ARBITRATION OPINION AND AWARD

In the Matter of Arbitration	)	
Between	)	Case 97
	)	No. 57506
MADISON AREA TECHNICAL COLLEGE	)	INT/ARB-8720
	)	Decision No. 29695-B
and	)	
WISCONSIN FEDERATION OF TEACHERS, LOCAL UNION 6100	)	

Impartial Arbitrator

William W. Petrie
217 South Seventh Street #5
Post Office Box 320
Waterford, WI 53185-0320

Hearing Held

Madison, Wisconsin
June 9, 2000

Appearances

For the Employer — LAFOLLETTE GODFREY & KAHN
By Jon E. Anderson
Attorney at Law
One East Main Street
Post Office Box 2719
Madison, WI 53701-2719

For the Association — SHNEIDMAN, MYERS, DOWLING, BLUMENFIELD, EHLKE, HAWKS & DOMER
By Timothy Hawks
Attorney at Law
700 W. Michigan Street
P.O. BOX 442
Milwaukee, WI 53201-0442

BACKGROUND OF THE CASE

This is an interest arbitration proceeding between the Madison Area Technical College and Local Union 6100 of the Wisconsin Federation of Teachers, AFT, representing a bargaining unit of certain part-time faculty and counselors, with the matter in dispute the terms of a renewal labor agreement covering July 1, 2000 through June 30, 2002.

After their preliminary negotiations had failed to result in complete agreement, the Union on April 22, 1999 filed a petition with the Wisconsin Employment Relations Commission seeking final and binding arbitration. Following an investigation by a member of its Staff, the Commission issued certain *findings of fact, conclusions of law, certification of the results of investigation, and an order requiring arbitration* on August 24, 1999, and, following the unavailability of a previously appointed arbitrator, it appointed the undersigned to hear and decide the matter. During preliminary negotiations the parties agreed to a *voluntary impasse procedure* providing, in material part, for any subsequent arbitral proceedings to be based upon the arbitral criteria contained in Section 111.70 of the Wisconsin Statutes.

An arbitration hearing took place in Madison, Wisconsin on June 9, 2000, at which time both parties received full opportunities to present evidence and argument in support of their respective positions, on September 21, 2000, they submitted a written stipulation to certain matters involving interpretation of the Madison and the Milwaukee Area Technical Colleges' part-time salary schedules, both thereafter closed with the submission of lengthy and comprehensive post-hearing briefs and reply briefs, and the record was closed effective November 20, 2000.[1]

THE FINAL OFFERS OF THE PARTIES

The parties have agreed to a two year renewal labor agreement covering July 1, 2000 through June 30, 2002. Their certified final offers, hereby incorporated by reference into this decision, are summarized as follows:

(1) The *final offer of the Board*, dated March 15, 2000, principally provides as follows:

[1] In this connection, the parties submitted 72 and 37 page initial briefs, and 22 and 34 page reply briefs.

(a) That the all existing wage schedules be increased by 3.5% effective July 1, 2000, and by 3.5% effective July 1, 2001.

(c) That the wage rates contained in Article VI, Section D, Paragraph (1) also be increased by 3.5% on each of the above dates.[2]

(2) The *final offer of the Union*, dated March 15, 2000, principally provides as follows:

(a) That the wage rates for additional professional work provided in Article VI, Section D, Paragraph (1) be increased by 3.5% effective July 1, 2000, by 3% effective July 1, 2001, and by 0.25% effective January 1, 2002.

(b) That Article VI, Section G, Paragraphs 1, 2, 3 and 4 provide for teacher preference in the filling of assignments on the following bases: *first*, the teacher's last teaching schedule within the past calendar year; *second*, seniority and within a certification area previously taught by a teacher; and, *third*, seniority and within an area for which the teacher is certified.

When a college requires specialized skills or knowledge not possessed by a bargaining unit employee indicating a preference, the course may be declared exempt from Article VI, Section G, Paragraphs 2(b) and (c), by providing appropriate notification and information to the Union.

A teacher may not be assigned a load that is equal to or greater than 50% of a full-time teacher's normal teaching schedule.

(c) That Appendix B of the agreement be modified to include the following wage schedules.

Wage Schedule - July 1, 2000

Step	*Semester Credits Earned*	*BS Degree*	*Masters*	*PHD*
1	0	$30.53	$31.76	$33.00
2	4	$32.02	$33.22	$34.51
3	8	$33.52	$34.68	$35.85
4	12	$35.01	$36.13	$37.25
5	16	$36.41	$37.53	$38.65
6	20	$37.81	$38.93	$40.05
7	24	$39.21	$40.33	$41.45
8	28	$40.61	$41.73	$42.85

Wage Schedule - July 1, 2001

Step	*Semester Credits Earned*	*BS Degree*	*Masters*	*PHD*
1	0	$31.45	$32.72	$33.99
2	4	$32.98	$34.22	$35.55
3	8	$34.53	$35.72	$36.93
4	12	$36.06	$37.22	$38.37
5	16	$37.51	$38.66	$39.82
6	20	$38.95	$40.10	$41.26

[2] See the contents of Joint Exhibit #3.

7	24	$40.39	$41.54	$42.70
8	28	$41.83	$42.99	$44.15

Wage Schedule - January 1, 2002

Step	*Semester Credits Earned*	*BS Degree*	*Masters*	*PHD*
1	0	$31.52	$32.80	$34.08
2	4	$33.07	$34.31	$35.64
3	8	$34.61	$35.81	$37.01
4	12	$36.15	$37.31	$38.47
5	16	$37.60	$38.75	$39.91
6	20	$39.04	$40.20	$41.36
7	24	$40.49	$41.65	$42.80
8	28	$41.93	$43.09	$44.25

(e) That Appendix B be implemented as follows: *first*, place all employees on the appropriate education column at the step closest to and higher than their last rate of pay; *second*, pay any employee currently paid higher than the highest rate in the appropriate educational lane, increases of 3.5% effective July 1, 2000, 3.0% effective July 1, 2001, and 0.25% effective January 1, 2002; and, *third*, effective July 1, 2001 and each July 1 thereafter, each employee shall be placed at the step prescribed in Appendix B, based upon semester credits earned since July 1, 1993 (per Article IV, Section C), provided, however, no employee shall move more than one step per year.[3]

THE ARBITRAL CRITERIA

That parties have agreed to the use of Section 111.70(4)(cm)(7) of the Wisconsin Statutes, which directs Arbitral use of the following criteria in arriving at a decision and rendering an award:

> "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 legislature to 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.
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> 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.
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> 7r. '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:
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> a. The lawful authority of the municipal employer.
>
> b. Stipulations of the parties.

[3] See the contents of Joint Exhibit #4.

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. Comparisons 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. Comparisons of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees generally in public employment in the same community and in comparable communities.

f. Comparisons 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 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 pension, 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 hearing.

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."

POSITION OF THE EMPLOYER

In support of the contention that its final offer is the more appropriate of the two before the Arbitrator, the Board emphasized the following principal considerations and arguments.

(1) That the following background and facts are material and relevant to the outcome of these proceedings.

(a) The Madison Area Technical College, one of sixteen technical colleges in the State of Wisconsin, has campuses in Fort Atkinson, Portage, Reedsburg and Watertown; its geographic coverage is quite broad, thus requiring significant flexibility in order to meet the needs of its customers.

(b) The bargaining unit consists of the part-time teachers, professional employees teaching less than 50% of a normal teaching schedule, and counselors working less than half of a normal counselor's schedule.[4]

[4] JX 1, pg. 1, and TR 17

(c) In addition to the *part-time faculty unit*, there are two other bargaining units within the MATC, a unit of *full-time teachers* and a unit of *support employees*, each of which has a contract running from July 1, 1999 through June 30, 2002.[5]

(d) Since gaining union representation in April 1996, faculty salaries have been expressed in terms of a basic hourly rate for non-specialized part-time faculty, and in terms of a separate salary schedule for part-time faculty teaching specialized courses.[6]

(e) The negotiation of the *initial labor agreement*, effective July 1, 1996 through June 30, 1998, spanned over two years, and when the contract was reached it had already expired. The parties agreed to a 10% increase in the basic hourly rate for 1996-1997, a 7% increase for 1997-1998, and continued payment of wages above the minimum basic rate for specialized instructors.[7]

(f) The negotiation of the *second labor agreement*, effective July 1, 1998 through June 30, 2000, resulted in 5% increases each year for both specialized and non-specialized faculty, and the addition of a $1.00 or $2.00 hourly longevity premium, after earning ten or sixteen semester seniority credits, respectively. Seniority credit accrual began July 1, 1993 and part-time faculty were restricted to its accumulation on the basis of two seniority credits per school year.[8]

(g) The negotiation of the *third labor agreement*, effective July 1, 2000 through June 30, 2002, resulted in the parties inability to resolve wages and assignment of work issues, and gave rise to these proceedings.

(2) The issues present in these proceedings are two-fold, and may be stated as follows: should part-time faculty be paid on an hourly basis, as in the past, or paid in accordance with the Union proposed schedule; and, how should the part-time faculty assignments be made?

(3) The **wage issue** impasse item has two sub-parts: *first*, the salary schedule structure (i.e., basic rate, specialized schedules, and longevity premiums) and whether the current system should be modified; and, *second*, the level of wage rate adjustments on the salary schedule structure.

(a) In connection with **the salary schedule structure issue**, the following considerations are material and relevant.

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[5] JX #7 & #8

[6] EX#32

[7] JX #1, page 24, and TR 17

[8] TR 17, JX #2, JX #1, page 7

(i) *The College's final salary structure offer* maintains the status quo methods of compensation for part-time faculty: a basic hourly rate is defined for the non-specialized part-time faculty and, after the attainment of ten or sixteen seniority credits, longevity benefits become available; the College's final offer also retains its ability to hire specialized instructors at higher rates of pay and provides for their continued placement on the specialized salary structure.[9]

(ii) *The Union's final salary structure offer* includes eight steps, ranging in value from a minimum of $1.34 to a maximum of $1.51 and generating from 3.38% to 4.88% more in hourly rates of pay; the structure of the MS and Ph.D. lanes are equivalent to a 4.00% value above the previous lane base.[10]

(iii) When evaluated on the basis of a limited sampling of thirty-one part-time faculty members, the Union proposed salary structure for 2000-2001 would entail the following: a conservatively estimated overall first year percentage cost of 5.73%; a first year increase of 3.5% for those with a Bachelor's Degree; and a first year increase of 7.45% to 7.70% for those with a Masters Degree; and a first year increase of 11.51% for those holding a Ph.D.

(iv) While the Union urges that implementation of its final offer would eliminate the current $1.00 and $2.00 longevity benefit, this conclusion is disputed by the College. Absent clear delineation to the contrary, the current longevity benefit would not be deleted by the selection of the final offer of the Union, and the Employer's costing figures are consistent with this principle.

(b) In connection with **the wage adjustment issue**, the following considerations are material and relevant.

(i) The *College's final offer* provides for 3.5% across-the-board wage increase for all existing wage schedules, in both the 2000-2001 and the 2001-2002 academic years. When evaluated on the basis of the above referenced thirty-one members of the bargaining unit, the first year percentage increase would be 3.44%, and the second year increase would be 4.99%.[11]

(ii) The *Union's final offer* provides, after initial placement on its newly proposed 2000-2001 salary structure, for split increases 3.0% on July 1 and 0.25% during the 2000-2001 academic year. Over the two year period of the agreement, the "actual" percentage impact of the Union's final offer is 14.31%.[12]

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[9] JX #3

[10] JX #4 and EX #4.

[11] Citing the contents of Employer Exhibit #1, and allowing for longevity pay eligibility within the group of thirty-one employees.

[12] See the contents of JX #4

(c) In connection with **specialized salary schedules**, the following considerations are material and relevant.

(i) The *College's final offer* would continue the practice of providing a separate salary schedule for specialized part-time instructors, including attorneys, dentists, doctors and veterinarians, and would increase the schedule by 3.5% in both 2000-2001 and 2001-2002.

(ii) The *Union's final offer* includes red-circling any specialized rates higher than its proposed salary schedule structure, and increasing the rates by 3.5% in the first year and by 3.0% and 0.25% in the second year of the renewal agreement. The Union's final offer does not address the matter of specialized faculty hiring during the renewal agreement, which raises questions of whether such hiring would result in a two-tiered compensation system, and/or whether it would defeat the purpose of the "off schedule" payment to such individuals which was previously agreed upon by the parties.

(4) The **assignment of work** impasse item also raises numerous questions.

(a) The current agreement contains a broad management rights clause that recognizes the College's right to assign work, including the sole right to "hire, promote, transfer, schedule and assign employees in positions within the District."[13] The Union's final offer would modify this status quo language with an extensive, tedious assignment procedure that would require the College to grant teacher assignments based upon prior teaching schedules, seniority, certification areas and areas of certifications.[14]

(b) The Union proposed language represents a critical change in the current assignment processes and procedures, it would seriously impair management's authority relating to part-time faculty assignments, and it poses a high potential for differences in contract interpretation. Such a drastic alteration of the status quo must be wholly justified by its proponent.

(5) In arguing its case the College will demonstrate that its final offer is the more reasonable and that it should be selected, on the following described bases.

(a) The Union's final offer seriously modifies the historical status quo pay structures which have been voluntarily negotiated between the parties, and it has failed to justify the need for this change.

(b) The Union's final offer provides for a split-year wage increase in the second year of the agreement; the College's strong hourly wage rates, along with an analysis of comparable settlements among other Wisconsin technical colleges, seriously calls into question the legitimacy of

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[13] Citing the contents of Joint Exhibit #1 at page 4.

[14] Citing the contents of Union proposed Article VI, Section G(1), (2), (3) a., b., c., and d., and (4).

the split-year adjustment.

(c) The College's final offer maintains its current contractual right to assign employees as it deems necessary within the District, which right is necessary due to the large geographic area covered by the College. Not only has the Union failed to justify the need for its proposed change, but it urges an assignment procedure which is so problematic that it begs for the filing of future grievances over the proposed language.

(d) The Union has failed to provide a *quid pro quo* to the College for either of the two language changes sought by it in these proceedings.

(e) The Union, through its final offer, seeks to gain much more than any party should be able to achieve through the interest arbitration process; the *restructured salary structure* and the *imposition of a restrictive assignment procedure* should not be contemplated and adopted by an interest neutral in one fell swoop. Such substantial issues should clearly be resolved by the parties at the bargaining table.

(6) The Union has failed to substantiate its proposed *changes to the status quo*, in either *the salary schedule* or the *assignment of work* language.

(a) When either party proposes significant changes in the status quo ante, arbitrators normally require such party to demonstrate the need for and to provide an appropriate quid pro quo for the change.[15]

(b) The *Salary Structure status quo*, which has been collectively bargained since the parties' initial contract, represents a past practice which evolved from the need to attract and retain professionals from within the local labor market.[16]

(i) Arbitrators have applied the above described status quo theory in connection with proposed salary structure changes, because of the significant impact of such changes on the parties' bargaining history.[17]

(ii) The Union is proposing a salary schedule structure based upon varying educational levels. Not only would implementation of the new lanes and steps present a significant burden to the College, but arbitral selection of the proposal would deny the College the opportunity to balance its needs and desires against the additional costs incidental thereto.

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[15] Citing the decisions of *Arbitrator Malamud* in D. C. Everest School District (Dec. No. 24678-A, 2/88), and *Arbitrator Krinsky* in Salem Jt. No. 7, (Dec. No. 27479-A, 5/93).

[16] Citing the *testimony of Dr. Sido* at Hearing Transcript, page 156, relating to the continued need of the salary structure status quo, in the recruitment of individuals holding DDS, MD, OC, DVM or Law Degrees.

[17] Citing the decisions of *Arbitrator Rose Marie Baron* in Middleton-Cross Plains School District (Dec. No. 27599-A, 12/93), and *Arbitrator Zel Rice* in West De Pere School District (Dec. no. 23687-A, 11/86).

(c) The Union has failed to establish the need for a status quo change in the salary structure.

(i) In order to justify its proposed change in the status quo, the Union must unequivocally demonstrate that current salary schedules are deficient in fairly compensating the part-time faculty, and that its proposal remedies such a deficiency.

(ii) The Union proposed altered salary schedules cannot be characterized as an attempt to address recruiting or staff retention problems.[18]

(iii) The Union's sole justification for its proposed salary schedule change is the Milwaukee Area Technical College data. Reliance upon a solitary comparable, however, does not establish an appropriate basis for the proposed change.

(d) The Union has failed to establish the need for a status quo change in the assignment of work provisions.

(i) The current management rights language reflects a commitment to provide the College with the requisite flexibility to assign its part-time faculty. Because of schedule changes, year to year flexibility is critical, which flexibility would be eliminated by implementation of the Union's final offer.

(ii) The Union proposed language change is not supported by evidence of problems with the current process, and the testimony Ms. Hernandez, Ms. Olson-Sutton, Dr. Sido, Ms. Hertel and Ms. Storley also calls into question the feasibility of the Union proposed change.

(e) The Union has failed to establish the need for its proposed change in the assignment language.

(i) While the Union characterizes its proposal as "a form of entitlement to bargaining unit work as it comes up in the future", the College regards it as a laborious and tedious process that undoubtedly sets the stage for future grievances.[19]

(ii) While the Union claims that its proposal represents an attempt to deal with turnover issues, its testimony at the hearing failed to indicate any turnover problem.[20]

(iii) Employer testimony seriously questioned whether the Union proposal could minimize turnover.[21]

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[18] Citing the *testimony of Dr. Sido* at Hearing Transcript, pages 155-156, and the fact that no Union witnesses identified any recruiting or staff retention problems.

[19] Citing the *opening statement of the Union* at Hearing Transcript, pages 12 and 13.

[20] Citing the *testimony of Mr. Boetcher and Ms. Grosse*, particularly that of the latter at Hearing Transcript, pages 81 and 82.

[21] Citing the *testimony of Ms. Hernandez* at Hearing Transcript, pages 122 and 123.

(iv) The Union's failure to prove a compelling need for its proposed change in the assignment language should be determinative.[22]

(f) The Union has not offered any quid pro quo for its significant proposed changes in the salary structure and in the work assignment language.

(i) Its salary structure proposal substantially deviates from the status quo and has enormous cost implications; its proposed work assignment change is also a serious deviation from the status quo and while its impact is difficult to quantify, it would virtually handcuff the College's scheduling flexibility.

(ii) Even if it had succeeded in establishing a need for its proposed changes, it has failed to offer any adequate quid pro quo.

(iii) The position of the College is consistent with significant arbitral precedent.[23]

(7) The external comparable pool has yet to be clearly defined, and the resolution of the underlying dispute requires arbitral consideration of statewide technical college data rather than limited consideration of a single technical college.

(a) The College has set forth hourly wage rate and settlement data based upon a primary/secondary comparable pool format. The primary comparables are the technical colleges of Fox Valley, Milwaukee, Northeast Wisconsin and Waukesha County, and the secondary comparables are the technical colleges of Blackhawk, Chippewa Valley, Indianhead, Lakeshore Mid-State, Moraine Park, Nicolet, North Central, Southwest and Western Wisconsin.[24] By way of contrast with the above, the Union has placed sole emphasis upon comparison with the Milwaukee Area Technical College.

(b) Guidance can be found in a prior MATC interest arbitration involving its full-time faculty, wherein the Arbitrator analyzed the district populations, student numbers, staffing levels, student costs, valuations and mill rates, and determined the identity of primary and secondary comparables upon which the College relies in these proceedings.[25]

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[22] Citing the *decision of Arbitrator Rose Marie Baron* in City of Mequon-DPW, (Dec. No. 28399-A, 12/95), and other arbitral decisions referenced therein.

[23] Citing the decision of *Arbitrator Frederick Kessler* in Webster School District (Dec. No. 23333-A, 11/86).

[24] Citing the contents of Employer Exhibit #5.

[25] Citing the contents of Joint Exhibit #6, the *decision of Arbitrator Richard Tyson* in Madison Area Technical College (Full-Time Faculty), (Dec. No. 28553-A, 09/96).

(c) The Union's sole reliance upon the Milwaukee Part-Time Contract is unreasonable.[26]

(i) The Union, in urging a single comparison, is seeking wage parity with the Milwaukee Area Technical College's part-time faculty. Not only is a single comparable inappropriate, but questions arise as to whether Milwaukee, due to its size, should be a comparable for any other technical college.[27]

(ii) Perhaps the safest conclusion relative to Milwaukee is neither complete reliance nor ignorance, but rather inclusion and buffering within a logically cohesive comparable pool.

(d) Union or non-union status cannot be a factor in the determination of the makeup of the comparable pool.[28]

(i) The fact that Milwaukee is the only other technical college in the state whose part-time faculty is unionized, cannot justify the Union proposed narrow application of the intraindustry comparison factor.

(ii) The more logical conclusion is that the comparable pool should not be based upon the unionized status of any of the technical colleges.

(e) The College proposed comparable pool is a reasonable resolution of this matter, and Arbitrator Tyson's determination of the comparables should be respected in these proceedings.

(8) The College's final offer maintains a healthy wage for its part-time faculty.

(a) The current labor agreement provides that MATC part-time faculty is to be paid on an hourly basis, and a majority of the other technical colleges do likewise.

(b) The Employer prepared comparisons utilize minimum, maximum and longevity pay scales for all sixteen of the statewide technical colleges, with differentiation for the primary and secondary comparison groups.[29]

(c) An examination of wage data beginning with the 1996-1997 school year, the start of the parties' initial agreement,

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[26] Citing the following arbitral decisions: *Arbitrator Richard Tyson* in Madison Area Technical College (Full-Time Faculty), (Dec. No. 28553-A, 09/96); *Arbitrator James Engmann* in CESA #2 (Dec. No. 29020-A, 9/98); *Arbitrator William Petrie* in Monona Grove School District (Teachers), (Dec. No. 25034-A, 7/88); *Arbitrator Frederick Kessler* in Monona Grove School District (Custodians), (Dec. No. 28339-A, 10/95); and *Arbitrator Sherwood Malamud* in Douglas County (Highway Department) (Dec. No. 28215-A, 3/95).

[27] Citing the contents of Employer Exhibit #8 and Union Exhibit #103(e).

[28] Citing the following arbitral decisions: *Arbitrator William Petrie* in Genoa City School District (Dec. No. 27066-A, 7/92); *Arbitrator John Flagler* in Cochrane-Fountain City School District (Dec. No. 27234-A, 10/92); and *Arbitrator Byron Yaffe* in Thorp School District (Dec. No. 23082l-A, 6/86).

[29] Citing the contents of Employer Exhibits #13 to #16.

indicates that great strides have been voluntarily made in MATC's part-time hourly wage standing, *within the primary comparable pool*.

(i) Initially, MATC's maximum plus longevity, was approximately $4.13 below the comparables, and which deficit was reduced to $2.14 per hour by the 1999-2000 school year.[30]

(ii) Analysis of the data for 2000-01 and 2001-02 is hampered by the fact that none of the comparables are settled for the second year of the agreement; the best comparisons, therefore, are based upon the 2000-01 school year.

(iii) The Union proposes an altered salary schedule effective with the 2000-2001 school year, with an *hourly maximum* of $42.85 for Ph.D.s after earning 28 credits. This proposed salary schedule has a tremendous impact upon the College's comparisons within the primary intraindustry comparison group. The Employer's final offer would put MATC $2.32 below the comparables, versus the Union's final offer which would place it $10.02 above the comparables.[31]

(iv) The maximum hourly wage rates negotiated between 1997-1998 and 1999-2000 school years deliberately boosted MATC's hourly rates. The Employer's offer for 2000-2001 is $0.06 below the average increase among the primary comparables, while the Union's final offer is $12.27 above these comparables; in terms of percentages, the Employer's offer is .50% above these comparables, while the Union's offer is 42.31% above the same comparables.[32]

(v) Stated simply, the Union offer seeks a maximum hourly rate which is the highest in the primary comparable pool, it has presented a final offer which will force the College to absorb the future cost increases of a money-hungry salary schedule structure. The parties have made great strides at the bargaining table since 1996-97, and the relaxation in the percentage increases in the Board's final offer will be enough to sustain the strong hourly wage rates enjoyed by those in the bargaining unit.

(d) In examining the Milwaukee Area Technical College data, it is noted that structurally its part-time faculty salary schedule is based upon certain percentages of the full-time schedule; during their periodic negotiations since 1996-1997, the parties have agreed to incremental increases in the part-time percentages.[33]

(i) The result of the increasing percentages paid to

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[30] Citing the contents of Employer Exhibits #13 and #14.

[31] Citing the contents of Employer Exhibit #14.

[32] Citing the contents of Employer Exhibits #13 and #14.

[33] Citing the contents of Employer Exhibit #62, page 2, which shows increases from 50% in 1996-1997, to 57.8% in 2000-2001.

Milwaukee part-time faculty has been wage increases which were significantly above average.

(ii) While some comparison is appropriate, the Employer does not believe that exclusive reliance upon Milwaukee is appropriate.

(e) Data from the primary and secondary intraindustry comparisons indicate that the Union's wage offer cannot reasonably be justified, and that the Employer's final offer is reasonable.[34]

(9) The Union's focus on workload misrepresents the hourly rates of pay in the Milwaukee contract.

(a) In presenting Madison and Milwaukee wage data, the Union provided calculations based upon specific class loads of part-time faculty at both institutions, while the Employer utilized the *hourly wage rate equivalents* that have been paid in Milwaukee since the 1996-1997 school year.

(b) While the Employer understands that the Union is presenting data on a workload issue basis rather than on a straight hourly wage rate, the part-time faculty in Madison are paid on an hourly basis and the part-time faculty in Milwaukee are paid on a percentage basis of the full-time schedules.

(c) The number of hours a college pays its teachers is an educational and employment policy decision that is market driven. Comparisons for full-time staff are not relevant when comparing the hourly rates part-time staff will receive for assigned work.

(d) The case at hand is about the hourly rate paid for assigned work, not the number of hours assigned. On an apples-to-apples comparison, the rate the Employer paid its teachers for teaching compares favorably to the rate the Milwaukee Area Technical College pays its teachers.[35]

(10) The internal settlement pattern at Madison Area Technical College supports the College's final wage offer.

(a) There are two other bargaining units within MATC, the full-time faculty unit and the support staff unit; both bargaining units have settled through the 2001-2002 school year, thus establishing an internal pattern.[36]

(i) The final offer of the Employer in these proceedings would provide the part-time faculty with the same 3.5% increases in 2000-2001 and 2001-2002 schools years, which were agreed upon for the support staff.

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[34] Citing the contents of Employer Exhibits #15, #16, #17 and #18.

[35] Citing the contents of the parties' September 20, 2000 stipulation, at paragraph A(2) and the contents of Employer Exhibit #63, and urging that a $21.71 hourly rate for Milwaukee is more appropriate for comparison purposes than the $41.69 rate utilized in the Union's documentation in these proceedings.

[36] Citing the contents of Employer Exhibit #19, comparing internal settlements between 199-1997 and 2001-2002.

(ii) Acceptance of the Union's final offer would award the part-time faculty members with an unwarranted and extravagantly higher wage increase than the external comparables.

(b) The Union's internal full-time and part-time calculations are also distorted.[37]

(i) It attempts to quantify a full-time salary with a significantly different part-time hourly rate.

(ii) The part-time faculty are paid for the numbers of student contact hours, while the full-time faculty are assumed to work significantly greater numbers of hours.

(11) Implementation of the Union's proposed assignment language, presents serious implications for all of the College's divisions.

(a) The College vehemently opposes the proposal because each division within the College has to adapt to and develop specific assignment practices and procedures which provide the utmost opportunities for staff recruitment and appointments.[38]

(i) What works in the business division, for example, may not work in other full-time programs or within the regional campuses, and a review of the Union proposal raises serious issues.

(ii) While a similar system may be employed in some divisions within the College, the unique nature of many divisions precludes its universal use.

(b) *Section 2* of the Union's proposal, which would allow employees to decline offers to teach, would apparently require repetitive searches.

(c) *Section 3* of the Union's proposal, by establishing priority order in the part-time faculty assignment process, would be the most cumbersome feature of the proposal.

(i) *Section 3(a)*, identifying the first priority as consistency with the teacher's last teaching schedule within the calendar year, is unclear, ambiguous, and would interfere with the College's responsibility toward its students.[39]

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[37] Citing the contents of Union Exhibits #118-#122.

[38] Citing the *testimony of Ms. Hernandez, Ms. Olson and Dr. Sido* at Hearing Transcript, pages 113-114, 121-122, 136-137 and 159-160.

[39] Citing the *testimony of Ms. Hernandez* at Hearing Transcript, pages 126, 127, 129 and 132.

(ii) *Section 3(b)*, addressing seniority and teacher's certification areas, does not guarantee ability to teach in specific areas, and it is fraught with definitional problems which would generate implementation difficulties.[40]

(iii) *Section 3(c)*, requiring assignments based upon "an area for which the teacher is certified," is problematic and ignores the fact that a teacher cannot be certified without having taught in a particular area.[41]

(iv) *Section 3(d)*, which would provide the College with certain exceptions to the general assignment procedures, is imperfect, unclear, unworkable and fraught with ambiguity.[42]

(d) *Section 4*, providing a limit equal to or greater than 50% of a full-time teacher's normal teaching load, merely reflects current practice and the nature of the bargaining unit.

(12) The external comparisons clearly support the Employer's status quo position relative to the Union proposed assignment language.

(a) Not only is the Union proposal full of implementation issues, but it is not endorsed within the statewide technical college system.[43]

(b) With the exception of Milwaukee, none of the state comparables employ the rigid job assignment language proposed by the Union.

(c) While limited examples of assignment procedures are in place in some secondary comparables in Southwest and Western Wisconsin, none employ procedures as structured as those proposed by the Union.

(d) The Milwaukee experience with the Union proposed assignment language has not been entirely satisfactory.[44]

(13) The College's offer on assignments should be selected.

(a) The procedures within the College's various divisions are driven by the needs of its customers, incidental to which some, but not all, divisions use preference sheets as part of the work assignment process.

(b) The relationship between MATC and its part-time faculty is grounded in good faith and fair dealing, which benefits the

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[40] Citing the *testimony of Ms. Storley, Ms. Hernandez and Ms. Olson-Sutton* at Hearing Transcript, pages 177-180, 126, 127, 128, 144 and 145.

[41] Citing the *testimony of Ms. Storley* at Hearing Transcript, page 82.

[42] Citing the *testimony of Ms. Hernandez and Ms. Olson-Sutton* at Hearing Transcript, at pages 130 and 145-150.

[43] Citing the contents of Employer Exhibits #28 and #29.

[44] Citing the *testimony of Ms. Sutton* at Hearing Transcript, pages 147-148.

College, the part-time faculty and the students.

(c) Administrators from diverse parts of the College testified that they determine the interest level of faculty, they regularly assign interested and qualified part-time faculty who have taught for MATC, particularly those who have taught well.

(d) There was neither evidence of a compelling need nor urgency presented at the hearing, in support of the Union's proposed movement into rigid assignment procedures. Absent a compelling need and a quid pro quo, the existing process for the assignment of work should be continued.

(e) The interest and welfare of the public is better served by maintaining the current system, which works well.

(14) The massive changes sought by the Union in its final offer are not supported either by need, by any quid pro quo, or by reason and, accordingly, they should be rejected.

(a) The Union is advancing a final offer which is overwhelming and one with detrimental consequences for students, customers and the College: it calls for a restructure in the current salary schedule system that will result in significant current and future costs to the College; and it calls for the implementation of assignment language that will dramatically change the way the College has operated in matching employees to assignments based upon customer needs.

(b) The revised salary structure is not needed.

(i) Since 1996-1997, the parties have made a concerted effort to improve Madison's part-time hourly wage rates, have agreed upon significant percentage increases when compared to internal and external comparables, and have also out-paced inflation.

(ii) The Union's final offer proposes a wage structure that is excessive, has great potential for increased costs, and includes too great a commitment of future resources. It has failed to justify the need for a change in the salary structure, which change would cause future harm to the College's ability to recruit and retain professionals holding specialized degree designations.

(iii) The Union's final offer does not delete the current longevity pay provision, which represents a voluntary effort on the part of the parties to reward returning teachers.

(iv) The Union has failed to provide a *quid pro quo* for its proposed change in the wage structure, it would not have been voluntarily agreed to without an appropriate quid pro quo, and it should not be adopted in these proceedings.

(v) The Union has also failed to substantiate the need for its proposed change in the assignment language of the agreement, in that the proposal leaves many unanswered questions, and it cannot be justified on the basis of external comparables.

(c) The College's final offer, by way of contrast, preserves the

negotiated status quo ante, maintains its work assignment authority, preserves the wage structure, and provides reasonable wage increases.

Based upon the entire record, the College requests selection of its final offer in these proceedings.

In its reply brief the Employer emphasized or reemphasized the following principal arguments and considerations.

(1) That the Union's reliance upon the parties' tentative agreement to utilize a multiple of 2.2 hours for each hour of teaching is misplaced. That this agreement was merely intended to provide a reasonable basis for determining whether a teacher met the WRS threshold, no more and no less, and was not intended to reflect that each hour of work was valued at 2.2 hours for pay purposes.

(2) That the Union's claim that "there is little differential cost between the Union and Employer proposals" fails to recognize the impact of educational demographics of the bargaining unit, in the form of pay recognition for advanced degrees. Similarly, the Union understates the significant cost increases associated with movement up its proposed 8 step salary schedule.

(3) If in fact the Union had intended for its final offer to eliminate longevity premium, the final offer would have so stated, and it is, in effect, asking the Arbitrator to amend its final offer.[45] The Union's final offer to modify Appendix B leaves the longevity provision intact and without modification.

(4) The Union's contention that the economic vitality of the Greater Madison area supports its final wage offer is clearly misguided. That economic prosperity cannot alone justify a wage offer that is not supported by the primary intraindustry comparisons.

(5) The Union has failed to justify its "Single-Employer" comparable pool: such a theory has been arbitrally rejected in the past; the intraindustry comparables must include Milwaukee in addition to non-unionized employee groups; the utilization of the so-called "*Tyson Five*" pool of primary comparables is reasonable in the case at hand.

(6) Contrary to the arguments of the Union, the Employer's comparable hourly wage data is not misleading.

(a) The problem in comparing rates in Madison and Milwaukee boils down to the fact that Milwaukee's rates have traditionally been reported in per semester salary format and Madison's have traditionally been reported in an hourly format.

(b) The Union methodology has been to assume a 50 total semester hours for a 3-credit course, which fails to account for many non-classroom hours in Milwaukee.

(c) Comparisons should be based upon the hourly rates contained in the Board final offer and compared to those set forth in Employer Exhibit #63, and Employer Exhibits #13 and #14 provide a correct and consistent analysis of the hourly

[45] Citing the *decision of Arbitrator Howard Bellman* in City of Wausau, Dec. No. 28529-A (4/96).

rates among the comparables.

(d) The case at hand is about the rates paid teachers for their work as teachers, and the hourly rate approach determines the status quo.

(7) Review of the Union's brief does not uncover sufficient need, quid pro quo or reason for its proposed change in the status quo assignment procedures.

(a) The Union proposes to strip management of its right to assign work to part-time faculty, with the imposition of an extensive, tedious assignment procedure, unaccompanied by any quid pro quo.

(b) The Union presented no tangible evidence in support of its claim that the current method of allocating teaching assignments had created confusion, inefficiency, and frustrated the objectives of the College; it additionally presented no evidence supporting the alleged high staff turnover and instability.

(c) The Union has not established the need for the adoption of its final offer, as an *organized and reasonable system of priorities for the assignment of courses*.

(d) The assignment procedures proposed by the Union in these proceedings are not supported by the parties' *bargaining history*, merely because the College put forth a preliminary final offer during the 1996-1998 negotiations, which included assignment language. In addition, there is little in common between the 1996-1998 proposal and the Union's proposal in these proceedings.

(e) There is no persuasive evidence in the record of the existence of any problem, which could be solved by the Union's assignment proposal.

(f) The Union proposed "*star clause*" would not constitute an appropriate *quid pro quo*. The Union cannot simply create its own quid pro quo out of the same cloth as its assignment proposal.

(g) The assignment priorities urged by the Union are not justified, raise serious concerns, and consist of a grievance waiting to happen.

In summary and conclusion it submits that the Union offer should be rejected on the following principal bases: it proposes an extremely costly salary schedule and assignment language that would bring the parties many years of litigation; it offers no type of quid pro quo in support of its salary structure change; it believes that because Milwaukee has such a schedule, so too must Madison; the proposed "*star clause*" does not constitute a quid pro quo for its scheduling proposal, and its application would be an administrative headache; and adoption of the assignment proposal would

generate many questions and difficulties. It urges that the College's final offer preserves what the parties themselves have agreed to in past contracts, and is supported by the record evidence, the hearing testimony, and arguments in its initial brief.

POSITION OF THE UNION

In support of the contention that its final offer is the more appropriate of the two before the Arbitrator, the Union emphasized the following principal considerations and arguments.

(1) That the following background and facts are material and relevant to the outcome of these proceedings.

(a) There are approximately 2,259 part-time teachers covered by the collective agreement, 59% of whom have less than one year of teaching experience, plus counselors who work less than one-half of a normal counselor's schedule.[46]

(b) In addition to teaching given courses, the responsibilities of bargaining unit teachers are the same as those of full-time teachers employed by MATC, including such duties as answering student inquiries regarding course content, being available for out-of-class student consultation, preparing course syllabi, and grading papers and examinations.[47]

(c) The Employer offers different types of courses for varying lengths of times ranging from twenty to forty hour courses, to those which run twelve weeks or less per semester.[48]

(d) Although there are sixteen technical colleges in Wisconsin, only two have organized part-time faculties, which teach less than 50 percent of a full-time schedule.

(e) Local #6100 and MATC previously entered into collective agreements covering July 1, 1996-June 30, 1998 and July 1, 1998-June 30, 2000.[49]

(i) The Employer proposed specific language governing teaching assignments in its final offer for the 1996-1998 agreement, which did not appear in the agreement because the parties reached a voluntary settlement after the contract had expired and the assignments had already been made.[50]

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[46] Citing the *testimony of Mr. Boetcher* at Hearing Transcript, pages 48-49, and the contents of Joint Exhibit #1, page 1.

[47] Citing the *testimony of Mr. Kowalsky* at Hearing Transcript, pages 106-107.

[48] Citing the *testimony of Ms. Hernandez* at Hearing Transcript, page 125.

[49] Citing the contents of Joint Exhibits #1 and #2.

[50] Citing the *testimony of Mr. Boetcher* at Hearing Transcript, pages 56-57 and 60-62, and the contents of Union Exhibit #202, pages 12-13.

(ii) In their negotiations for the 1998-2000 agreement, which took place in November 1999, the Union did not pursue assignment language, because most teaching assignments had already been made and the contract was to expire on June 30, 2000.[51]

(2) A synopsis of the Union's arguments include the following.

(a) Part-time teachers at Milwaukee Area Technical College are paid 50% more than part-time teachers at Madison Area Technical College, for performing the same job.

(b) Full time teachers at Madison Area Technical College are paid nearly two and one-half times more than part-timers to perform the same work.

(c) It is reasonable for the Union and its members to aspire to the same compensation paid to part-time technical college teachers in the Milwaukee area, or at least the compensation that would bear the same relationship to Milwaukee's compensation as the full-time Madison Tech teachers' salary is related to that of Milwaukee.

(d) The case is about fundamental fairness in the compensation and treatment of part-time teachers at Madison Technical College.

(e) Local 6100 proposed two changes, both of which are reasonable on their face, but resisted by the Employer to the point of impasse: *first*, it proposes to create a salary schedule that will, over time, improve the economic situation of its members; and, *second*, it proposes to create a flexible but organized system for class assignments.

(i) The *adoption of the proposed salary schedule* will have the following results: its short-term economic impact hardly differs from the wage proposal of the Employer, but as teachers gain additional experience it will better correlate the salaries of part-time teachers with their peer in Milwaukee and with the salaries of full time teachers; this is a conservative and incremental approach to a much larger wage problem, which is typical of *voluntarily negotiated agreements* where the parties begin to address large inequities, and is also preferred by arbitrators when settlement cannot be accomplished through direct bargaining; as of July 1, 2000, it does not give credit to members of the bargaining unit for experience gained prior to the effective date of the agreement, and thus reduces immediate costs and limits experience step advancement to one step per year; the Union proposal recognizes that more than 50% of its members have less than one year of seniority; the proposed experience step is one-half the rate of a conventional salary schedule, thus doubling the time that it takes to move through the schedule; the hourly rates proposed by the Union, conservatively compare to the rates for full-time staff at Madison, not the rates of the part-time staff

[51] Citing the *testimony of Mr. Boetcher* at Hearing Transcript, pages 61-62.

at Milwaukee; and the proposed percentage increase in hourly rates proposed by the Union closely relate to those of the internal comparables over the life of the agreement.

(ii) The proposed system for class assignments is the inevitable product of the mere size of the part-time teaching work force at MATC: it is intended to and will rationalize administration, not impede it; the evidence of administration of a similar plan at Milwaukee Area Technical College, contradicts the sole Employer objection to the proposal, alleged administrative inconvenience.

(f) The disputes relating to which other Districts' employment practices should appropriately be used for comparing the reasonableness of the proposals, and those over the costing methods used to compare Milwaukee Area Technical College and Madison Area Technical College wages and salary rates reveal the much larger significance of this case.

(i) The sheer number of part-time teachers, the extent to which they carry the teaching load of the College, and the voluntary election by the employees to be represented by an exclusive agent with regard to wages, hours and conditions of employment dictate that employment conditions of part-time teachers at Madison Tech should be more closely compared with those at Milwaukee Tech, than with those part-time teachers employed by the small technical colleges.

(ii) If Milwaukee's employment practices are to be given any weight, Local 6100's offer must be viewed as the most reasonable, precisely because it does not propose to catch-up all at once, nor even very quickly, but rather because its proposal, unlike the Employer's, strikes an intermediate stance -- one that, during the term of the agreement, is much closer to the position of the unrepresented employees of the comparables than to those at Milwaukee Tech.

(iii) The Union's proposal improves the prospect for change through future collective bargaining, while the Employer's final offer may so closely relate Madison's part-time faculty to the unrepresented staffs that real future progress becomes ephemeral and the value of collective bargaining is marginalized or eliminated.

(3) Local 6100's salary proposals are well supported in these proceedings.

(a) The Union's proposal to replace the former Appendix B, containing a longevity premium, with its proposed salary schedule, is supported by the statutory criteria.

(i) The evidence relative to *the economic conditions of the jurisdiction of the Employer*, a factor given greater weight, clearly establishes that the economy of the Madison Area Technical College district is flourishing: Madison is in excellent financial shape, which is expected to continue; it ranked 36 out of 321 metropolitan areas for medical household effective buying power in 1999; a five year projection indicates that household buying income in Madison will

rise from $50,261l in 1998 to $61,607 in 2003; out of nine large metropolitan areas, Madison ranked third from the highest, with 1998 average annual pay of $29,872; the median 1999 sale price for Madison housing was $160,000; Madison's equalized property values are extremely favorable, and increased 33% in the Madison School District between 1995-1996 and 1999-2000; the combined mill rate for MATC for 1999-2000 is 1.47928, raking it 12th of the 16 districts; Madison had the lowest actual total costs per FTE student in 1998-1999; Madison's projected total costs, and therefore its rank, is expected to increase slightly to $9,914 for 1999-2000; the Madison community enjoys the lowest unemployment rate, 1.6%, among 11 major Wisconsin statistical areas in 1999, well below the state average of 3.4% and the national average of 3.9%; it ranked 15 out of 316 metropolitan areas in 1999 as an area of high economic strength in 1999; in 1995, 1996, 1997, 1998 and 1999, metropolitan Madison received a grade of "A+" for its economy; and Business Development Outlook Magazine ranked Madison as highest in the Country for its quality of life.[52]

On the above bases, if there is a time to begin the incremental process of salary improvement for those in the bargaining unit, the time is now.

(ii) Both *the external and internal comparables* establish that the Union's final offer is supported by the statutory criteria.

(iii) The *only fair comparison* that can be drawn is between the part-time faculties at Madison and the Milwaukee Technical Colleges: the size of the staffs are equivalent; the two institutions are the two largest in the State of Wisconsin; and the part-time staffs have voted relatively recently to be represented by a collective bargaining agent.

(iv) Recognizing that a singular external comparison is not favored in interest arbitration, second consideration should be given to the part-time faculties of Waukesha, and Fox Valley Technical Colleges. This framework best balances the interest of the Union to hitch its horse to the Milwaukee wagon, against the interest of the Employer to anchor its compensation employment conditions upon the rock of the unorganized staffs elsewhere in the State of Wisconsin.

[52] Citing the contents of Union Exhibits 103, 104, 105, 107, 110, 111, 116, 117, 106, 112 and 113.

(v) The Employer proposes that the appropriate comparables are the six largest technical college districts in Wisconsin, consisting of Madison, Milwaukee, Fox Valley, Gateway, Waukesha, and Northeast Wisconsin, the so-called "*Tyson Five*".[53] The key distinction between the Tyson decision and the case at hand, is that all of his appropriate comparables involved collectively bargained agreements; in the situation at hand, Madison and Milwaukee are the only two technical college districts in the state whose part-time faculty employed less than 50%, are represented by a Union. Accordingly, Madison and Milwaukee should be accorded primary consideration in these proceedings, with the remaining comparables accorded only secondary consideration.

(vi) Arbitrators have recognized that the districts of Milwaukee and Madison are less comparable to other Wisconsin districts and belong in a class of their own due to their relatively distinct size.[54]

(vii) A historical pattern of appropriate comparable communities, the presence of which depends upon unique factors present in each case, has not been established. Here, the vast differences between Madison Area Technical College and Fox Valley, Gateway and Waukesha dictate that they cannot be treated as significant comparables. The following, unique circumstances in this case, including the similarities between the Madison and Milwaukee college districts and the fact that the two communities are the only ones in Wisconsin in which the part-time instructors employed less than 50% are represented, require that the only appropriate community to which Madison Area Technical College district can be compared is Milwaukee: the district populations; the staff equivalent and head counts by college; the cost per FTE student; the operational costs; the unionization of part-time faculty; the district populations and staff equivalents; and the state aids.[55]

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[53] Citing the contents of Joint Exhibit #6, the decision of *Arbitrator Richard Tyson* in MATC and Teachers Union Local 243, Dec. No. 28553-A (September 7, 1996).

[54] Citing the decisions of *Arbitrator Frank Zeidler* in Gateway Federation of Teachers Local 1924, Dec. No. 17168 (11/15/88), and *Arbitrator Byron Yaffe* in Waukesha County Technical Educators and Waukesha County Technical Institute, Dec. No. 19868-A (5/23/83).

[55] Citing the following exhibits and considerations: Union Exhibit 103(a), *showing Milwaukee and Madison to have the two largest district populations*; Union Exhibit 103(b), *showing Milwaukee and Madison to have the two highest staff equivalents and head counts by college*; Union Exhibit 108, apparently *showing Milwaukee and Madison to have very close actual costs per FTE student*; Union Exhibits 109, 114 and 115, *showing comparable direct costs per student between Milwaukee and Madison*, versus other technical colleges; the *decision of Arbitrator Fred Dichter* in Kewaukee City Employees Local 1470-B, Dec. No. 29726-A(3/31/00), regarding the significance of the fact that only Milwaukee and Madison have part-time instructors employed less than 50% represented by a Union; Union Exhibits 103(a) and (b), comparing Madison and Milwaukee in terms of district populations and staff equivalents, versus other technical colleges; and Union Exhibit 101, comparing Milwaukee and Madison receipt of state aids.

(b) Comparison of Wage Schedules of Local 6100 and the external comparable of Local 212.

(i) Local Union 6100 proposes a modified salary and abolition of the previous longevity premiums, which offer is consistent and reasonable when compared to its most appropriate external comparable, Milwaukee Tech, and the internal comparables.

(ii) The contents of Employer Exhibits #13 and #14 are profoundly misleading on various grounds: Madison pays its part-time teachers only for hours they spend actually teaching; Milwaukee pays its teachers a salary based on a percentage of a full-time teachers salary; while Milwaukee expresses part-time teacher compensation as an hourly rate, it is based upon the total number of hours spent on teaching duties, not merely the time spent in classroom teaching; the Milwaukee hourly rates cited by the Employer are less than one-half of what they would be if they were calculated on the same basis as the Employer elected to portray other technical colleges' hourly rates.[56]

(iii) The actual hours taught by Madison part-time teachers in a 3 credit course are 49 to 51, fewer than the assumed number of hours taught used by the Union in calculating total compensation paid by Madison to part-time faculty; the Union exhibits thus overstate actual compensation by 3 to 5 hours per semester.[57]

(iv) Hypothetically assuming a Madison teacher with a BA and no prior experience teaching a 3 credit course in the spring semester of the 2000-2001 academic year, the following considerations apply: *First*, he or she would receive 67.8% of what a comparable Milwaukee teacher would receive, or 41.4% of what a Madison full-time teacher was paid to perform the same work.[58] *Second*, when the same considerations are reviewed on the basis of hourly rates per class period the Madison part-time teacher would receive $30.53, the Milwaukee part-time teacher $45.02, and a Madison full-time teacher $73.66.[59] Third, multiplying the classroom hours by 2.2 to achieve the total hours reasonably necessary to teach the hypothetical 3 credit course, the Madison part-time teacher would be paid $13.87 per hour while the Milwaukee part-time teacher would

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[56] Citing the contents of Employer Exhibit 63, as carried over to Employer Exhibits 13 and 14, and Article IX, Section - ERS add to existing language, agreed upon by the parties, which provides for 2.2 hours for each paid hour to be reported to the Wisconsin Retirement System, as hours of work for pension coverage purposes.

[57] Citing the contents of Attachment 2 to *a stipulation signed by the parties on September 20 and 21, 2000*, and then transmitted to the Arbitrator.

[58] Based upon full-time teacher salaries of $36,834 at Madison and $38,818 at Milwaukee, and $1,526.50 in part-time compensation at Madison versus $2,251.44 at Milwaukee.

[59] Citing the contents of Attachments 2 & 3 to the parties' *September 20 and 21, 2000 stipulation*.

receive $73.66 per hour.[60]

[60] Citing the contents of Paragraph 2 of the parties' *September 20 and 21, 2000 stipulation*.

(v) In the above connections, the Union has compared apples with apples, while the Employer provided tables compare apples with oranges, by comparing the hourly rate paid Madison's part-timers for hours spent teaching, with the hourly rate of Milwaukee's part-timers calculated on the basis of hours reasonably necessary to teach, thus understating the Milwaukee rate by at least $20.00 per hour.[61] As referenced in the Union exhibits, a Madison part-time teacher with a BA and no prior experience and teaching a regular three hour lecture class, would receive considerably less than a comparable Milwaukee part-time teacher.[62]

(vi) That a comparison of bargaining unit member's progression through the salary steps proposed by the Union, and the part-time instructor contact for Milwaukee Area Technical College, confirms that the Union's salary proposal is reasonable.[63]

(c) The internal comparables within the Madison Technical College District support the reasonableness of the Union's salary proposal.[64]

(i) Where a clear pattern emerges among internal comparables, they take on additional importance in the final offer selection process.[65]

(ii) The Board's final wage offer falls short of the total pay increases for the three bargaining units covering full-time instructors, PSRP, and administrators.

(4) The Union's teaching assignment proposal is also favored.

(a) The evidence offered at the hearing indicated the presence of problems in connection with current teaching assignment procedures.

(i) Employer witnesses testified that the work assignment procedure proposed by the Union was unnecessary, a radical departure from the parties' bargaining history, and would be an administrative nightmare to implement; evidence by the Union, however, imply that the current methods of work assignment create confusion, inefficiency, and frustrate the objectives of the College to meet the educational needs of the community.

(ii) Because the assignment procedures proposed by the Union are consistent with the bargaining history of the parties, they do not represent a change in the status quo; even if they constituted a substantial

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[61] Citing the contents of Employer Exhibits 13 and 14.

[62] Citing the contents of Union Exhibits 302 and 303.

[63] Citing the contents of Union Exhibit 201.

[64] Citing the contents of Union Exhibit 401.

[65] Citing the *decision of Arbitrator Frederick Dichter* in Monroe County, 113 LA 933 (9/28/99).

change, however, the proposed assignment procedures are reasonable and necessary to correct the high staff turnover and instability that currently exist with the way the Employer assigns positions to those in the bargaining unit.

(iii) Maria Hernandez, the Campus Administrator for the Downtown Education Center, testified that the main determinants were the needs perceived by the Employer in the communities and locations it is teaching. She described the current procedures as follows: a pool of applicants for part-time teaching position exist before placing advertisements in community newspapers; MATC first approaches the existing part-time faculty to offer upcoming teaching positions, because they are competent, they are normally already teaching the courses, and they are familiar with the structure and curriculum; part-time teachers are sometimes found by conventional advertising and the use of flyers throughout the campuses; placement criteria include certification, competence, informal evaluations by students, teacher expressed preference, and experience; budgetary constraints and the availability of teaching sites are considered; and even though offered and scheduled, classes may be cancelled for low enrollment. Although imperfect, she described the system as simple, efficient, and meeting the needs of the community, the College, and the part-time teachers.[66]

(iv) Joan Grosse, the Secretary of Local Union 6100, testified as to the following problems with the current system: part-time teachers often do not know their teaching schedules until one to two weeks before the semester begins; last minute changes occur and cause part-time teachers to be completely unprepared for the disruption to their personal and professional schedules; and increases in prep time and inefficiency result from such changes.[67]

(v) David Boetcher, President of Local Union 6100, testified that its proposed assignment priorities were designed to correct the problem of high turnover among the part-time teachers at MATC.[68]

(vi) Although Ms. Boetcher testified that her discussions with part-time teachers who left teaching did not reflect unfair treatment or salary concerns, she conceded to hearing some complaints about the timing of the assignment process; surveys of members by Local Union 6100 indicate a primary concern over teaching assignments.[69]

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[66] Citing the *testimony of Ms. Hernandez* at Hearing Transcript, pages 113, 120, 121, 117-118, 115 and 116.

[67] Citing the *testimony of Ms. Grosse* at Hearing Transcript, pages 73-76.

[68] Citing *the testimony of Mr. Boetcher* at Hearing Transcript, page 55.

[69] Citing *the testimony of Ms. Hernandez and Mr. Boetcher* at Hearing Transcript, pages 122, 123 and 56.

(vii) A recent newspaper article described various problems related to turnover of part-time instructors at Madison Area Technical College.[70]

(b) The assignment language proposed by the Union is not a substantial change in the parties' bargaining history.

(i) The goal of an arbitrator is to reach a decision that puts the parties into the same position they would have reached but for their inability to reach full agreement at the bargaining table, and in doing so they closely examine parties' past practices and bargaining history.[71]

(ii) The issue of assignments was discussed by the parties during both their 1996-1998 and their 1998-2000 bargaining: although the Employer proposed language on teaching assignments in 1996-1998, it was not adopted because both parties thereafter withdrew their proposals on the issue; work assignments language was not pursued by the Union in the 1998-2000 negotiations because the issue had become moot and the contract would soon expire; the current work assignment impasse item is, therefore, not a significant change to what the parties have discussed in the past.

(iii) To a significant extent the Union proposed assignment language formalizes a practice which already exists, in that when a teachers expresses a preference for a class that is being offered again, and the teacher has successfully taught it in the past, he or she would normally have priority in that assignment.[72] After community needs are ascertained, the Employer gets information about faculty preferences by sending out a form two or three months before the beginning of each semester, and on most occasions a teacher who has previously taught a particular class and wants to do so again, is so assigned.[73]

(iv) Contrary to the Employer's intimations that the priority system proposed by the Union would be a *horrific* change that would be impossible to administer, the proposal is similar to the informal system presently in place.

(c) Even if viewed as a departure from the past practice, the proposed change represents a reasonable solution to a legitimate problem.

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[70] Citing the contents of Union Exhibit #123.

[71] Citing *the decision of the undersigned* in City of Whitewater, Dec. No. 29432 (10/29/00).

[72] Citing the testimony of Ms. Olson Sutton at Hearing Transcript, page 138.

[73] Citing *the testimony of Mr. Hernandez* at Hearing Transcript, pages 113-114 and 118-119.

(i) When an arbitrator is asked to adopt an offer which significantly changes the status quo ante, they normally consider whether a legitimate problem exists, whether the disputed proposal reasonably addresses the problem, and whether its proponent has offered an appropriate quid pro quo.[74] Application of these factors establishes the reasonableness of the Union proposed assignment procedure.

(ii) The assignment language proposed by Local 6100 is a reasonable solution to the current difficulty in recruiting and retaining part-time instructors, thus serving the *interests and welfare of the public* arbitral criterion.[75]

(iii) Union testimony indicated problems with the scheduling of part-time instructors, with 49% of them employed by the College for one year or less, and Union members have expressed their dissatisfaction with the way that teaching assignments are made. The College's use of newspaper recruiting reflects difficulty in retaining part-time instructors.

(iv) Implementation of the Union proposal would solve problems of instability and inefficiency which currently exist and would not create the problems predicted by the Employer, even those involving the use of so-called *38-14 contracts*.[76] An officer of the Milwaukee Area Technical College elaborated how the priority system for teaching assignments has worked work for both the College and Local Union 212.[77]

(d) Both equity and the "*star clause*" contained in Local 6100's assignment proposal constitute an appropriate *quid pro quo* for the proposed change.

(i) This clause addresses Employer concerns about ensuring that the part-time instructors are adequately certified to teach a class, by allowing the Employer to declare a course exempt from the priorities because the teacher does not possess the specialized skills or knowledge required by the College to teach the course, or the requisite certifications, either part-time approval or part-time provisional.

(ii) The implementation of the Union proposal serves the

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[74] Citing *the decision of the undersigned* in City of Whitewater, Dec. No. 29432-A (10/99).

[75] Citing the following arbitral decisions: *the undersigned* in Fond du Lac County (Health Care Center), Dec. No. 29621-A (2/19/00) and Northeast Wisconsin Technical College, Dec. No. 29320-A (1999); *Arbitrator Jay Grenig* in Manitowoc County (Courthouse), Dec. No. 29451-A (1999); *Arbitrator Raymond McAlpin* in City of Watertown (Police Department), Dec. No. 29442-A (1999); *Arbitrator Stanley Michelstetter* in Fond du Lac County (Dept. of Social Services), Dec. No. 23704-A (1986).

[76] Citing the *testimony of Ms. Hernandez, Ms. Olson Sutton, and Mr. Kowalsky* at Hearing Transcript, pages 131, 132, 133, 136, 138 and 212.

[77] Citing *the testimony Frank Shansky* at Hearing Transcript, pages 87 and 88-89.

community in the College district and it acknowledges the College's need for flexibility in order to be responsive to the changing needs of students, but community needs are not met if there are insufficient part-time teachers. The proposal makes sense because it establishes a uniform system and creates a reasonable expectation by the Employer that instructors will be available consistent with their last teaching schedule within the past calendar year, and it assures students that courses will be taught by teachers with the most seniority in the certification area in which they previously taught or are certified.

On the basis of all of the above, the Union submits that its final offer is broadly supported by the applicable statutory criteria and that it should be adopted in its entirety.

In its reply brief the Union emphasized or reemphasized the following principal arguments and considerations.

(1) By way of overview and synopsis, the following factors should be determinative.

(a) The Union sees two principal issues, the answers to which will affect the future relationship of the parties.

(i) How can a fair comparable pool be established when one logical choice, a group of four work forces, contains one unionized work force with substantially superior wages, benefits and conditions, and three non-unionized work forces with substantially inferior wages and benefits? If the comparable pool is fixed rigidly to either pole of the comparable set, the balance of power at the bargaining table is tipped irrevocably to one side or the other.

(ii) Is there a limit to the "*quid pro quo*" doctrine when a party, in this case the Union, has so little that it is doubtful that it holds something that the other party wants? In such a situation, the "*quid pro quo*" doctrine freezes the status quo.

(b) In addressing the above issues, the following factors must be considered: MATC's attempts to minimize the level of compensation which Milwaukee Tech pays to its part time faculty; Milwaukee, unlike Madison, pays its part-time faculty for time spent in preparation and direct student assistance; the Employer ignores the weight accorded arbitral criteria by Section 111.70(4)(cm)(7g), whereby local economic conditions may override the application of the statutory criteria which follow.

(2) The District's proposed comparable pool effectively locks its part-time teachers to the compensation and employment conditions of several significantly smaller units, and the case at hand requires a *balancing of interests*.

(a) The distribution of part-time teacher population supports the position of the Union, in that nearly 70% of the part-time teachers are employed by Milwaukee and Madison; the weight given to the other employers should reflect their proportionate share of the total employee complement.

(b) The polarization of employment conditions within the comparables sets them apart from one another: Waukesha, Fox Valley and Gateway, in contrast to Milwaukee, pay varying amounts to part-time teachers *for hours in the classroom* and they *have no assignment policy*. Arbitrator Tyson, by way of contrast, was dealing with a much different situation in his decision involving the full-time teaching staff. The Union's proposed "equal weighting" of the comparables permits it to occupy a similar position to that of its full-time peers.

(c) The Geographic constraints of the labor market for the part-time staff favors the position of the Union with respect to the intraindustry comparisons.

(i) Full-time faculty are paid annual salaries which allow them to consider relocating or traveling significant distances based upon the compensation and benefits they may be offered by different Voc-Tech Districts.

(ii) Part-time faculty, paid only a fraction of full-time rates, cannot afford to relocate or travel significant distances.

(d) The emergent movement toward collective bargaining in this occupational group deprives the parties and the arbitrator of an important source of information regarding the appropriate comparisons to be drawn.

(i) Milwaukee and Madison part-time faculty selected exclusive bargaining agents in the early to mid-1990s.

(ii) Milwaukee Tech and AFT Local 212 reached voluntary agreement in each of their first several contracts.

(iii) Madison and AFT Local 611, however, reached belated agreements in their first two contracts, but consciously put off their disputes regarding salary schedules and teaching assignments since their significance disappeared when the settlements took place well after the effective date of the agreements; they thus have no effective bargaining history for either the parties or the arbitrators to refer for instruction. The phrase "comparable pool" had no meaning prior to unionization because the employers simply set the wage rate without discussion.

(e) Examination of the reasons underlying unionization of part-time faculty at Madison and Milwaukee, indicate as follows.

(i) There is a serious and material conflict between the notion that unilaterally imposed wages and conditions do not reflect the give and take at the bargaining table and the notion that "generally accepted criteria for labor market comparisons" include non-unionized districts.

(ii) On economic issues, the arbitrator should seriously examine the difference between compensation paid to Milwaukee Tech's part-time faculty, and that paid to the non-union faculty elsewhere in the state, and strike a reasonable balance between them.

(iii) On non-economic issues, the arbitrator should consider

the difference between non-represented employees at will, versus those covered by labor agreements. The bases for Madison's part-time faculty electing a union included their aspiration for a more equitable salary schedule, and the simple dignity of a right of first refusal to do the work.

(3) The "*quid pro quo*" doctrine must be tailored to fit the unique facts of the case, as it otherwise creates an impenetrable shield for the employer to resist any material improvement in the Madison part-time staff's wages and conditions of employment.

(a) Relative newcomers to collective bargaining have little, if anything that the employer has expressed an interest in having exchanged for the changes in the status quo represented in the Union's final offer.

(b) The better view is that the "*quid pro quo*" doctrine has a diminished role precisely because, early on, the essential exchange is exclusively composed of the union member's services.

(c) When the parties are relatively early in the process, it makes more sense for the doctrine to reflect an emphasis upon whether the party's proposal is narrowly tailored to accomplish the problem addressed, and the Union's final offer in these proceedings does just that.

(4) There is substantial evidence in the record to support the Union's proposals for a salary schedule and teaching assignment provisions.

(a) The Employer argues that the Union failed to establish a need for its salary proposals. To reach such a conclusion the Employer must ignore the record/

(i) Full-time teachers employed by MATC are paid according to a salary schedule, which establishes the value of teachers' professional services according to length of service and education attained.

(ii) The value of part-time faculty, its sub-standard status, and the need for compensation equity is widely recognized.[78]

(b) The Union proposes the least costly method of implementing a salary schedule and the least administratively inconvenient scheduling proposal. The *quid pro quo* doctrine implies the existence of a negotiating partner, who in good faith compromises some of its interest in exchange for an offsetting compromise by the Union. In light of the negotiations, the Union could only draft proposals that contained within themselves the very compromises that management would seek.

(5) It is the College, not the Union, that misrepresents the hourly rates of the Milwaukee contract.

(a) It is a fair question to ask what a part-time teacher working at Milwaukee will be paid for one three-hour course.

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[78] Citing the contents of Union Exhibit #103(g).

(b) It is also fair to compare that answer with the same answer when the question is asked of the parties' final offers for Madison's part-timers.

(c) The Union undertook the above steps and provided accurate comparisons.

(d) It is unreasonable to infer that it takes a Milwaukee part-time teacher 103.68 hours to reach a three-credit course and a Madison part-time teacher 54 hours to teach the same course.

(e) It is unreasonable for the Employer to compare a Milwaukee hourly rate using the assumed number of hours expected to teach a three-credit course (103.68), with a Madison hourly rate based upon the assumed number of contact hours (54) to teach the same course.

(f) A teacher assigned more hours should be paid more than one who is assigned fewer hours. While MATC implies to the Arbitrator that its teachers are expected to work fewer hours than those at Milwaukee Tech, it knows this to be wrong.[79]

(6) The College's exhibits and tables are riddled with errors and misleading assumptions, in support of which it devoted five pages of its brief to challenges to various of the Employer's exhibits.

(7) The College's claim that the internal settlement pattern supports its proposal is not supported by the record, in support of which it devoted two and one-half pages of its brief to challenges.

(8) The College engages in speculation and exaggeration rather than concrete analysis of the implementation of the Union's assignment language.

(a) With its proposal the Union has merely attempted to provide a modicum of job security to its members; the prior agreement contained no layoff language, no bumping or job posting procedure, and no limitation on the Employer's ability to schedule a course, and continuing employment is contingent entirely on the whim of a manager.

(b) Mr. Boetcher testified to turnover in the bargaining unit in excess of 30% per year, and Ms. Grosse spoke of petty preference, neglect and discourtesy.

(c) Although its first choice would have been for pure seniority, practical considerations resulted in a proposal which contained a number of limitations; the Union adopted these with an eye to providing a practical and workable solution to its members' problems. The testimony of Mr. Shansky indicated that no grievance had been filed in six years in Milwaukee, reflected the workability of the parallel language which exists there.

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[79] Citing the contents of the June 24, 1997 decision of the Dane County Circuit Court in *Madison Area Technical College/Madison Area VTAE Dist. #4 v. State of Wisconsin Employee Trust Funds Board and Nancy McMahon*, a copy of which was appended to its reply brief. Citing also the agreement of the parties referenced at Joint Exhibit #4, page 4, wherein they agree to a reporting ratio of 2.2 hours for each hour of teaching, for WRS eligibility purposes.

(d) The specific arguments of the MATC do not portray the Union's proposal as a burden.

(i) Relative to Section 1, it urges as follows: that it wouldn't be a burden if management did not implement the Union's proposal, not the reverse; it claims that the procedure may not result in returned forms, which would not be an administrative burden; it claims that no protection exists for the College in the event that an employee signs up for any work for which he or she may be qualified, which should not be a problem.

(ii) Relative to Section 2, it urges as follows: the claim that teachers are not required to work, while true, is nothing new; employees sign up because they want to work, therefore rejection is unlikely to occur with any significant frequency.

(iii) Relative to Section 3, it speculates that the Union's proposal would limit its ability to schedule which, with all due respect, is merely a scare tactic, unsupported by common sense. If the College had put in a final offer on the point, this sort of objection could have been readily resolved at the bargaining table.

(iv) Relative to Section 3(b), the College turns the Union proposal on its head. In fact, the Union proposes to limit the number of teachers whose applications be considered, which limiting criteria are designed as a compromise by the Union in the College's favor.

Based upon the evidence in the record, the testimony of witnesses, and the arguments contained herein, the Union respectfully requests that the Arbitrator adopt its final offer for incorporation into the 2000-2002 collective bargaining agreement.

FINDINGS AND CONCLUSIONS

As the undersigned has emphasized in many prior decisions, interest arbitrators operate as extensions of the normal contract negotiations process, and their basic goal is to attempt to put the parties into the same position they would have occupied but for their inability to achieve complete agreement at the bargaining table. Wisconsin's *final offer procedure* normally limits an arbitrator to selection of the final offer of either party *in toto*, which practice is intended to motivate the parties to reduce their areas of difference and to move close to agreement prior to submission of an impasse to arbitration. If this final offer process operates as intended, interest arbitrators may succeed in putting the parties into almost exactly the same position they might well have reached at the bargaining table; if the parties

remain significantly apart in their final offers, however, and neither offer is close to the result which might well have been reached in conventional bargaining, the final result will differ significantly from the normal settlement which might have been reached in conventional bargaining. In applying the evidence and the arguments of the parties against the various statutory criteria in the final offer selection process, Wisconsin interest arbitrators normally closely examine the parties' *past practice* and their *negotiations history*.[80]

In the case at hand, *the final offers of the parties* differ quite significantly, in that the Employer is proposing *general wage increases during each of the two years in the renewal labor agreement*, and the Union is proposing *more significant increases within the framework of a new wage structure* in addition to *a system of employee preferences in the filling of vacancies*; in addition to the clear differences in their final offers, the parties also disagree as to *whether the final offer of the Union included the elimination of the longevity pay provisions contained in the prior agreement*. In *arguing their respective cases*, the parties also significantly disagree relative to *the identity of the intraindustry comparables*, and *the application of the normal principles applied by arbitrators when the final offer of a party proposes significant differences in the status quo ante*.

Prior to applying the statutory criteria against the final offers of the parties, reaching a decision and rendering an award, the undersigned will preliminarily address three matters, *the scope of the Union's final offer*, *the identity and significance of the intraindustry comparables*, and *the significance of the Union proposed changes in the status quo ante*.

The Scope of the Union's Final Offer

In addressing the disagreement of the parties as to whether the final offer of the Union had provided for the elimination of the longevity pay program contained in the prior agreement, the undersigned finds two considerations to be determinative: *first*, the final offer of the Union does

[80] Both *past practice* and *negotiations history* are arbitral criteria which fall well within the scope of Section 111.70(4)(cm)(7r)(j) of the Wisconsin Statutes.

not clearly indicate an intention to eliminate the program and, accordingly, it is subject to arbitral interpretation; and, *second*, had the Union intended the elimination of this program as a *quid pro quo*, in whole or in part, for its proposed changes in the wage determination and the work assignments components of the renewal labor agreement, it is reasonable to infer that it would have clearly proposed, discussed, and emphasized this consideration during the parties' preliminary contract negotiations process. On the bases of the *ambiguity of its final offer* and the *lack of supporting bargaining history*, the undersigned has concluded that the final offer of the Union neither explicitly nor implicitly proposes elimination of the longevity pay provisions contained in the prior agreement.

The Significance and Identity of the Intraindustry Comparables in the Final Offer Selection Process.

In the absence of either statutory or agreed-upon prioritization of the various arbitral criteria, it is widely recognized by interest arbitrators that comparisons are the most frequently cited, the most important, and the most persuasive of the various arbitral criteria and, in the absence of strong evidence to the contrary, the most persuasive comparisons are normally the so-

called *intraindustry comparisons*.[81] In applying the comparison criterion, Arbitrators normally respect the parties' *wage history,* including but not limited the *identity of intraindustry comparables*, the *contractual wage determination criteria*, and the *significance of wage differentials*, which considerations are described as follows, in the respected book by Irving Bernstein:

> "Comparisons are preeminent in wage determination because all parties at interest derive benefit from them. To the worker they permit a decision on the adequacy of his income. He feels no discrimination if he stays abreast of other workers in his industry, his locality, his neighborhood. They are vital to the Union because they provide guidance to its officials upon what must be insisted upon and a yardstick for measuring their bargaining skill...Arbitrators benefit no less from comparisons. They have the appeal of precedent...and awards, based thereon are apt to satisfy the normal expectations of the parties and to appear just to the public.
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> a. *Intraindustry Comparisons*. The intraindustry comparison is more commonly cited than any other form of comparison, or, for that matter, any other criterion. Most important, the weight that it receives is clearly preeminent; it leads by a wide margin in the first rankings of arbitrators. Hence there is no risk in concluding that it is of paramount importance among the wage-determining standards.
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> A corollary of the preeminence of the intraindustry comparison is the superior weight it wins when found in conflict with another standard of wage determination. The balancing of opposing factors, of course, is central in the arbitration function, and most commonly arises in the present context over an employer argument of financial adversity.
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> This, once again, suggests the force of wage history. Arbitrators are normally under pressure to comply with a standard of comparison evolved by the parties and practiced for years in the face of an effort to remove or create a differential. When the Newark Milk Company engineers asked for a higher rate than in New York City, the arbitrator rejected the claim with these words: 'Where there is, as here, a long history of area rate equalization, only the most compelling reasons can justify a departure from the practice.
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> * * * * *

[81] The terms *intraindustry comparisons* derive from their long use in the private sector. The same principles of comparison are used in public sector interest impasses, in which situations the so-called *intraindustry comparison groups* normally consist of other similar units of employees employed by comparable governmental units.

> The last of the factors related to the worker is wage history. Judged by the behavior of arbitrators, it is the most significant consideration in administering the intraindustry comparison, since the past wage relationship is commonly used to test the validity of other qualifications. The logic of this position is clear: the ultimate purpose of the arbitrator is to fix wages, not to define the industry, change the method of wage payment, and so on. If he discovers that the parties have historically based wage changes on just this kind of comparison, there is virtually nothing to dissuade him from doing so again..."[82]

The above described considerations are also addressed as follows in the following excerpt from a book originally authored by Elkouri and Elkouri:

"**Prevailing Practice - Industry, Area, Industry Area**

> Without question the most extensively used standard in interest arbitration is 'prevailing practice.' This standard is applied, with varying degrees of emphasis in most interest cases. In a sense, when this standard is applied the result is that disputants indirectly adopt the end results of the successful bargaining of other parties similarly situated. The arbitrator is the agent through whom the outside bargain is indirectly adopted by the parties.
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> In giving effect to the prevailing practice, an arbitrator relies upon precedent, adopting for the parties that which has been adopted by other parties through collective bargaining or, as sometimes is the case, as a result of arbitration awards.
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> Where each of various comparisons had some validity, an arbitrator concluded that he should give the greatest weight to those comparisons which the parties themselves had considered as significant in free collective bargaining, especially in the recent past."[83]

In light of their importance in the final offer selection process, it is not uncommon to find disagreement between parties as to the identity of the intraindustry comparables, with each urging primary arbitral emphasis upon those comparisons felt to be most favorable to the selection of its final offer, and such a disagreement exists in the case at hand: *the Employer urges* that the *primary intraindustry comparables* should consist of the Fox Valley, Gateway, Madison Area, Milwaukee Area, Northeast Wisconsin and Waukesha County technical colleges, and the *secondary intraindustry comparables* should include

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[82] Bernstein, Irving, The Arbitration of Wages, University of California Press (Berkeley and Los Angeles), 1954, pages 54, 56, 57, 63 and 66. (footnotes omitted)

[83] Volz, Marlin M. and Edward P. Goggin, Co-Editors, *Elkouri & Elkouri* How Arbitration Works, Bureau of National Affairs, Fifth Edition - 1997, pages 1106-1107 and 1113. (footnotes omitted)

the Blackhawk, Chippewa Valley, Indianhead, Lakeshore, Mid-State, Moraine Park, Nicolet, North Central, Southwest and Western Wisconsin technical colleges; *the Union urges* that primary weight in these proceedings be placed upon *comparison of the Madison and Milwaukee Area Technical Colleges*.

While there is no evidence in the record which indicates that the parties had ever *specifically agreed* to identification of the primary and/or secondary intraindustry comparables in their prior contract negotiations, the following factors are determinative in arbitral identification of these comparables.

(1) In his decision and award involving a wage impasse Madison Area Technical College and Madison Area Technical College Teachers' Union, Local 243, Dec. No. 28553-A (9/7/96), Arbitrator Richard Tyson discussed and determined the primary and secondary external comparables, indicating in part as following:

> "The parties are in disagreement about which comparisons to make with MATC faculty. The Employer makes comparisons with all technical colleges, the Union with Milwaukee, and then with Gateway and Waukesha (which isn't settled)...
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> Date (sic) suggests to the arbitrator that there are significant difference among the Technical Colleges in district populations, student numbers, and staffing levels, as well as in student costs, valuations and mill rates. However, there are five districts within a factors of one (1/2 to 2 times) in comparison to Madison in terms of size, and then a larger number which are less close. Milwaukee is about 78% larger in district population, 51% larger in terms of students, and 35% larger in terms of teaching staff. Fox Valley, Gateway, Northeast, and Waukesha are somewhat more similar to each other than to Madison, perhaps, through the smallest of these is only 43% smaller in population. The next larger district is 55% smaller or less than half the size of the MATC district population. These six larger districts also tend to be the highest valuation district, (sic) and appear distinct from the remaining ten districts. With the exception of Kenosha, the metropolitan area household income levels of this group also tend to be at the top. Fox Valley and the Union's proposed Districts are contiguous to MATC. Fox Valley is as large as Gateway and larger than Waukesha, and has more students and faculty than either. Northeast has a somewhat larger district and student population and staffing level than Waukesha and thus more similar by these measures, though it is quite distant from Madison. To follow the parties' lead in making comparisons under (d), the Arbitrator would make primary comparisons between Madison and Milwaukee, Waukesha, Gateway, and Fox Valley, giving some consideration to Northeast, and secondarily consider the remaining technical college districts. Unfortunately in the instant case, only Milwaukee and Gateway have settled contracts which forces greater reliance on the second tier to reveal any general pattern of settlements. The Undersigned agrees with the Employer that exclusive reliance on one or two other settlements would seemingly be inappropriate in interest arbitration."

While the decision of Arbitrator Tyson did not involve the same

bargaining unit of part-time faculty involved in the case at hand, it involved the Madison Area Technical College and another local of the Wisconsin Federation of Teachers representing its full-time faculty. The undersigned finds both his reasoning and conclusions to be very persuasive relative to the identification of the primary and secondary intraindustry comparables in the case at hand.

(2) There is nothing in the record to indicate that in negotiating their prior agreements, the parties had either expressly or implicitly treated Madison and Milwaukee as either the sole or the primary intraindustry comparables.

(3) While the Union emphasized that Madison and Milwaukee are the only two technical colleges in Wisconsin in which the part-time instructors employed less than 50% are represented, this factor, while it may affect the weight to be placed upon certain comparisons, does not justify exclusion of groups of non-represented employees from the intraindustry comparables. Although the Union emphasized various other areas of comparison between the Madison and Milwaukee area technical colleges, they are simply insufficient to justify either a single or a primary comparison group consisting of only the Madison and Milwaukee bargaining units.

On the above described bases, the undersigned has preliminarily concluded that the primary and secondary comparables identified by Arbitrator Tyson in the above reference decision, should constitute the intraindustry comparables in the dispute at hand. While the record might well support somewhat higher wage increases during the term of the renewal agreement than those proposed by the Employer, the question before the undersigned is not what would constitute an appropriate wage increase during the life of the renewal agreement, but rather which of the two final offers is the more appropriate for arbitral selection pursuant to the applicable arbitral criteria.[84] Despite the Union arguments to the contrary, an interest arbitrator has no unilateral authority to make a decision based upon a perceived position of bargaining weakness by either side; as indicated by Professor Bernstein and referenced in Footnote 82 above, "...the ultimate purpose of the arbitrator is to fix wages, not to define the industry, change the method of wage payment, and so on."

Having established the appropriate intraindustry comparables, it is

[84] See pages 30 through 34 in the Employer's brief, including the contents of Tables 3, 4, 5 therein, which show that the maximum hourly rates within the bargaining unit had progressed from $4.13 below the primary comparables in 1996-1997, to $3.60 below in 1997-1998, to $1.41 below in 1998-1999, and had then regressed to $2.14 below in 1999-100, and would regress to $2.32 below in 2000-2001, under the Employer's final offer.

noted that if both parties had merely disagreed as to the size of the hourly rate increase to be applied to the existing wage schedule and if their proposals had been relatively close to one another, the undersigned would have been required to verify and to compare in detail the disputed pay data among the comparables; when parties remain relatively far apart in their final wage offers, however, as in the case at hand, such detailed analysis and comparison of wage rates is frequently unnecessary.

Without unnecessary elaboration, it is clear to the undersigned that consideration of the intraindustry comparables clearly favors selection of the final offer of the College in these proceedings.

The Significance of the Status Quo Ante in the Final Offer Selection Process

The Employer's final offer proposes retention of the previously existing wage structure, including up to $2.00 per hour in longevity pay, and moving from the hourly base rates of $29.49 in the 1999-2000 school year, to $30.52 in 2000-2001, and to $31.59 per hour by 2001-2002. The Union's final offer proposes adoption of an eight step wage structure with three degree lanes, and moving from the hourly base rates of $29.49 in the 1999-2000 school year to maximum potential hourly working rates of $40.61 (BS Lane), $41.85 (MS Lane) and $42.85 (PhD Lane) in 2000-2001, and $41.93, $43.09 and $44.25 in the three degree lanes in 2001-2002; its final offer also proposes the addition to the agreement of a form of seniority preference in filling part-time teaching openings.[85] Regardless of the actual dollar costs of its proposals during the life of the renewal labor agreement, it is apparent that *the Union is proposing very significant and important changes from the status quo ante, in wage rates, in wage determination criteria, and in employee preference in filling job vacancies* for those in the bargaining unit.

As discussed by both parties, Wisconsin Interest Arbitrators normally require the proponent of such significant modification of the negotiated status quo ante, to establish a *very persuasive basis for such change*, typically by showing that *a legitimate problem exists which requires*

[85] See the contents of Joint Exhibits 3 and 4, and Employer Exhibits 1 thru 4.

attention, that *the disputed proposal reasonably addresses the problem*, and that *the proposed change is accompanied by an appropriate quid pro quo*; they thus normally assign *determinative weight* to the above referenced *past practice* and *negotiations history* arbitral criteria where the proponent of change fails to make the requisite showings. In applying these considerations to the dispute at hand, the undersigned finds the following considerations to be determinative.

(1) The selection of the Union proposed changes in the *wage structure* and in the *work assignment procedures* would each represent very significance changes in the status quo ante. An appropriate *quid pro quo* for such changes would normally consist of what would have been adequate in the give and take of conventional bargaining.

(2) While, as indicated above, the overall record might have supported somewhat higher wage increases during the term of the renewal agreement than those proposed by the Employer, no adequate *quid pro quo* has been advanced in support of the Union proposed change in the wage structure.

(3) The Union testimony relative to the potential beneficial effects of its work assignment proposal was neither comprehensive nor entirely persuasive, in that it was anecdotal, was principally based upon hearsay, and/or consisted of subjective opinions. Further, the fact that its proposal contained a so-called "*star clause*," while it certainly would be a talking point for the parties in their negotiations of such a provision, it would not constitute *an appropriate quid pro quo* for arbitral selection of the proposal.[86] The fact that the proponent of change might have asked for a more significant concession would not normally constitute an adequate *quid pro quo*.

At this point it is re-emphasized that the authority of the undersigned is limited to selection of which of the two final offers is the most appropriate, by applying the various arbitral criteria contained in the Wisconsin Statutes. The fact of the matter is that the parties negotiated an initial agreement covering 1996-1998, and these proceedings involve their *second renewal agreement*. The undersigned has no authority to reopen and examine their prior agreements for the purpose of deciding whether perceived inequities contained therein justify either non-application or modified application of the statutory criteria, and no authority to offset or to modify the perceived bargaining powers of either of the parties. The parties negotiated and agreed upon *the existing wage structure* and they later agreed

[86] An appropriate *quid pro quo* normally consists of what would have been required to justify a negotiated change in the *status quo ante* if agreement had been reached at the bargaining table.

to wage increases appended thereto, and they agreed to *management retention of broad rights to assign work*, despite the existence of at least one rejected College proposal which would have somewhat limited these rights. This *bargaining history* is material and relevant in evaluating the merits of the final offers of the parties in these proceedings, and requests for changes in the *negotiated status quo ante* by either party are normally subject to the prerequisites discussed above.

On the above described bases, the undersigned has concluded that the Union has failed to establish the requisite *very persuasive basis* for its *proposed changes in the negotiated status quo ante*, and, accordingly, arbitral consideration of the *past practice* and the *negotiations history* arbitral criteria clearly favor selection of the final offer of the College.

The Remaining Arbitral Criteria Emphasized by the Parties

What next of the application of the remaining statutory arbitral criteria emphasized by either or both of the parties in these proceedings, including the *factor given greater weight* and the *interests and welfare of the public*.

In its post-hearing brief the Union emphasized a variety of facts and considerations in support of the proposition that the very positive economic climate in the Madison area and its concomitant ability to meet the economic costs of its final offer, justified *"greater weight"* in the final offer selection process than the remaining statutory arbitral criteria. While this is an ingenious argument, it seems clear that both Sections 111.70(4)(cm)(7) and 7(g) of the Wisconsin Statutes were intended to apply to situations involving state restricted or otherwise *impaired ability to pay*, rather than giving controlling or greater weight, versus other arbitral criteria, to *positive ability to pay*, which rationale is consistent with the arbitral treatment normally accorded ability and inability to pay.

> "To determine wages exclusively on the basis of ability to pay would lead to wage scales that vary from company to company, and would require a new determination of the wage scale with each rise or fall in profits. The existence of unequal wage levels among different companies would be incompatible with union programs for the equalization of wage rates among companies in the same industry or area. If inability to pay were used as the sole or absolute basis for wage cuts, inefficient producers would receive the benefit of having a lower wage scale than that of efficient ones, regardless of the fact that the value of the

services rendered by the employees of each is the same.

> One board of arbitration indicated three different degrees of weight that may be given to the ability-to-pay factor. Speaking through its Chairman, John T. Dunlop, that board outlined the three situations as follows: (1) 'In the case of properties which have been highly profitable over a period of years, the wage level would normally be increased slightly over the levels indicated by other standards'; (2) 'in the case of persistently unprofitable firms, the wage rate would normally be reduced slightly from the levels indicated by other standards'; (3) 'in the case of the companies whose financial record over a period of years falls between these extremes, the wage rate level would be determined largely by other standards.' "[87]

On the above described bases the undersigned has preliminarily concluded that while the economic climate in the Madison area might support a somewhat higher increase in wages above that offered by the Employer, it cannot be accorded *greater weight* than other arbitral criteria in the final offer selection process in these proceedings, pursuant to Section 111.70(4)(cm)(7q) of the Wisconsin Statutes.

It is next noted that while a stable group of adequately paid part-time instructors in the Madison Area Technical College *serves the interests and welfare of the public*, the application of this arbitral criterion is insufficient to significantly justify selection of the Union proposed wage structure and work assignment procedures.

Summary of Preliminary Conclusions

As addressed in greater detail above, the Impartial Arbitrator has reached the following summarized, principal preliminary conclusions.

(1) The primary focus of an interest arbitrator is to attempt to put the parties into the same position they would have occupied but for their inability to achieve a complete agreement at the bargaining table.

   (a) Wisconsin's *final offer procedure* normally limits an arbitrator to selection of the final offer of either party *in toto*, which practice is intended to motivate the parties to reduce their areas of difference and to move close to agreement prior to submission of an impasse to arbitration.

   (b) If parties remain significantly apart in their final offers, the final result will normally differ significantly from the normal settlement which might have been reached in conventional bargaining.

   (c) In applying the evidence and the arguments of the parties against the various statutory criteria in the final offer selection process, Wisconsin interest arbitrators normally

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[87] See *Elkouri & Elkouri* How Arbitration Works, pages 1124-1125. (footnotes omitted)

closely examine the parties' *past practice* and their *negotiations history*.

(2) In the case at hand, *the final offers of the parties* differ quite significantly.

(a) In addition to the clear differences in their final offers, the parties also disagree as to *whether the final offer of the Union included the elimination of the longevity pay provisions contained in the prior agreement*.

(b) In *arguing their respective cases* the parties disagree relative to *the identity of the intraindustry comparables*, and *the application of the normal principles applied by arbitrators when the final offer of a party proposes significant differences in the status quo ante*.

(c) Prior to applying the statutory criteria against the final offers of the parties, reaching a decision and rendering an award, the undersigned must address *the scope of the Union's final offer*, *the identity and significance of the intraindustry comparables*, and *the significance of the status quo ante in the final offer selection process*.

(3) In connection with ***the scope of the Union's final offer***, the undersigned has concluded that it neither explicitly nor implicitly proposed elimination of the longevity pay provisions contained in the prior agreement. This conclusion is principally based upon the *ambiguity of its final offer* and the *lack of bargaining history* supporting the position of the Union.

(4) In connection with ***the identity and significance of the intraindustry comparables***, the undersigned has concluded as follows.

(a) In the absence of either statutory or agreed-upon prioritization of the various arbitral criteria, it is widely recognized by interest arbitrators that comparisons are the most frequently cited, the most important, and the most persuasive of the various arbitral criteria and, in the absence of strong evidence to the contrary, the most persuasive comparisons are normally the so-called *intraindustry comparisons*. In applying the comparison criterion, Arbitrators normally respect the parties' *wage history,* including but not limited to the *identity of intraindustry comparables*, the *contractual wage determination criteria*, and the *significance of wage differentials*.

(b) The *primary and secondary comparables identified by Arbitrator Richard Tyson in a prior proceeding involving the College's full time faculty should constitute the intraindustry comparables in the dispute at hand*. This conclusion is principally based upon the reasoning leading to the decision of Arbitrator Tyson, the negotiations history of the parties to this proceeding, and the fact that the presence or absence of union representation is insufficient to justify either a single or a primary comparison group consisting of only the Madison and Milwaukee bargaining units.

(c) Consideration of the *intraindustry comparables* clearly favors selection of the final offer of the College in these proceedings.

(5) In connection with ***the significance of the status quo ante in the final offer selection process***, the undersigned has concluded as follows.

(a) The Union is proposing *very significant and important changes from the status quo ante*, in *wage rates*, in *wage determination criteria*, and in *employee preference in filling job vacancies* within the bargaining unit.

(b) Wisconsin Interest Arbitrators normally require the proponent of such significant modification of the negotiated status quo ante, to establish a *very persuasive basis for such change*, typically by showing that *a legitimate problem exists which requires attention,* that *the disputed proposal reasonably addresses the problem*, and that *the proposed change is accompanied by an appropriate quid pro quo*; they thus normally assign *determinative weight* to the above referenced *past practice* and *negotiations history* arbitral criteria where the proponent of change fails to make the requisite showings.

(c) The Union has failed to establish the requisite very persuasive basis for its proposed changes in the negotiated status quo ante, and, accordingly, arbitration consideration of the *past practice* and the *negotiations history criteria* clearly favor selection of the final offer of the College.

(6) The positive economic climate in the Madison area cannot be accorded ***greater weight*** than other arbitral criteria in the final offer selection process.

(7) While a stable group of adequately paid part-time instructors in the Madison Area Technical College serves ***the interests and welfare of the public***, the application of this criteria is insufficient to significantly justify selection of the Union proposed wage structure and work assignment procedures.

Selection of Final Offer

Based upon a careful consideration of the entire record in these proceedings, including arbitral consideration of all of the statutory criteria contained in Section 111.70(4)(cm)(7) of the Wisconsin Statutes, the Impartial Arbitrator has preliminarily concluded that the final offer of the Madison Area Technical College is the more appropriate of the two final offers, and it will be ordered implemented by the parties.

AWARD

Based upon a careful consideration of all of the evidence and arguments, and a review of all of the various arbitral criteria provided in Section 111.70(4)(cm)(7) of the Wisconsin Statutes, it is the decision of the Impartial Arbitrator that:

(1) The final offer of the Madison Area Technical College is the more appropriate of the two final offers before the Arbitrator.

(2) Accordingly, the final offer of the College, hereby incorporated by reference into this award, is ordered implemented by the parties.

WILLIAM W. PETRIE
Impartial Arbitrator

January 4, 2001