BEFORE THE ARBITRATOR

In the Matter of the Arbitration Between

OMRO AIDES/FOOD SERVICE ASSOCIATION
WEAC/NEA

and

SCHOOL DISTRICT OF OMRO

Case 31
No. 55514
Int/Arb-8230

Decision No. 29313-A

Appearances: For the Union: Gary L. Miller
Uniserv Director

For the District: William G. Bracken
Godfrey & Kahn

Before: Fredric R. Dichter, Arbitrator

DECISION AND AWARD

On April 1. 1998, the Wisconsin Employment Relations Commission, pursuant to Sec. 111.77(4)(cm) of the Municipal Employment Relations Act, appointed Fredric R. Dichter to serve as arbitrator to issue a final and binding award. The matter involves an interest dispute between the School District of Omro, hereinafter referred to as the Employer and Omro Aides/Food Service Association, WEAC/NEA, hereinafter referred to as the Union. A hearing was held on May 27, 1998 at which time the parties presented testimony and exhibits. Following the hearing the parties elected to file briefs and Reply briefs. Those briefs have been received by the arbitrator. The arbitrator has reviewed the exhibits and briefs filed by the parties in reaching his decision.

ISSUES

The parties reached agreement on most of the items to be included in their agreement. All the tentative agreements are incorporated into this Award. The following are the outstanding issues.

THE UNION OFFER:

Wages
1997-98 Wage Schedule: add 40 cents to each wage rate.
1998-99 Wage Schedule: add 40 cents to each wage rate.

A step 3 shall be added to the 1996-97 Wage Schedule for the Aide I category at a wage rate of $7.48.

Probationary Period
Amend the first sentence of Section IV, Subsection A to read:

> All new employees hired after December 12, 1997, shall serve a probationary period of one hundred and twenty (120) work days duration to determine whether or not they are suited and qualified for the job.

THE EMPLOYER'S OFFER:

Wages
1997-98: Add 28 cents to each wage rate.
1998-99: Add 28 cents to each wage rate.

A step 3 shall be added to the 1996-97 Wage Schedule for the Aide I category. The 1996-97 rate shall be &7.48.

Probationary Period
Amend Section IV, Definition A to read:

> All new employees shall serve a probationary period of one (1) year duration to determine whether or not they are suited and qualified for the job." (This provision shall apply to employees hired after October 24, 1997)

BACKGROUND

The Employer has collective bargaining agreements with several Unions that represent its employees. The Teachers constitute one bargaining unit. There is also a Secretarial Unit and a Custodial

and Maintenance Unit. All of those units have settled their agreement for the 1997-98 and 1998-99 school years. The custodians received a $.45 per hour increase in each of those years. The secretaries were given a $.40 per hour increase each year.

The bargaining unit involved in this dispute primarily consists of Aides and Food Service workers. There are 34 employees in the bargaining unit. 25 employees work as teacher aides, and 21 of those employees are Aide II's. 9 employees work in Food service, primarily as assistant cooks or servers. The parties have had a series of collective bargaining agreements prior to the one in question here. The first agreement began in 1991. This is the first time the parties have not voluntarily settled their agreement. There is no record of any prior interest arbitrations between this Employer and any of its bargaining units.

The Employer pays 100% of the health insurance premium for single employees and 90% of the rate for married employees. In 1995, it sought a request for proposal from insurance companies that based the premium on loss data information of the District, instead of a larger pool. It has been under this type of rate structure ever since. The Employer experienced no rate increase in 1997-98. In 1998-99, the increase was 18.4%. The Employer had very high losses the previous year. The increase for those employers that stayed in the larger rate pool was approximately 10% less. The Employer had settled with the custodians and the secretaries before the actual increase had become known. When it settled those agreements, it anticipated about a 10% increase. The Employer pays

the same percentage of the rates for those employees as it pays for the employees in this unit. They are all under the same plan with the same premiums.

DISCUSSION

Both parties have referred the Arbitrator to the Statutory criteria that arbitrators must follow in deciding interest arbitration issues. Needless to say, they disagree as to how the facts of this case relate to each of those criteria. Each indicates that when the facts are applied to those criteria, their proposals should be adopted. I shall review each of the factors set forth in the Statute. Each party's position regarding that factor shall be set forth.[1] Those factors which must be "given greatest weight" and "greater weight" will be addressed first.

Greatest Weight

Section 111.70(cm) requires an arbitrator to give greatest weight to "any state law or directive ... which places limitations on expenditures that may be made or revenues that may be collected." This School District, like all districts in the State, is limited, by law, as to the amount of money that it can spend. The total amount available is determined by the number of pupils in the District. The amount that it can spend per pupil is set by

[1] The Union did not address some of the factors in its brief. The Employer argues that its offer must be preferred on those factors not addressed. If this were a grievance arbitration, the Arbitrator might agree. In an interest arbitration, the law requires the Arbitrator to consider the factors based upon all the facts available to the Arbitrator. This is what I shall try to do.

Statute.[2]

Position of the Employer

The entire method for funding schools has been changed by the legislature. It limited the amount that could be spent, while also limiting the amount of wage and benefit increases teaching and administrative staff could receive to 3.8%.[3] Given the limit on what can be spent, the District must be allowed to set the priorities on those expenditures. As long as its wage proposal is fair and reasonable, that determination should not be changed by the Arbitrator. While support staff do not fall under the QEO provision, the legislature still clearly indicated its intent to limit increases for support staff. It changed the degree of importance to be given to certain criteria. The new prioritization of criteria applies equally to support staff and to teachers.

Position of the Union

The Employer is correct that wage increases were limited by the legislature for teachers and administrators. The legislature chose not to apply the QEO law to support staff. Any attempt by the Employer to argue that the same limits apply here or that the rationale applicable to disputes with teachers carries weight in this dispute is error.[4] The cost difference between the parties

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[2] The District can spend more if approved by referendum. Certain amounts are exempt from the cap.

[3] This has been referred to by the parties as the QEO Law. The Arbitrator shall also use that terminology.

[4] This issue again arises when considering the internal comparables. It will be more fully addressed in the discussion when analyzing that factor.

proposals in very small. The Employer has not shown that any students would fail to get textbooks or other educational aids if the Union proposal were adopted. Consequently, this factor has little relevance in this dispute.

Analysis

The legislature did change the statutory criteria to be applied. Limits on expenditures must be taken into account and given the greatest weight. There has unquestionably been a limit placed on expenditures for this Employer. Does that limit point towards denial of the Union's proposed increase here?[5] The fact that the total difference in cost that would result from the parties proposals is only a little over $15,000 for the two years is significant. This figure represents only approximately .01% of the total budget each year. The more that is involved the greater the likelihood that such an expense would impact other needs. It then follows that the impact of state imposed limits for expenditures is not nearly as great when the funds sought by a party involve such a small percentage of total costs.

This arbitrator has considered the significance of this criteria to this dispute. Arbitrators that have issued decisions under the new law have generally held that this factor is not in itself controlling. In this case, that is particularly true given

[5] The Employer argues that the arbitrator should not second guess the school board when it comes to determining priorities. The Board, it notes, has determined what it believes to be the best way to spend its available funds, and argues that I am bound to that determination. This is not the first time that this arbitrator has been faced with that argument. In Madison School District,, Int/Arb 8018, I rejected that argument. I similarly do so here.

the amounts involved. To hold otherwise, would be to say that the cheaper proposal would always be favored whenever there is a limit on expenditures or revenues. I do not believe that this is what the legislature intended when it established the new criteria. Judgments must be made by the arbitrator that balance the total cost of a proposal against the effect that the cost will have on an employer's ability to meet its other needs. Where costs are small, the effect is minimal. The fact that this District has been able to increase its surplus over the last several years despite the expenditure limit further demonstrates this point. While funding wage increases through the use of accrued surpluses is not something this arbitrator or other arbitrators believe would be prudent, it is an entirely different matter when the choice is between adding to mounting surpluses and granting otherwise justifiable wage increases.[6] For all of these reasons, I conclude that this factor is not controlling and that it does not favor one proposal over the other.

Greater Weight

An arbitrator must give greater weight to "economic conditions in the jurisdiction." Are the conditions in the economy so poor as to prevent it from giving an otherwise appropriate increase?

Position of the Employer

The average net income of residents of the District are lower than the income levels of residents of any comparable school district. The average tax return shows income of almost $4000 less

[6] See Arbitrator Nathan, Madison School District

than for other districts. They have less income available to pay taxes, yet their taxes are as high as others. The lower income level of Omro residents illustrates how poorly the local economy is doing. This factor favors the Employer's less expensive proposal.

Position of the Union

The income statistics used by the Employer are "flawed." The Employer did not show that this District was below the statewide average income per tax return. A showing of poor economic condition requires more than a simple comparison of income per tax return. There is no showing by the Employer that the overall economy is worse off than it is for others.

Analysis

I agree with the Union that merely looking at income per tax return is too small of a barometer to use for measuring economic conditions. Unemployment rates, property value and numerous other factors are all relevant to any analysis of local economic conditions. None of these factors have been shown to be worse here than elsewhere. Only when it can be shown that this economy has plummeted while others have flourished or, at least, plummeted to a greater extent than others, will the local conditions warrant awarding less than would otherwise have been proper. I conclude from the evidence that local condition are not as the Statue requires "so poor as to prevent it from giving an otherwise appropriate increase."

Internal Comparables

The Statute requires the arbitrator to compare the "wages

hours and conditions of employment" of the employees involved in the dispute with those of "other public employees in the same community." It is with this criteria that the parties have most vigorously raised their arguments. How they view the facts as they relate to this criteria are not surprisingly at odds.

Position of the Employer

The Employer's goal is to "treat all employees the same by providing them with relatively the same wage and benefit increase." The Arbitrator must look at the total compensation package offered in order to compare this proposal with the terms offered to the other bargaining units of the Employer. Increased benefits granted by the Employer as part of the items agreed to by it in this round of negotiations (TA's) must also be given weight. The Employer has made substantial concessions. It would be wrong to look to wage increase alone. The Employer pays step increases, health insurance, retirement and other benefits to these employees. All of those costs must be counted. That was done for each of the other bargaining units. The Employer has established a pattern of settlements in keeping with the limits imposed by the QEO. Once a pattern is established, arbitrators have traditionally issued awards that are in keeping with that pattern. The offer of the Employer is similar to the total package increases that were accepted by the other bargaining units. The Union offer is considerably greater. Accepting the Union offer, would be to break the pattern and would have a negative impact upon morale.

Position of the Union

The total compensation method suggested by the Employer is not the proper manner in which to compare the proposals with the other bargaining units wage increases. Instead, the arbitrator should look to the total dollars spent per employee on wages and benefits. This is particularly true where the wages of the employees involved in the dispute are at the low end of the scale. The employees here make considerably less than what is made by the other employee bargaining units. The total compensation given to employees in this bargaining unit is less than one-third of what teachers are paid. It is also error for the Employer to include step increases when costing the salary increases. Step increases were always in the contract. They are not new benefits. The facts reveal that these employees need to catch-up in this contract to the wages paid to those other employees.

The Employer settled with the other bargaining units before it knew how much the increase in health insurance costs would be. They turned out to be much more than anticipated. The Employer now wants to burden this bargaining unit alone with the increase by counting the total increase as part of the package offered. The fact that the Employer put itself in this position when it chose to base its rate on the experience rating of these employees alone should also be factored into the analysis. The rate increase would have been lower had the Employer not unilaterally decided to do this. These employees should not be asked to pay for that decision.

Analysis

Both parties have taken a completely different approach to this factor. What they do not disagree upon is the ultimate goal. These employees should be treated in the same way that the other employees of the Employer were treated. My task is to figure out what approach is the one that best assures that result. My analysis, therefore, will begin with a review of each party's method for calculating the increase contained in their proposal.

The Union argues that dollars spent per employee is the correct method. It notes that these employees have less spent for them then any other group. That is certainly true. The problem with this method, however, is that this is always true of the lowest paid employees. An employee that earns $35,000 a year is going to cost an employer more than an employee that makes $20,000, not just in wages, but in total roll-up costs. The only way to change that is to pay everyone the same amount. That is not what our society has determined to be the right course. Some employees because of education, training or other factors earn more than others. Teachers make more than aides. That is a fact of life. As a result, the cost to an employer will always be more for a teacher than for an aide. Other classifications are also paid more than aides. The differential may be smaller, but it still exists. The fact that it exists does not then mean that the lower paid employees need to catch-up to the higher paid employees. That would only be true if the compensation paid these employees in comparison to other classifications in this jurisdiction were substantially different

that the relationship that exists between those same classification elsewhere. This is not what the Union is arguing. What it is in essence arguing is that simply because the total compensation is less, bigger increases are warranted. I simply cannot agree with that line of argument. I, therefore, reject this approach.

The Employer urges the arbitrator to consider only the total costs of the increase offered and to compare that with the total compensation costs for the other bargaining units. Total costs would include all benefits, including health insurance. This arbitrator has some problem with that approach, as well. Each employee, regardless of their wage rate, costs the Employer the same amount for insurance. The family rate in 1998 is over $500. To a lower paid employee, $500 is always going to be a higher percentage of the compensation package than it will be for a higher paid employee. When that rate increases, the increase will always translate to a larger percentage of total compensation for the lower paid. Consequently, their actual percentage base wage increase would always be smaller than it is for higher paid employees.[7] If the percentage of premiums paid by the Employer for these employees was higher than for others or if they had greater

[7] The arbitrator recognizes that under the QEO Law percent increases can go down from the statutory 2.1% when other costs exceed 1.7%. This arbitrator agrees with the Union that these employees are not covered by the QEO Law and that this same principle does not apply to these employees. The legislature could easily have extended the QEO provision to cover all school employees. It chose not to do that. Perhaps, it is for the very reason described here that this is so. Lower paid employees might never get a wage increase when fixed costs for all employees, like health insurance premiums, increase.

benefits, than consideration of that additional cost might be appropriate. Where the insurance premium percentages paid and benefits provided are constant for the Employer, I do not find that it is appropriate to assess the lower paid employees with a higher proportionate share than more highly paid employees.[8]

I do agree with the Employer that one cannot simply look to the actual cents per increase given to others and apply that same cents per hour to everyone. As the Employer correctly notes, there are times that employees are given a percentage increase across the board, and there are times that employees are given a fixed cents per hour increase across the board. The latter method gives the lower paid employees in a unit a greater percentage increase than the higher paid. This may be needed to close or to restore to a previous level the gap between the classification within a bargaining unit. The fact that the custodians received $.45 and the secretaries got $.40 does not mean that the aides should get $.40 or $.45. That amount would represent a much bigger percentage to them then it does for those two groups. Instead, those increases should be converted to a percentage increase for each unit.[9] The

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[8] The Employer also asked the arbitrator to consider all TA's in his review. It points to changes in the retirement provision and the sick leave provision in particular. The arbitrator looked at those changes and also reviewed the language in the agreements for the other bargaining units. The changes conform this bargaining unit to those. They are not getting more benefits, but the same benefits. That reduces the significance of those changes. These employees are being treated the same as other employees. The additional step for Aide I is new, and a fact to be considered.

[9] This Arbitrator agrees with Arbitrator Julie Miller-Weisberger's Decision in Manitowac County Highway Dept. on this point.

proposals of the parties should then be converted to percentages and compared.

The Employer has offered charts showing percentage increases for "salary only" and for total benefits. In salary only, it includes the $.28 it has offered and any step and longevity increases that would be received by current employees during each of the years of the agreement. The agreement contains 5 steps for all classifications, but Aide I. That classification had two steps. The parties have agreed to add a third. Employees also receive an additional $.10 per hour after ten years, $.15 after fifteen years, and $.20 after twenty years as longevity. With the one exception noted, none of these increases were changed during this round of negotiations. The two other non-teacher bargaining units also have steps. The secretary unit has the same number of steps. The custodians have only three steps. The secretaries have longevity. The custodians do not.

Under the QEO law, the cost of step and longevity increases are included in the total costs. It is for that reason that the Employer has included them here. The Union has objected to the Employer's applying QEO rationale to employees not covered by that law. I agree with the Union. Normally, step and longevity increases are not considered when comparing wage increases, unless they are new to the agreement involved. Arbitrators have found such increases to be part of the bargain reached at the time they were incorporated into the agreement, and not part of the bargain in subsequent agreements. If that were not so, why would arbitrators

require, as they do, a quid pro quo in order to take them out of the agreement. In addition, the fact that employees in this bargaining unit may have been employed for a shorter period of time than employees in other bargaining units should not count against these employees. That is what would happen if step and longevity increases were included in the percentages. Therefore, while I agree with the Employer that percentages should be compared, I do not agree that those percentages should include actual step and longevity increases received. Instead base rate increases should be compared. Are the employees here getting substantially the same percentage base wage increase as did the secretaries and custodians. The Employer, the Union and this arbitrator have all agreed that the goal is to treat these employees in the same manner as the others. It is my conclusion that the method described here provides the best way to see which offer does that.

The Arbitrator has prepared a chart. That chart shows the actual wage increases received by the three units from 1993-1997. It then converts those increases to percentages. It then takes both parties offers and makes the same conversion. The minimum and maximum wages for secretaries, custodians and aide II's are used for the comparison.

	93-94	94-95	95-96	96-97	97-98	98-99
Actual Wage Inc.						
Secretary						
(Min)	.50	.45	.30	.35	.40	.40
(Max)	.40	.45	.30	.35	.40	.40
Custodian						
(Min)	.41	.47	.35	.40	.45	.45
(Max)	.43	.48	.35	.40	.45	.45
Aide II						
(Min)-Er	.27	.19	.22	.24	.28	.28
-Un					.40	.40
(Max)-Er	.33	.23	.26	.29	.28	.28
-Un					.40	.40
Inc. in %						
Secretary						
(Min)	6.3%	5.4%	3.4%	3.8%	4.2%	4.0%
(Max)	4.4	4.8	3.0	3.4	3.8	3.7%
Custodian						
(Min)	4.3%	4.8%	3.4%	3.7%	4.1%	3.9%
(Max)	4.4	4.7	3.3	3.6	3.9	3.8%
Aide II						
(Min)-Er	4.0%	2.7%	3.0%	3.2%	3.6%	3.5%
-Un					5.0%	4.9%
(Max)-Er	4.0	2.6	2.9	3.2	3.0	2.9%
-Un					4.3	4.1%
% Difference						
Sec.						
Min-Er	(2.3%)	(2.7%)	(.4%)	(.6%)	(.6%)	(.5%)
-Un					.8%	.9%
Max-Er	(.4%)	(2.2%)	(.1%)	(.2%)	(.8%)	(.8%)
-Un					.5%	.4%
Cust.						
Min-Er	(.3%)	(2.1%)	(.4%)	(.5%)	(.5%)	(.4%)
-Un					.9%	1.0%
Max-Er	(.4%)	(2.1%)	(.4%)	(.4%)	(.6%)	(.9%)
-Un					.4%	.3%

As can be seen, neither proposal corresponds to the increases given the others.[10] The Union's is too large and the Employer's is too small. The Arbitrator can empathize with Goldilocks predicament. The Arbitrator then prepared a second chart to determine how these employees have fared over the years vis-a-vis the other units. Is the ratio of their wages to others the same as it has always been?

% of Secretaries and Custodians Wage for Aide II

	1992-93	93-4	94-5	95-6	96-7	97-8(E)	(U)	98-9(E)	(U)
Sec.	91.0%	90.6	88.4	88.8	88.6	87.9	89.0	87.3	89.4
Cust.	84.3%	83.9	82.3	82.1	81.7	81.0	82.0	80.3	82.2

*Chart uses maximum salaries for Aide II, Secretaries and Custodians

The chart shows that in order to maintain the same differential as existed in 1996-7 with the Secretary, the Aides would need a wage of $9.66 or a $.35 increase. The rate would be $9.67 or a $.36 increase to maintain the ratio with the custodians. Those same increases would be needed the second year. For this agreement, employees in this bargaining unit would be treated most fairly and most like the others by being given at least a $.35 increase. $.35 would be right between the two offers. Unfortunately, that rate is not one of my choices. I must chose between maximum rates of $9.71 and $9.59 for 1997-8, and $10.11 or $10.87 for 1998-9.

Since I must pick one rate or the other, and since neither

[10] The cost of adding the third step for the Aide I does count toward the percentage increase. The cost of this change, however, is small as only three employees are affected. It has little impact on the percentages.

rate is where I have found it should be, I must review the entire history of this unit as compared to the others to see if that adds assistance. If the wage ratio of these classifications were examined going back to 1993-4, prior to the beginning of the last contract, it can be seen that these employees wages, especially when compared to the custodians, have slowly fallen. In 1993, the aides made 83.9% of what custodians made. If I adopted the Employer's offer they would make 80.3% by the end of 1999. It would go from 90.6% to 87.3% for secretaries. Even under the Union's proposal, the ratio would still be less in 1999 than it was in 1993-4. It would go from 90.6% to 89.4% for secretaries and from 83.9% to 82.2% in relation to the custodians.

It is apparent that these employees wages have fallen in comparison to their fellow employees. The Union now wants to catch-up. The Employer counters by quoting from Arbitrator Petrie. He noted:

> "The Arbitrator has no unqualified charter to review the basis for the past negotiated settlements of the parties, and, accordingly, it a much more formidable task to establish the need for an extraordinary catch up increase, than to merely establish the basis for a competitive increase for the current year.[11]

The previous contract resulted from a voluntary settlement. Should any ratio changes that resulted from that contract then be disregarded? If one did that, the arbitrator would be back to the same Goldilocks conundrum described above. The Union believes that the history is in its favor. It argues that other employee groups

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[11] Ripon School District

of the Employer "have been organized for a considerably longer period of time," and that "it did not just accept the difference in wages as something which they would have to agree to and maintain in future bargains." There is some merit to the Union argument. When a unit is first organized, it takes time for the employees in that unit to raise their level as compared to others. It takes a series of contracts. In this case, while other benefits certainly increased during that time, relative wages have actually fallen. This fact would lend support to adopting the Union's position. Such a finding would not be contrary to the rationale of Arbitrator Petrie. He did not say that one never should order catch up, just that it is more difficult to establish the need. There may be such a need here.

In summary, this Arbitrator, despite the history, would not find that the internal comparables favor either party's offer if he had a choice of selecting something in between. Since I do not have that choice, I must find that the totality of circumstances supports the Union's proposal more than the Employers. Selecting the Union proposal would more closely treat the employees like the other employees of the Employer, and that was, after all, the goal everyone sought.

External Comparables.

There is no precedent within this District as to the appropriate set of external comparables. While there is some overlap from the lists proposed by the parties, there are also many differences. The appropriate list shall be determined first, and

then that list shall be examined in comparison to the party's proposals.

Position of the Employer

The Employer believes that those schools comprising the Eastern Central Athletic Conference should be utilized. Other arbitrators have used a similar method for selecting comparables. This list includes Winneconne, Waupaca, Wautoma, Hortonville, Berlin, Ripon and Little Chute.[12] The Union has argued that only unionized employers should be included. There are many arbitrators that have refused to limit the list to unionized employers. The statute makes no reference to union status when it lists the criteria for selecting which "other" groups of employees to use as comparables.

A comparison of the wages paid in this District with the wages paid by others demonstrates that this District is a wage leader. It ranks near the top for most of the classifications involved in this dispute. That ranking would remain about the same under the Employer's proposal. Under the Union's, the ranking would move up. The Employer offer is .2% below the average of the comparables total compensation package for 1997-8.[13] The Union's is .9% higher. The Employer also provides a longevity benefit better than most of the other employers on the list. Its proposal is more in line with

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[12] Only Winneconne, Waupaca and Wautoma have collective bargaining representatives for the employees performing similar work to those involved in this dispute.

[13] Only 1 of the comparables has set the wages for 1998-9. Waupaca granted a 4.5% increase.

what the other comparables have done.

Position of the Union

Most arbitrators have refused to include non-union employers in the list of comparables. Only where wage rates have been set through collective bargaining should they be included. Wages unilaterally set by employers should not be included. Arbitrator Rice in Winneconne County included unionized employers as the primary comparables. He noted that it is "inequitable to compare collective bargained working conditions with those which have been unilaterally established by employers." This is also true here. There is no basis for using the Eastern Central Athletic Conference since the schools in that conference constantly change. The Arbitrator should find that Winneconne, Waupaca, Wautoma and Weyauwega-Fremont comprise the appropriate comparables.

Analysis

Both sides have cited extensive precedent as to whether non-union employer's should be used as comparables. This arbitrator has been faced with that question before. It is generally my opinion that including non-union employers should not be done. Wages set through the bargaining process are different than wages unilaterally set by an employer. When there is collective bargaining, the wages rates have been accepted by those employees or determined by an arbitrator to be fair. There is no such acceptance when those wages have been unilaterally selected by the Employer. A unilateral wage increase may show what an employer deemed as fair, but it does not show concurrence with that

determination by the employees or an outside individual.

The party's concur on three unionized employers. The Union also seeks to include Weyauwega. The information presented is insufficient for me to determine whether there are sufficient similarities between this District and Weyauwega to warrant inclusion. Therefore, I shall not include it in the list.

The problem that now faces this arbitrator is that there are only three comparables on the list. As Arbitrator Haferbecker stated in School District of Bruce "To use only the Union three unionized comparables... would be too limited." I agree. Therefore, I shall follow the lead of Arbitrator Rice and consider the Unionized list as a list of primary comparables. The list of non-unionized districts shall be considered, but given less weight than the primary list.

The Employer prepared a chart showing the percentage increase given in each of the districts that it proposed as comparables. That chart sets forth either the percentage increase or cents per hour increase that was given. Unlike what was done for internals, the salary figures show only increases in the base rate at each step on the wage scale. They do not include any step or longevity increases that might also accrue to employees during the period. The Employer then shows percentage increase for the total compensation package. For the same reasons, discussed earlier, I shall use the actual base increases for comparison, and not total

package or wages with steps or longevity.[14] Since only one employer settled for 1998-9, I shall not use that year for comparison. One employer does not make a pattern.

The average increase for the three unionized employers for 1997-98 is 3.85% for the minimum and 3.1% for the maximum. The Employer proposed a 3.6% increase to the minimum and 3% to the maximum. The Union offer is 5% added to the minimum and 4.3% to the maximum. Thus, the Employer proposal is .25% lower and the Union's is 1.15% higher for the minimum. For the maximum, the Employer's offer is .1% too low and the Union's is 1.2% too high. Clearly, the Employer's offer is much closer to the average than is the Union's. The average increase for the secondary group was 3.51% for the minimum and 3.35% for the maximum. It would appear as though more of the non-unionized employers gave across the board percentages rather than flat dollar amounts. In any event, the offer of the Employer here exceeds the average for the minimum, but is .35% below the maximum average. The differential in the Union's offer is greater than the average for both the minimum and maximum. Thus, this list would also support the Employer's offer.[15]

It is also helpful, as the Employer notes, to ascertain what

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[14] The Employer notes in its calculations that the longevity that it pays exceeds that of others and that this should be considered by the arbitrator. I do not agree. Longevity is not new to this Employer. It paid it during the last contract. When it agreed to pay the wages that it did, the circumstances were the same as they are now. The fact that others did not have it was or should have been taken into account at that time.

[15] It is again at this point that the cost of adding a third step for Aide I would be added to the calculations.

effect the proposals will have upon the ranking of the District among the comparables. I shall use the Aide II's for comparison purposes. The ranking among the unionized employers would stay at 2 of 4 under the Employer's offer and would rise to 1 of 4 under the Union's. The ranking stays at 2 of 4 for both offers for the non-union employers. There is little change under both, but to the extent that there is a change, that fact favors the Employer. It better maintains the status quo.

The external comparables favor the Employer's offer. While below the others, it is closer to the increases granted by them than is the Union's offer.

Cost of Living

The Employer notes that the Consumer Price Index rose 3.4% in 1997. It rose 2% in 1998. The Employer cited Arbitrator Yaffe wherein he found that "it is fair and appropriate to compare the total economic value of the two final offers in determining their reasonableness under the cost of living criterion." School District of Athens. If total cost is used, both offers exceed COLA. The Union offer exceeds it by a much large amount. If just base wage increases are compared, the Employer is .4% below COLA for the maximum rates in 1997-8 and .2% above it for the minimum. In the second year, it is above COLA for both rates. The Union offer is greater than COLA for all rates in both years. Clearly, COLA favors the Employer.

Overall Compensation

The Employer argues that the compensation received by these

employees includes many benefits. When all of these benefits are considered, it believes that this factor favors its position. All of the benefits except for the three exceptions already noted, were in the last contract. I am not persuaded that this factor is of much significance here. Most arbitrators consider this factor of much greater importance when setting wages in a first contract. It is of much less importance in subsequent negotiations. "The theory behind this rule is that the parties accounted for these factors in their past collective bargaining over rates." The Arbitration of Wages, University of California Press, p. 63-64. I do give some credit for the changes that were made in this agreement. However, except for the Aide I addition they are nothing more than any other employee gets. Because of that fact, the overall significance of this factor is negligible.

Interests and Welfare of the Public

The main thrust of the Employer's argument is that granting these employees more than other District employees would have an adverse impact upon morale. It argued that the Union offer does that. It reached that conclusion using methods of calculation that have been rejected by the Arbitrator. Accordingly, I do not find any facts that would support one proposal over the other as it relates to this factor.

Probationary Language

Both sides have made proposals that would increase the probationary period. The Employer proposal would increase it to one calendar year. The Union proposal would increase it to 120 work

days. It is currently 6 calendar months. Both sides recognized a problem with the current language. These employees are off on holidays and school vacation periods, including the summer break. An employee hired in the spring will be off for a good portion of their probationary period. It is impossible for them to be evaluated if they are not working. That is why the Union changed its proposed language to include only working days. Both proposals are improvements on the current language.

There is a fact that does favor the Employer's proposal. The language that it has proposed is identical to the language contained in the 1997-99 custodial and secretarial agreements. Its proposal is internally consistent. As the Employer correctly noted, the Union when it came to wages asked for parity with the others. When it came to this proposal, however, it did not offer that same parity. It cannot have it both ways. While it should be commended for seeing the problem and addressing it, that does not negate the fact that its offer was inconsistent with the philosophy that it was espousing. For these reasons, I find that the Employer probationary language is preferable.

CONCLUSION

There are factors that point in both directions. Were this arbitrator able to do so, the Award would not grant either party's proposal, but something in between. In that way, the status quo could be maintained during these two years. It would then be the party's responsibility to address any need for catch-up in their

future negotiations. Unfortunately, that is not a choice that I have. Therefore, the factors must be weighed to ascertain which proposal should be selected.

COLA favors the Employer. The Employer proposal is also more in keeping with the increases of the external comparables. Even though the Employer proposal is less in some respects than the wages set by others, the Employer proposal is without doubt far closer to that of the comparables. In interest arbitrations involving wages, externals are generally given more credence than internals. It is when benefits are involved that internal comparables are generally given the most weight. There is an exception to this principle. When there is an established internal pattern the weight given to internal comparables carries more weight. That is the case here.

The internal comparables demonstrate to this Arbitrator that $.28 is simply too little. The Arbitrator recognizes the manner by which the Employer chose this amount, but has already indicated his disagreement with that process. This unit, as the Union notes, is relatively new. Their benefits are akin to the other units, but their wages are not. They are, in fact, falling behind. Accepting the Employer offer would further aggravate that situation. The internals demonstrate that it may be time to stem the tide. As noted, accepting the Union offer would not put these employees in a better position then they were, but would only put them closer to the point that they were three years ago. Thus, internals favor the Union.

It is unfortunate that this group of employees was not settled before the 1998 insurance rates were known. The negotiations with the other groups took place under a set of assumptions that were no longer true when these employees negotiations were in progress. The subsequently known higher rates affected those negotiations. This group now had to bear the full brunt of those increases, whereas others did not. Such a result is unfair to these employees. This fact adds additional weight to the Union proposal.

Probationary language is also an issue. I have found that the Employer proposal is the better one. This fact favors the Employer's proposal.

This is not an easy call. Going either way is justifiable. In toto, I must conclude that the wage proposal of the Union is preferable. While I do not favor its probationary proposal, I find that this issue, especially given the concessions that are made by the Union, does not tip the scale the other way.

AWARD

The offer of the Union together with the tentative agreements shall be incorporated into the parties agreement.

Dated: October 3, 1998

Fredric R. Dichter,
Arbitrator