If they were exactly average before are they average today? The answer to both questions is no. The rank may not have changed, but wage differential has. That is a factor in comparability.

The District argues that its benefit package compares favorably, and that this must be considered. As comparability relates to turnover, I would agree, and will discuss that point later. However, for traditional purposes, it is more helpful to know if one of the comparable jurisdictions changed a benefit in

their current contract. If they have, that might explain why they gave a particular raise and that fact should be taken into consideration in evaluating that increase. They are also relevant towards ascertaining the total value of the wage package increase being offered by a particular jurisdiction in any given year. If benefit levels and costs have not changed, benefits should not be taken into account when evaluating raises in a jurisdiction. What benefits each locality gave was known during their previous negotiations. They agreed upon wages based upon that information. It would be error for me to now consider this existing benefit at contract renewal when it did not affect the parties decisions when they negotiated the wages in their last several contracts.

What raises were given in the ten largest districts in the State? The average increase for 7 of the largest districts in the State was $.31. Their starting wages were in many cases higher than the wage in Madison even with the increases proposed. As I have indicated, for turnover purposes I will not consider the ten largest district's. For the traditional usage of these comparables, it favors the District. The starting wage for those district's has always been higher than Madison's. Like with existing benefits, the parties knew that when they negotiated several years ago. I am not prepared to change that relationship. It is the increases that must be compared not the wage rate. Thus to the extent that this factor applies, it favors the District. However, given the real reason for the raises, turnover, I do not find that the utilization of the top ten districts provides a great deal of assistance.

My discussion, thus far, has been limited to the more traditional use of external comparables. The driving force in these proposals, however, is not that. It is the turnover within the bargaining unit. How the proposals address that issue is critical to a resolution of this matter. Since that discussion transcends many different criteria, for reasons set forth later in this Decision, it will be addressed under the Greatest Weight category and not here.

Other Public Section Positions

The Union contends that the duties of Child Care Counselors are similar to the duties performed by the EA's. Their starting wage is $1-$3 more per hour. Teaching Assistants with the State of Wisconsin earn $1-$2 more. The District believes that these are inappropriate comparables. It argues that a library page is more closely akin to the EA. The starting wage for a page is $7.50-$8.04. As the Union points out, the library page is a non-union position.

I do not find any of these proposed comparables persuasive. I need to know what type of wage increase these positions received. More importantly, the duties may be similar in some respects, but they are not the same. A school secretary might be able to be compared to a secretary somewhere else. The duties of the EA's and especially the HCAs are not as transferable. I agree with the Union that it is inappropriate to compare union positions with non-union. Thus, I do not find that this factor is relevant here.

Internal Comparables

This factor favors the District. The District's proposal exceeds those of the other bargaining units in the District. All of the agreements were in the 2.75-3% range. The District proposal is more the first year and in that range the second. The Union's proposal is over 2% more each year than the other bargaining units.

Cost of Living

COLA increased by just over 3% in 1996-7. It will be probably less than 3% in 1997-8. The District's proposal is in line with COLA the second year, and greater the first year. The Union proposal is over 5% each year. The District proposal much more closely follows the COLA increase and is favored for that reason.

Greatest Weight

The legislature in 1993 limited the amount of increases in expenditures that a school district could incur each year. The expenditures are based upon the number of "members"[8] in a school district. The cost to the District per member is derived by dividing the amount of monies received from certain sources by the number of members. The legislature then provided that a district each year may add a certain amount per member to that figure. The legislature currently has set that figure at $206. To lessen the impact of any sudden changes in enrollment, the legislature also provided that the number of members used as the base point for

[8] The number of members is not the same as the number of students enrolled. Students who only go to school for 1/2 day count as a 1/2 member. Thus, the number of actual students is greater than the number of members.

calculations is derived from taking the average over the previous three years. This average is then multiplied by the allowable amount per member, including the $206 increase permitted by law. This figure then becomes the cap for the year in question.[9] The cap for this District for 1996-7 was $182.3 million. That figure increased to $187.9 million for 1997-8.

There are some funds that are exempt from the cap for various reasons. This fact is relevant to the instant dispute. The State reimburses a district for some of the expenses incurred in providing education to handicapped children. Since the HCAs perform that function, a portion of their expense is exempt from the cap limit.[10] Approximately 40% of HCA costs or 23% of the total bargaining unit costs are not subject to the cap.

Position of the Union

The Arbitrator must consider this factor before considering any others, but this factor is not alone determinative. All the other factors must also be addressed. The cumulative effect of those factors could outweigh this factor. This factor is in essence a measurement of the District's ability to pay for the proposed increases. Revenue growth, the amount of new money, budget surplus or reserves and the District's other financial needs are the components for analyzing this factor.

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[9] The Union introduced a document with its reply brief that indicated that the legislature is discussing ways to change the formula. The District objected to that document. In as much as this is only a proposal, it cannot play a part in the ultimate determination in this matter.

[10] Most of the funds that are exempt here are in "Fund 10."

This factor favors the Union. The cost difference between the offers is modest. The impact of one offer over the other is negligible. The District's total budget for 1996-7 is over $228 million. Some of the expenses for this bargaining unit utilize funds exempt from the tax cap. The percentage of the budget that the difference in offers represents of total cap dollars for the two year period is under .1%. This amount has no impact upon the District's ability to meet its other needs.

The District has a large fund balance and reserves. These reserves are greater than it needs. These reserves could easily pay for the increased costs that the offers represent.

The District has predicted declining enrollment. There is no decline during the term of this agreement. The current enrollment figures are known. Whether there will be a decline in the future is speculative. There is no certainty as to what will occur in the years to come. The allowable expenses for 1996-7 and for 1997-8, which are already available, are the only figures involved in this dispute.

Position of the District

The Legislature has limited the amount that any school district can increase its expenses each year. Increases in the expenses of any bargaining unit that exceed the percentage increase allowed under the revenue cap requires a reduction in the amount of increase in some other area. One must presume that any percentage increase above the cap increase is unreasonable. The District's offer already provides increases beyond the cap increases. The

Union's proposal is even greater, and should be found to be unreasonable.

The greatest weight test is not the traditional ability to pay test. One does not merely look to see if there are sufficient funds available to pay for the proposed increase, but must look instead to the entire financial needs of the District. With limited funds, judgments need to be made as to the best way to use those funds. This is a decision reserved to elected officials.

The increase in the cap is less than the increase in inflation. The projected declining enrollment in the District exacerbates the situation. The gap between projected tax levy and the allowable levy for 1997-8 is over $1 million. It will grow even more in the years to come.

Analysis

Arbitrator Nathan was the first arbitrator to extensively examine the changes in the law. He was also dealing with a dispute involving the parties here. He recognized that those district's with high per pupil expenditures, like Madison, receive a far lower percentage increase than do those District's with smaller per member expenditures. The higher that figure is to start, the smaller $206 as percent represents. The $206 increase here represents a 2.8% increase. The actual increase in new revenue is greater given the increase in the number of members. The $5.5 million increase from 1996-7 to 97-8 represents a 3% increase. Notwithstanding the receipt of new funds beyond the $206 per current member, Arbitrator Nathan concluded that "the appropriate

measurement in a cast forward analysis is the measurement of new money for the existing pupils and staff." Using Arbitrator Nathan's approach in this case, the actual increase is just over $5 million.[11] I agree with his rationale and adopt that approach.

I also agree with Arbitrator Nathan and subsequent arbitrators who found that this factor is not by itself controlling. It is weighed together will all of the factors set forth in the Statute. While it must be given the most weight, it does not override everything else. The amount of money involved also impacts upon the ultimate weight this factor carries. I find that this is especially true in this case given the small amounts that the differences represent.

The Union has pointed out that the District maintains a substantial fund balance. It has urged the utilization of that balance to fund some of the increase here. It cited Arbitrator Nathan's Award to support its argument. Arbitrator Nathan did find the fund balance out of line for this District. He found it was appropriate to use the surplus to pay for the Union's first year proposal. That proposal provided for a bonus rather than a schedule increase. Since it was a nonrecurring expense, the surplus was a proper source of funds. He disagreed with the Union, however, that the fund balance should be used for scheduled increases, because they are recurring. Again, I agree with Arbitrator Nathan on this point. These expenses are recurring. While the District may be able to use reserves the first year, they would not be available

[11] The additional $500,000 comes from the increased enrollment.

thereafter. Recurring income must be used to cover recurring expenses.

Under the new law, an arbitrator must look beyond the existence of funds available to pay for an increase. As noted, the revenue cap requires the District to make choices. The District is not free to spend whatever funds it can, but is limited by Statute. There is only so much in the pot. Unless one lives in Utopia or Duibi, the demands for the money will always exceed the money available. As was so in the case before Arbitrator Nathan, the District has demonstrated extensive maintenance and technological needs. It must either get that money from the capped funds or seek a referendum before the voters. It has attempted this other route with mixed success. All of this must be considered in order for me to meet the obligation placed on me, as arbitrator, by the Legislature.

I do not agree with the District that I must find that any percentage increase over the percentage increase in the cap presumptively means that the increase is unreasonable. The totality of all of the facts and circumstances surrounding the proposed increase must have a bearing. In this case, both sides pointed to the turnover of employees within the bargaining unit. Both sides offered increases greater than the cap increase to deal with that problem. If I were to follow the District's argument, I would have to find both offers presumptively unreasonable. Instead, I must examine each parties proposals to see which one best addresses the turnover problem. While doing that analysis, I must keep my eye on

the ball, meaning I must not forget the limitations under which the District operates. The limitations are balanced against the needs of the District in general and the needs for this bargaining unit in particular. All of this is taken together, and ultimately, hopefully leads to a determination on this factor.[12]

The District also argues that it is the Board that must make the choice on how to spend the available funds and not the arbitrator. Presumably that means that if the District decides that it only wants to spend a certain amount on wage increases, that the decision should be theirs to make. If that were true, an arbitrator would always have to chose the offer of the employer. I do not believe this is what the legislature meant when it passed the Statute. I have to consider the competing demands, but I am not bound to follow the course that the District believes is the best course. The facts as they are revealed during the arbitration will dictate the result and whether the decision of the District as to

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[12] To some extent, I disagree with Arbitrator Nathan on this point. He noted that"One of the problems with the greatest weight test is that it puts the emphasis on ability to pay in light of government restrictions and does not allow consideration of whether an offer otherwise justified or makes sense." Certainly, the question of whether an offer makes sense is critical in evaluating many of the criteria, including comparables. That does not mean that it is not relevant in this factor. Arbitrator Nathan himself noted that the Legislature when it passed this Statute was doing more than merely reciting the old ability to pay argument. Total needs must be considered. I do not believe that one can get into a discussion of the total needs of a district without considering the reasoning behind the offers put forward. Unless the legislature takes out the escalator entirely, there will always be new money. Every proposal made by a Union is going to impact upon the funds available, and is going to seek to use some of that "new money" to cover the costs. Is the proposed use of the new money appropriate? That question must be answered in the course of addressing this issue as well as when discussing the other criteria.

the amount of funds to be used for salaries is the correct amount.

There is $5 million of new money available under Arbitrator Nathan's analysis. The cost difference between the parties offers for 1997-8 is $150,000.[13] Over $30,000 of that difference is covered by exempt funds. Thus, for cap purposes the difference in 1997-8 is $120,000. Given the size of the budget, the difference in the proposals is not substantial. The greater the difference the more funds must be drawn from other sources to make up this difference. Conversely, the less funds that are involved, the smaller the need to take the money from elsewhere. The District acknowledged that the amount in dispute is not great when the total revenue picture is examined. That fact is highly relevant to this criteria. Notwithstanding the above, the District notes that $250,000 should not be considered insignificant. It notes that every little bit counts. While its needs are greater than the amount in question here, even that relatively small figure is a start towards meeting those needs.

The District is correct that one should not disregard $250,000 as insignificant. However, given the total new money available, the amount of new money involved here and the importance of the turnover issue to both sides, I do not find that the cap limitations placed upon the District by the Legislature would negate choosing the offer that best addresses those needs, even if

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[13] The figures for 1996-7 were not introduced. The allowable per pupil increase was also $206. Therefore, one can assume that roughly the same amount of new money was available for 1996-97. The difference in the parties offers was $100,000 for that year.

that offer were the costlier of the two proposals.[14]. If the turnover problem is better addressed by the Union proposal in some significant way, the small increased cost of its proposal could be more than justified. Solving the problem in the long run will probably save even more money then is involved here. There are always expenses incurred in training new employees. Furthermore, as the union notes, there is unquestionably some trauma to the student that needs the service when they are constantly faced with a new aide. Continuity clearly impacts upon the education process itself. Thus, the question is which offer best addresses the turnover issue. Put more succinctly, is there likely to be an additional reduction in turnover resulting from the Union's offer beyond those in the District's offer that justifies the additional expense of the Union's offer.[15]

There are two prongs to the turnover issue. The first is obtaining good qualified candidates that can and want to perform the job. Once they have been found, one must then find a way to keep them. The surveys and common sense tells one that the District

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[14] Arbitrator Kirkman in the Greendale School District case noted that "The undersigned concludes that in the instant dispute the difference of .83% in the values of the respective offers will not be the determining factor in establishing whose offer is preferred." In that case, he was addressing comparables. However, his reasoning is equally applicable here.

[15] In writing this decision, it was not easy to determine precisely where turnover should be addressed. It could be considered one of the "other" factors under section j. I believe, however, that it is best addressed under this factor. Both sides have recognized that variations in the traditional types of offers is necessitated by the turnover problem. Comparability and other such factors discussed above, do not adequately address this precise question. That is why it is done here.

was not attracting enough qualified individuals because it was paying too little. Both proposals address this issue. The Union proposes a $.50 increase each of the two years. The District proposes $.45 the first year and 2.95% the second year in addition to eliminating the first step. This raises the starting wage $.47 the second year.

I have indicated earlier in this Decision that the external comparables come into play to a much greater degree in this case than in most. The District's ability to lure potential employees to apply for jobs with the Madison School District rather than applying to other district's and to then retain those individuals is what both sides are hoping to accomplish. In order for the parties to ascertain the rates necessary to do this, one must know what the competition is doing and paying. Does the $1 addition the Union proposes over two years or the $.92 the District proposes meet the objective. Based upon wages alone, the answer is a definite maybe. Madison is not at the top. Sun Praire and Verona are still substantially higher. Unfortunately for the parties, the other District's had the same idea. They all raised their starting rate through one method or another. There is no denying that the District's 1997-8 rate will be noticeably higher under either proposal than it is now. The difference between the proposals is $.08. For an employee working 30 hours per week, the difference in wages for an entire school year is only $92. I do not find that this additional $92 for new employees resulting from the Union proposal meets the needs any better than the District's proposal.

The District urges the arbitrator to consider health benefits when evaluating comparables. I rejected that for traditional purposes. It is important in this analysis. Benefits, especially, health benefits are of major significance to employees. If one is trying to entice an individual to come to work, the benefit package available can be a prime consideration for the prospective employee. Verona and Sun Prairie are two districts with a higher starting wage. However, there health insurance coverage is far more expensive. In Sun Prairie, anyone who works less than full time pays a pro rata portion of the premium. Although the premium is less than Madison, it is still more costly for part-time employees, especially those working 20-30 hours per week. In Verona, part-time employees must pay the full premium. The current premium is $150 per month for a single and $430 for a family. Madison pays 90% of the WPS and all of the GHC premium for anyone that works 20 hours per week. While health insurance is only one benefit, it is the major benefit, and Madison compares very well with its work force competition. Even McFarland which pays the same wage as Madison, does not fare nearly as well in comparison.

From the above, I conclude that both proposals have gone a long way towards addressing the new employee issue. There is no benefit offered by the Union's proposal as it applies to new employees that justifies the difference in its proposal.

The second prong of the test is how do the proposals address the retention question. As the District correctly points out, the record shows that most employees that leave do so within the first

three years. This comports to the testimony of Paula Voos who stated that the longer one stays the more likely it is that they will continue to stay. There is a correlation between length of employment and the likelihood one will leave and between wages and the likelihood that one will leave. As one stays longer, their wages increase and they are more content in their job. While Ms. Voos did not state that three years was the point where the chances of staying are greater than the chances of leaving, the record indicated that 3 years is critical.

The District offer increases the rates for steps 1-4 for the first year by $.45. They picked that number of steps because that is where most of the turnover has occurred. The Union is certainly correct that this proposal does not do anything to lessen the number of voluntary quits from employees with more than three years of service. However, the main problem occurs in the early years of employment. There is always going to be some number of employees that quit for reasons unrelated to pay. They may be moving for personal reasons or for some other reason. As Ms. Voos noted, people are less likely to quit for pay reasons the longer they are there. The District proposal the first year addresses that issue for the period where the greatest turnover has occurred. The Union proposal unquestionably also addresses that issue. It gives $.05 per hour more than the District's proposal. I noted earlier I did not believe $.08 more per hour changed anyone's mind about applying for a job. I similarly do not believe that $.05 will have any effect. Thus, for the first year there is no additional benefit to

solving the turnover from the Union's proposal.

The second year is a different story. The District addressed the new hires in the second year by eliminating a step. It did not further address the current employees. They would receive a 2.95%. The actual wage increase they would receive is less than the other comparables, and for two of the comparables, it is less by a large margin. Thus, some of the gain it made in the first year is lost in the second year. The Union proposal keeps pace with the comparables. While the District's offer aids towards retention in the first year, it does not the second year. For that reason, I find that the Union's offer better addresses the turnover issue for employees employed between 1-3 years in the second year.

There is also a potential problem caused by the District's 1st year proposal. That problem arises for employees who have finished four years of employment. An employee that is deciding whether to stay for the fifth year is faced with the dilemma that they will only get an increase of $.05 per hour. For 1996-7, Step 4 was the cutoff from a $.50 per hour increase to a 2.95% increase. The Step 5 increase is $.20 less per hour than the Step 4 increase. The District lowered the increase at a spot much earlier than the other districts. This makes the disparity even greater. Not only do employees lose from one step to another in Madison, they also lose in comparison to the same steps in other jurisdictions. What effect will this have on morale for those employees? Will this cause them to "enter the state of looking?" These are employees who have worked only four years. While the likelihood that they will leave

is less than it might be for a more junior employee, they are still sufficiently junior to consider moving on given the circumstances. This fact poses a real problem with the District's proposal. It creates a large vacuum that may suck some current employees into it. For that reason, the Union's proposal is favored for this group of employees. The only saving point for the District is the fact that the first year of the contract has already passed. That means the employee that entered year 5 in 1996-7 will now be at year 6. Unfortunately, the employee that was at year 4 in 1996-7 will be entering this vacuum this school year. Fortunately, they will simultaneously get their raise from the preceding year. Thus, the negative impact is diminished, but not erased.

There is a deficiency in the Union proposal as well. Each of the other District's broke down their proposal into two categories. The lower paid employee received greater increases than did the higher paid. As was noted during the discussion of the comparables, that does not occur in the Union proposal. While the District failed to give enough attention to the lower steps the second year, the Union gave too much attention to the higher steps in both years. Its raises far exceed what is needed to meet the needs caused by the turnover. As an employees years of service grow, their rank among comparables climbs. The Union proposal exceeds the average of the comparables by $.20. This is not an attempt to address turnover. In essence, the Union has thrown more on top in the hope of getting it through given the totality of the circumstances. That approach weakens the other aspects positive

aspects of their offer.

I noted at the beginning of this discussion that the issue before me is to decide which proposal best addresses the turnover problem, and if it is the Union proposal does the benefit justify the additional cost of the proposal. I have found that the Union's proposal is not preferable to the District's for new hires. It is preferable for the lower paid employees in both years, although the benefit the first year is limited to those at step 5-7. I further found that the District proposal has an adverse effect on those at step 5. The District's proposal surpasses the Union's proposal for both years for employees at Step 8 and above.

The State has placed a limitation on the funds that the District can spend. I must give this factor the greatest weight. I have found that there is a definite advantage to the Union proposal towards solving the turnover problem. The cost of the proposal as it impacts upon the limited expenditures allowed by law is weighed against the benefit received. Does the benefit justify the cost? The fact that the percentage of cap funds needed is relatively small is significant. For all of the aboe reasons, I find that, notwithstanding its blemishes, the Union proposal does aid in solving a major problem to a sufficient extent to justify the extra cost of the proposal, and the use of the funds limited by law.

CREATION OF A JOINT COMMITTEE

Reference to the Union's committee proposal is required. That proposal is another method for addressing the turnover issue. The

Union believes a committee created to study the issue, and to report its findings to the parties is a logical way to proceed. The District questions the necessity of such a committee. It notes the parties already know that low wages causes turnover, and the wage proposals have been put forth to address that problem.

There is merit to the District's argument. Both wage proposals resulted from a recognition of the problem and its cause. The testimony of the Union's own witnesses confirm the cause and effect between wages and turnover. The Union wage proposal presumably took these causes into account, otherwise why would they have made the offer that it did. The study would in essence seek to prove that which the parties already believe that they know, and that which their proposal already addressed. While it is difficult to criticize the creation of a study to address a real situation, it is of doubtful need here. It might be worth while to ascertain the effect of the proposal ultimately selected on turnover. Is it enough or is more needed? That would be a proper function. That is not how the proposal reads. Therefore, I do not find that this suggestion enhances the Union's position.

Conclusion

Internal comparables and COLA point towards the District proposal. The Union offer far exceeds both of those. If this were an ordinary case, those factors would weigh more heavily than they do here. This is not an ordinary case. The quest to solve the turnover problem that plagues the Distict must be the prime consideration in reaching my decision. Unfortunately, I cannot

segregate the parties proposals to fashion a solution that would appear to best solve the turnover problem with the least amount of expense. There are definitely solutions that better serve the parties than either of these. Given that I must take one proposal or the other, I conclude that the Union proposal is slightly favored. It is far from ideal, but it better serves the needs than does the District's. The negative aspects of both proposals are relatively equal. The positive aspects of the Union proposal marginally outweigh the positive aspects of the District's. It is for that reason that I have chosen their proposal.

HEALTH INSURANCE

The current agreement allows an employee to chose between the WPS plan and one HMO. The current agreement reads:

> The Board shall offer the educational assistants the option of membership in a qualified health maintenance organization which is engaged in the provision of basic and supplemental health insurance in the areas where the educational assistants reside, all in accordance with P.L. 93-222 and such regulations as the Secretary of Labor shall prescribe thereunder. The Board shall pay the premiums up to the amount paid for the regular group hospital and surgical insurance but shall not be required to pay any more to such health maintenance organization that it is required to paid under provision VII-B-4.

The current HMO is GHC. The premiums for GHC have always been and still are less than the premiums paid by the District for WPS. The percent increases each year are also less for GHC. The employees enrolled in GHC have never had to pay any portion of the premium.

GHC is a closed panel. Employees must go to doctors employed

by GHC. There are three other HMO's presently operating in Madison. They are Dean Care, Physicians Plus and Unity. All three of those HMO's are open panels. The Doctors in the plan are also in private practice. Some of their patients come through the HMO and some are seen on a fee for service basis. It is possible that the Doctor that an employee has chosen on the WPS plan is also a participant in one of the HMO's. In fact, almost all of the doctors in Madison participate in one of the three HMO's. Perhaps it is for this reason, that Madison has the highest percentage of HMO penetration of any City.

The District proposal seeks to modify paragraph 8. It would delete the reference to "a health maintenance organization." It would now read "any one of the local health maintenance organizations contracted by the District." The proposal also deletes the words "qualified" and the rest of the first sentence after the words "health maintenance organization. Thus, the reference to P.L. 93-222 is deleted. It also adds a new second sentence. Once contracted with by the District, an HMO cannot be dropped without concurrence from the Union. The last sentence of the sub-section is unchanged.

Position of the Union

The employees are content with their current health care choices. The WPS plan is very important to many of the employees. The District plan will jeopardize the WPS plan. Through the process of "adverse selection," healthy employees will choose the cheaper HMO over WPS. Consequently, the claims per employee in the WPS plan

will continue to grow, as those left in the plan are the employees with the greatest health needs. The rates for the WPS will then rise making the cost prohibitive.

The District proposal is an attempt by the District "to get their foot in the door" to change the coverage in the other bargaining units. The process of adverse selection would then occur in all bargaining units, and further threaten the WPS plan. The higher premiums that would result would force the lower paid employees, which are the employees in this bargaining unit, into an HMO. The Union has demonstrated that some adverse selection has already occurred. This proposal would speed up that process.

The District proposal has no limit on the number of offerings, who the carriers will be, the level of benefits or the premium percentage paid by the employee. The employee could be offered a plan that is inferior to the coverage they currently receive. There is nothing in the District proposal that would prevent this from occurring.

The District has argued that its proposal would save money for the EA's. The District asserts that if an EA chose an HMO over WPS, they would have greater take home pay. They would no longer be required to pay any premium out of pocket. The District argues that this would assist in resolving the turnover issue. The true benefit to the employee is unknown because the nature of the HMO offered is unknown. What will be covered and what must the employee pay out of pocket? The out of pocket medical costs could exceed the premium savings. Accepting the District plan is like buying "a pig in a

poke." The plan is not being offered to benefit the employee, but to save the District money on health premiums. The District attempted without success to obtain this change in the other bargaining units. This is the lowest paid unit. It should not be allowed to succeed in getting that change here.

Major changes in a contract should be bargained, and not obtained through arbitration. The arbitrator should determine if the result sought could have been obtained as part of a voluntary settlement. If not, is there a quid pro quo being offered. Neither of those are true here.

Position of the District

The Board proposal gives employees more choices than they presently have. It can also increase the employee's take home pay. It could increase it by $1200 per year if an employee chose an HMO over WPS. The cost of GHC has never exceeded 90% of the WPS premium. It is fully paid by the Board. More HMO options will give employees that do not want GHC, but do want a particular HMO the chance to make that choice. The District proposal is a clear benefit to the employee.

GHC is the only closed panel. The other HMO's use doctors engaged in private practice in the Madison area. An employee might be able to join an HMO and keep the same doctor that they presently have. Choice in doctors is important, and they would still have that choice under the District proposal. The other HMO's are larger than GHC. The choices that the employee would have would expand by the addition of the larger HMO's.

The Board's proposal was met by a refusal to discuss the issue from the Union. The Board was willing to discuss the proposal and the Union's concerns, but the Union refused to do so.

The Board proposal makes no change in the WPS plan, while expanding the options of the employees. The employee has the option of choosing any particular HMO offered or the WPS plan. It is totally voluntary. If the employee does not like a plan being offered, that employee does not have to choose that plan. The Union objects to the lack of specificity in the coverage of the plan. The District intends to discuss any prospective plan with the Union before implementing that option. It further intends to only offer plans that are comparable to present plans. It would do no good to offer an inferior plan since no one would choose it. The Union wants to be the "gatekeeper" of choices available. The individual employee best knows what is good for their individual needs. They should have the choice.

The Union is concerned that the price of the WPS plan will increase as a result of this proposal. The cost of WPS has already increased to a level that cannot be afforded by some in the bargaining unit. Adverse selection has already occurred. Even if some further adverse selection occurred after the implementation of the Board proposal, it would not have a dramatic impact the employees in the bargaining unit. At worst, rates would increase by 3%. Rates already increase each year by more than that amount. Further, the claims per employee is higher in this bargaining unit than any other. If all of the employees in this unit chose an HMO,

the average claim per employee for the remainder of the employees in the plan would decrease. This would result in a lowering of the premium. Their is no rationale basis for denying the District's proposal.

Analysis

The employees in this bargaining unit are the lowest paid of the four bargaining units represented by the Union. The WPS premium represents a far greater percentage of this bargaining unit's wage than it does for employees in the other units. Giving the employee here health insurance alternatives that can lessen the load placed upon them can undoubtedly be a benefit to them. The District maintains that the proposal is made to this Unit because of the low wage scale of these employees.[16] Such a rationale is quite plausible, but that motive does not automatically make their proposal acceptable. There may be factors that militate against the proposal, notwithstanding the potential benefits of it. Does the benefit outweigh the potential harm?

This proposal comes from the Employer. The Union proposes maintaining the status quo. Consequently, the greatest weight and the greater weight factors really play no part. The reality is that

[16] The Union asserts that the desire to cut costs is the true motivating factor in this proposal, and that it is not being "altruistic" as the District claims. While the District is correct that there could be a benefit to the employee, it is hard to believe that the desire to save money did not also play a part in the proposal. Would it have made the same proposal if the monetary impact were to increase rather than decrease expenditures? Probably not. The truth of the matter is that both motives were probably present when the proposal was drafted.

this proposal will most likely have a negative dollar effect. Unless, all those without insurance seek insurance under this proposal, and unless all of those employees have experienced a qualifying event, the net cost to the District of the proposal will be less than its current costs.[17] Every EA that was in the WPS plan that opts for an HMO saves the District money. They cannot cost the District anything, since the maximum premium that the District will pay for an HMO is the amount it pays for WPS.

The District is proposing a change in the status quo. It has the burden of demonstrating the need for the change. Arbitrators have uniformly held that changes should be made at the bargaining table, and not through arbitration. Generally, it is found that the arbitrator's role is to ascertain what the parties would have done at the table, and to give a result that reflects that. Many arbitrators have also recognized that sometimes change is necessary, and that it might never occur, if not allowed through arbitration. There are changes which came about through arbitration. The parties provided copies of numerous prior arbitration decisions. Many of those decisions expanded upon the above premise. This arbitrator has no difficulty accepting these well established rules. As Arbitrator Petrie stated in Iowa County:

> Wisconsin public sector statutory interest arbitrators have recognized the occasional need for

[17] Many employees have opted to skip the district's coverage. These employees most likely have health coverage from some other individual. Once an employee has elected to pass on health insurance from the District, they can not subsequently change their mind unless a "qualifying event" occurs. That event might be the loss of insurance from their spouse.

> innovation or for change in the status quo ante, provided that the proponent of such change or innovation has demonstrated that a legitimate problem exists which requires attention and that the disputed proposal reasonably addresses the problem.

He noted that an appropriate quid pro quo might need to be offered.

On the surface, one is inclined to think there could be no harm caused by the District's proposal. The choice of plans is voluntary. There would seem to be no reason one would chose a plan if it were inferior. For that reason, the District states it is unrealistic to assume it would not put the best plan forward. Any plan offered would, it notes, compare well with the plans already being offered. In fact, it still would consult with the Union before selection and implementation. There may be logic to some of what the District states, but where is the guarantee that any of this will actually happen. No where in its proposal does it *incorporate any of these representations. They are non-enforceable* promises. If its proposal were accepted, the District could implement a new plan tomorrow, and that plan could be anything. In Plum City, Arbitrator Kirkman found that "the fact that the language fails to codify the practice... flaws the Employer proposal." In that case, verbal representations were made, but not put in writing. That is not unlike the situation here.

The above is also supported by the Decision of the Wisconsin Court of Appeals for the Fourth District in LaCrosse Professional Police Association v. City of LaCrosse, Case 96-274196-2741, June 5, 1997. In that case, the arbitrator accepted the City's final offer. In analyzing the health insurance proposal, the arbitrator

incorporated verbal statements made by the City into the proposal. The Court found that the arbitrator had "modified' the City's last offer by making these statements part of the offer. It reversed the arbitrator's decision. The Court held that a party should not be able to "back-pedal from its positions in a final-offer instead of defending those positions before an arbitrator." I must cocnlude that the verbal representations made by the District cannot be considered by me. To do so, would be to allow it to modify that which it offered. The fact that the District did not incorporate into its proposal that which it verbally committed at the hearing flaws its proposal.[18] I agree with the Union that the lack of specificity negatively affects the merits of the proposal.

The Union is also correct that the true savings to an employee cannot be ascertained without knowing the extent of coverage provided by the HMO and the medical situation of the employee that made the HMO choice. If the employee's family has few medical needs, most if not all of the premium savings would increase the employee's take home pay as the District states. The question remains how many employees are there in that situation. Is it not more likely that most of the employees with few medical costs have already selected an HMO. The adverse selection has already occurred. It must be remembered that this bargaining unit already

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[18] The District has argued that it tried to discuss the issue with the Union, but the Union refused to do so. Even given that fact, their was nothing that prevented the District from putting into its final proposal the things that it would have agreed to at the table, or those things to which its witnesses testified at the hearing. It was making a final offer which it knew the arbitrator had to accept or reject in its entirety exactly as it was written.

has over 50% of those insured in an HMO. Without doubt, there will be employees that do get this saving, and that will change to an HMO. They may now be able to keep their doctor because that doctor is in one of the HMOs offered. The number of employees that receive this benefit is unknown, but it cannot be assumed that it will be a substantial number.

The District states it has made this proposal, in part, to address the turnover problem. This would be the problem that requires attention under Arbitrator Petrie's Iowa Decision.[19] It believes that if more money is put in the pocket of the employee, its ability to compete for employees will be enhanced. The Union counters that employees have never indicated that they desire any health insurance changes. It notes that none of the survey responses stated that health insurance was a negative factor. The District, it contends is addressing a problem that does not exist.

Putting more money in the pocket of the employee is not the same thing as wanting a change in health insurance, yet the two questions are related. That is what makes the analysis of this issue difficult. The real question is whether the change in health insurance proposed addresses the turnover problem, and what impact that change would have on insurance coverage? If the impact is too large, it might make the proposal unreasonable. It would then fail under the second part of Arbitrator Petrie's test.

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[19] To the extent that this proposal is aimed at health care needs, the first test of Arbitrator Petrie's analysis has not been met. There has been no showing that there is a problem that needs to be addressed.

This is a unique and innovative approach to the turnover problem. The impact of this proposal would be felt more by new employees than it would current employees. They might be intrigued by the choices, especially if their own doctor is one of the choices.[20] Some prospective employees might chose the District because it is offering a particular HMO at no cost to them. What is unknown is how many employees chose another employer because the HMO they wanted was not available through the District. There is just not enough evidence to indicate that this proposal will impact upon the ability to obtain new employees.

Given the high penetration level already, current employees would be less affected by this proposal. In fact, there is no evidence that any employee that has not already chosen an HMO would now choose one. If the only affect of the proposal would be to enable an employee that has an HMO to change to a new one, there would be no impact upon take home pay at all.

There is minimal evidence, at best, that more choices for either prospective employees or current employees would impact upon turnover. The surveys would lead one to believe that this is not a concern of employees, and that the proposal would not affect the problem. The District argues that adding options can only be a benefit. Even assuming that was so, the District is seeking to change the status quo. It must show that a problem exists and that the proposal reasonably addresses it. In this case, the problem is

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[20] I found earlier in this Decision that the District is more competitive with the comparable districts when it comes to insurance

turnover not health insurance coverage. While the proposal is unique, it does not have a major impact upon the problem. To the limited extent that it might address the problem, it has the potential to cause even greater problems in other areas. Will adverse selection impact upon WPS rates? Any increase in rates that this proposal may cause affects not only this bargaining unit, but all bargaining units. The District's worse case scenario is a 3% increase. That is 3% to every member of the plan. It is not a certainty that adverse selection will result, but that possibility exists, and that possibility impacts upon the merits of the proposal. This potential harm is further exacerbated by the lack of specificity in the proposal.

The analysis of proposals addressing benefits often centers around the benefits available to other bargaining units of the Employer. Internal comparables are utilized to a much greater degree where benefits are concerned. Usually, it is the employer that is seeking to deny a particular benefit increase and who urges an arbitrator to look to internal rather than external comparables. In this case, the parties roles are reversed. Regardless of who makes the argument, the rationale for utilizing internal comparables here still applies. The District health insurance coverage is identical for all four of the bargaining units represented by the Union. The change proposed here was also proposed to at least two of the other bargaining units. The proposal was rejected by the Union. The District then voluntarily withdrew the proposal. It did not go to arbitration. After settling

the other contracts without this change, the District made the same proposal here. It was rejected by the Union. It now seeks to obtain that change via arbitration. The internal comparables would indicate that the proposal should be rejected. This factor strongly favors the Union.

The concept of making other HMO choices available is not a bad concept. It is something that merits discussion among the parties. Rising health care costs are affecting the negotiation process throughout the Country, and have for a number of years. Parties have found various ways to deal with the rising cost of insurance. It is in both parties interests to address that problem here, before the cost of the WPS plan becomes prohibitive to even the higher wage earning bargaining units. It may already have approached that point in this bargaining unit. Giving the employees in this unit other options that are within their financial means would appear to be in the interests of everyone. It is understandable why the District would want to discuss this with the Union, and to do so in this unit. There may very well be a benefit to the EAs by this proposal. However, that fact does not justify this proposal at this time. I do not find that the turnover issue, which is the District's rationale behind the proposal is reasonably addressed by this proposal. The District has not met its burden to support this proposal.

DPI CERTIFICATION

The Union seeks to add language to the Agreement that would

require the District to pay the cost of obtaining DPI Certification for those involuntarily transferred to positions requiring that certification. The cost of this proposal is negligible. Both parties concede that it is not the major component of the packages being offered. Thus, the outcome on this proposal does not weigh significantly towards the ultimate outcome in this case.

The Union is proposing something new. The burden is upon the Union. There is potentially some cost for the proposal. While there is some appeal to the Union's equity argument, they have not met the burden of substantiating the need for this change. There has not been a showing that there is a problem that needs addressing. Consequently, I find that the status quo proposed by the District is favored on this issue.

CONCLUSION

I have pointed out what I see as the shortfalls, where they exist, for each component of the various proposals. In weighing all of the factors, I conclude that the Union proposal is preferred. While I recognize the problems with that proposal, on balance for all of the reasons explained in this Decision I conclude that it is better than the proposal of the District.

This arbitrator has observed in other cases that the one drawback to this State's interest arbitration law is that the bad must be taken with the good. I do not have the luxury of choosing the best of each parties proposal and rejecting the worst, or to offer an alternative to either parties' proposal. I must accept one

offer in its entirety. It was this feature of the law that the Legislature believed would prompt the parties to try and settle the matter themselves, rather than taking their chances in arbitration. It would have been preferable for the parties here to have reached their own settlement. Even though I have found for the Union, that is not the best result in this case. That is not to say that interest arbitration is never warranted. Obviously, there are situations that call for arbitration. What I am saying is that this is not one of them. The parties must exist and work together over the years. That woud have best been achieved here if the parties worked things out themselves.

AWARD

The final offer of the Union shall be incorporated in the parties 1996-8 collective bargaining agreement.

Dated: August 12, 1997

Fredric R. Dichter,
Arbitrator