

I. Introduction

On June 29, 2009, Governor Doyle signed 2009 Wisconsin Act 28, which is the executive budget act of the 2009 Legislature. This Act made significant changes to laws affecting school districts, including reductions in state aid, repeal of the qualified economic offer (QEO), and changes to interest arbitration criteria. This presentation will focus on the changes made by Act 28 and other legislative changes and will discuss the impact of these changes to both teacher and support staff collective bargaining and interest arbitration.

II. Selected Changes Under The Budget Bill (2009 Wisconsin Act 28)

A. Longer Durations for Collective Bargaining Agreements in School Districts

1. Under prior law, the duration of collective bargaining agreements between school districts and their professional teaching staff was required to be a two-year duration, from July 1 of each odd-numbered year through June 30 of the ensuing odd-numbered year. However, collective bargaining agreements covering other municipal employees, if mutually agreed to, could be up to three years.
2. 2009 Wisconsin Act 28 made changes to the duration of collective bargaining agreements between school districts and their employees. Specifically, Act 28 now provides that contracts for school district employees may be up to four years. These changes first apply “to collective bargaining agreements entered into, extended, modified, or renewed, whichever occurs first, on the effective date of this subsection.”
3. Except for the initial collective bargaining agreement between the parties, where parties have not agreed upon the term of the agreement as a part of the stipulation of agreed upon terms, final offers must provide for a term of agreement of two years. Wis. Admin. Code § ERC 32.10.

B. Ability to Combine Bargaining Units Inside (and Outside) of the District

1. Under prior law, a collective bargaining unit was defined under the Municipal Employment Relations Act (MERA) as a unit consisting of municipal employees who are school district professional employees or of municipal employees who are not school district professional employees that is determined by the Wisconsin Employment Relations Commission (WERC) to be appropriate for the purpose of collective bargaining. Further, MERA prohibited the WERC from deciding that any group of municipal employees constitutes an appropriate collective bargaining unit if the group included both municipal employees who are school district professional employees and municipal employees who are not school district professional employees. Thus, school district professional employees and nonprofessional, educational support personnel employees

were, by law, required to be organized into separate collective bargaining units. *See* LFB Paper #331 (May 26, 2009).

2. 2009 Wisconsin Act 28 changes the law in two respects. These changes first apply “to collective bargaining agreements entered into, extended, modified, or renewed, whichever occurs first, on the effective date of this subsection.”
 - a. First, it provides that professional and nonprofessional employees of a school district could be combined into a single collective bargaining unit if a majority of the professional employees vote for inclusion. This conforms the treatment of school district employees with the current law treatment of other municipal employees. The provision also returns the treatment of school district employees to the pre-QEO law provisions relating to such combinations.
 - b. Second, the Act requires the WERC to combine two or more collective bargaining units consisting of school district employees into a single unit if a majority of the employees voting in each unit vote to combine upon the expiration of any collective bargaining agreement. This provision does not have precedent in current law for other municipal workers or in pre-QEO law. The provision would allow the combining into a single collective bargaining unit of school district employees working for different school districts.

C. Domestic Partnership

1. Act 28 modifies a number of existing laws in order to establish rights for domestic partners.
2. In particular, the Act extends spousal rights under Chapter 40 to domestic partners. Chapter 40 of the statutes governs the administration of the Wisconsin Retirement System (WRS), which includes nearly all public employees in the state except employees of Milwaukee County and the City of Milwaukee, which operate separate retirement systems. Chapter 40 also authorizes various benefit programs, primarily applicable to state employees, including health insurance coverage. Under these Chapter 40 provisions, spouses are provided with a legal status and a range of beneficiary rights pertaining to retirement benefits and other benefit programs.
3. The Act now extends these spousal rights to domestic partners, and the Act provides a definition of “domestic partner” and a “domestic partnership” in Chapter 40. Both same-sex and opposite-sex partners would be covered under the definition provided in the bill. Under Wis.

Stat. § 40.02(21c) and (21d), the two individuals must satisfy all of the following criteria: (1) each individual is at least 18 years old and otherwise competent to enter into a contract; (2) neither individual is married to, or in a domestic partnership, with another individual; (3) the two individuals are not related by blood in any way that would prohibit marriage under Wis. Stat. § 765.03; (4) the two individuals consider themselves to be members of each other's immediate family; (5) the two individuals agree to be responsible for each other's basic living expenses; and (6) the two individuals share a common residence. Such domestic partners began to be recognized on June 30, 2009.

4. The Act also creates new requirements for the establishment of same-sex domestic partnerships under Chapter 770 of the statutes to provide domestic partners with certain rights and benefits that parallel some of the rights and benefits provided to spouses under current law. Under Wis. Stat. ch. 770, the two individuals must register with the Register of Deeds for the county in which they reside and certify as follows: (1) each individual is at least 18 years old and capable of consenting to the domestic partnership; (2) neither individual is married to, or in a domestic partnership with, another individual; (3) the two individuals share a common residence; (4) the two individuals are not nearer in kin to each other than second cousins, whether of the whole or half blood or by adoption; and (5) the two individuals are of the same sex. Each county's Register of Deeds began accepting domestic partnership registrations on August 3, 2009.
5. As a result of Act 28, protected leave under the Wisconsin Family and Medical Leave Act (WFMLA) has now been extended to domestic partners. Prior to June 30, 2009, an eligible employee could take WFMLA leave to care for the employee's child, spouse, or parent with a serious health condition. The statute defines a spouse as the "employee's legal husband or wife." As a result of Act 28, effective June 30, 2009, an eligible employee may now take leave to care for his or her domestic partner.

III. Other Legislative/Administrative Changes Related to Collective Bargaining

A. Preparation Time

Another new law, 2009 Wisconsin Act 34, also impacts school district bargaining. Effective with collective bargaining agreements that cover any period that begins after June 30, 2011, school districts will be required to bargain collectively with respect to preparation time, that is, time spent during the school day, separate from pupil contact time, to prepare lessons, labs, or educational materials, to confer or collaborate with other staff, or to complete administrative duties.

B. Maintenance of Arbitration and Fair Share During Contract Hiatus

2009 Wisconsin Act 21 provides that it is a prohibited practice under MERA for a municipal employer, after a collective bargaining agreement expires and before another collective bargaining agreement takes effect, to fail to follow any grievance arbitration agreement or fair-share agreement in the expired collective bargaining agreement. The Act also provides that it is a prohibited practice under MERA for a municipal employee, after a collective bargaining agreement expires and before another collective bargaining agreement takes effect, to fail to follow any grievance arbitration agreement in the expired collective bargaining agreement. The Act took effect on June 23, 2009.

C. Wisconsin Retirement System Increase

On June 19, 2009, the Department of Employee Trust Funds (ETF) announced that, for 2010, Wisconsin Retirement System (WRS) employer and employee contribution rates will increase from 10.4% of payroll to 11%. The rate increases, expressed as a percentage of salary, go into effect for salaries and wages paid beginning January 1, 2010. According to the ETF, the increases in contribution rates for 2010 are a direct result of investment declines in 2008, brought about by the global economic crisis.

The Wisconsin Association of School Boards (WASB) has also informed school districts that they should anticipate that WRS rates should continue to rise for the next several years, considering a presentation to the ETF Board prior to the release of the 2010 increase. During the presentation, it indicated that there would be a strong upward pressure on contribution rates over the next four years. WASB anticipates increases annually from 0.8% to 1.0% over the next three or four years.

IV. Major Legislative Revisions (School Funding, QEO, and Interest Arbitration)

A. Aid to Schools

1. The American Reinvestment and Recovery Act (ARRA) was signed into law on February 17, 2009. The ARRA funds are to be spent quickly to save and create jobs and to improve student achievement through school improvement and reform. These funds are expected to only be available through September 30, 2011.
2. The ARRA funds have two parts.
 - a. The first part involves one-time stimulus funds that are provided as part of existing programs in addition to the regular federal funding (with some new reporting requirements). These programs include:

- i. Title I Part A & School Improvement Grants
 - ii. IDEA (Special Education)
 - iii. Competitive Grants (Race to the Top, Teacher Incentive Fund, State Longitudinal Data Systems, Investing in Innovation Fund)
 - iv. State Educational Technology Grants
 - v. Title VI-B of the McKinney-Vento Homeless Assistance Act
 - b. The second part involves a new education initiative, the State Fiscal Stabilization Fund. This is made up of the Education Stabilization Fund (81.8% of the State's allocation), and the Government Services Fund (18.2% of the State's allocation).
3. Wisconsin's ARRA Education Stabilization Fund was allocated to Wisconsin school districts through the school aid formula.
- a. Under 2009 Wisconsin Act 11, \$291,000,000 in federal ARRA funding was appropriated in 2008-2009 for the June 2009 equalization aid payments.
 - b. 2009 Wisconsin Act 23 increased the amount of federal ARRA funding used for the June 2009 general school aids by \$261,278,000, to a total of \$552,278,000.
 - c. 2009 Wisconsin Act 28 reduces general school aids by \$147 million in 2009-2010 and makes no changes to funding in 2010-2011. For 2009-2010, \$237 million of federal stimulus funds will be used for state equalization aids.
4. Education Stabilization Funds pursuant to the ARRA can be used to fund programs offered through:
- a. Elementary and Secondary Education Act of 1965 (ESEA);
 - b. The Individuals with Disabilities Education Act (IDEA);
 - c. The Adult Education and Family Literacy Act (AEFLA);
 - d. The Carl D. Perkins Career and Technical Education Act of 2006 (Perkins Act);

- e. To the extent consistent with State law, an LEA may use funds for modernization, renovation or repair of public school facilities, including modernization, renovation, and repairs that are consistent with a recognized green building rating system. If the LEA uses Education Stabilization funds for this purpose the LEA must comply with specific requirements relating to the use of American iron, steel, and manufactured goods in the project (*See*, Section 1605 of the ARRA).
5. Education Stabilization Funds pursuant to the ARRA cannot be used for:
- a. Maintenance costs;
 - b. Stadiums or other facilities primarily used for athletic contest, exhibitions or other events for which admission is charged to the general public;
 - c. The purchase or upgrade of vehicles;
 - d. Improvement of stand-alone facilities whose purpose is not the education of children, including central office administration or operations or logistical support facilities.

B. Revenue Limits

- 1. Act 28 sets the per-pupil adjustment under revenue limits at \$200 per pupil in 2009-2010 and 2010-2011. The governor had initially proposed maintaining the current law for these school years, which was estimated to be about \$275 per pupil in 2009-2010.
- 2. Act 28 also allows increases in revenue limits for energy efficiency measures beginning in 2009-2010 and allows increases in revenue limits for expenditures on school security, transportation and nurses beginning in 2011-2012.

C. Repeal of the Qualified Economic Offer (QEO)

- 1. Under prior law, the primary difference between support staff (nonprofessional) arbitration and teacher (professional) arbitration was the qualified economic offer (QEO). A QEO was an offer to the professional employees of a school district that amounted to a 3.8% total package increase in wages and benefits in each year of the bargaining agreement. Generally speaking, a valid QEO would:

- a. Preserve fringe benefits as they existed on the 90th day prior to the expiration of the previous bargaining agreement between the parties;
 - b. Preserve the percentage contribution toward fringe benefits as they existed on the 90th day prior to the expiration of the previous agreement; and
 - c. Provide for a total package increase of at least, but not more than, 3.8%.
2. The QEO offered an advantage to school districts by allowing them to settle all “economic issues” with professional employees without going to interest arbitration. “Economic issues” were defined by statute and included, but were not limited to, salaries, health insurance, overtime, sick leave, vacation, holiday pay, workers compensation, etc. Arbitration was still available for noneconomic issues that qualified as mandatory subjects of bargaining. However, permissive subjects of bargaining did not need to be continued as part of a QEO in order to ensure the QEO’s validity. *Dodgeland Education Association v. WERC*, 240 Wis.2d 287 (2002).
3. The QEO, revenue limits, and two-thirds commitment were implemented in the early 1990s to work in tandem as part of a system for financing K-12 education. An annual increase in the two main sources of operational funding for districts (property taxes and general aids) would be provided under revenue limits, with the state providing an ongoing and significant portion of that increase through general aids under the two-thirds commitment. The QEO was intended to give districts a means to control teacher compensation costs to more easily stay within the revenue limits. The state’s two-thirds commitment was repealed in the 2003-05 budget act. *See* LFB Paper #330 (May 26, 2009).
4. Now, with 2009 Wisconsin Act 28, the QEO has been repealed. These changes first apply “to petitions for arbitration that relate to collective bargaining agreements that cover periods beginning on or after July 1, 2009, and that are filed under section 111.70 (4) (cm) 6. of the statutes, as affected by this act, on the effective date of this subsection.” Revenue limits, therefore, are the only remaining component of the major modifications to the school finance system that were made in the early 1990s.

D. Repeal of Certain Interest Arbitration Factors For School Districts

1. The statutory factors that an arbitrator may consider when choosing the most reasonable final offer in an interest arbitration proceeding have undergone two significant revisions since their adoption. The pre-1995 statutory factors were as follows:

‘Factors considered.’ In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator shall give weight to the following factors:

- a. The lawful authority of the municipal employer.
- b. Stipulations of the parties.
- c. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.
- d. Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services.
- e. Comparison of the wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees generally in public employment in the same community and in comparable communities.
- f. Comparison of the wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees 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 employees, 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.

See Wis. Stat. § 111.70(4)(cm)7.(a.-j) (1993-94).

- 2. In 1995, the Legislature revised the statutory factors considered by arbitrators. The Legislature broke the factors into three categories: (1) factors given greatest weight; (2) factors given greater weight; and (3) factors to be given weight under the old interest arbitration law.

‘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. *See, Wis. Stat. § 111.70(4)(cm)7.*

‘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. *See, Wis. Stat. § 111.70(4)(cm)7g.*

‘Other factors considered.’ In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall also give weight to the following factors:

[a. through j. same as above]

See Wis. Stat. § 111.70(4)(cm)7r (a.-j) (1995-96).

3. Under the post-1995 arbitration framework, arbitrators are required to give the “greatest weight” to revenue limits. This means that school boards must present economic data establishing the impact that the revenue limits have on the district. Arbitrators must give “greater weight” to local economic conditions, which can benefit either the school district or the union, depending on the health of the local economy. The pre-1995 criteria remained post-1995; however, they were considered by arbitrators after the greater and greatest weight factors.
4. 2009 Wisconsin Act 28 modifies the statutory factors an arbitrator may consider. These changes first apply “to collective bargaining agreements entered into, extended, modified, or renewed, whichever occurs first, on the effective date of this subsection.” Specifically, under 2009 Wisconsin Act 28, the weight-factor approach is maintained for interest arbitration proceedings relating to all general municipal employees, except school district employees. Thus, Act 28 exempts decisions involving a collective bargaining unit consisting of school district employees from the greatest-weight or greater-weight factors. Only the remaining “other factors” are required as considerations by the arbitrator for interest arbitration proceedings relating to school district employees.
5. Although Act 28 eliminates the requirement that arbitrators give greatest and greater weight to certain factors, it does not necessarily prevent arbitrators from considering such factors as revenue and expenditure limitations and the economic conditions of the community. *See LFB Paper #331 (May 26, 2009).*

E. Impact On Collective Bargaining (In Light of the Repeal of the QEO, the Repeal of Interest Arbitration Factors, and Changes to School Funding).

1. With the QEO removed from the equation, school districts have lost some leverage afforded by the QEO and are forced to think in terms of either voluntary settlement or interest arbitration.
 - a. The QEO permitted a school board to hold strong to the proposals to be included in a successor teacher agreement, particularly with respect to its economic proposals. School boards could be resolute in their decision to offer no more than a minimum QEO unless the union agreed to make concessions in exchange for exceeding the minimum QEO.

- b. School boards must now look closer at whether their offer can be justified in light of the interest arbitration factors.
2. It is important to remember that, even under the QEO law, the school board always had the option to proceed to final and binding interest arbitration.
3. In some cases, a school board would not utilize the QEO because the board was unable to fund it. Circumstances that contributed to the district's inability to fund the QEO included:
 - a. Maintaining mandatory subjects of bargaining during a contract hiatus proved too costly;
 - b. Industry-wide fringe benefit increases;
 - c. Increasing pressure of revenue caps/fiscal limitations;
 - d. Unfunded mandates (No Child Left Behind Act, PI 34, special ed., etc.);
 - e. Rising cost of post-employment benefits, and their accounting (Governmental Accounting Standards Board (GASB));
 - f. Continued steady increase in Wisconsin Retirement System (WRS) rates.
4. In certain circumstances, the QEO was not a viable option for school districts because it served as a "safe haven" for the union, because it:
 - a. Preserved the salary schedule configuration.
 - b. Preserved benefits.
 - c. Preserved the percentage of district contribution toward benefits.
 - d. Preserved step movement.
 - e. Preserved the status quo with respect to all district policies and practices affecting fringe benefits.
5. The elimination of the QEO puts the emphasis on interest arbitration and puts a premium on research and information. In short, school districts must research and understand the decision-making patterns of the arbitrators to show that their offer is reasonable.

6. Arbitrators may place a greater emphasis on comparability. Because of the greater emphasis on comparability, school districts should:
 - a. Identify traditionally comparable districts and compare wages and benefits of both professional and non-professional staff in order to evaluate the strength of the district's leverage before commencing negotiations.
 - b. Identify other comparables that the district may wish to propose including on the list of external comparables for the purpose of improving the district's ranking with respect to wages and benefits.
 - c. Coordinate and participate in sharing information across districts and amongst comparables in order to develop a coordinated and consistent strategy to control costs.
 - d. Anticipate that unions may fear that school districts will look to make changes based on comparables.
7. Unions may argue that school districts should look to fund balances to use for settlement purposes. However, districts should be careful in entering into settlements that result in a depletion of fund balances. In *Madison Teachers, Inc., (Educational Assistants)*, Case 271 No. 54438 INT/ARB-8018 (Dichter, 8/97), the arbitrator rejected the union's argument that the district utilize the fund balance to pay the wage and benefit increases advocated by the union's final offer. Arbitrator Dichter concluded that it was inappropriate to use the fund balance for wages and benefits versus a one-time non-recurring expense such as the bonus payment contained in the Madison teachers' bargaining unit final offer.
8. The American Reinvestment and Recovery Act (ARRA), while it does provide stabilization and stimulus funds, is not a continuing source of revenue and should not be utilized in negotiations to fund recurring expenses like teacher salaries or benefits. The use of federal stimulus funds is governed by the conditions of various special education programs and grants. In addition, the reporting requirements and transparency connected to the ARRA funds are clearly in place to ward against districts investing in unsustainable commitments that continue after the expiration of the ARRA funds. Finally, the 2009-2010 equalization aid, even with the additional federal stabilization dollars, is less than the 2008-2009 level and will not be increased for 2010-2011.
9. In light of the elimination of the QEO, school districts should assess salary schedules, costing methods, and typical application of cost saving methods to the salary schedule. School districts should design schedules to address revenue concerns and to hire and retain quality teachers. School districts

may want to focus more heavily on total salary, rather than total package, or propose creative ways of providing money to everyone on the schedule (even those who are at the top of the schedule), through perhaps adding a step, freezing step movement and applying those funds across-the-board, or paying one-time stipends.

10. The elimination of the QEO, decreases in revenue limits, and decreases in school aid may now lead to increases in school district property taxes or referenda. A school district's revenue limit determines the maximum amount, absent an approved referendum, that the school district may raise through the property tax and general aids. In common or union high school districts, any property tax effect would be determined by the electors at the annual meeting.

V. Interest Arbitration Factors

Interest arbitration may be an attractive option at this time, in light of economic conditions in the school district. The elimination of the greatest and greater weight criteria for school district employees means that the remaining factors will be considered by each arbitrator. However, the particular weight the arbitrator gives to any factor will not be decided by statute, but rather by the arbitrator in light of the evidence presented by the parties. Below is an in depth look at each factor in order for districts to evaluate whether interest arbitration is a viable option.

A. The Lawful Authority of the Municipal Employer.

1. The factor requiring the arbitrator to consider the lawful authority of the employer has generally been interpreted as referring to the authority of the employer to levy taxes necessary to implement an offer when levy limits are in effect. *Village of Greendale*, Dec. No. 25579-A (Nielsen, 3/89).
2. However, that limitation is not express and the criterion certainly is capable of sustaining a broader interpretation. The mere fact that the arbitrator is able to consider the employer's lawful authority does not inevitably lead to the conclusion that the arbitrator is the appropriate agent for determining the scope of that authority. *Id.*

B. Stipulations of the Parties

1. Arbitrators are precluded from modifying the tentative agreements reached by the parties. Stipulations are individual agreements between the parties over which the arbitrator has no jurisdiction. *Lakeshore Vocational Technical and Adult Education District*, Dec. No. 19085-A (Rothstein, 7/82).

2. However, arbitrators may take into consideration the tentative agreements reached by the parties when evaluating which offer is more reasonable under the statutory criteria. This is particularly true when:
 - a. The tentative agreements represent significant language or benefit concessions on behalf of one party or the other.
 - b. The tentative agreements contain fiscal implications with respect to concessions made by either party in the final offer.

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.

1. This criterion requires an arbitrator to consider both the employer's ability to pay either of the offers and the interests and welfare of the public. *Wisconsin Indianhead Technical College*, Dec. No. 32460-A (Grenig, 12/08). The interests and welfare of the public include both the financial burden on the taxpayers and the provision of appropriate municipal services. *Id.*
 - a. The public has an interest in keeping the employer in a competitive position to recruit new employees, to attract competent experienced employees, and to retain valuable employees now serving the employer. *Id.*
 - b. Presumably, the public is interested in having employees who by objective standards and by their own evaluation are treated fairly. What constitutes fair treatment is reflected in the other statutory criteria. *Id.*
2. However, arbitrators are also cognizant of the welfare of the public as it relates to the ability of the taxpayer to fund governmental operations.
 - a. The ultimate factor is the weight of the comparability criteria juxtaposed with the weight of the interest and welfare of the public standard. Recognizing the recessionary condition of the state and nation carries added weight in determining which of these offers is more reasonable, the arbitrator reviewed the final offers of the parties, keeping in mind the ability of the public to continue financing the costs of government. *Milwaukee County*, Dec. No. 32241-A (Engmann, 7/08) *citing Cochrane-Fountain City Community School District*, Dec. No. 19771-A (Imes, 1/83).
 - b. When unemployment is high and the general economic conditions are tenuous, moderation in pay increases is demanded. *Id.*

D. Internal Comparability

1. An employer's ability to negotiate to a successful voluntary agreement with other unions, the same terms that it proposes in interest arbitration, is a factor to be accorded significant weight, if not controlling weight. *City of Tomah*, No. 31083-A (Yaeger, 2/05). Internal comparability is very important in interest arbitrations. If you can show similar proposals to multiple units, it is more likely that an arbitrator will select your final offer. *City of Marshfield*, Dec. Nos. 30638-A (Dichter, 5/04).
2. However, internal comparability is not always controlling when there is a compelling justification to support the departure from a settlement pattern. Even if an internal settlement pattern has been established, the arbitrator is not precluded from considering the union's claim that a catch-up adjustment is warranted. *Milwaukee County (Airport Fire Department)*, Dec. No. 31600-A (Yaeger, 6/07).

E. External Comparability

1. The purpose behind comparing wages, hours, and other conditions of employment in comparable employers is to obtain guidance in determining the pattern of settlements among the comparables, as well as the wage rates paid by these comparable employers for similar work by persons with similar education and experience. *Wisconsin Indianhead Technical College*, Dec. No. 32460-A (Grenig, 12/08).
2. Typically, the athletic conference has been shown to be an appropriate comparable pool for teachers. However, geographic proximity can play a larger role than athletic conference in support staff comparisons.

F. Private Employment Comparables

1. Private sector comparability under this statute requires the arbitrator to note trends, particularly in the payment of benefits. *City of Monona (Fire Department)*, Dec. No. 32036-A (Malamud, 4/08).
2. However, most arbitrators do not accord significant weight to private employment comparables for a variety of reasons, including:
 - a. The duties and responsibilities of similarly situated employees in the private sector differ from those in the public sector. *See Monroe County*, Dec. No. 31374-A (Brotzlaw, 12/05).
 - b. The pattern of better health insurance benefits for municipal workers versus similarly situated workers in the private sector is general and not specific to a particular bargaining unit. Therefore,

this discrepancy in benefits is presumably reflected in the general bargaining among external and internal municipal comparables as well. *Village of Germantown*, Dec. No. 31006-A (Honeyman, 3/05).

G. CPI – Cost of Living

1. The weight placed on cost of living varies with the state of the economy and the rate of inflation. Generally, in times of high inflation, public sector employees lag the private sector in their economic achievement. Likewise, in periods of time such as we are currently experiencing, public sector employees generally do somewhat better not only with respect to the cost of living rate, but also vis-à-vis the private sector. *Clark County*, Dec. No. 32092-A (McAlpin, 1/08).
2. In addition, the movement in the consumer price index is generally not a true measure of an individual family's cost of living due to the rather rigid nature of the market basket upon which cost of living changes are measured. Therefore, cost of living considerations are best measured by the external comparables and wage increases and wage rates among those external comparables. *Id.*

H. Total Package

1. A number of arbitrators have concluded that the total package cost must be given weight, even when it includes increases in the health insurance premiums.
 - a. It is valid to consider total cost, including the cost of insurance premiums, because it is the cost experienced by the employer as a direct result of a benefit negotiated by the union. *Marion School District*, Dec. No. 19418-A (Vernon, 7/83).
 - b. This cost, like the cost of any other benefit that can be expressed in dollar terms, should be considered when comparing the costs of the final offers of the parties to comparable districts. *Id.*
2. When examining the total package costs, arbitrators generally require different costing mechanisms for professional employees than non-professional employees.
 - a. Most arbitrators have excluded the cost of step increases and the cast forward costing method when comparing wage levels and wage increases of non-professional employees. *Waunakee Community School District*, Dec. No. 30305-A (Stern, 9/02).

- b. However, arbitrators permit the inclusion of step increases and the use of the cast forward method when examining the total package increase of a final offer involving a teacher or other professional employee.

I. Changes In Circumstances During The Pendency Of The Arbitration Proceedings.

- 1. This factor requires the arbitrator to examine changes in circumstances that occurred during the arbitration proceedings. These changes may include:
 - a. Changes in the law governing the arbitrator process or the legality of the provisions contained in either party's final offer;
 - b. Changes in economic data or the cost of living represented by the consumer price index;
 - c. Voluntary settlements within the district affecting internal comparability; and
 - d. Arbitration awards affecting other units within the district that affect internal comparability.
- 2. Nevertheless, typically the economic data available at the time the parties should have reached voluntary settlement is given more weight than any changes that occur during the pendency of the arbitration proceedings. *Forest County*, Dec. No. 22061-B (Imes, 8/85).

J. Other Factors -- Quid Pro Quo as a Requirement for Change in Status Quo.

- 1. Some arbitrators believe that the party proposing a change in status quo is required to justify the change and offer a quid pro quo for the change. *See e.g., Middleton-Cross Plains School District*, Dec. No. 28489-A (Malamud, 4/96). Arbitrator Malamud explained that where arbitrators are presented with proposals for a significant change to the status quo, they apply the following factors to determine whether the proposed change should be adopted:
 - a. Has the party proposing the change demonstrated a need for the change?
 - b. If there has been a demonstration of need, has the party proposing the change provided a quid pro quo for the proposed change?

2. However, if there is a problem that necessitates change, the more the proposal directly addresses and remedies a problem, the less likely an arbitrator is going to require a quid pro quo. *See, Waukesha County (Master Unit)*, Dec. No. 30468-A (Dichter, 5/03).
3. Moreover, with respect to changes in health insurance, a number of arbitrators have concluded that the undisputed economic impact of rising health insurance costs has reduced the employers' burden of establishing a traditional quid pro quo. Arbitrators have recognized that the spiraling costs of providing health care insurance for its current employees is a mutual problem for the employer and the association. *Village of Fox Point*, Dec. No. 30337-A (Petrie, 11/02). As such, in light of the mutuality of the underlying problem, the requisite quid pro quo is somewhat less than would be required to justify a traditional arms-length proposal to eliminate or modify negotiated benefits or advantageous contract language. *Id.*
4. In fact, some arbitrators do not require a quid pro quo for health insurance benefit changes at all. Arbitrators have found that the quid pro quo concept does not prevail where comparables support change. *See Pierce County (Sheriff's Department)*, Dec. No. 28187-A (Friess, 4/95); *Cornell School District*, Dec. No. 27292-B (Zeidler, 11/92). Other arbitrators have concluded that increasing health insurance premiums alone alter the status quo and negate any presumption that the prior contract arrangements for contributions should carry over. *Walworth County Handicapped Children's Education Board*, Dec. No. 27422-A (Rice, 5/93).