BEFORE THE ARBITRATOR

In the Matter of the Interest Arbitrations Between

CESA #2 BOARD OF CONTROL

and

CESA SPECIAL EDUCATION PROGRAM AIDES and CESA EMPLOYEES FOR EQUITY ORGANIZATION

Case 2
No. 53578 INT/ARB-7848

Case 3
No. 53579 INT/ARB-7849

Decision No. 29020-A

Appearances:

Ms Sandy Nass, Executive Director, Southern Lakes United Educators - Council 26, 32100 Droster Street, Burlington, WI 53105, appearing on behalf of the CESA Special Education Program Aides and CESA Employees for Equity Organization .

Mr Barry Forbes, Staff Counsel, Wisconsin Association of School Boards, 122 West Washington Avenue, Madison, WI 53703, appearing on behalf of CESA #2 Board of Control.

ARBITRATION AWARD

Cooperative Educational Service Agency #2 Board of Control (CESA #2, Board or Employer) is a municipal employer maintaining its offices at the 430 East High Street, Milton, Wisconsin Both the CESA Special Education Program Aides (SEPA or Labor Organization) of Case 2 and the CESA Employees for Equity Organization (CEEO or Labor Organization) of Case 3 are labor organizations maintaining their offices at 32100 Droster Street, Burlington, Wisconsin.

For SEPA, the Labor Organization is the exclusive collective bargaining representative of all regular full-time and regular part-time special education program aides employees by CESA #2, but excluding supervisory, managerial, confidential and professional employees For CEEO, the Labor Organization is the exclusive collective bargaining representative of all regular full-time and regular part-time professional employees employed by CESA #2, excluding confidential, supervisory, managerial, and non-professional employees. The Labor Organizations and the Employer were parties to collective bargaining agreements which expired on June 30, 1995.

On May 4, 1995, the Labor Organizations and the Employer exchanged their initial proposals on matters to be included in new collective bargaining agreements. The parties met on seven occasions in an effort to reach accords on new collective bargaining agreements On December 20, 1995, the

Employer filed petitions requesting the Wisconsin Employment Relations Commission to initiate Arbitration pursuant to Sec. 111.70(4)(cm)6 of the Municipal Employment Relations Act (MERA).

The Investigator appointed by the Commission to investigate these matters met with the parties on several occasions, after which it was determined the parties were deadlocked in their negotiations. On February 7, 1997, the Employer and Labor Organizations submitted to the Investigator their final offers, as well as stipulations on matters agreed upon, after which the Investigator notified the parties that the investigations were closed. On or after February 13, 1997, the parties entered into a voluntary impasse resolution procedure agreement. Said agreement provided that for the purposes of greater economy and internal contractual consistency among the bargaining units, once an interest arbitrator was selected for Case #3, No. 53579, INT/ARB 7849, the parties shall be deemed to have made a joint request to the Commission to designate that arbitrator as the arbitrator in Case #2, No 53578, INT/ARB 7848, and the Commission shall designate said arbitrator as the arbitrator in that case as well.

The Commission concluded that the parties had substantially complied with the procedures set forth in Sec. 111 70(4)(cm) of MERA required prior to the initiation of arbitration and that an impasse within the meaning of Sec 111.70(4)(cm)6 of MERA existed between the parties with respect to negotiations leading toward new collective bargaining agreements covering wages, hours and conditions of employment affecting employees in the bargaining units described above Therefore, on February 27, 1997, the Commission certified these matters to arbitration and submitted a panel of seven arbitrators to the parties from which to select an arbitrator to decide these matters

On April 9, 1997, the parties advised the Commission that they had selected the undersigned as the arbitrator of these matters On April 17, 1997, the Commission appointed the undersigned to issue a final and binding award, pursuant to Sec 111 70(4)(cm)6 and 7 of MERA, to resolve said impasse by selecting either the total final award of the Employer or the Labor Organization in each case

The parties agreed these matters would be arbitrated on August 4, 1997. Prior to the hearing, Counsel for the Labor Organizations was seriously injured in an accident Hearing was postponed by agreement with Counsel for the Employer to September 9, 1997, then to October 15, 1997, and then again as she recuperated from her injuries. The hearing was held on November 5, 1997, in Milton, Wisconsin. No transcript was made of the hearing. The Labor Organizations submitted additional exhibits on January 12, 1998. On January 16, 1998, the Employer submitted additional exhibits.

Briefs in chief were received on or before March 9, 1998 Reply briefs were received on April 1, 1998. Additional evidence and arguments were received from the parties on July 31, 1998 An additional joint exhibit was received by the arbitrator on September 24, 1998, at which time the record was closed.

Careful consideration has been given to all the testimony and evidence and to the arguments of the parties in reaching this decision and issuing this award.

ISSUES

A. CESA #2 Employees for Equity Organization (Teachers) Agreement

1. Personal Leave

The agreement at Article XIII - LEAVES WITH PAY, Section C, reads as follows:

> C. Personal Leave. Each CESA #2 professional employee shall be allowed one (1) day of personal leave each year without accumulation. . Employees choosing to take a second personal day shall have three (3) days deducted from their accumulated sick leave.

The Labor Organization proposes that the first sentence of Section C be modified and that the second sentence quoted above be deleted as follows:

> C. Personal Leave. Each CESA #2 employee shall be allowed two (2) days of personal leave each year without accumulation. . . .

The Employer proposes that the first sentence of Section C be modified and that the second sentence quoted above be deleted as follows:

> C. Personal Leave. Each CESA #2 professional employee shall be allowed two (2) days of personal leave each year without accumulation. . . .

2. Retirement

The Labor Organization proposes adding a new article as follows:

> Voluntary Early Retirement
>
> A. The employer shall contribute on behalf of the employee an additional contribution to the Wisconsin Retirement System an amount equal to 2% of the employees contracted salary. This contribution shall be made subject to the rules and regulations of the Wisconsin Department of Employee Trust Funds and such contribution shall be made no less than one (1) time per month.
>
> B. Upon retirement, employees are eligible to continue in the group health insurance plan subject to the rules and regulations of the carrier. After the exhaustion of any employer paid insurance, the employee may continue at his/her own expense

The Employer proposes adding Section P to Article XVI - COMPENSATION as follows:

P. Employees who have worked more than 5 years for CESA 2 shall, commencing with their 6th through their 9th year of employment, receive an additional 1 percent contribution to the Wisconsin Retirement System. Employees who have worked more than 10 years for CESA 2 shall, commencing with their 11th year of employment, receive an additional 2 percent contribution to the Wisconsin Retirement System. This contribution shall be subject to the rules and regulations of the Wisconsin Department of Employee Trust Funds.

Upon retirement, employees are eligible to continue in the group health insurance plan subject to the rules of the carrier. After the exhaustion of any employer paid insurance, the employee may continue at his/her own expense

3. Health Insurance

The collective bargaining agreement at XVI - COMPENSATION, Section L, reads as follows.

L All full-time professional employees shall receive fully paid Health Insurance, Dental Insurance, Life Insurance, and Long Term Disability Insurance The standard for such insurance shall not be less than the standard in existence for September 1, 1985.

The Labor Organization proposes the *status quo*.

The Board proposes that Section L be modified as follows:

L. All full-time professional employees shall receive fully paid Health Insurance, Dental Insurance, Life Insurance, and Long Term Disability Insurance The carrier and benefit levels shall be selected by the Board The standard for such insurance shall not be less than the standard in existence for such insurance coverage in the prior contract between the Board and Union. As of the date of settlement of this collective bargaining agreement or an interest arbitrator's award relating to this agreement, the Board may switch the health insurance coverage to the Trustmark health insurance plan with benefits equal to or better than the existing WEAIG plan (a benefit summary of the Trustmark health plan is attached as an appendix to the contract). If the Board selects the Trustmark Insurance plan, the Board will self fund the waiver of premium benefit for employee on long term disability leaves.

4. Salary Schedule

The Labor Organization characterizes its total package increase as 4.10% for 1995-96 and 3.81% for 1996-97.

The Board characterizes its total package increase as 5.22% in 1995-96 and 3 68% in 1996-97.

5. Comparables

The Labor Organization proposes that the comparability group be the Western Racine County Handicapped Children's Education Board (Western Racine County HCEB).

The Board proposes that the comparability group be composed of all schools districts in CESA #2. These districts are Albany, Belleville, Beloit, Beloit-Turner, Big Foot UHS, Brighton No. 1, Bristol No 1, Brodhead, Burlington, Cambridge, Central/Westosha UHS, Clinton, Deerfield, Deforest, Delavan-Darien, Dover No 1, East Troy, Edgerton, Elkhorn, Evansville, Fontana Jt. 8, Fort Atkinson, Geneva Jt 5, Genoa City, Janesville, Jefferson, Johnson Creek, Juda, Lake Geneva Jt. 1, Lake Geneva-Genoa UHS, Lake Mills, Linn Jt. 4, Linn Jt. 6, Madison, Marshall, McFarland, Middleton-Cross Plains, Milton, Monona Grove, Monroe, Monticello, Mount Horeb, New Glarus, Norway Jt 7, Oregon, Palmyra-Eagle, Paris Jt 1, Parkview, Randall Jt 1, Raymond Jt. 1, Raymond No 14, Salem Jt. 2, Salem Jt. 7, Sharon Jt 11, Silver Lake Jt. 1, Stoughton, Sun Prairie, Twin Lakes No 4, Union Grove Jt. 1, Union Grove UHS, Verona, Walworth Jt. 1, Washington-Caldwell, Waterford (V), Waterford UHS, Waterloo, Watertown, Waunakee, Wheatland Jt. 1, Whitewater, Williams Bay, Wilmot Grade, Wilmot UHS, Wisconsin Heights and Yorkville Jt 2.

B. CESA #2 Special Education Program Aides Agreement

1. Personal Leave

The agreement at Article XIII - LEAVES WITH PAY, Section C, reads as follows.

> C. Personal Leave. Each CESA #2 special education program aides (sic) shall be allowed one (1) day of personal leave each year without accumulation . . Employees choosing to take a second personal day shall have three (3) days deducted from their accumulated sick leave.

The Labor Organization proposes that Section C be modified as follows:

> C. Personal Leave. Each CESA #2 employee shall be allowed two (2) days of personal leave each year without accumulation. . . .

The Board proposes that Section C be modified as follows.

C. Personal Leave. Each CESA #2 special education program aide shall be allowed two (2) days of personal leave each year without accumulation. . . .

2. Retirement

The Labor Organization proposes adding a new article as follows·

Voluntary Early Retirement

A. The employer shall contribute on behalf of the employee an additional contribution to the Wisconsin Retirement System an amount equal to 2% of the employees contracted salary. This contribution shall be made subject to the rules and regulations of the Wisconsin Department of Employee Trust Funds and such contribution shall be made no less than one (1) time per month.

B. Upon retirement, employees are eligible to continue in the group health insurance plan subject to the rules and regulations of the carrier After the exhaustion of any employer paid insurance, the employee may continue at his/her own expense.

The Board proposes adding Section G to Article XV MILEAGE-INSURANCE-RETIREMENT as follows

P Employees who have worked more than 5 years for CESA 2 shall, commencing with their 6th through their 9th year of employment, receive an additional 1 percent contribution to the Wisconsin Retirement System. Employees who have worked more than 10 years for CESA 2 shall, commencing with their 11th year of employment, receive an additional 2 percent contribution to the Wisconsin Retirement System This contribution shall be subject to the rules and regulations of the Wisconsin Department of Employee Trust Funds.

Upon retirement, employees are eligible to continue in the group health insurance plan subject to the rules of the carrier After the exhaustion of any employer paid insurance, the employee may continue at his/her own expense.

3. Health Insurance

The agreement at XV - MILEAGE-INSURANCE-RETIREMENT, Section F, reads as follows:

F. All special education program aides shall receive fully paid Health Insurance, Dental Insurance, Life Insurance, and Long Term Disability Insurance. The

standard for such insurance shall not be less than the standard in existence for September 1, 1985

The Labor Organization proposes the *status quo*.

The Board proposes that Section F be modified as follows:

F. All special education program aides shall receive fully paid Health Insurance, Dental Insurance, Life Insurance, and Long Term Disability Insurance. The carrier and benefit levels shall be selected by the Board The standard for such insurance shall not be less than the standard in existence for such insurance coverage in the prior contract between the Board and Union. As of the date of settlement of this collective bargaining agreement or an interest arbitrator's award relating to this agreement, the Board may switch the health insurance coverage to the Trustmark health insurance plan with benefits equal to or better than the existing WEAIG plan (a benefit summary of the Trustmark health plan is attached as an appendix to the contract). If the Board selects the Trustmark Insurance plan, the Board will self fund the waiver of premium benefit for employee on long term disability leaves

4. Salary Schedule

Both the Labor Organization and the Employer have proposed a 21 cent per hour increase on the rates for 1995-96

The Labor Organization characterizes its proposed increase in 1996-97 as 47 cents per hour

The Board characterizes its proposed increase in 1996-97 as 40 cents per hour

5. Comparables

The Labor Organization proposes that the comparability group be the Western Racine County HCEB aides.

The Board proposes that the comparability group be composed of all K-12, K-8 and Union High School districts in the Southern Lakes Athletic Conference which employ teacher aides Those districts are Bristol No 1; Burlington, Central/Westosha UHS, Delavan-Darien, Dover No. 1, East Troy, Elkhorn, Genoa City, Jefferson, Lake Geneva Jt. 1, Lake Geneva-Genoa UHS, Milton, Paris Jt 1, Randall Jt. 1, Raymond Jt. 1, Raymond No. 14, Salem Jt. 2, Salem Jt. 7, Silver Lake Jt 1, Twin Lakes No 4, Washington-Caldwell, Waterford (V), Wheatland Jt. 1, Whitewater, Wilmot UHS, and Yorkville Jt. 2

ARBITRAL CRITERIA

Section 111.70(4)(cm) of MERA states in part as follows:

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

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

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

a. The lawful authority of the municipal employer.

b. Stipulations of the parties

c. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.

d. Comparison of wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes performing similar services.

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

f. Comparison of wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes in private employment in the same community and in comparable communities.

g. The average consumer prices for goods and services, commonly known as the cost of living.

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

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

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

POSITIONS OF THE PARTIES

Employer on Brief

On brief, the Employer argues that under Section 111 70(4)(cm)7 of MERA, the Legislature had directed arbitrators to give the greatest weight in any interest arbitration proceeding to any expenditure or revenue limit applicable to the municipal employer, that Cooperative Educational Service Agencies (CESA) are not subject to an expenditure or revenue limit; that CESA expenditures are instead limited by the revenues generated by service contracts and grants received by the CESA from the federal, state and local governments and other entities contracting with the CESA; that CESA #2's customers are subject to revenue limits; that Wisconsin school districts' revenues may increase by no more than $200 per pupil in 1995-96 and $206 per pupil in 1996-97; that CESA #2 depends on those districts for the contracts that employ members of the teachers' and aides' bargaining units; that if CESA #2 does not find a way to control its costs, its customers will go elsewhere, that evidence of this is apparent in staff turnover rate; that four of the 48 members of the teachers' bargaining unit were hired by the districts that had formerly contracted for their services during 1995-96 and 1996-97; that the cost incentive for hiring these teachers is obvious, that CESA #2 teachers can choose to be on the CESA #2 salary schedule or the local district salary schedule; that

contracting school districts will pay either the same salary or less if they hire these teachers away from CESA; that CESA #2's health insurance costs are significantly higher than the contracting districts, that CESA #2 charges 3 to 4 percent for overhead; that local districts have administrative costs but those are sunken costs and will not rise significantly to employ one more teacher, that CESA #2, on the other hand, will not have to pay significantly less overhead cost because it employes one less teacher; that if districts continue to terminate contracts because of high costs, the time will come when CESA #2 cannot afford to offer contracts for teacher services to school districts; that if CESA #2 had not found a way to curtail its health insurance costs, it was also in risk of losing the Jefferson County Head Start program; and that CESA #2 has solved this problem by switching the non-union employes to the Trustmark Insurance Company plan.

The Board also argues that under Section 111.70(4)(cm)7g of MERA, the Legislature has directed arbitrators to give greater weight in any interest arbitration proceeding to the economic conditions in the jurisdiction of the municipal employer; that it is evident that the Legislature intended that interest arbitrators give greater weight to economic condition in the jurisdiction of the municipal employer than to comparisons of the wages, hours and conditions of employment of other employes performing similar serviced under Section 111.70(4)(cm)7r of MERA or any of the other criteria under Section 111 70(4)(cm)7r of MERA; that the principal components of CESA #2's economy are its member school districts, that if anyone's economic conditions are to be considered in this arbitration, it would have to be those school districts; that the economic condition of Wisconsin school districts can be summarized by the words "revenue limits"; that the arbitrator must look at the impact of either final offer of a school district and union on the taxpayers of the school district, that the Board must control long term health insurance costs to keep its total costs competitive and within the reach of school districts, that the other components of the Board and two labor organizations final offers are similar enough that the only significant factor having a long term impact on cost is the health insurance issue; that the evidence in the record clearly shows that a switch to the Trustmark Insurance Company plan will reduce CESA #2's health insurance costs while maintaining existing benefit levels; that Trustmark is less expensive; that Trustmark is willing to negotiate with CESA #2 over health insurance costs, that Trustmark is willing to provide all of the experience information requested by CESA #2 without charging a higher premium while the Wisconsin Education Association Insurance Trust (WEAIT) will only provide some of that information at the cost of a significantly higher premium; that the Board's final offer allows the Board to choose between the current WEAIT plan and a plan from Trustmark with equal or greater benefits; and that as the Board's final offer does the better job of controlling health insurance costs, this criterion clearly supports selection of the Board's final offers.

The Board also argues that, based upon the criteria under Sec. 111.70(4)(cm)7r of MERA, the Board's final offers were designed to offer both the Teachers' Labor Organization (CEEO) and the Aides' Labor Organization (SEPA) a significant *quid pro quo* in exchange for the proposed switch to the Trustmark Insurance Company plan; that this meant that the Board had to determine what the settlement pattern was for each comparison group and offer CEEO and SEPA something more; that the teachers received a salary increase at the settlement average in 1995-96 and nearly one percent above the average in 1996-97; that the teacher also received a new retirement benefit in the form of

additional WRS contributions and the right to stay in the group health insurance plan at their own expense at retirement, that the teachers also received an additional personal leave day, which is more than twice the number of unrestricted personal leave days offered to teachers in CESA #2 school districts; that the CEEO salary offer is not unreasonable in light of salary increases in comparable school districts; that their retirement demands are not supported by comparison data because of the lack of a vesting period requirement; that their second day of unrestricted personal leave is not supported by the comparison data; that the Labor Organization took the Board's *quid pro quo* and offered nothing in return; that the Board has offered the Aides Labor Organization a wage increase in line with increases at area schools; that the Board does not contend that the wage increase is a *quid pro quo* for the switch to the Trustmark Insurance Company plan; that the Board's *quid pro quo* comes in the form of the retirement benefit and the second personal leave day; that most teacher aides in the Southern Lake Athletic Conference receive no retirement benefits beyond the minimum required by the WRS and no unrestricted personal leave, that the Aides Labor Organization wage proposal is reasonable, that the Aides Labor Organization demand for retirement benefits and a second personal leave day find no support in the practices in comparable school districts, that the Aides Labor Organization took the Board's *quid pro quo* and offered nothing in return, and that the evidence of the wages, hours and working conditions in comparable school districts supports selection of the Board's final offers.

In addition, the Board argues that under Sec. 111.70(4)(cm)7r(j) of MERA, the issue to be considered is the Board's and the Labor Organizations' proposals to change the *status quo* of wages, hours and working conditions from the prior contracts; that the Board has proposed to switch the health insurance plan from one offered by WEAIT to one offered by WEAIT or the Trustmark Insurance Company (Trustmark), that the Labor Organizations have resisted this proposal, that arbitrators have generally placed the burden of proof on the party proposing to change the *status quo* in interest arbitration proceedings; that in this case the Board must justify the change in health insurance carriers while the two Labor Organizations must justify the demand for a new retirement benefit and second personal leave day, that the burden of proof is a burden to justify the change in the contract by a showing of a need for the change through proof of a hardship or widespread support for the change in comparable employers, and by offering a significant *quid pro quo*, citing several cases, that the Board has demonstrated a need to change the health insurance carrier at several levels; that WEAIT health insurance costs are out of line with the costs of CESA #2 member school districts pay for their own health insurance; that WEAIT has demonstrated that it is quite difficult to deal with then an employer attempts to control its health insurance costs; that WEAIT is not rated by any of the companies that rate the financial stability of insurance companies; that WEAIT does not buy reinsurance for unusually large claims; that the Board believes there is clear need for a change in the *status quo*; that the Board has made a proposal reasonably designed to meet the need for a change, that the Board's proposal solves the problems identified above; that the Board's proposal will not cause an undue hardship for CESA #2 employes; that Trustmark has agreed in writing to match the benefits provided by the current WEAIT plan; that the Board has offered a significant *quid pro quo* to the two Labor Organizations; that both the Teachers and the Aides receive a new retirement benefit in the form of a one percent additional WRS contribution during the sixth through tenth year of employment and an addition two percent contribution starting with the 11th month of employment;

that employes in both Labor Organizations will be allowed to continue in the CESA #2 group health insurance plan at their own expense; that both Labor Organizations will gain a second day of unrestricted personal leave; that the Board's offer increases the teachers' base salary 1.98% in 1995-96 and 3 00% in 1996-97; that this exceeds the Teacher Labor Organization proposal for a base salary increase by 1.73% over two years; that the Board has clearly offered a significant *quid pro quo* to both Labor Organizations for its proposal in health insurance carrier; that the Board has met its burden to justify its proposed change in the *status quo*; that the two Labor Organizations have not justified their proposed changes in the *status quo*; that the two Labor Organizations have failed to offer any *quid pro quo*; that the Labor Organizations have included the Board's *quid pro quo* in their final offers without dealing with the insurance issue; and that this is a clear justification for selection of the Board's final offers.

In conclusion the Board argues that it has met its burden to justify a switch in the health insurance carrier; that the Board has proved there is substantial need for this change in carrier, that WEAIT cost much more than it should; that WEAIT is uncooperative when asked for relevant health benefit experience date that other insurance carriers would regularly supply to an employer; that WEAIT has been difficult to deal with in general; that WEAIT does not seek ratings from financial rating agencies and does not purchase reinsurance; that the Board has proven that its proposal to allow a choice in insurance plans will meet this need for a change, that Trustmark costs are substantially lower than the cost of WEAIT, that combination of the union and non-union groups of employes at CESA #2 should lower the premium levels further; that Trustmark has provided the Board with all experience data and other information it has asked for; that Trustmark has excellent financial ratings and purchases reinsurance to cover large losses; that the Board has demanded that Trustmark guarantee in writing that the benefits will be equal to or better than the WEAIT plan; that Trustmark has complied with this requirement; that the Board has proposed language that will guarantee benefit levels equal to or better than the WEAIT plan; that the Board has offered a significant *quid pro quo* to each Labor Organization; that the teachers receive a higher pay increase, a new retirement package and second unrestricted personal leave day; that the aides receive the retirement package and second personal leave day, that in both cases, examinations of benefits in comparable school districts shows that this is a real *quid pro quo*; and that, therefore, the Board requests the arbitrator to select its final offer in each of these arbitration proceedings.

Labor Organizations on Brief

The Labor Organizations argues that its preferred group of comparables provide the most reasonable basis of comparison than the set described by the Employer, that the Labor Organizations propose a comparable group which has a similar community of interest and is geographically proximate to the work sites of the majority of CEEO and SEPA employes; that in determining a suitable group of comparables for interest arbitration, the Labor Organizations carefully considered the employes working in the public and private sectors, organized and unorganized groups, and the geographic proximity to work sites of CEEO and SEPA employes; that in scrutinizing each of these options and the arbitral criteria, the Labor Organizations determined that the most appropriate and direct comparison is an intra-industry, geographically proximate comparison; that past arbitration dicta

indicate the comparable group consist of the athletic conference in which the bargaining unit is located; that schools in an athletic conference are of relatively equal size and are geographically proxima; that economic factors are often similar; that this type of comparison does not fit a CESA unit; that the districts which comprise CESA #2 cross into seven different counties, multiple athletic conferences and differ tremendously in size, that teachers are more likely to move from one location to another for employment than are support staff employes; that, therefore, a CESA-wide comparability could be argued for the CEEO, that such an argument does not take into consideration where the employes actually work, the geographic proximity; that most CEEO employes work in Kenosha County with a handful in Rock and Dane counties, that many of the services provided by these employes are shared by multiple districts; that geographic proximity is even more compelling for the SEPA unit; that all but one special education aide is located in Kenosha County, that the Employer recognizes that geographic proximity is a vital comparison as well; that the expired contract addresses the geographic issue in a number of ways; that, one, employes receive the same benefits as other employes in the school district to which they are assigned; and, two, that layoff language specifically addresses seniority, bumping and layoff in terms of geographic location, that in both CEEO and SEPA, the group most similar in composition, size, geographic location and type of work performed is the Western Racine County HCEB teachers and aides; that they are the only other group within CESA #2 which provides primarily special education services, are assigned to work sites in Districts, and frequently provides service for multiple school districts; that Walworth County also has a special education program, but much of it is located at one work site in Elkhorn and is therefore less comparable; that the Employer proposes a comparable grouping with little or no interest with the parties in this dispute, and that the Employer by attempting to use all CESA #2 schools for teachers and support staff locals located within Southern Lakes United Educators does not compare similar employes performing similar work nor does it compare these employes to the district in which they actually work.

The Labor Organizations also argue that their proposal regarding health insurance is more reasonable than the Board's offer; that the Board's offer is not supported by the testimony, that the Board and the Labor Organizations are in agreement that health insurance is the single issue behind this arbitration; that the Board argues that it is offering a change in carrier with a lower cost and a plan equal to or better than the current plan; that as of the arbitration hearing, the Employer had not been able to provide facts, only promises; that the Labor Organizations asked the Employer to show the plan that is equal to or better at a lower cost; that after three years, the Labor Organizations are still waiting, that the Labor Organizations cannot in good conscience take such an offer to their respective members and ask them to buy a plan that no one has seen, that even the information provided demonstrate that the plans are not equal, not better and costs have been hidden and after the initial buy-in may not be lower; that employes have a limited amount of resources and a responsibility to spend those resources in a fashion that will provide the greatest benefit to their members at a reasonable cost, that if dollars are spent in benefits, there is less available for salary; that the *quid pro quo* offered by the Employer are benefits that are common provisions for their CESA employe colleagues in districts where CESA employes work; that the alleged *quid pro quo* is not a suitable replacement for a reduction of health insurance benefits, that these employes are asking for a modest improvement in retirement and personal leave; that the great majority of their colleagues already enjoy

these benefits and are not asked to reduce their health benefits to maintain those benefits, that in order to make informed insurance decisions, the Board asked for experience claims from the current carrier; that the Board was forewarned on more than one occasion that if they received the data, they would no longer be a pool rated school; that the Board persisted in that request and did receive the data; that only representatives of the Board had difficulty understanding the WEAIT data; that the Labor Organizations bargaining teams had no such difficulty; that at no time prior to the arbitration hearing did the Board or Trustmark admit that consultant fees would be hidden in the Trustmark rates; that there was nothing hidden in the WEAIT data or rates; that, to date, the Labor Organizations have never seen a plan document for the proposed Trustmark health plan; that there are many items that are less than the current coverage and in some cases non-existent, that based on the information gleaned from what the Employer has provided or testified at the arbitration hearing, discrepancies have been identified regarding lower premium, self-funded waiver of premium, provider network, wellness/preventative component, flu shot program, consultant fees, experience rated, actuarial ratings, federal mandates, commission to agent and plan/subscribers service provider; that any of these area would be a sufficient reason for rejecting the Employer's offer; and that when looked at from an overall perspective, it is clear the plans are not equal and the Trustmark plan is actually inferior.

According to the Labor Organizations, the Employer attempts to argue that its offers make up for a change in carrier with a *quid pro quo* in retirement, leave, and wages, that when employes are receiving lower benefits than their counterparts and the employer offer does little to remedy that, it hardly qualifies as a *quid pro quo* when the improvements are offset by a health plan that will prove to be much more costly to the employe, that the Employer has not demonstrated a necessity to change from the *status quo*; that at a time when all districts in the state must maintain existing benefits to have a qualified economic offer, this employer seeks to make a unilateral change; that no other organized group of school employes in Wisconsin has voluntarily switched to Trustmark, that the one district which was forced to change has been faced with large rate increases and is attempting to escape, that once such a change in carrier is made, it becomes the *status quo*; that when problems arise, the Labor Organization bears the burden of establishing a compelling reason to change; that an area of extreme concern is the Employer's decision to self-fund the waiver of premium portion of the health plan; that employes have no recourse to the Office of the Commission of Insurance if the employer refuses to provide this benefit; that the employe would be required to sue the employer to seek redress; that there is no compelling need to deviate from the *status quo*, that the parties have never had an interest arbitration, that, rather, the settlements have been voluntary; that the Employer has agreed to the current insurance plan and carrier for many years; that the burden of demonstrating a compelling need for change in the plan and carrier falls on the Employer; and that the Employer's final offer as such does not demonstrate a need for change nor does it offer a *quid pro quo* that would make up for the loss of insurance benefits and potential future cost to the employes.

The Labor Organization argues that the Employer's and its proposals regarding personal leave are the same and are supported by the comparable data; that the parties proposals of two days of personal leave are not more generous than the norm, but will simply bring the bargaining units closer to the norm, that the Labor Organizations proposals regarding contributions to the WRS are more reflective

of comparable retirement plans than the Employer's offer; that the parties offers differ in the amount of contribution and when the contributions will be made, that retirement benefits have long been a concern of CESA employes; that various proposals during prior negotiations have failed to find a solution workable for both parties; that the Employer has been opposed to implementing the traditional type of benefit; that the Labor Organization then proposed a pay-as-you-go plan that would have districts contributing only when a CESA employe was working with that district; that while the Labor Organizations offers do not begin to match that of most districts, it is a step in the right direction; that the maximum allowable additional contribution to the WRS is two percent; that, therefore, it is not possible at this time using this method to more closely approximate a traditional plan, that the Labor Organizations salary proposals are preferable to the Board's offer; that the Labor Organizations offers are consistent with both teacher salaries and support staff salaries in comparable districts; that the consensus reached between representatives of the Board and Labor Organizations is that a comparison of teacher settlements is absolutely meaningless; that further reducing any validity is the fact that most CEEO members elect to be paid on the salary schedule of the school district in which they work, that the SEPA employes wage proposal is more in line with the wages of their counterparts than the Employer offer, that the Labor Organization offers are affordable, and that the Employer has not put forward anything in the record indicating that the Employer would be unable to afford the offers of the Labor Organization

The Labor Organizations conclude that a review of their final offers in consideration of the evidence presented, testimony provided, the factors to be considered by the arbitrator under the law, the comparable data, and the argument of this brief confirms that the Labor Organizations offers are the more reasonable offers before the arbitrator, that these offers provide wages, hours and working conditions which conform to existing settlement patterns and the community of interest among local school districts in which CESA employes work; that these offers also offer continuation of the *status quo* regarding health insurance plans, more equitable treatment regarding early retirement provisions and wages for staff that keep pace with the two year settlement of employes doing comparable work, that the Labor Organizations offers do all of this in affordable packages and without taking any unreasonable or extreme positions; that, furthermore, the Labor Organizations offers are harmonious with statutory criteria and further the interest and welfare of the public in providing a competitive system equal to the public schools; and therefore the Labor Organization requests the arbitrator to find for them and order implementation of the Labor Organizations' final offers for the 1995-96 and 1996-97 collective bargaining agreement.

Employer's Reply Brief

The Employer asserts that it does not object to adding the Western Racine County HCEB Handicapped Children's Education Board to the school districts in CESA #2 as the teacher comparison group or to the Southern Lakes Athletic Conference for the aides comparison group, but the Employer argues that the Labor Organizations' proposal for a one school comparison group is unacceptable; that arbitrators routinely reject proposals for one-employer comparison group, citing various cases; that since this is the first arbitration between the Board and the two Labor Organizations, the decision as to the appropriate comparison group for each bargaining unit will guide

not only the parties but any future arbitrator asked to decide a case between these parties; that dependence on one employer as a comparison group will distort future negotiations between the parties, that Employers and Labor Organizations should look to groups of employers for comparison groups to avoid extreme results; that the Board believes that the use of CESA #2 school districts for a comparison group is mandated by the collective bargaining agreement; that the Board and teachers' Labor Organization have used all the schools in CESA #2 to set salary levels in past contracts; that the Board believes the Southern Lakes Conference K-12, K-8 and Union High School Districts are the best comparison group for the aides; that the schools are geographically proximate to the schools where CESA #2 aides work; and that in some cases the schools in question are the same schools where CESA #2 aides work.

The Board also notes that the Labor Organizations argue they have not received a copy of the customized Trustmark plan and that the Labor Organizations are being offered only promises. The Board argues that these promises are in the form of binding contract language; that the Board guarantees by contract that Trustmark benefits will be equal to or better than the WEAIT plan, that the Labor Organizations do not need to trust Trustmark or CESA #2 because they have binding contract language; that if Trustmark and CESA #2 do not keep this promise, the Labor Organizations could seek enforcement of the language through binding arbitration; that the whole purpose of reducing the results of collective bargaining agreements to writing is to turn promises into enforceable contract rights, that the Labor Organizations' argument that the administrative fee or retention is a difference in benefits is stretching the concept of benefits; that future salary increases are not a benefit of any health plan, that the Labor Organizations' argument is obviously very speculative, that, in any case, Trustmark still has the lower premium; that the Board's decision to self-fund the waiver of premium benefits is not a difference in benefits, that, citing other points argued by the Labor Organizations, the Employer argues that there is no true differences in benefit levels identified in the Labor Organizations brief; that the Labor Organizations' argument at times ignores the Board's final offer, that the Board's final offer refers to benefits equal to the existing WEAIT plan, and that the Labor Organizations will always have contract language indicating the parties' intent was that the Trustmark plan would match the benefit levels of the WEAIT plan.

As to the Labor Organizations' assertion that there is no evidence of a need for a change in the health benefit carrier, the Board argues that the need was covered in its initial brief; that the need for this change can be summarized by three points: that WEAIT premiums are too expensive, that WEAIT has demonstrated that it is quite difficult to deal with when an employer attempts to control its cost; that WEAIT does not apply for or receive financial rating and does not purchase reinsurance to cover unusually large claims; and that the evidence clearly shows the need for a more responsive insurance carrier.

As to the Labor Organizations' argument that the employer has not offered a *quid pro quo* for the change in insurance carriers and that the Employer simply offers benefits that comparable employers already offer to their employes, the Board argues that the Labor Organizations' evidence does not differentiate leave deducted from sick leave from leave not deducted from sick leave, that if comparisons are to be made, the comparisons should be based on the number of personal leave days

received by employes in comparable school districts that are not charged against sick leave; that the Board's offer of a second personal leave day is clearly one day more than the average in either comparison group; that this constitutes a significant *quid pro quo* for the change in the health carrier; that the Board does not agree with the Labor Organizations' argument that a change in benefits bringing an employer up to the average of comparable employers cannot constitute a *quid pro quo* for another change in the contract; that the existing retirement benefits, personal leave and salary levels are the result of many voluntary agreements between the Board and the two Labor Organizations; and that the Board's final offer clearly includes a *quid pro quo* for each bargaining unit beyond the average benefit provided by comparable employers.

The Board also argues that the Labor Organizations' calculations regarding the two teacher retirement benefit proposals are based on flawed assumptions, that the Labor Organization's calculations are based on the CESA #2 salary schedule while half of the teacher are on the local salary schedule which pays more; that the Labor Organization' calculations are based on the employer contribution to the WRS rather than the benefit that the employes will receive from those contributions; that WRS contributions are invested and retirees receive significant benefit from those investment; that the Labor Organization uses the schedule in its final offer while the Board's salary schedule is substantially higher, resulting in higher WRS contributions for both the required portion and the optimal contribution in either final offer; that the Board does not dispute the fact that teachers would receive a higher WRS contribution under the Labor Organization's final offer than under the Board's final offer, that the Board had to balance the employe's need for a benefit with the employer's desire that this benefit be limited to employes with at least five years of service to CESA #2; that the Labor Organizations' analysis for the aides unit covers four school districts out of 27 in the Southern Lakes Athletic Conference, that 23 of the 27 districts have no benefit, that all four districts that offer a benefit require some years of service to the district before any benefit accrues; and that since most school districts employing teacher aides offer no retirement benefit beyond required WRS, the Board's final offer to the teacher aides includes a significant *quid pro quo* for the change in the insurance carrier

The Board also argues that, in terms of teacher's salary, anyone can see by looking at the benchmark increase that the Employer's final offer includes benchmark increases substantially above the average of CESA #2 school districts, that the 1.73% difference between the Labor Organization and the Board in the base increase is a significant *quid pro quo* for the change in insurance carrier; that the Board's offer to the teacher aides did not match the Labor Organization's demands, that the Board believes that its proposed retirement benefit and personal leave day is a sufficient *quid pro quo* for the change in insurance carrier as almost no comparable employers offer retirement benefits to teacher aides; and that the Board's final offer to the aides compared well with average wage rates in the conference and exceeded the average wage increase in both years in dispute

Overall, the Board argues that it has met its burden to justify a switch in the health insurance carrier; that it has shown a substantial need for a change; that a switch to a Trustmark plan will result in lower insurance costs and equal to or better benefit levels; that the Labor Organizations' failure to raise any significant evidence or arguments to suggest that costs will not be lower and that benefits will not be

equal or better is further proof that the Board has met its burden to justify the switch in insurance carrier; that the Board has offered a significant *quid pro quo* for the change in carrier; that teachers receive a salary increase that is $1.73% on the base higher than the Labor Organization's offer, a new retirement benefit and one more day of unrestricted personal leave than the average teacher in CESA #2; that aides receive an above average wage increase, an unprecedented retirement benefit and one more day of unrestricted personal leave than the average teacher aide in the Southern Lakes Athletic Conference; and that, therefore, the Board requests that its preliminary final offer be selected in this arbitration.

Labor Organizations' Reply Brief

As to the allegations made by the Board regarding the cost of insurance provided to these two bargaining units, the Labor Organization argues that CESA #2 insurance premiums are both in line with other districts and employer working in the same area as CESA #2 employes and are no higher than those districts; that the Employer attempts to create a premium discrepancy by not using an actual premium to premium comparison; that the Employer compares actual premium cost to employer contribution in determining average cost; that the employer also looks to all CESA #2 districts rather than looking to the Districts where CESA #2 employes are actually employed; that in January 1995 the Employer expressed interest in receiving the experience data from the current insurance carrier; that the Labor Organizations were very explicit in expressing their concern over the Employer's request for this data and the potentially negative impact it would have if the District's experience was worse than the pool-rated experience; that the Labor Organizations knew that if the Employer elected to become experience rated, those costs would be directly transferred to the employe bargaining unit in terms of total cost for wages and benefits, that the chief negotiators for both the teacher and support staff units volunteered to be a part of a committee to review insurance plans, and that the Employer elected to proceed in its own fashion by hiring a consultant

The Labor Organizations also argue that there is no evidence that industrial employes with a Trustmark plan were satisfied with the services or the plan, that the only group of school employes covered by a Trustmark plan, the Palmyra School District employes, received a 27% increase in premiums and have been forced to reduce benefits while actively pursuing an alternative health plan provider, that WEAIT provides the Employer with a complete list of employes for whom they are paying benefits; that therefore the Employer has an opportunity to review that list on a monthly basis to ensure that they have properly deleted individuals who are no longer eligible, that CESA #2 did ask at a later time to return to the pool, that the insurance provider responded favorably as the group was, in fact, returned to the pool; that non-bargaining unit employes have an experience factor significantly worse than the bargaining unit employes; that Trustmark underbid the plan for the non-bargaining unit employes which therefore resulted in an immediate 12% increase in the next plan year; that combining these two groups together for purposes of insurance may reduce the cost to the non-bargaining unit portion of CESA #2 employes; that it may very well increase the cost to the bargaining unit members who will be required to subsidize federally funded programs out of their wage and benefit packages; that the plan year being proposed by Trustmark from April 1 to March 30 does not coincide with the state mandated fiscal year of July 1 to June 30 for purposes of

collective bargaining, that this places CESA #2 employes at a distinct disadvantage in terms of bargaining; that the proposed self-funded waiver of 27 months does not equal the current benefit level of 30 months; and that the Employer's assertion of significantly higher rates amounted in 1997-98 to a difference of $6 09 per month for the single premium and $19.65 for the family premium.

In addition, the Labor Organizations argue that there is little significance between these two premiums with the exception that the Trustmark plan is by far more inferior; that a 12% increase as that received by the non-bargaining unit employes is higher than the Labor Organization proposal, that it is easy to understand why these employes have placed their faith in the provider who has provided an actuarial sound bid proposal versus that of a company whose efforts are solely to buy the business; that the Labor Organization raises questions of the consultant's ability to negotiate with the Trustmark provider to reduce the cost of the insurance package; that had he not been able to do so, the Employer cost would have been significantly higher than the 12% rate increase which was ultimately achieved; that the Labor Organization questions how Trustmark could write off $100,000 in additional claims for the non-union group, that WEAIT is unwilling to modify its method for calculating premiums, that the fact that this insurance provider bases its premium on actuarial data is of great relief; and that any provider willing to do whatever it takes to secure the business can hardly be trusted regarding other matters relating to the plan or its cost.

The Labor Organizations argue that the real issue here is that the surcharge CESA #2 received by acting as the fiscal agent for these two bargaining units and particularly the teaching unit are the most lucrative form of income for CESA #2, that these employes are most similar to employes performing educational duties at these work sites; that the community of interest that they share with non-bargaining unit employes located at the CESA #2 office in Milton is virtually non-existent, that for many years the Labor Organization has worked aggressively to have these employes become employes of the local school district, and that then they would no longer be caught between two masters.

In response to the Employer argument that if the Labor Organization offer is found to be the more reasonable, it will require CESA #2 to curtail student services, activities and programs, the Labor Organizations argue that those services will not be curtailed by merely transferred to a different fiscal agent that will not single out these employes with a different level of wages and benefits from the individual that they work next to, that CESA #2 may be required to reduce its management employes and other extraneous services; that the bottom line is the individual students served by the employees in these two bargaining units will continue to receive the same high level of service and receive that service in perhaps a much more cohesive manner when employes have only one board to serve; that should the Employer prevail in this arbitration, the Labor Organization efforts to have these exceptional needs services picked up through the local school district will continue; that the only difference may be that the Labor Organization becomes even more aggressive in their effort to ensure that its members are able to receive the same level of benefits and wages as their educational counterparts, that based upon the data presented, the Labor Organization does not believe the cost to provide these educational services is any higher than the majority of districts where these employes work; that if CESA costs are indeed higher, the majority of it comes from the additional service fee

charged by CESA; and that the Labor Organizations hope the local districts recognize there is no need for this additional surcharge and will join with the Labor Organizations in bringing these people home to the local district.

In regard to comparables. the Labor Organization asserts that, for the most part, the Employer and the Labor Organizations have utilized the same theory in looking to the appropriate comparable group, that the greatest different between the two set of comparables is that the Labor Organization in following the arbitral criteria has focused on utilizing a comparison not only of geographic proximity but for employes performing the same work; that no matter what set of comparables is determined, if the employes are performing two different types of work, the value of such a comparable is significantly diminished, that, therefore, the Labor Organization asserts that its comparable group is preferable for both the teachers and support staff units, that the question should be whether or not employes perform the same type of duties as the employes found in the CESA #2 units; that for the Employer proposed grouping the answer is that they simply do not; that both of these units are very specialized employes; that in terms of looking at comparable wage data, especially in the area of support staff employes, the Labor Organization data is derived from actual contract settlement date and salary schedules; and that, therefore, the Labor Organization does not concur with the Employer's calculation of minimum and maximum rates of pay for these highly specialized employes.

In regard to the retirement comparables, the Labor Organizations argue that the comparable group of teacher retirement plans very distinctly demonstrates that CESA employes, even if granted the Labor Organization final offer, will lag extremely far behind their counterparts throughout the entire CESA #2 area; that had the Employer been willing to offer a traditional retirement defined benefit to either the teacher or support staff groups, the Labor Organization would have gladly entertained a vesting period, that in an effort to accommodate the desires of CESA #2 and concern for the individual school districts, CESA employes were willing to look at a unique retirement plan; that even without a vesting period, these employes do not approach a similar level of benefits enjoyed by their colleagues, and that, in regard to the Employers assertion that one of the *quid pro quos* for changing insurance carries is that employes will be able to remain in the group plan following retirement at their own expense, the option already exists.

In conclusion, the Labor Organizations argue that the Employer's final offer attempts to justify changes in the collective bargaining agreement that it has been unable to achieve through voluntary agreements; that the Employer's justification for the reduction in benefits continues to be an alleged *quid pro quo*; that both the Employer and Labor Organizations proposals regarding retirement are merely a fraction of the benefit available to their educational colleagues; that if the Employer provided a greater than average benefit, there could perhaps be a *quid pro quo* argument; that such is not the case in this dispute; that the Employer cannot use as a *quid pro quo* a benefit already enjoyed by members of both bargaining units, such as the right to remain in the group plan following retirement; that in regard to the Employer's assertion that its proposal regarding a one-day increase in personal days is also a *quid pro quo*, the Labor Organization argues that the proposed increase by both of the parties merely brings these two units into closer alignment with their colleagues in the districts in

which they work, that neither constitutes an appropriate *quid pro quo* for imposing a flawed insurance plan with unknown future costs to the employes; that the two Labor Organizations final offers are consistent with the comparable, are supported by other settlements, and are more reasonable than those of the Employer; and that, therefore, the Labor Organizations urge adoption of their final offers as a part of the 1995-97 collective bargaining agreements.

DISCUSSION

Introduction

The parties agree that these cases are in arbitration because of the health insurance issue.

The Employer wants to change the *status quo* to allow it to select the insurance carrier It has included language to guarantee that the benefit levels under any new carrier are equal to or better than the present levels. As its *quid pro quo* for granting it the right to choose the insurance carrier, it argues it is offering two incentives to each bargaining unit. First, it offers a second day of unrestricted personal leave, where previously the second day of personal leave cost employes three days of sick leave. Second, the Employer is offering an additional contribution to the WRS, above those required by law of both the employer and employe Said contribution would be one percent after five years of employment with the Employer and an additional one percent after ten years of such employment. The Employer argues it offers an additional incentive of a salary increase for teachers higher than that proposed by the Labor Organization and the average settlements in CESA #2 schools Finally, the Employer's final offer also includes a salary increase in both years to the aides' unit

CEEO and SEPA have resisted this change in health insurance, choosing to stay with the insurance carrier that both parties have agreed to for years under these agreements. CEEO and SEPA seek three items in their final offers. First, they also include a second day of unrestricted personal leave in their final offers, arguing it is catch up with what they argue other employers offer their employes Second, their final offers also include a contribution to the WRS above and beyond that required by law of both the employer and employe. CEEO and SEPA seek a two percent contribution for all employes, arguing again it is a catchup to what it asserts other employers offer their employes Third, CEEO and SEPA seek salary increases for both bargaining units in both years.

The parties agree upon two other things: the decision on the question of insurance is the determining factor in both cases; and both cases have to have the same result

Section 111.70(4)(cm)7 of MERA[1]

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[1]Said section states as follows:

7 'Factor given greatest weight ' In making any decision under the arbitration

CEEO and SEPA assert that CESA #2 in this case is not covered by Sec. 111 70(4)(cm)7 of MERA.

The Employer notes that revenue and expenditure limits apply to CESA #2's customers and that CESA expenditures are limited by the revenues generated by service contracts and grants received by the CESA from the federal, state and local governments and other entities contracting with the CESA. While the Employer argues that its costs impact on school systems subject to expenditure and revenue controls, it ultimately agrees that CESA #2 is not subject to expenditure or revenue limits.

As the arbitrator agrees, this factor shall not be considered in the decision in this matter.

Section 111.70(4)(cm)7g of MERA[2]

The Employer asserts that the "jurisdiction" of CESA #2 is the member school districts, and their economic condition is defined by school district revenue limits Since the economic conditions of the school districts will be helped by CESA #2 controlling its long term health insurance costs, and since the Employer's final offers do the better job of controlling these costs, the Employer argues that this criterion clearly supports selection of the Employer's final offers The Labor Organizations appears to assert this criterion does not apply

In any case, other than the mention of revenue limits, no other information was provided to this arbitrator regarding the economic conditions in the jurisdiction. For this reason, this criterion will not be considered in reaching a decision in these matters.

> 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 which places limitations on expenditures that may be made or revenues that may be collected by a municipal employer. The arbitrator or arbitration panel shall give an accounting of the consideration of this factor in the arbitrator's or panel's decision

[2]Said section states as follows.

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

Section 111.70(4)(cm)7r(d) of MERA[3]

1. Comparables

The first dispute that needs to be resolved in this matter is the issue of comparables.

CEEO: For the CEEO agreement, the Labor Organization asserts that a CESA-wide comparability could be argued but such an argument does not take into consideration geographic proximity. The group most similar in composition, size, geographic location and type of work performed, according to the Labor Organization, is the Western Racine County HCEB CEEO asserts that the Western Racine Co. HCEB is the only other group within CESA #2 which provides primarily special education services, is assigned to work sites in District, and frequently provides service for multiple school districts. It therefore proposes Western Racine Co. HCEB as the CEEO comparable [4]

There are two problems with this position First, it defines the concept of "employes performing similar services" too narrowly. While CEEO employes are special education teachers with some unique aspects to their positions, they are, first and foremost, teachers. As such, comparisons to teachers in districts of approximately the same size, geographically proximity and similar local economic conditions should serve these teachers well, as well as such criteria serve all teachers throughout the state. To limit comparisons only to special education teachers who provide primarily special education services, are assigned to work sites in Districts, and frequently provides service for multiple school districts, limits the comparability pool too much, as is seen by the fact that only one group in the entire CESA #2 area qualifies as a comparable.

Which leads into the second problem As noted by the Employer, arbitrators routinely reject proposals for one-employer comparison groups [5] So does this arbitrator Having only one comparable creates a situation in which there is not so much comparability as there is a correlation It creates a parallel relationship and, ultimately, a dependent one, losing focus on what the situation is inside one's own district while focusing attention on what is happening in the other district. This can not serve to create a healthy collective bargaining relationship between the parties. The Employer

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[3]Said section states as follows.

> d Comparison of wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes performing similar services

[4]The Labor Organization will not be consistent in this argument, using other comparables in its arguments on the substantive issues.

[5]See, i.e., Monona Grove School District (Teachers), Dec. No. 25034-A (Pietri, 7/88), Monona Grove School District (Custodians), Dec. No. 28339-A (Kessler, 10/95); and Douglas County (Highway Department), Dec. No 28215-A (Malamud, 3/95).

points out other problems, all of which are well taken.

The Employer, on the other hand, proposes that the comparability group be all schools in CESA #2. This proposed comparability group has a history with these parties: they have negotiated and agreed to use the BA base of CESA #2 schools in determining CESA #2's BA base, and have placed said agreement in their agreement.[6] The Labor Organization offers no persuasive argument on why it would agree in its voluntarily settled collective bargaining agreement to use all the schools of CESA #2 to determine its salary schedule and then not use those same schools to resolve the issues, including salary, before this arbitrator

By the same token, the Employer states it has no objection to including the Western Racine Co. HCEB in the comparable pool.

Therefore, I find that the comparability group for the CEEO agreement is composed of all schools in CESA #2 and Western Racine Co. HCEB.

SEPA: For the SEPA agreement, the Labor Organization uses the same analysis and offers the same arguments that the comparability group should include only the Western Racine Co. HCEB.[7] This arbitrator's response, in essence, is the same Although SEPA does not use other districts within CESA #2 to determine its salary schedule, as CEEO does, the agreement between the Board and

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[6]Article XVI - COMPENSATION, Section A, Paragraphs 4-6, reads as follows.

> The BA Base for the forthcoming school year shall be determined by finding the average BA Base of all CESA #2 schools which are settled for the present school year as of April 1 of any calendar year.
>
> Next, multiply the above average BA Base by the statewide average percentage increase in salary alone for the present school year as of April 1 of any calendar year. This figure shall then be step one of the salary schedule for the forthcoming school year
>
> Next, the above step one figure shall be divided by 1 038 and the result will be the BA Base for the forthcoming school year.

The parties stipulated during negotiations for this collective bargaining agreement that the formula quoted in the paragraphs above would not be used to generate the CESA #2 salary schedule during the 1995-96 and the 1996-97 school years, but that those paragraphs would remain in the agreement This stipulation in no way detracts from the point that the parties have used CESA #2 school districts as the starting point for determining their salary schedule and have codified this formula in their collective bargaining agreement.

[7]Again, the Labor Organization is not be consistent on this issue as it argues other comparables in the SEPA substantive issues.

SEPA calls for lay-off decisions to be made within a consortium [8] So, again, the parties have determined that certain school districts are appropriate to use in carrying out the goals of the parties' agreement, and the Labor Organization does not offer a convincing argument as to why these districts should be excluded from the comparable pool. The Labor Organization does note that geographic proximity is most important in determining SEPA comparables.

The Employer recognizes that as well in proposing that the teacher aides be compared to K-12, K-8 and Union High School Districts in the Southern Lakes Athletic Conference. As noted by the Employer, these districts are geographically proximate to the schools where CESA #2 aides work and, in some cases, are the same schools. Again, the Labor Organization does not offer any arguments to successfully refute this comparable pool.
And, once again, the Employer does not object to inclusion of Western Racine Co. HCEB in the comparable pool.

Therefore, I find that the comparable pool for SEPA are the K-12, K-8 and Union High School districts in the Southern Lakes Athletic Conference and Western Racine Co. HCEB

2. Personal Leave

Both sides propose amending the personal leave policy to eliminate the deduction of three sick days for using a second day of personal leave. The Employer views such a change as part of its *quid pro quo* for the change in the health insurance language The Labor Organizations see the change as bringing these employes closer to the average.

CEEO: The Labor Organization reviewed information from 72 CESA #2 school districts and found that the average minimum number of personal days available to teachers was 1 93 and the maximum was 2.47. It therefore argues that increasing CESA #2 teachers to two days brings them closer to the norm, a little above the minimum but below the maximum

But CESA #2 teachers already have two personal leave days That is not the change that is taking place in this arbitration. Even without the change in language proposed by both the Employer and the Labor Organization, CESA #2 teachers have two personal leave days, a little more than the

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[8]Article XI - LAYOFF, Section A, reads as follows:

> When a special education program aide position is eliminated, the last senior aide in the district or consortium shall be laid off providing the remaining aides are qualified to staff the remaining positions.
>
> For purposes of this provision, "consortium" refers to the 12 school consortium of Brighton, Bristol, Central Westosha UHS, Lakewood, Paris, Randall, Salem Consolidated, Salem #7 (Trevor), Silver Lake, Wheatland, Wilmot Grade and Wilmot UHS

minimum and somewhat less than the maximum.

The change that will occur as a result of this arbitration is that CESA #2 teachers will have two unrestricted personal leave days. The high price for using a second personal leave day in CESA #2's expired agreement is the loss of three sick leave days. The removal of this dis-incentive to using a second personal leave day is what is changing in this process.

So the comparison offered by the Labor Organization does not cover the situation that is being advocated. The comparison, as asserted by the Employer in its Reply Brief, should be based on personal days received by employes that are not charged against sick leave. The comparable comparison should also exclude those contracts that require teachers to pay for part or all of the cost of the substitute teacher or to specify the purpose for the personal leave, for neither of these is required by CESA #2. When such a comparison is made, the data collected by the Employer shows that the average teacher in CESA #2 districts receives 0.85 days of unrestricted personal leave.

SEPA: The Labor Organization reviewed information from 29 organized support staffs in CESA #2 which showed that the minimum number of personal days is 2.24 and the maximum number is 2 31. In those districts that are most comparable to SEPA, according to the Labor Organization, the average number of days is 1.5. Again, the Labor Organization sees the proposal as only bringing SEPA employes closer to the average

And, again, the Labor Organization fails to distinguish between restricted and unrestricted personal leave, which is the issue in this arbitration. When such a comparison is made, the data shows that the average number of unrestricted personal leave days granted in a Southern Lakes Athletic Conference school is 0.95

Conclusion: The Labor Organizations' argument that the change in these final offers only brings these employes up to the norm is found wanting. The proposal advocated by all parties is at minimum a day more of unrestricted personal leave than the comparables offer. But since all parties advocate the same position, the comparables favor neither the Board or Labor Organizations' offers on this issue.

3. WRS Contribution

The typical retirement benefit in CESA #2 school district teacher contracts is an employer contribution toward a health insurance plan for a period of time upon early retirement. Since CESA #2 cannot provide this type of benefit to its teachers because there is no way to charge the cost of retirement benefits back to the school districts using the services of the CESA #2 teacher, the Employer and Labor Organization have found a unique way to provide such a benefit.

The Employer and the Labor Organizations propose adding to both agreements a retirement benefit in the form of a salary percentage contribution to the WRS, above and beyond that required under state statutes, but they differ as to the percentage and to when the contribution requirement takes

effect. The Employer proposes a one percent contribution after the fifth year of employment and an additional one percent contribution after the tenth year. The Labor Organizations proposes a two percent contribution from day one. The Employer views its proposal as part of its *quid pro quo* for the change in the health insurance language. The Labor Organizations see the change as initiating a benefit at a low level that most other teacher's in CESA #2 school districts already have.

CEEO: The Labor Organization asserts that the average monthly health insurance premium for teachers in CESA #2 districts for 1996-97 was $547.19 per month, that the average number of years of payment for insurance as a retirement benefit for teachers in CESA #2 school districts was 5.82, and that multiplying the two gives the average teacher a retirement benefit worth $38,216. This benefit would be available to teachers after being employed for an average of 14.97 years. The Labor Organization calculates its proposal would generate an additional WRS contribution of $16,784 for a teacher with 24 years of service. The Labor Organization calculates the Employer's proposal would generate an additional WRS contribution of $12,772. According to the Labor Organization, both are more than $20,000 below the average retirement benefit

The Employer acknowledges that teachers will receive a greater WRS contribution under the CEEO proposal. The Employer does argue that CEEO's calculations are based upon the flawed assumptions that all teachers are on the CESA #2 salary schedule when half are on the higher paying local schedule and that the calculations refer to contributions as opposed to the benefits received from those contributions which are invested by WRS The Employer argues that its requirement of a five year wait is substantially below the 15 years of required service for the average teacher.

It is clear from the record that most teacher contracts covered by CESA #2 have some form of retirement benefit above and beyond the WRS contribution required by state statute The Labor Organization certainly is entitled to a catch-up argument in this situation.

But in this situation a problem with comparisons occurs right up front in that the plan proposed by the parties here is different in kind than the typical plan. As mentioned above, the typical plan consists in some employer contribution toward a health insurance plan for a period of time. It usually has a minimum number of years of service required and a minimum age requirement

Therefore, if you leave the district without the requisite number of years of service or before the minimum age, you do not receive any benefit. If you work in a district 30 years but are 52 when you leave and the minimum age is 55, you do not get the benefit. If you are 57 and have 12 years of experience when you leave and the minimum requirement is 15 years, you do not get the benefit. The typical benefit is not placed in the teacher's retirement account; it only becomes available from the employer in incremental payments once the minimum number of years of service and the minimum retirement age are reached.

Under both proposals in this proceeding, the additional contribution goes into the teacher's WRS account immediately and, once it is there, it goes with the teacher wherever the teacher goes. It begins to be provided on day one of employment under the Labor Organization's proposal or after

five years of service under the Employer's proposal. Both proposals are significantly below the average years of service required of approximately 15. And neither proposal has an age requirement attached to it, the benefit is paid to the teacher's account in the WRS regardless of the teacher's age, and is theirs to keep regardless at what age he/she leave the employer's service.

Thus, the proposals are much more inclusive that the typical plan A teacher at age 23 who has worked for one year receives some benefit from the Labor Organization proposal, a benefit the teacher would not receive under the typical plan. A teacher at age 28 who has worked for six years receives some benefit from both proposals, more so from the Labor Organization's than the Employer's, a benefit the teacher would not receive under the typical plan.

In addition, the typical plan has a cap, a level of benefit that cannot be exceeded, usually a number of years an employe can receive health insurance. The proposals offered here have no such cap. The longer a teacher works, the more that is contributed to the WRS on the teacher's behalf and, therefore, the more that is available to the teacher at retirement. The Labor Organization's calculations imply that the benefits from the proposals here offered are capped when the employe reaches 24 years of service, but such is not so. So while the typical plan may be capped at $38,216, the teacher under this plan continues to earn benefits.

In addition, the typical plan is an early retirement benefit only If you do not retire early, you do not gain any benefit from the plan. Such is not the case with the proposals here. The increased contribution can be used with early retirement, but the benefit is not loss if the teacher chooses to work until retirement age.

These are significant differences, difficult if not impossible to compare to the typical plan. On their face, both plans generate less money than the typical plan, although the Employer argues that its plan generates more than is shown by the Labor Organization But both plans place the money into the employe's account directly, irrespective of the number of years of service (beginning after five years of service under the Employer's proposal) and the teacher's age of when he/she leaves the employ of the Employer.

A flaw in the Labor Organization's catch-up argument is that it overreaches financially, trying to gain all the possible catching up it can do under this proposal in its initial inclusion in the agreement. The teachers have been behind in retirement benefits for many years The WRS limits additional contributions to two percent. The Labor Organization's proposal is to grant everyone a two percent contribution. This is a hefty catch-up amount

It also over reaches in terms of coverage. As noted above, many employes in the typical plan may not meet both the years of service and the minimum age requirements All employes will benefit from the Employer's proposal. So not only is the catch-up excessive in amount but in coverage as well.

The goal of a typical retirement plan is to reward those employes who provide long term service to the employer The Employer's proposal tries to balance that goal with providing a financial benefit

that over the long haul will provide insurance or other financial benefits to employes when they choose to retire. While the employes here certainly are entitled to a catch-up argument in regard to early retirement, as a catch-up proposal, the Employer's is more consistent with the norm, moving in the direction of catch-up while not over paying people who may not qualify for the benefit

SEPA: The proposals are the same, though the comparables are drastically different.

Again, the Labor Organization calculates that the average monthly health insurance premium for CESA #2 districts employing special education aides for 1996-97 was $555.37 per month, that the average number of years of payment for insurance as a retirement benefit for teachers in CESA #2 school districts was 5.625, and that multiplying the two gives the average teacher a retirement benefit worth $37,487. This benefit would be available after being employed for an average of 13.75 years. The Labor Organization calculates its proposal would generate an additional WRS contribution of $4,626 for an aides with 13 years of service. The Labor Organization calculates the Employer's proposal would generate an additional WRS contribution of $3,099. Neither proposal equals the value of one year of health insurance, the Labor Organization notes, much less five-plus years for the comparables.

But the Employer points out that the comparables used by the Labor Organization are only four of the 27 school in the Southern Lakes Athletic Conference plus Western Racine Co. HCEB. The other 23 schools offer no supplementary retirement benefit.

Conclusion: For the CEEO unit, the Labor Organization makes a credible argument for some catch-up in this area. The Employer's proposal, in essence, also offers some catch-up to these employes The Labor Organization's argument is weakened by its over-reaching in terms of inclusion (no waiting period -- everyone is covered from day one) which is not supported by the comparables, and in terms of amount of catch-up in one agreement (two percent)

The comparables favor the Employer's proposal in terms of having a waiting period before an employe becomes eligible for the benefit. While the waiting period has to be less than the comparables because of the way in which this proposal is financed, the Employer has balanced that with a two-tier payment system, a good start of catching these employes up in terms of retirement benefits

For the SEPA unit, neither offer is strongly supported by the comparables as only four of 27 comparables have any such benefit In terms of those that do, they all have a waiting period which favors the Employer's position.

4. Wages

CEEO: In this situation, the Labor Organization argues that comparison of salary settlements is absolutely meaningless in that reported settlements are often times not a true costing This is an interesting argument for the Labor Organization to make, one that is not accepted by this arbitrator

The Labor Organization also argues that comparison of salary settlements is absolutely meaningless in that most CEEO members elect to be paid on the salary schedule of the school district in which they work. Therefore, the Labor Organization offers no argument or support of its wage proposal other than to say its proposal is preferable.

In terms of comparable percentage settlements, the Employer's offer is more consistent with the comparables in the first year while the Labor Organization's offer is closer to the comparables in the second year.

	1995-96			1996-97		
	CEEO Offer	Board Offer	CESA Ave.	CEEO Offer	Board Offer	CESA Ave
BA Base	0.47%	1.98%	2.00%	2 78%	3.00%	2.10%
BA Max	0.47%	1.98%	1 70%	2.78%	3.00%	2.10%
MA Base	0.44%	1.83%	2 20%	2.58%	2 79%	2 00%
MA Max	0.44%	1.83%	1 70%	2 58%	2.79%	2.20%
Sch Max	0.40%	1.67%	1.80%	2 35%	2.54%	2 00%

The Employer's higher offer impacts the salary schedule, not only in offering a higher salary schedule than the Labor Organization but by raising the parties' salary schedule such that it exceeds the comparable average on the BA level and closes the gap at the MA level.

	1995-1996			1996-1997			Total +/-
	CEEO Offer	Board Offer	CESA Ave.	CEEO Offer	Board Offer	CESA Ave.	Board - CEEO =
BA Base	23400	23750	23501	24050	24463	23850	+ 413
BA Max	34070	34580	32802	35017	35618	33524	+ 601
MA Base	25205	25555	26771	25855	26268	27207	+ 413
MA Max	36698	37208	40504	37645	38246	41042	+ 601
Sch. Max	40324	40834	45312	41270	41872	45573	+ 602

Over the two-year period, the Employer's offer is substantially higher than the comparable settlements while the Labor Organization's offer is substantially below the comparable average .

SEPA: Both parties offer a wage proposal of a 3.5% or 21 cent per hour increase on the base step in the first year. In the second year, the Labor Organization proposes to increase the base step by 7 5% or 47 cents per hour while the Employer increases the base step by 6 4% or 40 cents per hour. The average increase for the comparables is unclear with the parties suggesting widely differing increases with no way for the arbitrator to determine the correct figure It is clear that both offers greatly exceed the cost of living and the settlements that most employes are seeing at this time. It is also clear that this unit is below average on the minimum step and above average on the maximum step The Labor Organization argues that its proposal is more comparable. The Employer notes that its wage offer to the aides is not part of its *quid pro quo* for its health insurance proposal.

Conclusion: In the CEEO case, there is no doubt that the Employer's offer to the teachers is above the comparable average and the Labor Organization's offer is below the comparable average. The Employer's offer causes the salary schedule to catch up and exceed the comparable average at the BA level and provide some catch-up at the MA level The Labor Organization's offer causes the salary schedule to fall farther behind the comparable average In the SEPA case, both offers are above the rate of inflation and both do a good job of raising the minimum salary level which is substantially below the comparable average. As best as can be determined, the Employer's offer is the more comparable while the Labor Organization's provides the most catch-up.

5. Health Insurance Carrier

This is the crux of the problem. If the parties resolve this issue, everything else in this case falls into place The parties were not able to resolve this issue so it is before the arbitrator for decision. But the parties do not argue comparability as to this issue, other than as it relates or does not relate to the need for a change in the *status quo*.

Section 111.70(4)(cm)7r(j) of MERA[9]

This arbitrator is loath to change a long standing *status quo*, one voluntarily agreed to by the parties over the course of many years. To do so, the moving party must show. that there is a substantial problem which the *status quo* cannot rectify, that the proposal is reasonably designed to address the problem, and that the quid pro quo compensates the other party for any hardship the change will

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[9]Said section reads as follows:

> 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

cause [10]

Is there a substantial problem which the *status quo* cannot rectify?

The Employer argues as follows: 1) WEAIT health insurance costs are out of line with the costs of CESA #2 member school districts pay for their health insurance; 2) WEAIT has demonstrated that it is quite difficult to deal with then an employer attempts to control its health insurance costs, 3) WEAIT is not rated by any of the companies that rate the financial stability of insurance companies, and 4) WEAIT does not buy reinsurance for unusually large claims.

As to arguments 3) and 4), the Employer offers no evidence that this is a change in procedure for WEAIT; therefore, this situation has been such during the previous times that the parties have agreed to WEAIT as their insurance carrier so it is unclear as to why it has become an issue in this proceeding. Therefore, I give no credit to these arguments.

As to argument 2), it is unclear from the record whether this "problem" is a result of the policies WEAIT has regarding information of pooled ratings, a personality conflict between some of the parties, or what. The Employer and WEAIT do not have a good working relationship. This, in and of itself, is not enough to support a change in the long-standing *status quo*.

In terms of health insurance costs, the Labor Organization argues that insurance premiums are in line with other districts. Yet, its own chart shows that in 1994-95, CESA #2 had the tenth highest health insurance premium of the 75 school districts in CESA #2. It was over 12 percent higher than its own chosen comparable, the Western Racine County HCEB and 13% over the average among CESA #2 school districts So the Employer's argument that the premium rates it has paid since 1994-95 have been consistently in the top ten of the 75 schools in the CESA #2 district, and the most expensive when the experienced rated premium was in place, is well substantiated

As a result of this high premium, the Employer argues that it is losing teacher bargaining unit members According to the Employer, individual school districts are hiring CESA #2 teachers to

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[10]See, i.e., Glidden School District, Decision No 27244-A (Malamud, 10/92), which reads in part as follows: "(T)his Arbitrator identifies a three-pronged test for establishing the basis for a change to the *status quo*, as follows: 1) Establish a need for a change, i e., a change in the contractual relationship between the parties on a particular issue; 2) a *quid pro quo* is offered for the change; and 3) that the need for the change and the *quid pro quo* be established by clear and convincing evidence."

See also Wilmot Grade School District, Decision No. 26861-A (Yaffe, 12/91), which reads in part as follows: "The most critical question which must be answered in making such a determination is whether the party proposing the change has been able to demonstrate that a legitimate issue which needs to be addressed exists. . . Once the legitimacy of an issue has been established, the proponent of the change also must demonstrate that its proposal is reasonably designed to address the defined problems and/or issues, and that the proposal will not impose an undue hardship on the other party "

perform the same services the district once bought from CESA #2 because the Districts can employ the CESA #2 teachers more cheaply themselves than they could through CESA #2.

And in essence, the Labor Organization candidly admits this is one of its goals. "For many years, the Association has worked aggressively to have these employees become employees of the local school district."[11] And this will be an on-going goal of the Labor Organization. "Should the Employer prevail in this arbitration, the Association efforts to have these exceptional needs services picked up through the local school district will continue. The only difference may be that the Association becomes even more aggressive in their effort to ensure that its members are able to receive the same level of benefits and wages as their educational counterparts."[12]

So the Employer has shown that there is a substantial problem which the *status quo* cannot rectify

Is the proposal reasonably designed to address the problem?

The Employer argues that its final offers allow it to choose the current WEAIT health insurance plan or the Trustmark health insurance plan with equal or greater benefits, thus providing the possibility to pick the least costly plan, whereas the Labor Organizations' final offers lock it into the WEAIT health insurance plan at whatever cost.

The Labor Organization argues that the difference in 1997-98 rates between Trustmark and WEAIT is $6 09 per month for single and $19 65 per month for family. Yet the difference in rates were much greater in the preceding years, and both parties agree that the non-bargaining unit employes currently in the Trustmark plan have an experience factor significantly worse than the bargaining unit employes Therefore, the premium levels for a combined bargaining units and non-bargaining unit employes would be lower than for the non-bargaining unit employes alone.

The Labor Organization spends many pages of both briefs arguing that the plan is not and will not be equal to or better than the plan currently in place But the record is clear this is the standard that is contained in the Employer's proposal and, therefore, this is the standard to which the Labor Organization can hold the Employer through enforcement of the agreement.

The Labor Organization also argues several other points in which it sees discrepancies in the Employer's health insurance plan. Many of these do not relate to benefits but are components of the cost of the plan which ultimately end up as the premium. The others, if they exist at all, can be fixed by the Labor Organizations' enforcement of the contractual requirement that the health insurance benefits be equal to or better than the current benefits.

Does the *quid pro quo* compensate the other party for any hardship the change will cause?

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[11]Labor Organization Reply Brief at page 9

[12]Labor Organization Reply Brief at page 10.

The Employer argues that it offers the teachers a *quid pro quo* in personal leave, retirement and wages. It also argues that it offers the aides a *quid pro quo* in personal leave and retirement.

Personal Leave: As noted above, the Labor Organizations' argument that the change proposed by the Employer and both Labor Organizations only brings the employes up to the comparable average is rejected. The Employer argues that changing the agreement to two days of unrestricted personal leave is a significant *quid pro quo*. I find that changing the cost of a second day of personal leave from three sick leave days to unrestricted is an added benefit above and beyond what the average employe receives. It certainly qualifies as a *quid pro quo*, though standing by itself it is not sufficient to balance the change in health insurance sought by the Employer.

Retirement: For the CEEO unit, the Labor Organization's credible argument for some catch-up in this area weakens the Employer's argument that this proposal is part of its *quid pro quo* for its change in health insurance. For the SEPA unit, however, the issue is clear cut. There is no catch-up argument here for the vast majority of comparables have no such benefit. The Employer's proposal certainly is a new and important benefit, one not received by the majority of aides, and qualifies as a *quid pro quo* for its insurance proposal.

Salary: The Employer's offer to the teachers' is above the comparable average and, as such, provides employes on the salary schedule with a life long increase in wages. It qualifies as a *quid pro quo* for the Employer's health insurance proposal.

Conclusion

The Employer provides a significant *quid pro quo* to the teachers in the form of a salary increase significantly higher than that proposed by the Labor Organization and the average settlement of the comparables and in the form of a second unrestricted personal leave day.

The Employer provides a significant *quid pro quo* to the aides in the form of a retirement benefit of a one percent contribution after five years and a two percent contribution after ten years to the WRS and in the form of a second unrestricted personal leave day.

As the change in health insurance is guaranteed to have benefits equal to or greater than the current plan, I find the *quid pro quo* stated above sufficient to compensate the employes for any hardship the change in health insurance may cause.

Other Statutory Criteria

The arbitrator has reviewed the little evidence and argument offered in regard to the other statutory criteria and find that none of it impacts significantly on the decision in this matter.

Summary

The 'Factor given greatest weight' and the 'Factor given greater weight' do not impact on this decision. The comparables selected are consistent with comparables used by the parties in their collective bargaining agreements. The comparables do not favor either the Labor Organizations' or the Employer's positions offer regarding personal leave While CEEO has a credible argument for catch-up regarding early retirement, its offer reaches too far in terms of cost and coverage. The Employer's offer is the more reasonable in terms of early retirement. The comparables do not favor either SEPA or the Employer in terms of early retirement. In regard to CEEO wages, the comparables are more consistent with the Employer's offer the first year and with CEEO's offer in the second year; however, the Employer's offer better catch-up in the overall salary schedule. For SEPA, the comparables do not favor either party the first year; during the second year, the belief is that the comparables favor the Employer

In terms of health insurance, the parties do not argue comparability so it is not considered The Employer has shown there is a substantial problem regarding the health insurance language which the *status quo* cannot rectify. It has offered a proposal to give it leeway in contracting health insurance which reasonably addresses the problem while contractually guaranteeing employes benefits equal to or better than they have now. The Employer provides a significant *quid pro quo* to the CEEO in the form of a significant salary increase significantly and a second unrestricted personal leave day. The Employer provides a significant *quid pro quo* to the SEPA in the form of a retirement benefit of a one percent contribution after five years and a two percent contribution after ten years to the WRS and a second unrestricted personal leave day.

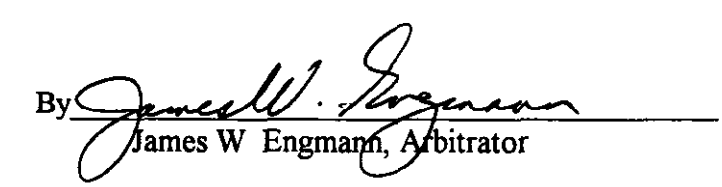
For these reasons, based upon the foregoing facts and discussion, the Arbitrator issues the following

AWARD

1. That the final offer of the CESA #2 Board of Control be incorporated into its collective bargaining agreement with the CESA Special Education Program Aides for 1995-97.

2 That the final offer of the CESA #2 Board of Control be incorporated into its collective bargaining agreement with the CESA Employees For Equity Organization for 1995-97.

Dated at Madison, Wisconsin, this 29th day of September, 1998.

By 
James W Engmann, Arbitrator

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