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In the Matter of the Petition of

AFT-W LOCAL 3605 PSRP UNIT

Case 41  
No. 68023  
INT/ARB – 11184  
Decision No. 32531-A

To Initiate Interest Arbitration  
Between the Petitioner and

WESTERN WISCONSIN TECHNICAL COLLEGE

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APPEARANCES:

Mr. James Mangan, Staff Representative, appearing on behalf of the Union

Johns, Flaherty & Collins, S.C., by Ms. Ellen M. Frantz, Attorney at Law,  
appearing on behalf of the Employer

**ARBITRATION AWARD**

AFT-W Local 3605 PSRP Unit, hereinafter the Union, and Western Wisconsin Technical College, hereinafter the Employer, reached impasse in their bargaining for the 2007 – 2009 collective bargaining agreement. The Union filed the subject interest arbitration petition on May 20, 2008. The Wisconsin Employment Relations Commission's staff investigator conducted an investigation of the petition and concluded the parties were deadlocked in their negotiations, and by August 5, 2008, the parties had submitted their final offers to the investigator. The Commission, on August 26, 2008, certified their impasse/final offers and provided them with a panel of ad hoc arbitrators from which they selected the undersigned to hear and resolve their bargaining impasse. A hearing in the captioned matter was held on December 2, 2008, in LaCrosse, Wisconsin. The parties submitted post-hearing briefs and reply briefs that were received by January 9, 2009.

FINAL OFFERS IN THE ISSUES IN DISPUTE:

Employer's Final Offer:

Wages        7/1/07 2% ATB  
                  7/1/08 2% ATB

Union's Final Offer:

Wages        7/1/07 3% ATB  
                  7/1/08 3% ATB

BACKGROUND:

This dispute is concerned with the terms of the parties' 2008-2009 collective bargaining agreement in the bargaining unit of

“all regular full-time and part-time employees regularly scheduled to work fifteen hours per week or more in PSRP positions excluding managerial, supervisory, confidential and executive employees, professional employees and all other employees.”

The only issue in dispute between the parties is wages. The Employer's final offer quoted above is to increase wages 2% in each of two years dating back to July 1, 2007, whereas the Unions final offer is for a 3% across the board increase each year retroactive to July 1, 2007. The Unions staff representative, Kowalsky, testified that he has been the Field Representative responsible primarily for the Madison Area Technical College, Southwest Wisconsin Technical College, and Western Wisconsin Technical College locals. He testified he is familiar with AFT Local 3605, which is the Western Wisconsin Technical College local, since 1989 or 1990 and was involved with the PSRP (support) and faculty locals. He stated that the structure of this local, Local 3605, was unique among the 60 other AFT locals in Wisconsin. He said this local and two others have governance over both the faculty and support staff bargaining units. He said for, example, in the Madison, Eau Claire and Indian Head Technical Colleges represented by AFT, the support staff and faculty units are separate bargaining units with two separate local unions. However, at the

Western Wisconsin Technical College the two AFT bargaining units are organized under one local union with one president. He stated that was also the case at Southwest Wisconsin Technical College which was organized into two bargaining units under one local union, and the Milwaukee Area Technical College which has three bargaining units under one local governance structure.

Kowalsky also testified that he had been the chief negotiator for Local 3605 and both bargaining units since 1989 or 1990 and had participated in all bargaining sessions since then. He testified that the relationship between the two units during bargaining was such that there was a lot of cross communication from day one of bargaining more than if there were two different political structures. He said there is a single negotiating committee for the Union, and consequently, there is communication in the preparation and bargaining for the contracts for the two different bargaining units, and most importantly since the beginning the two units have worked closely together on economic issues. He testified that while each bargaining unit, the faculty and PSRP units, have separate bargaining teams, during the last four or five contract negotiations the two bargaining teams have participated in joint bargaining sessions with the Employer to deal with economic issues, health insurance, dental insurance, retirement and, off and on, they have also met jointly to discuss salary. He also stated that since 1988 or 1989 the Teamsters Union has represented the custodial unit, but that the Teamsters and the AFT bargaining units have never participated in joint bargaining. He did state that the custodial unit has participated in health insurance committee discussions, but that the Teamsters Union, which represents employees in that bargaining unit, has a separate health and retirement plan from that which the faculty and PSRP units have.

Kowalsky also testified that this joint bargaining between the Employer and both AFT bargaining units has resulted in sameness between them. The health insurance is identical for both bargaining units and is unique to those two units. He said that in the last two contract negotiations there have been significant changes in the health insurance program for both bargaining units. He said, for example, the health insurance retirement bridge in both units is identical. Kowalsky also stated that in the past salary has not consistently been bargained jointly with both units, but the end result has been pretty consistent if not identical. He stated that, for example, in 2002-2003 Management

proposed a salary freeze to both units, neither unit agreed to the freeze, but both sides agreed to only litigate the issue in the faculty unit and agreed that the outcome of the faculty unit arbitration would control what happened in the PSRP bargaining unit.

Kowalsky compared what occurs in the Western Wisconsin Technical College bargaining among the faculty and PSRP units to what goes on in collective bargaining in Wisconsin K-12 units of teacher and support staff. He stated that in bargaining with this Employer the bargained wage increase in both units has been stated as a percentage across the board and doing so reflects the coordination that goes on between the two bargaining units. He compared that to the K-12 situation where, he said in most cases, salary increases are stated as a raise to the base and in the support staff units the increase is stated as a cents per hour increase. Thus, he concluded that the manner in which the wage increases are stated in the K-12 bargaining units is a reflection of the fact that there is little coordination in bargaining between the two different types of bargaining units, faculty and support staff.

Salls, the Human Resources Director for the Employer since 1990, testified that it was his responsibility to lead other administrators in bargaining contracts with the AFT. He indicated that the joint bargaining with the PSRP and faculty units with respect to health insurance, retirement and wages started in the 2001-2002 negotiations when the parties were attempting to work with consensus bargaining because health insurance couldn't be changed in one bargaining unit without the same changes being negotiated in the other bargaining units. He testified that in prior years dating back to 1990 the two bargaining unit contracts were not co-terminus, in other words the faculty collective bargaining agreement expired in one year and the PSRP unit bargaining contract expired in a different year. He stated that they became co-terminus with the 1995-1996 contracts, but also since then there have been differences between the contract settlements in these two bargaining units. He said that in 1995-1996 the PSRP agreed to a 2% across the board increase and a retroactive freezing of step increases, which were restored on the June 30<sup>th</sup> contract expiration date. He stated that in 1999 the PSRP wage settlement was larger than the faculty increase because the parties agreed to reduce a 10-step salary schedule to a 5 step schedule for active employees. He stated that in the 2005-2006 negotiations the Employer proposed differential settlements between the two bargaining units with a 2.5%

across the board increase in each year in the PSRP unit and a 3% across the board increase in each year in the faculty unit. In the end, the parties agreed to split the difference and each unit received a 2.75% across the board increase in each year of the contract. He also testified that in the 2004-2005 contract the faculty unit received a 2% across the board increase.

Salls testified that the Employer's offer in this case of 2% and 2% across the board in the support staff unit as opposed to the 3% and 3% increase in the faculty unit was based upon his analysis of the Indianhead Technical College contract. He stated that when he applied the Indianhead support staff unit salary structure to the Western PSRP salary structure he found that if the Employer's final offer was paid on the Indianhead support staff salary schedule it would save the college \$600,000. He said that he looked at other bargaining unit wage rates and concluded that Western Wisconsin Technical College's were equal to or greater than Southwestern Wisconsin Technical College's, but that Southwestern Wisconsin Technical College had caught up to Western Wisconsin Technical College on faculty pay during the last bargain. On cross examination, Salls stated that Western Wisconsin Technical College's inability to make up ground on other institutions' faculty salaries was related to what it was paying its support staff employees. He concluded that as long as the faculty and PSRP units move in lock step with one another the District will not be able to increase its faculty pay -vs- other technical college faculties.

#### DISCUSSION:

In determining which offer to select the arbitrator is required to apply the following statutory criteria established for the evaluation of the parties final offers.

Section 111.70(4)(cm)

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

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

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

- a. The lawful authority of the municipal Employer.
- b. Stipulations of the parties.
- c. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.
- d. Comparison of wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes performing similar services.
- e. Comparison of the wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes generally in public employment in the same community and in comparable communities.
- f. Comparison of the wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes in private employment in the same community and in comparable communities.
- g. The average consumer prices for goods and services, commonly known as the cost of living.
- h. The overall compensation presently received by the municipal employes, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- i. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- j. Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

Of the factors set out above the “greatest weight”, “greater weight”, “lawful authority of the municipal Employer”, “stipulations of the parties”, “the average consumer prices for goods and services, commonly known as the cost of living”, “the overall compensation presently received by the municipal employes, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received”, and

“changes in any of the foregoing circumstances during the pendency of the arbitration proceedings” are not in issue in this case.

The Employer’s arguments in support of its final offer of a 2% across the board (ATB) increase to wages in 2007 and 2008 are that the offer will keep the PSRP’s unit employees’ wages not just comparable, but among the highest for employees performing similar work when compared to other technical colleges, and public and private sector employers, while at the same time decelerating the rate of increase for the support staff so that under compensated faculty members can be brought to a more equitable wage position. The Employer reached those conclusions by comparing its wage scales to the wage scales at other technical colleges and compared its wages in selected jobs against those of public and private employers in the area. The Union, on the other hand, argues that the comparisons of specific wage rates for selected positions is not comparing apples to apples, whereas a comparison with the ATB wage increases granted at other technical colleges is the best and most relevant comparison that can be made. The Union also argues that the Employer’s exhibits do not paint a clear picture, because some employers pay more than Western for some positions and less than Western for others, and there is no clear pattern. The Union also contends that the Employer has attempted to dismiss a substantial amount of the jointness in the bargaining history of the PSRP and faculty bargaining units. And last, the Union argues that while the Employer’s stated reason for not offering the same ATB wage increase to this unit that it granted to the faculty bargaining unit is so that it will be able to afford to grant a higher wage increase to faculty in order to bring them closer to the faculty wages at other technical colleges that is not what it did. The Union asserts that the faculty bargaining unit’s wage increase did not close the gap between it and other technical colleges. Also, the Union contends this Employer argument that it cannot raise the faculty wages unless PSRP unit ATB wage increase is less than 3% relates to the Employer’s 2010 budget and is a future consideration not relevant to this bargain.

The statutory factors set out above that the undersigned is to consider when deciding which final offer to select reflects the legislature’s belief as to what are the components that go into determining an appropriate wage level for any group of public sector employees included within the scope of that law. As I have already noted several of

those factors are not in issue in this case as the parties have not argued them as being relevant to the resolution of this dispute. The factors that are relevant are the interests and welfare of the public, and a comparison of wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes performing similar services, other employes generally in public employment in the same community and in comparable communities, and other employes in private employment in the same community and in comparable communities.

The record evidence is that the Employer has two other groups of represented employees - a faculty bargaining unit and a custodial/maintenance bargaining unit. The Union represents the faculty bargaining unit and the Teamsters represent the custodial/maintenance bargaining unit. The Employer negotiated a 3% per year ATB wage increase for the 2007 and 2008 contract years in the faculty bargaining unit. However, there is no record evidence regarding the amount of any ATB wage increase, if any, that was negotiated with the Teamsters for the 2007 and 2008 contract years. As I have stated previously in other interest arbitration cases, internal comparability, or in other words what terms and conditions of employment the Employer has negotiated with other represented bargaining units is a very significant factor, and in certain circumstances can be a controlling factor in deciding which final offer is selected. Here, the Employer has argued that the faculty bargaining unit is not a group of employees that is comparable to the PSRP unit in terms of the type of work being performed, and thus, their wage increase should not be compared to its wage offer for the PSRP bargaining unit. While it is true that they perform dissimilar types of work, in the undersigned's opinion, this is not a significant consideration in this dispute because what is in issue is the general wage increase. As such this type of annual ATB wage increase is generally reflective of changes that are necessary in the level of employees' wages in order that they be protected from erosion by increases in the employees' cost of living. The general wage increase may also contain a component reflecting productivity increases that have occurred since the last negotiation, and/or what is commonly referred to as an annual improvement factor. So while the Employer's other represented bargaining unit employees may be dissimilar in terms of the nature of the jobs they perform the general wage increase is not intended to take into account such



differentiations. Just as maintaining uniformity of fringe benefits among the Employer's various bargaining units is important for numerous reasons so too, absent some extraordinary circumstance, is uniformly protecting the existing wage levels from erosion.

The Employer has argued that it must treat the PSRP bargaining unit differently from it represented faculty bargaining unit when it comes to the ATB wage increase in order to be able, in the future, to grant what the undersigned would characterize as a "catch-up" wage increase to bring faculty wages more in line with their external comparables – other technical colleges' faculty. It asserts that because the PSRP bargaining unit's wages rank at or near the top of its external comparables an increase smaller than what it negotiated with its faculty is appropriate. It is not unusual for an employer to negotiate a larger ATB increase for one bargaining unit than its other units because there is need to provide "catch-up" to all classifications in that bargaining unit. Or, an employer might grant wage adjustments to certain classifications within a bargaining unit to achieve the same purpose as was done by Chippewa Valley Technical college when it granted an additional .5% increase to those in the PHD and Masters salary lanes above the 2008 ATB increase of 3.5%. But, that is not what this Employer is proposing. Rather, this Employer is proposing to give this bargaining unit a smaller across the board increase so that in its next bargain it will have additional funds available to grant a larger wage increase to the faculty bargaining unit, and thus, begin catching up with other technical college faculty wages.

While I appreciate the Employer's dilemma in these difficult economic times its rationale is unconventional and in opposition to conventional thinking regarding how to achieve its objective. In the first place, there is no guarantee that in the next faculty bargain the Employer would spend any monies generated by granting a smaller ATB increase to the PSRP unit in this bargain on faculty wages. Second, the Employer would clearly not be required to do so, and intervening events might occur which would preclude the Employer from fulfilling those intentions.

More importantly, in essence, the Employer is implicitly arguing that because it believes the PSRP wage levels are high vis-a-vis other comparable technical colleges support staff wages not granting them the same protection against erosion of their wages that it negotiated with the faculty is justified. It argues that even with a 2% wage increase

PSRP bargaining unit employees will continue to be wage leaders not only among other comparable technical colleges, but also among other public and private sector employees in the region. The Employer is not required to move the PSRP unit's wages in lock step with the faculty bargaining unit. But, that portion of any annual ATB increase which takes into account the factors of cost of living, annual improvement and productivity increases, which are not unique to any particular bargaining unit and similarly impact all of its represented bargaining units, should generally be a mirror image across represented bargaining units. This also explains why internal comparability is seen as a significant factor when evaluating final offer general ATB wage increases. At the same time, if as the Employer argues in this case, the faculty is in need of a wage adjustment(s) in order to catch them up to their external comparables such an increase can be negotiated for the faculty unit without having to be passed on to the PSRP unit. And, if this wage adjustment/catch-up increase needs to be included as a part of the ATB increase it need only be made clear what portion of the across the board increase is attributable to the catch-up adjustment. In this case however, the Employer asserts that the annual ATB wage increase for the PSRP should be reduced in order to facilitate a future catch-up increase for the faculty. Yet, there has been no showing that the 3% ATB wage increase negotiated with the faculty bargaining unit for each of the two contract years is made up of anything other than the traditional factors discussed above that generally comprise an annual ATB wage increase. Thus, what this approach says to the PSRP bargaining unit, among other things, is that because you are a wage leader your wages need not receive the full erosion protection that the faculty bargaining unit is receiving because they are not a wage leader. I am persuaded that this is an inappropriate way of achieving the Employer's objective.

Needless to say, arguing that by saving money in one bargaining unit during this contract negotiation in order to potentially permit it to provide more money to another bargaining unit in the next round of contract negotiations, in the undersigned's opinion, is not only unconventional but also unpersuasive in overcoming the persuasiveness of maintaining internal comparability among represented bargaining units in terms of the annual general ATB wage increase. And, for all of these reasons, the undersigned finds that internal comparability with the PSRP bargaining unit supports selection of the Union's final offer.

A comparison of the Employer's 2% per year final offer to that of other technical colleges support staff ATB wage settlements shows that their wage settlements were 3% or greater. Wisconsin Indianhead Technical College settled at 3% and 3% in 2007 and 2008, Southwest Wisconsin and Chippewa Valley Technical Colleges settlements were for a 3.25% increase in each year for 2007 and 2008, and Mid-State Technical College support staff negotiated a 3.85% increase in each year for 2007 and 2008. Thus, the Employer's final offer of a 2% wage increase in each year is a full percentage point below the lowest annual increase among the comparables, and even the Union's final offer of a 3% per year ATB wage increase for the 2007 and 2008 contract years is less than what 3 of the 4 comparable technical college settlements were. And, there has been no showing that those annual wage increases among the comparables contained any adjustments other than those traditionally factored into the annual increase as discussed above. Clearly, the Union's final offer, rather than the Employer's, is supported by a comparison with the wage increases negotiated among comparable technical colleges.

I understand that the Employer believes a more meaningful comparison than the ATB percentage increase comparison would be to compare the actual wages of the classifications because the same percentage ATB wage increase will generate differences in the actual wages paid if the comparable jobs are not paid at the same wage rate prior to application of the ATB increase. However, for that to be a meaningful comparison the job descriptions would need to be analyzed in order to evaluate if the jobs had the same level of responsibility, notwithstanding that the positions might carry the same job title. But, there is no such record evidence available in this case. The information that is in evidence merely shows what the schedule minimum and maximum wage rates are, and there is, for example, no information on how many steps there are between the range minimums and maximums and the length of service required to move from one step to another at the comparable colleges. Consequently, the only reliable/meaningful comparison that can be made in this case is to compare the sizes of the ATB increases among the external comparable technical colleges. And, that comparison supports selection of the Union's final offer.

The Employer also relies upon a comparison of its support staff classification wage rates to those wages to those of what it considers to be comparable classifications in the

LaCrosse, Holmen and Onalaska School Districts, LaCrosse County, the City of LaCrosse and area private sector employers. Again, as with the wage information provided for comparable technical colleges the information relating to these employers is presented in the same format - wage range minimum and maximums without any information regarding the number of intervening steps and the length of service required to move from one step to another. Also, no position descriptions have been provided so that the alleged comparable positions can be compared in terms of duties and levels of responsibility. Additionally, the private sector wage data by classification shows that in several cases the 2007 90<sup>th</sup> percentile rank for the private sector position exceeds the 2007 schedule maximum for the alleged Employer comparable classification. Also, there was no evidence adduced as to size of any ATB wage increases negotiated in 2007 and 2008 at those employers. Thus, the evidence relative to the private sector wage data for all the reasons discussed above does not persuade me that there is support for selection of the Employer's final offer in either the public or private sector data supplied.

In conclusion, the settlement with the internal comparable faculty represented bargaining unit, and the external settlements among the Employer's technical college comparables support selection of the Union's final offer. And, for the reasons discussed above, the persuasiveness of those two factors is not overcome by the data supplied for area public and private sector employers. Also, the undersigned believes that consideration of the interest and welfare of the public in this matter is not adversely impacted by selection of either offer. Consequently, I am persuaded that application of the statutory criteria to the facts of this case requires selection of the Union's final offer.

### **AWARD**

That the Union's final offer is selected, and it, along with the tentative agreements of the parties, shall be incorporated into the parties' 2007-2009 collective bargaining agreement.

Entered this 4th day of March 2009.

Thomas L. Yaeger  
Arbitrator