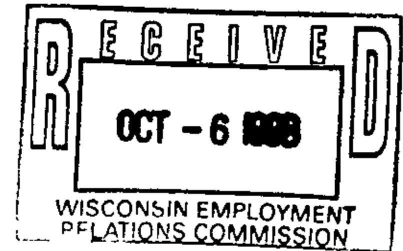


BEFORE THE ARBITRATOR

In the Matter of the Interest Arbitration Between

NORTHCENTRAL EDUCATION SUPPORT PERSONNEL ASSOCIATION

and

NORTHCENTRAL VOCATIONAL, TECHNICAL & ADULT EDUCATION DISTRICT

Case 55
No 55411
INT/ARB-8207

Decision No 29303-B

Appearances

Mr. Thomas J. Coffey, UniServ Director, Central Wisconsin UniServ Council-North, 625 Orbiting Drive, P.O Box 158, Mosinee, WI 54455-0158, appearing on behalf of the Northcentral Education Support Personnel Association .

Mr Dean R. Dietrich, Ruder, Ware & Michler, A Limited Liability S C., Attorneys at Law, 500 Third Street, Suite 600, P.O. Box 8050, Wausau , WI 54402-8050, appearing on behalf of Northcentral Vocational, Technical and Adult Education District

ARBITRATION AWARD

Northcentral Educational Support Personnel Association (Association) is a labor organization maintaining its offices 625 Orbiting Drive, P O. Box 158, Mosinee, Wisconsin The Northcentral Vocational, Technical & Adult Education District (District) is a municipal employer maintaining its offices at 100 West Campus Drive, Wausau, Wisconsin. At all times material herein, the Association has been and is the exclusive collective bargaining representative of a collective bargaining unit consisting of all regular full-time and regular part-time support personnel employed by the District, including but not limited to administrative assistants and clerical/secretarial employes, but excluding field house attendants, supervisory, managerial, professional (non-faculty), custodial/maintenance, paraprofessional/technical, confidential, faculty and casual employes. The Association and the District have been parties to a collective bargaining agreement covering the wages, hours and working conditions of the employes in said unit, which agreement expired on June 30, 1997

On April 16, 1997, the parties exchanged their initial proposal on matters to be included in a new collective bargaining agreement to succeed the agreement noted above The parties met on seven occasions in an effort to reach an accord on a new collective bargaining agreement. On July 29,

1997, the Association filed a petition with the Wisconsin Employment Relations Commission (Commission) requesting the Commission to initiated arbitration pursuant to Sec. 111 70(4)(cm)6 of the Municipal Employment Relations Act (MERA) On November 11, 1997, an Investigator from the Commission conducted an investigation which reflected that the parties were deadlocked in their negotiations On January 27, 1998, the parties submitted their final offers and stipulation on matters agreed upon to the Investigator who then notified the parties that the investigation was closed The Investigator also advised the Commission that the parties remained at impasse The parties have not established mutually agreed upon procedures for the final resolution of disputes arising in collective bargaining On February 24, 1998, the Commission ordered that arbitration be initiated for the purpose of issuing a final and binding award to resolve the impasse existing between the parties The Commission submitted a panel of arbitrators to parties and directed them to select the neutral arbitrator from said panel

On March 13, 1998, the parties advised the Commission that they had selected the undersigned as the arbitrator. On March 25, 1998, the Commission appointed the undersigned as arbitrator to issue a final and binding award, pursuant to Sec. 111 70(4)(cm)6 and 7 of the Municipal Employment Relations Act and to resolve said impasse by selecting either the total final offer of either the Association or the District. A hearing in this matter was held on May 6, 1998, in Wausau, Wisconsin, at which time the parties offered evidence and made arguments as they wished. The hearing was not transcribed The parties submitted briefs which were received on June 17, 1998 The parties also submitted reply briefs, after which 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

1. Comparables

The Association proposes that the comparable pool consist of the following Vocational, Technical and Adult Education (VTAE) Districts Chippewa Valley, Fox Valley, Mid-State, Nicolet, Northeast, Western and Wisconsin Indianhead.

The District proposes that the primary comparable pool consist of the following K-12 school districts. Antigo, D C. Everest, Medford, Mosinee, Phillips, Spencer, Wausau and Wittenberg-Birnamwood The District proposes that the secondary comparable pool consist of the following VTAE districts. Chippewa Valley, Mid-State, Nicolet, Northeast, Western and Wisconsin Indianhead.

2. Vacation

The Association proposes adding the following to Section A of Article XX - Vacations.

After nineteen (19) years of employment.... .... 193 75 hours (25 days)

The District proposes the *status quo.*

3. Early Retirement

The Association proposes adding Section D to Article XXII -- Insurance.

D Health Insurance at Early Retirement

The Board agrees to pay 70% of the single premium of the College health benefit plan for retired employees between the ages of 57 - 65 with 15 years of service to the District The retired employees may pay the additional premium and retain the family health insurance plan. All other employees who retire shall be allowed to participate in the College's health benefit plan until age 65 provided the retire employee pays the full cost of coverage

The District proposes revising Article XXII - Insurance by adding Section D

D. Employees who retire shall be allowed to participate in the College's health benefit plan until age 65 provided the employee pays the full cost of coverage

ARBITRAL CRITERIA

Section 111 70(4)(cm) of the Municipal Employment Relations Act (MERA) states

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 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

Association Brief

The Association argues that selection of its comparability grouping is consistent with arbitral authority, that it provides the proper basis for comparison in this dispute, that the Association has selected seven other VTAE districts that the District used as comparables in a previous case, that in that case the arbitrator stated that the District's brief stressed the comparability of these districts because of geographic proximity and comparable enrollment; that these facts have not changed since that award, that the District has an inconsistent approach to its selection of comparables, that the District alleges that K-12 school districts should be its primary comparable, that there is no arbitral authority that can legitimize the District's claim, that the District's K-12 selection is not consistent with the districts selected in the previous case; that the District conveniently leaves out the Fox Valley VTAE District as a comparable, although it is a contiguous district that meets the commonly accepted standards for comparability, that changing of comparables encourages shopping for those districts that best support your position, that VTAE districts have clearly defined missions that are distinctly different from the K-12 districts, that the funding and organization of the VTAE districts is totally separate from the K-12 districts, that the Association's choice of comparables is consistent with a previous arbitration award in the District, with the district mission and organizational setup, and with the funding mechanisms for VTAE districts, that K-12 districts are simply on a different track, that the District has provided no specific evidence that the K-12 employes have similar responsibilities, and that it is common sense to stay with the tested measurement of external comparability that has been used in this District's cases

The Association also argues that under Section 111.70(4)(cm)7 of MERA, the 'Factor given greatest weight' supports the Association's case, that the District testified that ability to pay was not an issue in this case, that the District's own evidence shows that the mill rate has declined from 1997-98 and 1998-99; that the District is under the general operational mill limit; that property values of the District have increased, that the District receives above average state aidable costs, that the minor increased liability to the District for the Association's two improved benefits does not place any significant burden upon the District's funds, and that, therefore, the Association's offer is the more reasonable when measured against the 'greatest weight' criterion

The Association also argues that under Section 111 70(4)(cm)7g of MERA, the 'Factor given greater weight' supports the Association's offer as the more reasonable; that historically, in times of economic downturn, employers have included voluminous bad economic news evidence in interest arbitration cases, that the District did not provide any evidence in its exhibits that speaks to this criterion; that the Association's evidence establishes that economic conditions are good, and that the 'greater weight' factor is basically conceded to the Association by the District's lack of evidence of any claim of economic problems.

In addition, the Association asserts that the criterion regarding the lawful authority of the Municipal Employer is not in dispute between the parties, that the factor regarding stipulations of the parties is

not in dispute, that no items in the voluntary agreement reached between the parties stand out as being inconsistent with the comparable VTAE districts; that no District assertions on the value of the stipulations can hide the fact that the voluntary agreements reached by the parties were simply in line with what already exists in other VTAE districts, that the cost of living factor has traditionally been viewed by arbitrators as to be consistent with the pattern of voluntary settlements, that the evidence does not establish any special consideration should be given the cost of living criterion in this case, that the evidence of comparability within a similar work environment at VTAE districts shows that the Association's offer of an addition of a health insurance benefit at retirement and improvement of vacation for long term career employees is consistent with the other comparable VTAE districts, that nothing on the record establishes that these secretarial employes' overall compensation deviates from the norm to such an extent that the criterion of overall compensation should be decisive for this case, and that the Association asks the arbitrator to take notice of any changes in the District bargaining status during the pendency of a decision in this case

The Association also argues that the District has agreed that ability to pay is not an issue in this dispute, that the District has presented no specific evidence that the addition of two justifiable improvements in fringe benefits will damage the interests and welfare of the public, that, in fact, for the health insurance improvement, the modest assistance in health insurance premiums for retiring career employes is in the public interest, that it is well accepted that the general public has a built-in liability in health costs for any uninsured employes in the community; and that this modest health insurance protection for retirees will help mitigate against the general community potential liability for these employes' medical and hospitalization costs after retirement.

In regard to the comparability with other employes performing similar services, the Association argues that once it has established that its offer is in harmony with the 'greatest weight factor' and the 'greater weight factor', the comparison factor regarding employes performing similar services is the one the parties have presented the most specific evidence; and that, traditionally, unless restricted by other economic factors, arbitrators have given the most weight to this type of comparable data

Specifically in regard to external comparability on the issue of vacation leave, the Association argues that the evidence overwhelmingly supports the Association's offer; that the District is off the mark when it refuses to make any offer of improvement of vacation benefits for long time career employes, that in regard to external comparability on the issue of early retirement health insurance benefit, the Association argues that its proposal is modest; that the Association's comparable group shows differing configuration of payment by the districts, that all districts except one have some type of payment of insurance benefits; that the Association's offer is in the middle of the group; and that early retirement is at issue in the one district without it

In regard to internal comparability regarding the issue of early retirement health insurance benefits, the Association argues that 81 percent of the employes other than members of this bargaining unit already have an early retirement benefit, that the District's apparent contention that a minority of 58 employes in the Custodial and Paraprofessional units should be a determinative comparison in this case is not reasonable, that 248 full and part-time faculty, management and professional non-faculty

employes all have an early retirement health insurance benefit substantially better than the Association offer, that all the external comparables include the paraprofessional group in the same bargaining unit as the clerical employes, that the external comparables establish the unique nature of the paraprofessionals as a separate union in the District, and that when one looks at the VTAE districts' industry practice, the two smaller units, Custodial and Paraprofessional, are an anomaly concerning the fringe benefits in dispute in this case.

The Association also argues that the District and the Association have not had identical approaches in the past for three standard elements of the contract: salary structure, longevity and shift differential, that both the custodial and paraprofessional units have more favorable contractual provisions for these items; and that the evidence and previous well-accepted arbitral dicta do not justify determining this decision based on sparse internal comparability from two smaller bargaining units in the District

In regard to the criterion of the comparability of other employes generally in public employment in the same and comparable communities, the Association argues that it should not be decisive in this case, that the only specific evidence the District uses is certain K-12 districts in the area, that arbitrators have not traditionally given any significant weight to K-12 employes when determining VTAE district interest arbitration cases, that the District excludes three K-12 districts that had been used in the previous arbitration award in the district, that the most reliable, specific evidence for comparability exists in the similar VTAE districts that the District used in a past case, that the District includes rate increase only for certain county and city employes, that this fragmentary evidence does not include actual wage rates or supporting verification, and that it should not be given weight in the decision making process

In regard to the criterion of the comparability of other employes in private employment in the same and comparable communities, the Association argues that this criterion should not be determinative in this dispute that only involves an addition of early retirement health benefits and a minor improvement in vacation benefits that are consistent with the vast majority of the other employes of the District, that the Association has submitted specific evidence on the demanding responsibilities of the bargain unit members' jobs, that evidence shows that the wages of the bargaining unit members at a minimum are not out of line with the comparable private sector wages, that the type of evidence the District presents on private sector employes is fragmentary; and that it does not give a complete picture of what occurs in the total package of wages and benefits for this class of employes

Finally, the Association argues that the criterion of other factors normally or traditionally considered, along with the comparability of other employes performing similar services, should be the primary criteria used by the arbitrator in determining the more reasonable final offer, that the evidence on the responsibilities of support staff is of great significance in considering the reasonableness of the Association offer; that the Association has proven the increase in level of responsibility of the support staff as a result of the District's Shared Leadership approach in delivering the District's programs; that an equity issue that is traditionally handled in collective bargaining makes the Association's offer particularly reasonable, that the District's increase of responsibilities for this group of employes who still maintain an inequity in fringe benefits for this class of employe is not consistent with commonly

accepted practices in collective bargaining; that while the equity factor is not given any recognition by the District for this group of employes, faculty team leaders have been given extra compensation; that a recognition of the changed responsibilities is addressed in the faculty bargaining, that this Association's attempt to obtain some modest improvements in fringe benefits is discounted by the District; that the Shared Leadership concept is not used in the K-12 school districts which the District attempts to use as its primary comparables; that this fact dramatizes the lack of District recognition of the added responsibilities of these bargaining unit employes as a result of the new design in the college's structure; that the wage rates for these employes are substantially below average for the salary ranges in which the overwhelming majority of the employes are placed; that only one employe is at the above average salary range for the comparables; and that charts prepared by the Association reinforce the fact that the Association's offer is simply seeking some equitable treatment in the fringe benefit area for these key employes in comparison to other similar VTAE District employes and the vast majority of other employes of the District.

In conclusion, the Association argues that its offer is more reasonable in the following areas. that the 'greatest weight' and 'greater weight' criteria of the law are supportive of a modest equity adjustment in health insurance benefits for retirees and an additional week of vacation for long term employes, that the best comparable evidence is the other VTAE districts that have been accepted by the District and another Arbitrator in a previous case; that the evidence clearly favors the Association's offer as the more reasonable; that the other primary factor in this case, other factors normally or traditionally considered, is supportive of the Association's offer in that it recognizes the changed demands placed on these employes with Shared Leadership, equity adjustments made for the faculty and the general relationship between the District and the other bargaining units, that none of the other criterion of the law should be of primary significance in determining the more reasonable final offer, that no specific evidence points to the Association's offer to be unreasonable when measured against these criteria, that the Association's comparability grouping is consistent with established arbitral dicta; that this grouping should be accepted by the arbitrator as the primary benchmark measurement for determining the reasonableness of the two final offers; that the Association's offer best meets this benchmark, that, based on the evidence in this case, the Association believes its final offer is the more reasonable, and that the Association asks that its final offer be selected by the Arbitrator.

District's Brief

The District argues that the comparable pool proposed by the District should be relied upon by the arbitrator, that this unit was recently organized in 1993, that the parties have not proceeded to interest arbitration in the past, that, thus, no comparable pool for this bargaining unit has been established; that the District submits that the appropriate primary comparable pool should consist of the K-12 school districts where the District's sites are located; that these school districts consist of Antigo, D C. Everest, Medford, Mosinee, Phillips, Spencer, Wausau and Wittenberg-Birnamwood; that as a secondary pool of comparables, the District proposes VTAE districts somewhat similar in size and equalized value; that this districts are Chippewa Valley, Wisconsin Indianhead, Mid-State, Nicolet, Northeast Wisconsin and Western Wisconsin; that the Districts comparables are more appropriate since history and applicant tracking show clerical employes are hired from immediate

geographic area, that applicants for vacant positions in this bargaining unit almost exclusively come from the immediate surrounding cities and counties of the District site where the vacant position is available; that they do not come from cities or counties where other technical colleges are located, that for this very important reason, the District's comparable pool is more appropriate and the Association's proposed comparable pool should not be accepted; that the District does not have to recruit clerical support staff employes outside the immediate area of the campuses, that teachers and paraprofessional employes require more specific education, training and skills, that, therefore, they are harder to recruit which justifies a broader comparable pool, that this is not the case with clerical employes, that the statutory criteria providing that the arbitrator shall give 'greater weight' to economic conditions in the jurisdiction of the municipal employer supports selection of the District's proposed comparables, that the arbitration award argued by the Association involved a different unit with different positions which require different levels of education, qualifications and skills; that no comparables were ever established by the arbitrator in the award, that no precedent has been established due to the dissimilarity of positions, that all of the VTAE districts argued by the Association except Fox Valley are comparable to the District as secondary comparables only, that this is due to the fact that these are support staff employes who are hired from the immediate area, and that Fox Valley VTAE District is impacted by a completely different set of economic factors than exist for the Wausau area and should not be included in the comparables

The District also argues that the arbitrator must give greatest weight to the state law that limits the tax levy to not exceed 1 5 mills, that the Association is asking for not one but two very expensive additional benefits, that it will cost the District nearly $83,000 over the next ten years for a vacation benefit that the other two support staff bargaining units do not have, that it will cost the District over $623,000 over the next ten years to pay for an early retirement health insurance benefit that the other two support staff bargaining units do not have, that selection of the Association's offer would cause a financial burden on the District, that it would undoubtedly increase the tax levy now and over the years to come, that the District is the third smallest college with the second highest tax levy, that the District simply cannot fund these benefits the Association is asking for without having a negative effect on the tax levy; and that the arbitrator must consider the Association offer under this 'greatest weight factor' and find that this criterion supports selection of the District's offer

In addition, the District argues that its final offer is reasonable and consistent with the internal settlements of the Custodial and Paraprofessionals units, that arbitrators have long recognized the importance of internal settlement patterns and maintaining consistency in the fringe benefits provided internal bargaining units, that consideration of internal settlements and consistency are proper factors for consideration; that they are to be given substantial weight when selecting between final offers, that the District has a history of comparable settlements with its support staff bargaining units, that arbitrators have recognized the importance of maintaining an internal settlement pattern among support staff bargaining units negotiating with a single employer, especially when dealing with fringe benefits like health insurance; that the other two support staff units have agreed to the exact same settlement that does not provide for the employer paying for early retirement health insurance benefits and for five weeks of vacation after 19 years, that the Custodial and the Paraprofessionals tentative agreements are almost identical, that the Association received the same benefits as these two units,

that the Clerical unit received additional benefits above what the Custodial and Paraprofessional units received, that in addition to five benefits and language revisions, the Association asks for a costly early retirement benefit and a costly vacation benefit, although the Custodial and the Paraprofessional units do not receive these benefits, that the Paraprofessional unit just obtained language in its new contract that provides for its members to participate in the retiree health insurance plan at their own expense; that the Custodial unit does not even have this language as of yet, that both the Custodial and the Paraprofessional units receive four weeks of vacation after 13 years of employment; that they do not receive five weeks of vacation after 19 weeks as the Association is asking for; that the District has maintained a settlement patterns with its support staff employes, that the general wage increase has been consistent among all the bargaining units since the start of the Clerical Association in 1993, that this internal settlement patten should not be ignored by the arbitrator, that, in fact, it dictates that the arbitrator should select the District's offer; that this would be consistent with the rational adopted by many arbitrators, that the final offer of the District accomplishes what arbitrators state should happen in that the District will have a consistent level of health care benefits for all District support staff employes; that absent any compelling reason for rejecting this consistency of benefits, the arbitrator should select the District's offer to maintain the necessary consistency, that adoption of the District's offer will mean that the early retirement health care and vacation benefits provided to the clerical employes will be exactly the same as the retiree health care benefits and vacation benefits provided to the other support staff employes of the District, that this alone strongly compels the arbitrator to select the District's offer, that the settlement of the Custodial and Paraprofessional contracts without an employer paid early retirement health insurance benefit and an extra week of vacation shows that the District's offer is reasonable and should be selected by the arbitrator, that arbitrators have recognized that their function is to place the parties in the position they would have ended up had a voluntary agreement being reached, that it is obvious that the parties would have reached a voluntary agreement very similar to that of the Custodial and Paraprofessional units which do not include the costly benefits the Association is asking for, that adoption of the Association's offer would result in a different and costly retirement health insurance benefit and extra vacation being provided to one support staff group and not the others, that failure to maintain consistency in these two expensive benefits provided to the support staff employes will undermine voluntary collective bargaining in the future, and that selection of the District's offer verifies the collective bargaining process and maintains consistency in retirement health benefits and vacation benefits

In terms of the external comparables, the District argues that they support selection of the District's offer; that not one of the K-12 districts provides employes with paid health insurance at retirement as an expected benefit or as a 'freebie'; that if and when an employe is eligible to participate in the retiree health insurance plan, it is at their own expense or their unused sick leave must be converted and applied toward the health insurance premium; that the benefit sought by the Association is clearly not granted to other similarly situated employes; that the secondary comparables do not grant the generous early retirement benefit sought by the Association; that only one college provides a similar benefit; that the rest of the colleges either allow the use of sick leave or require the employes to pay the cost of coverage like the District's offer; that regardless of who is considered primary comparables or secondary comparables, the result is the same, that the comparable support staff employes do not receive employer paid health insurance at retirement as an automatic benefit; that in regard to the

Association's proposal regarding an extra week of vacation, only one school of the primary comparables provides its employes with a maximum of 25 days of vacation, that although four of the secondary comparables do provide up to 25 days of vacation, the employes in two of them must wait until completion of their 20th year of service; and that the Association cannot support its offer under the external comparables, just as it cannot under the internal comparables.

In addition, the District argues that the burden rests with the Association to justify the proposed changes, that the Association is simply asking for too many costly benefits without justification, that the Association has failed to meet its burden of proof to justify implementing a huge retirement benefit and an expensive extra week of vacation, that the Association has not demonstrated by clear and convincing evidence the need for implementation of these expensive benefits, that the Association has not offered a *quid pro quo* for the extra benefits they are asking for; that they did not offer to take a lesser wage increase to obtain these additional benefits; that there has been no 'give' whatsoever on the part of the Association during this bargain, that any and all changes were to their benefit; that there is no justification for the changes; that the new benefits proposed by the Association creates an unreasonable burden upon the District, and that extremely expensive benefits as the Association is asking for should be bargained, not forced upon a party and implemented through arbitration

In regard to the interests and welfare of the public, the District argues that this criterion supports selection of its offer due to the financial impact of the Association proposed benefit additions, that acceptance of the Association offer will only increase the tax levy and increase taxes, that maintenance of the status quo in these benefits for the support staff employes will enhance the relationships between the employe groups, that this will result in higher employe morale which will be beneficial to the citizens and taxpayers of the District, that this will also result in a reduction in the amounts that the District must pay to outside parties to assist it in resolving employer-employe disputes, that private sector comparative data supports the reasonableness of the District's offer, that some of Wausau's largest employers do not provide any type of retiree health insurance benefit, and that the District's offer exceeds the CPI and is more in line with the CPI.

According to the District, the offer of the Association must be rejected on the basis of the totality of the offer and the statutory criteria, that case law requires that the arbitrator look at the totality of the offers; that in this case the Association's offer is clearly excessive; that the excessive Association offer cannot be justified, that the Association has not provided a legitimate presentation as to why it should be afforded expensive extra benefits while the two other support staff units in the District do not receive them, that for such an economic increase, the District is certainly entitled to a *quid pro quo*, that the Association is not offering any *quid pro quo*, that to the contrary, they are asking for an incredibly above average package; that the Association's excessive offer is not supported by the external comparables in whole; that it is certainly not supported by the internal settlements, that it is not in the interest and welfare of the public to have such an expensive proposal chosen by the arbitrator; that the proposals sought by the Association should not be forced upon the District by arbitration, that, rather, the proposal should be the result of bargaining between the parties, that the Association's offer is not supported by the comparables either issue by issue or in its entirety, that acceptance of the Association's offer will only serve to the detriment of the District by raising costs

without any justification whatsoever; that the District's offer reflects a fair and consistent wage increase for all members of the Association, that it leaves the granting of extra vacation or a new form of early retirement benefit to be negotiated in future years, and that, when considering the total offer, the Association is simply asking for too much with too little in return

In conclusion, the District contends that all of the statutory criteria support selection of the District's offer, and that, for all the foregoing reasons, the District requests that its offer be selected by the arbitrator for the 1997-99 collective bargaining agreement.

Association Reply Brief

On reply brief, the Association argues that the District's inference that the tentative agreements or stipulation should be a factor favoring its offer is not accurate; that all of the items in the tentative agreements were a balanced product of the negotiations; that some of the items were for administrative convenience; that the self-insured health benefit was a major District proposal and a significant concession by the Association; and that the tentative agreements should not be a factor favoring the District's offer

The Association also argues that the District's assertion that paraprofessional pool of applicants can be distinguished from members of this unit is not justified; that the District provides no evidence of the source of the pool of applicants of paraprofessionals; that paraprofessional and clerical employes are in the same bargaining unit in all but two of the Association's comparables; that the District's attempt to discount other similar VTAE districts as the determinative comparable grouping is not consistent with the clearly distinguishing characteristics of VTAE districts, that the demands and mission of the VTAE districts are not like those of K-12 districts, and that, therefore, the District's primary comparables should not be adopted.

In addition, the Association argues that the District's main argument that internal comparability is the crucial factor in this case must be rejected, that the District's reliance on dicta does not give a complete picture, that the dicta does not match with the specific facts in this case; that the District does not provide a historical review in this case, that the only evidence is some fragmentary wage data, that this is a relatively new union with its first labor agreement in 1993-95; that there is no evidence that its approach to fringe benefits, wage structure, longevity or other items matched the Paraprofessional and Custodial units, that, in fact, significant differences are outlined by the Association in its brief; that the District wants the arbitrator to determine this case based on the minority position of the two smaller units as it relates to this benefit, that this is an example of the 'tail wagging the dog', that this is not consistent with the standard interpretation of the criteria of the law; that the District wishes the arbitrator to ignore the 248 employes of the District who have the benefits in dispute; that only 58 employes do not, that equity supports the reasonable position of the Association; that the siren call of internal comparability advocated by the District does not match the reality of this particular fact situation; that no historical pattern of internal comparability is established; and that the District ignores that the largest Association and the management already have benefits in the two areas in dispute

In regard to costing, the Association argues that the District's approach to costing of the benefits is exaggerated and used fanciful projections; that the vacation costing is misleading, that there is no evidence that the District replaces an employe when she/he is on vacation or gives overtime to remaining employes; that while the additional vacation does give an additional week's time off for long term employes, it does not require the District to spend additional money; that the District's costing of the additional health insurance cost for early retirees also misses the mark with its long term projection, that it assumes all employes will retire at 57 and it projects a 10% increase in premiums each year; that this is a highly speculative projection and should not be the basis for determining what is fair for the 1997-99 labor agreement, that should this item become more costly in the future, it will be a factor in determining the wage and benefit increases in future bargains; that the District will not be damaged financially by implementing a benefit it has already accepted in a richer form for most of its other employes, that since the District agreed that ability to pay is not at issue in this case, the cost factor should not be decisive in this case; that the District's 'worse case scenario' with its alleged long term damage to the District's finances rings hallow, and that the District has already committed to a richer program for health insurance benefits for retirees to the larger teachers' union, management and professional non-faculty employes

The Association also argues that the District's scenario of the effect of the adoption of the Association's offer on the two smaller unions is not based on facts, that there is absolutely no evidence that the two issues in dispute were ever proposed by the other two unions, that there are obvious differences in priorities between unions, that the District throughout its brief continues to forget the inequity built into the present system with the vast majority of employes already receiving the disputed benefits; that the District may have created envy by providing the disputed benefits to the vast majority of other District employes, and that the so-called morale factor is clearly without any merit in determining the more reasonable offer

Finally, in regard to the District's argument that the Association did not offer a *quid pro quo* for the items sought in this dispute, the Association argues that it is without merit, that much of the District's arbitral dicta involves reduced contribution levels or increased deductibles for insurances in other district's offers, that, obviously, a *quid pro quo* is necessary in such a case, that the problem for the District is that such rational does not apply in this case, that the Association is merely seeking a benefit in an area the larger teachers' union already has or a vacation benefit already available to the District's management, and that the District's attempt to distort its arbitral dicta to apply to these specific facts must be rejected.

District's Reply Brief

The District argues that the comparable pool proposed by the District are proper comparables for the support staff unit; that the Association suggests that the District is changing the comparables from a previous award, that this unit has not been to arbitration before to have any comparables established, that the Association is basing its comparable pool on comparables presented for a previous Paraprofessional unit arbitration where the arbitrator did not even select a proper comparable pool, that it is obvious there is no precedent for this bargaining unit, that one can not be

considered based on the Paraprofessionals award due to the different positions involved in that proceeding and the lack of arbitral authority, that the District's comparable pool of K-12 schools where the District's campuses are located employ support staff employes similar to that of the employes in this unit; that the District is not 'shopping' for comparables as the Association suggests, that the District has shown that employes in this unit are hired from the immediate area of the District campus where the position is available, and that the District has shown why its proposed comparable pool should be utilized by the arbitrator.

The District also argues that the 'factor given greatest weight' supports the District's offer, that it is in the best interest and welfare of the public; that the Association's argument that the mill rate has declined is weak at best, that what little relief the District has experienced in the mill rate will certainly be destroyed if the Association's offer is selected; that by comparing mill rates, it is very clear that the District cannot afford such an expensive adjustment; that the Association offer is not 'modest' as is contended, and that acceptance of the Association's offer is detrimental to the District

In addition, the District argues that the Association's contention that external comparables should be given priority is contrary to the evidence, that arbitral dicta dictates that internal consistency governs when considering fringe benefits, that dicta cited by the Association does not paint a true picture of the awards cited; that the Custodial and the Paraprofessional units settled their 1997-99 contract without these costly benefits, and that to award the Clerical unit with these expensive benefits through arbitration would be unjust

In regard to the Association's argument against internal comparables, the District argues it ignores bargaining history and the duties performed by members of this bargaining unit; that the tentative agreements show that the District has agreed to grant one week of vacation to school year employes starting in the 1998-99 school year; that this has been a benefit sought after by the Association for as long as the Association has existed, that this concession alone should be considered enough of a benefit improvement for the Association, and that the request for improvement in vacation and early retirement benefits is a significant overreach by the Association and should not be rewarded by the arbitrator

In regard to the Association argument that its members should receive early retirement benefits because the professional non-faculty, management and faculty members of the District receive early retirement benefits, the District argues that these groups received this benefit based upon collective bargaining between the District and the Faculty Association or received this benefit based upon the personnel policies of the District; that the Clerical unit has not voluntarily agreed to these benefits but rather seeks the imposition of these benefits at a time when it has acquired other benefits for its membership, that the groups cited by the Association are professional groups, that the granting of early retirement benefits to these groups has a far different impact and background than the granting of early retirement benefits to the members of support staff units; that the most appropriate comparison for the Association is with the other staff units at the District, that the Custodial and the Paraprofessional units have not received the expensive early retirement benefit or the expanded vacation benefit sought by the Association; that the Association's economic arguments are without

merit, and that wages are not at issue.

Regarding the Association's argument that it deserves improved fringe benefits because of the shared leadership governance model adopted at the District, the District argues that this is both self-serving and without merit; that this is not a factor that is traditionally taken into consideration in the determination of wages, hours and condition of employment during voluntary collective bargaining, that, as such, it does not fall under any of the criteria under MERA; that if the shared leadership governance model required Association members to perform more duties, the item that normally would be taken into consideration would be an increase in wages, not an increase in vacation or early retirement benefits, that the change to a shared leadership governance model has not affected the Association members any differently than it has affected all other employes of the District; that there is nothing in the record to support the Association's claim that its members should receive a better vacation package or a better early retirement package because the District has adopted a shared leadership governance model; that the current collective bargaining agreement contains a reclassification procedure whereby employes can request a change in classification if they can justify a change in duties and responsibilities to warrant the adjustment in pay level to a different classification, and that there is no connection between the granting of these new fringe benefits and any alleged additional workload due to the shared leadership governance model

DISCUSSION

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

As noted by the District, it must abide by Section 38 16, Wis Stats , which states:

> District tax levy. (1) Annually by October 31, or within 10 days after receipt of the equalized valuations from the department of revenue, whichever is later, the district board may levy a tax, not exceeding 1 5 mills on the full value of the taxable property of the district, for the purpose of making capital improvements, acquiring equipment and operating and maintaining the schools of the district, except that the mill limitation is not applicable to taxes levied for the purpose of paying principal and

---

[1]Said section states as follows:

> 7 'Factor given greatest weight.' In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall consider and shall give the greatest weight to any state law or directive lawfully issued by a state 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

interest on valid bonds or notes now or hereafter outstanding as provided in s 67.035

The District argues that the selection of the Association's offer will undoubtedly increase the tax levy now and over the years to come. The District does not assert that Sec 38.16, Wis. Stats., prevents the District from funding the Association's offer if it is chosen. Indeed, it is not argued that Sec 38 16, Wis. Stats , directly affects the current situation in the least. Having considered the 'Factor given greatest weight', the arbitrator determines that the limits on revenues that may be collected by the District under Sec. 38.16, Wis Stats., are not a significant factor in this case

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

As noted above, the Association argues that economic conditions are good in Marathon County and throughout Central Wisconsin generally and that, therefore, this criterion clearly supports the Association's offer as the more reasonable The District argues that the economic conditions of counties other than Marathon are not as good and that the District's mill rate show no signs of good economic conditions

The Association's argument is based on the assumption that if the economic conditions are good, this favors the more expensive of the offers This logic is flawed. Good economic conditions means that the financial situation is such that a more costly offer may be accepted, that it will not be automatically excluded because the economy can not afford it. While bad economic conditions would foreclose consideration of an expensive benefit, good economic conditions allows the analysis to continue.

In any case, the parties spend little time and argument on this criterion, and they provide little in terms of supporting documentation. I therefore find in this situation that the 'Factor giver greater weight' does not foreclose the possibility of the acceptance of the Association's more expensive offer over the Board's offer

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

---

[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.

[3]Said section states as follows

> d Comparison of wages, hours and conditions of employment of the municipal

The parties focus their argument on this criterion, as well as Sec 111.70(4)(cm)7r (j) of MERA discussed below. Under this criterion, the first determination is the pool of comparables.

1. Comparables

The District asserts that the comparables should be as those determined in a previous arbitration involving the District.

In that case involving the Paraprofessional bargaining unit, the District argued for a comparable group consisting of the six contiguous VTAE Districts and the Western Wisconsin District, as well as selected school districts from Marathon, Lincoln and Langlade Counties which made up the District The school districts were Antigo, Mosinee, Rhinelander, Stevens Point, Wausau, Wisconsin Rapids and Wittenberg-Birnamwood The District also presented settlement evidence concerning public employes in Merrill, Schofield, Tomahawk, Weston, and Wisconsin Rapids, as well as a private company, Consolidated Papers of Wisconsin Rapids The Association argued in that case for a comparability group consisting of the technical schools in Appleton, Eau Claire and Green Bay and, to a lesser extent, Madison and Milwaukee

In that case, the arbitrator wrote

> The general consideration of determining the first line of what constitutes the most appropriate comparables as followed by most arbitrators, including the undersigned, is that of geographic proximity, average daily pupil membership, average size of bargaining unit staff, full value taxable property, and level of state aid. On the basis of those considerations, it would therefore appear on its face, that the designation of those comparables advanced by the District should be the most appropriate comparables in the first instance [4]

In this case, the Association argues only for the seven VTAE Districts to serve as comparables The District strenuously opposes this pool of comparables as the primary comparables, although it offers this pool, minus Fox Valley, as a secondary pool The District argues that the Paraprofessional arbitration involved a different unit with different positions which require different levels of education, qualifications and skills. The District notes that five of its seven comparables have bargaining units of paraprofessional and clerical employes combined. This suggests that these two groups of employes, have in many cases, a strong community of interest.

This arbitrator can find no reason to exclude these seven VTAE districts from the primary list of

---

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

[4]Case XI, No. 26595, MED/ARB - 819 (Mueller, Robert J , 1/16/81) at page 4

comparables Traditionally, arbitrators approve of same-type employer comparables, especially those of contiguous employers. That is reinforced here where the arbitrator found for this group of comparables in the Paraprofessional unit, and five of the seven VTAE districts have combined clerical/paraprofessional bargaining units.

While the District makes a convincing argument regarding applicant pool, this is not the only criterion upon which comparables are based The District argues that Fox Valley should be excluded because it is impacted by a completely different set of economic conditions than exist for the Wausau ares In some ways, this is true, but it is also true for Northeast which the District included in its secondary comparables While Fox Valley is not a perfect comparable, it has enough of the criteria to be included in the pool of comparables for this arbitration

The District also argues that its proposed comparables of K-12 school districts in cities in which the District has a campus should be accepted as these are the cities from which the applicants come to fill the vacancies in this bargaining unit As noted above in the Paraprofessional arbitration, the District had proposed the inclusion of several K-12 school districts as well as the seven VTAE Districts The arbitrator wrote as follows·

> Each of the parties presented evidence and made reference to the pay levels of certain selected classifications in other public schools and/or other private employer situations It does, however, appear that a small number of positions in the District do have some comparative standing with similar positions in public schools . . It would therefore appear that a very narrow and fragmented type comparison to employer, both public and private other than VTAE districts, would slightly favor the District's offer.[5]

In this case, the District builds a strong case to include these K-12 school districts in the pool of comparables The Association suggests that the District is shopping for comparables, but its determining factor, school districts in which the District has campuses located, is reasonable based upon its argument and evidence that applicants for positions covered by this bargaining unit come from these school districts While the District's argument that this should distinguish this arbitration from the Paraprofessional award is weakened by the lack of data on where the paraprofessional applicants lived, it nonetheless offers a solid reason to include these K-12 school districts in the comparable pool.

Therefore I find that the comparable pool, consistent as possible with the previous award, consists of the six contiguous VTAE Districts and Western Wisconsin VTAE District, and the K-12 school districts in which the District has campuses. But if push comes to shove, the comparable pool of like employers is the stronger aspect of the pool. If the pool is evenly divided, with VTAE districts pointing one way and the K-12 districts pointing the other, this arbitrator would find for the VTAE district comparables, using the K-12 pool as a strong secondary comparable pool.

---

[5]Id. at page 9.

2a. External Comparables -- Vacation

The Association is attempting to improve the vacation schedule by adding a fifth week of vacation, such that employes would have 25 days of vacation after 19 years of employment The District offers the status quo, which is 20 days of vacation after 15 years

Chart 1: Comparables and Offers listed in estimated order of the most to the least vacation benefits.

VTAE District	# of days after # of years	K-12 School District	# of days after # of years
Nicolet	25 days - 15 years	Mosinee **ASSOCIATION**	25 days - 19 years
Mid-State	25 days - 18 years	Wittenberg-Birnamwood	20 days - 14 years
Western Wisconsin **ASSOCIATION**	25 days - 19 years	Antigo DC Everest Wausau **District**	20 days - 15 years
Northeast Wisconsin[6]	24 days - 19 years	Medford	20 days - 16 years
Chippewa Valley	25 days - 20 years	Spencer	15 days - 10 years
WI Indianhead	20 days - 10 years	Phillips	15 days - 11 years
Fox Valley	20 days - 12 years		
District	20 days - 15 years		

In terms of the VTAE district comparables, five of the seven comparables have a fifth week of vacation for long term employes Two of the comparable (Mid-State and Nicolet) offer a better vacation benefit than that sought by the Association While one comparable (Western Wisconsin) has the same benefit as that proposed by the Association, two comparables (Chippewa Valley and Northeast Wisconsin) require more years of service than is proposed by the Association [7] The other

---

[6]The parties are in final offers The District is offering the status quo which has 18 days after 13 years, and one additional day for each year up to 24 days after 19 years. The Association is offering 25 days after 15 years.

[7]The labor organization at Northeast Wisconsin is seeking a benefit better than that offered here by the Association but, to the best of the undersigned's knowledge, has not secured it at this point.

two comparables (Fox Valley and Wisconsin Indianhead) grant only 20 days of vacation, though both grant it in less years than the District's offer

In terms of the K-12 district comparables, only one of the eight comparables (Mosinee) offers 25 days of vacation. Five of the eight comparables grant 20 days of vacation, equal to the *status quo* which the District offers in this case. One of those five comparables (Wittenberg-Birnamwood) grants the 20 days of vacation a year before the District does and one (Medford) grants it a year after the District does. The other three of these five offer 20 days of vacation after 15 years of service, the *status quo* and the District's offer in this case The two remaining comparables (Phillips and Spencer) grant only 15 days of vacation after 10 or 11 years of service.

In some ways, this is a split decision. The VTAE district comparables favor the Association's proposal to have 25 days of vacation. All of these comparables have a better vacation plan for long-term employes than the District's *status quo*, for even the two comparables which offer only 20 days of vacation grant it in a minimum of three less years than the District's proposal On the other hand, the K-12 district comparables favor the District's proposal While the Association's proposal is the same as the best vacation plan in this pool, none of the other comparables support the Association's proposal to have 25 days of vacation. The District's proposal, the *status quo*, is in the middle of the comparables, with two having better and three have lessor vacation benefits for long term employes.

If the case hung on the determination of external comparables, disregarding the internal comparables, the *quid pro quo* and other arguments in this case, the undersigned would favor the Association on this proposal

2b. External Comparables -- Early Retirement Health Insurance

As noted above, the Association argues that its proposal is modest, that all districts except Northeast Wisconsin have some type of payment of insurance benefits, and that its offer is in the middle of the group with some richer and some not quite as good. I view the comparables differently

Of the seven comparable VTAE districts, the retiree pays the full cost in one district (Northeast Wisconsin) and the retiree converts sick leave in some formula to pay for health insurance in four districts (Mid-State, Nicolet, Western Wisconsin and Wisconsin Indianhead). In only two districts (Chippewa Valley and Fox Valley) do the Districts pay for insurance.

In those two districts, the district pays the full premium while the Association in this case is seeking a payment of 70% In that sense, the Association's offer may be in the middle of the comparable group, but there is a huge difference between the two Districts which pay the benefit and the five districts in which the retiree converts sick leave to pay for health insurance or pays it totally out-of-pocket.

Chart 2: Comparables and Offers listed in estimated order of the most to the least early retirement health insurance benefit

VTAE Districts	Contract Language for early retirement health	K-12 Districts	Contract language for early retirement health
Chippewa Valley	At 57 w/10 yrs, Dist pays health to 65	**ASSOCIATION**	At 57 w/15 yrs, Dist pays 70% of single
Fox Valley	At 56 w/15 yrs or at 60 w/10 yrs, Dist pays health to 65	Antigo	Before 65 w/10 yrs, Dist pays $260 for each 3 sick leave days
ASSOCIATION	At 57 w/15 yrs, Dist pays 70% of single	Medford	At 57 w/15 yrs, Dist pays $20 per sick day
WI Indianhead	At 55 w/15 yrs, Dist pays one month single for each sick day	**District**	At retirement, Retiree pays full
Western WI	At 55 w/5 yrs, Retiree pays full, at 55 w/10 yrs, Dist pays 60% of sick leave, max 65 days	Wittenberg-Birnamwood	At 57 Retiree pays full
Mid-State	At 58 w/12 yrs, Dist pays 50% of sick leave	DC Everest	Before 65 w/10 yrs, Retiree pays full
Nicolet	Retiree uses sick leave for health	Mosinee Phillips Spencer Wausau	No early retirement health insurance benefit
District Northeast WI[8]	Retirees pay full		

With a sick leave cash-out system, the District also benefits for this system has a built-in incentive for employes to use sick leave judiciously so they can bank the leave to buy insurance later. Having employes at work on those marginal days when an employe is not feeling well but can work is a big benefit for employers. So this type of early retirement health insurance plan benefits both parties.

---

[8]In final offers, the Association at Northeast Wisconsin VTAE District is proposing that retirees receive same payment as employes to age 65. The District is proposing the *status quo* in which the retiree pays the full cost of insurance.

This is the type of early retirement health insurance benefit that four of the seven VTAE district comparables have The Association does not offer such a plan to the District in this case It offers something comparable to two of the comparables, certainly at a lower rate, but it does not offer something supported by four of the comparables. sick leave buy-out and its benefit to the employer

Thus, I see two of the comparables favoring the Association's offer by having even a better benefit than that sought by the Association, but I see five comparables that do not favor the Association's offer, the fifth one allowing the retiree to pay the health insurance in full, the same as is offered by the District in this case

So even among the comparables proposed by the Association, it does not succeed in convincing this arbitrator of the reasonableness of its offer Granted, the District's offer has retirees paying for health insurance in full and so the four comparables in which the retiree converts sick leave into early retirement health insurance do not support the District's offer either If the Association's offer had included a formula based on sick leave, this would have been a much closer case.

The K-12 district comparables totally go against the Association's offer Four districts have no early retirement health insurance plan. In two districts, the retirees pays the full amount. In the other two, the early retirement health insurance plan is connected to sick leave buy-out, something the Association does not offer here This strongly supports the position of the District

While the VTAE comparables favor that aspect of the Association's proposal that provides for some type of early retirement health insurance benefit, these comparables do not support the specifics of the Association's proposal, that is, health insurance paid at the 70% rate by the District with no buy-out of sick leave Therefore, including the K-12 district comparables, it is clear that the external comparables favor the District's offer.

3a. Internal Comparables - Early Retirement

The parties dispute the internal comparables, each arguing that the internal comparables support their positions

The Association argues that 81 percent of the District's employes other than this bargaining unit have an early retirement benefit substantially better than the Association's offer. These 248 employes consist of full-time and part-time faculty, professional non-faculty and management. The remaining 19 percent or 58 employes are in the Custodial and Paraprofessional bargaining units. The Association argues that it is unreasonable that a minority of employes, the Custodial and Paraprofessional bargaining units, should be a determinative comparison in this case.

The District argues the importance of maintaining internal settlement patterns among support staff bargaining units, especially when dealing with fringe benefits like health insurance, that the groups cited by the Association to whom they wished to be compared are professional groups and that the granting of early retirement benefits to these groups has a far different impact and background than

the granting of early retirement benefits to members of support staff groups.

In such a situation as this, this arbitrator does not strongly consider the fringe benefit packages of those employes who do not have the benefit of union representation In this case, that includes the management and the professional non-faculty. These employes, in most cases, do not enjoy the job security of just cause and seniority based lay-off, the career enhancement benefit of seniority based advancement and other benefits enjoyed by many union members. What the District chooses to pay them in salary and benefits is what the District pays them. If the District had not given these employes a early retirement health insurance benefit, I would not have seen that as supporting the District's position, so I will not look upon their having this benefit as supporting the Association's position here. I wish to focus on the union employes and their benefits.

The District has 158 full-time and 22 part-time faculty. The Custodial unit is composed of 16 full-time and 3 part-time employes, while the Paraprofessional unit has 29 full-time and 10 part-time employes. The Association's calculations have shown the comparison between these groups (plus the non-union groups which I discount in this instance) to come up with percentages of employes who have these benefits. What the Association neglects to do is include itself in the status quo, and its inclusion changes the figures dramatically. This is because the Association bargaining unit has 55 full-time and 43 part-time employes. When you add these employes into the mix, you have 180 faculty members and 156 support staff. Using these figures, only 54 percent of the unionized employes have the benefit while 46 percent do not have this benefit

And these employes that comprise the 46 percent are different in kind. There is a difference between the professional staff and the paraprofessional/non-professional staff. One difference is the history of early retirement. It developed party because of the structure of teacher salary schedules which has a wide range built into them between the first year -- BA only teacher and the 30 year -- MA + 15 teacher When early retirement started to become popular, it was to the benefit of both teachers and employers. Teachers were allowed to retire early from a career marked by high pressure and stress and strong burnout potential With this type of benefit, these long term teachers were provided with health insurance coverage, without which many could not have financially chosen to retire before age 65, even though they may have wanted to. Employers were willing to offer such a benefit because they were able to replace senior retiring teachers with less experienced and therefore less costly teachers, thereby saving money. In fact, employers could pay for early retirement health insurance benefits and still see a decrease in cost by hiring a less experienced teacher.

This is not the case with support staffs. In many of the terms and conditions of employment, clerical employes are more like custodial and paraprofessional employes than they are like teachers So if clerical employes are to be compared to any part of the work force, they are to be compared to other support staff employes. And if that is the case, the internal comparables support the District's offer since neither the Custodial nor the Paraprofessional units have such a benefit

3b. Internal Comparables - Vacation

The Association offers little if any argument regarding internal comparables for its vacation proposal. The District notes that neither the Custodial nor the Paraprofessional units have a fifth week of vacation. Again, the internal comparables favor the District.

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

Each party offers a major argument under this criterion.

The Association argues that the Shared Leadership approach at the College has increased the level of responsibility of the support staff members in this bargaining unit, that this increase in responsibilities while maintaining an inequity in fringe benefits for this class of employe is not consistent with commonly accepted practices in collective bargaining, that other employes have been given extra compensation for the added responsibility, and that the wage rates for these employes are substantially below average for the salary ranges where the overwhelming majority of the members are placed.

The assertion that other employes have received extra compensation for their part in the Shared Leadership approach and the assertion that the salary ranges for these employes are below the comparables are strong arguments -- but they are strong arguments for a salary increase. Salary is not on the table. The parties have resolved that matter for these two years. Those arguments are therefore for naught.

And to argue for fringe benefit increases for some employes while all employes are impacted by the Shared Leadership approach is found wanting. Only those employes who have been employed 19 years will benefit from the Association's vacation proposal. Only those employes who have been employed 15 years, who are between the ages of 57 and 65 and who choose to retire early benefit from the Association's health insurance proposal. Yet the argument is that all employes are impacted by the Shared Leadership approach. Of course, one could say that all these employes will ultimately benefit, once they reach a certain number of years of employment and reach early retirement age. For many employes working now, that may be a long way off, by which time they may have left the District's employ and/or Shared Leadership may have gone the way of many other innovative programs

---

[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.

So while I have no reason to doubt that Shared Leadership has impacted these employes, it is unclear to this arbitrator why the Association does not have a wage proposal on the table to compensate all employes impacted by the Shared Leadership approach and, instead, has chosen to seek a benefit that only some will be able to use. In essence, this inconsistency defeats the Association's argument on this issue.

The District argues that the three support staff units -- Clerical, Custodial and Paraprofessional -- all settled for a 3.0% increase in 1997-98 and a 3.2% increase in 1998-99, and that all three units agreed to a change in health insurance to a self-funded plan which increases the maximum coverage to $1,000,000. Both the Clerical and the Custodial units also receive one week of prorated vacation for school year employes under the new agreement. In addition, the Board and the Association also agreed to allow sick leave accumulation for part-time employes, to include other relatives under bereavement leave, to allow emergency/personal leave usage for child care, and to provide holiday pay for school year employes. The District costs its package at 5.9%, and argues that the Association wants more without any *quid pro quo* The District argues this is especially unreasonable as the other two support staff units settled without either an increase in vacation benefits for long-term employes or a District paid early retirement health insurance plan

This arbitrator is hesitant to change the *status quo*, one voluntarily agreed to by the parties in the past. To do so, the moving party must show. that there is a 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 cause.[10]

The problem, according to the Association, is that its members are behind in the comparables both for vacation benefits for long term members and for early retirement health insurance As noted

---

[10]This case is different than the fact situation this arbitrator had in CESA #2 Board of Control, Dec 29105-B (Engmann, 9/98) where the moving party was attempting to change a long standing contractual term. The standard and analysis used there has to be modified in a situation such as this where the *status quo* has a relatively short history

See also, 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."

above, the Association has some external support among the VTAE districts for both of its proposals, but not enough support to convince this arbitrator that its proposal is more reasonable than that offered by the District. This is especially true of its early retirement health insurance proposal The Association has little or no support among the K-12 district comparables and, while it has support from the teacher bargaining unit, it has no support among the internal support staff comparables

Even if the Association had shown that there is a problem which the *status quo* cannot rectify, which it did not, it did not show that its proposal was reasonably designed to address the problem Its vacation proposal lands in the upper half of the VTAE comparables Its retirement proposal, while lower in contribution than the two top comparables (70% vs. 100%) is inconsistent with the majority of VTAE comparables in which health insurance contribution is connected to sick leave buy out. In neither case does the proposal seem reasonable when the K-12 comparables are included.

Finally, there is no *quid pro quo*. Even if the Association had included a connected *quid pro quo* by tying the health insurance to sick leave, it is unclear from this record if that would have been enough If the comparables were overwhelming in favor of the Association, perhaps a *quid pro quo* would not be necessary in the face of a strong catch-up argument.

In any case, the Association is seeking a lot in this offer, a lot more than the Custodial and the Paraprofessional units agreed to with no convincing rational on why it should be given more than these other bargaining units. This arbitrator is not locked into the idea that all support staffs must have the same benefit package, but it does require a showing of why a particular support staff should be treated differently in order to rationalize such a difference

Other Criterion and Arguments

The other statutory criteria are not strongly argued by the parties if argued at all. They have been reviewed by this arbitrator and found not to have impact on the ultimate decision in this matter

Both parties offered other arguments, supported by factual assertions, in this matter. Even if not mentioned specifically in this Award, all of these arguments have been reviewed by this arbitrator and found not to impact on the decision in a meaningful way.

Summary

The 'Factor given greatest weight' has been considered and found not to have an impact in this case. The 'Factor given greater weight' does not foreclose acceptance of the Association's more expensive offer. The comparables chosen include the six contiguous VTAE districts and Western Wisconsin VTAE District and, as a very strong secondary comparable pool, the K-12 school districts in the cities in which the District has campuses. In regard to the Association's vacation proposal, the VTAE district comparables tend to favor the Association while the K-12 district comparables favor the District's status quo proposal In terms of the Association's early retirement health insurance proposal, the VTAE comparables support an early retirement health insurance benefit, but they do

not support the benefit as proposed by the Association with the District paying 70 percent of the benefit with no connection to a sick leave buy-out.

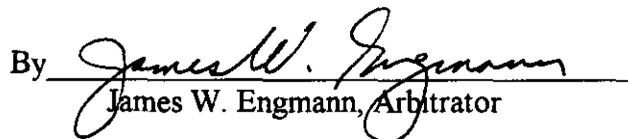
The internal comparables given greatest weight by the arbitrator in this case are the support staff comparables, with the arbitrator discounting comparisons to non-union management and other employes The internal support staff comparables support the District's proposals on both vacation and early retirement health insurance. In regard to other factors, the argument by the Association that the added responsibilities given unit employes as a result of Shared Leadership supports these benefits is found wanting as such an argument supports a wage increase, not a benefit increase for a minority of the unit's members It is found that the Custodial and the Paraprofessional units settled without the benefits sought by the Association and that the Association did not provide a convincing rational for these employes to be treated differently.

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

AWARD

> That the final offer of the Northcentral Vocational, Technical & Adult Education District be incorporated in the 1997-99 collective bargaining agreement with the Northcentral Education Support Personnel Association.

Dated at Madison, Wisconsin, this 30th day of September, 1998



By James W. Engmann, Arbitrator

c \wpwin60\wpdocs\arbitration\NorthcentralVTAE\award\9-30-98 jwe