STATE OF WISCONSIN

BEFORE THE ARBITRATOR

In the Matter of the Stipulation to Initiate Mediation-Arbitration between KENOSHA UNITED SCHOOL DISTRICT NO. 1 and LOCAL 2383, AFSCME, COUNCIL 40, AFL-CIO	Case LXIV No. 23497 MED/ARB-216 Decision No. 16604

Appearances:

Mr. Cary L. Covelli, Coordinator of Staff Relations, Kenosha United School District No. 1, appearing on behalf of the Employer.

Mr. Richard W. Abelson, District Representative, Wisconsin Council of County and Municipal Employees, appearing on behalf of the Union.

ARBITRATION AWARD:

On October 9, 1978, the undersigned was appointed Mediator-Arbitrator pursuant to Section 111.70 (4)(cm) 6 of the Municipal Employment Relations Act, in the matter of a dispute existing between Kenosha Unified School District No. 1, referred to herein as the Employer, and Local 2383, AFSCME Council 40, AFL-CIO, referred to herein as the Union. Pursuant to the statutory responsibilities, the undersigned conducted a mediation meeting between the Employer and the Union on November 6, 1978, at Kenosha, Wisconsin; and pursuant to prior notice, when mediation failed to produce settlement on November 6, 1978, the undersigned proceeded to take evidence in arbitration hearing over the matters in dispute. Prior to taking evidence the parties waived the statutory provisions of Section 111.70 (4)(cm) 6.c. with respect to the arbitrator giving written notice to the parties of his intent to arbitrate, and with respect to the opportunity for the parties to withdraw their final offers. The proceedings were not transcribed, however, briefs were filed in the matter, which were received by the Arbitrator by December 26, 1978, and exchanged to the opposing parties on January 6, 1979.

THE ISSUES:

The impasse in the instant matter occurred over a wage reopener for the second year of an existing two year Agreement. At issue between the parties is whether a cost of living provision, which had been a part of predecessor agreements, should be included in the instant Agreement as part of the wage reopener; also at issue is the amount of negotiated wage increase. The positions of the parties are set forth in their final offers filed with the Wisconsin Employment Relations Commission as set forth below:

EMPLOYER FINAL OFFER:

1. Secretary II and Computer Operator classifications - 40¢ plus increments.

2. Secretary III and Senior Fiscal Clerk classifications - 42¢ plus increments.

3. All other classifications - 38¢ per hour plus increments.

These increases are reflected in the attached salary schedule.

All other issues are resolved and included in the current two year agreement.

UNION FINAL OFFER:

Article VIII, Section 8.06 On the first payroll period following July 1, 1978, October 1, 1978, January 1, 1979, and April 1, 1979, the rates of pay set forth in the appended schedules will be adjusted by the percentage amount, computed to the closest whole cent, by which the Cost-of-Living Index (U.S. Department of Labor, BLS Price Index, New Series, Urban Wage Earners and Clerical Workers, 1967 = 100, National) for May 1978, August 1978, November 1978, and February 1979, respectively, exceed said index of February, 1978. The maximum aggregate percentage Cost-of-Living adjustment under this paragraph shall not exceed 5% and shall be implemented in accordance with Appendix B. The Cost-of-Living adjustment effective April 1, 1979, shall be added to the base rates in Appendix A.

APPENDIX B

IMPLEMENTATION OF COST-OF-LIVING INDEX

The cost-of-living index is set forth in Article VIII, Section 8.06, and will be implemented in the following manner:

1. The percentage amount will be computed by dividing the amount of change in the index from the February 1978 index which will be considered the base index. The percentage in decimal form will be carried out to four places.

2. The percentage amount of change in the index will be applied to the base hourly rate of July 1, 1978. The adjustment will be computed to the closest whole cent by dropping the remainder, if less than one-half, and carrying to the next whole cent if the remainder is one-half or more.

3. If the effective date of the adjustment falls on Monday, Tuesday, or Wednesday, the adjustment will apply to that entire week. If the effective date falls on a Thursday or Friday, the adjustment will apply to the following week.

4. The provision for the second and third shift differential shall remain at seven (7) cents per hour.

5. In the event the Bureau of Labor Statistics is late with the issuance of the cost-of-living index for the pay period as set forth in Section 8.06, any adjustment in the allowance by such index shall be retroactive to the beginning of the pay period that is applicable.

WAGES

1. An across-the-board wage increase of twenty-five cents (25¢) per hour to be added to the BASIC SALARY SCHEDULE FOR SECRETARIAL AND CLERICAL EMPLOYEES EFFECTIVE 7-1-77.

2. An additional two cents (2¢) per hour to be added across-the-board for the classifications of Secretary II and Computer Operator. (This increase is over and above the twenty-five cents (25¢) in paragraph 1.)

3. An additional four cents (4¢) per hour to be added across-the-board for the classifications of Secretary III and Senior Fiscal Clerk. (This increase is over and above the twenty-five cents (25¢) in paragraph 1.)

DISCUSSION:

Wisconsin Statutes at 111.70 (4)(cm) 7 a through h direct the Mediator-Arbitrator to give weight to certain factors in arriving at his decision. The ensuing discussion will evaluate the position of the parties and the evidence adduced, measured against the statutory factors. In arriving at the ultimate decision in this matter, the undersigned must consider two questions: 1) should a cost of living provision be included in the Agreement between the parties?, and 2) which wage offer is the more reasonable when considering the evidence and the statutory criteria? The undersigned will discuss each of the issues separately.

COST OF LIVING ISSUE

The Union proposes the inclusion of a cost of living formula in the second year of this Agreement as set forth in the final offer of the Union, supra. The Employer opposes the inclusion of the cost of living formula. A review of the evidence establishes that the parties have historically negotiated two year bargaining agreements, and that in the collective bargaining agreements which preceded the current Agreement a cost of living provision, capped at 5%, was part of the predecessor agreement. In bargaining for the instant Agreement, which became effective December 13, 1977, the parties entered into a two year Agreement, but were unable to negotiate the terms of the wage agreement for the second year of the Contract, which was to become effective July 1, 1978. In the bargaining leading up to the present Agreement the Employer continued to insist that the cost of living provision of the predecessor agreement be deleted from the Contract, and the Union insisted upon its inclusion.[1]

The undersigned has considered all of the evidence and argument of the parties with respect to the inclusion of the cost of living provision, and because the evidence shows that the Employer previously had a cost of living provision with another bargaining unit, which he successfully bargained out of the Agreement; and because the cost of living provision proposed by the Union has already reached its "cap", thereby removing the normal benefits attributable to a cost of living provision from consideration (that is, the cost of living provision now represents a sum certain as opposed to an ongoing provision which would keep pace with the cost of living); and because traditionally cost of living provisions are written into multiple year agreements where there are no wage reopeners in order to protect the employees covered by the agreement from a real wage erosion due to inflation; and because the protection against a wage erosion can be assured to the employees in the unit by reason of the wage reopener of the instant Agreement; the undersigned concludes that the cost of living provision proposed by the Union is not necessary for the protection of its members, notwithstanding the fact that the Union 1) had the right to bargain over its inclusion by the terms of the Agreement, and 2) that predecessor agreements had a cost of living provision which became operative in the second year of two year agreements contained in them.

Favoring the noninclusion of the cost of living provision, however, does not automatically result in finding for the Employer in this dispute. As set forth earlier, the amount of wage increase generated by the Union's cost of living proposal has now become a sum certain because the 5% cap proposed by the Union has been reached. In the instant dispute, then, the cost of living pro-

1) The cost of living provision of the predecessor agreement operated only in the second year of the two year agreement. The parties finally agreed to leave the second year wages unresolved, and provided at Article II, Section 2.02 the following wage reopening language for the second year: "This Agreement may be reopened in the second year by either party solely and exclusively for the purpose of negotiating a basic salary adjustment. It is understood by the parties that the Union has not waived its right to include the COLA subject in its salary proposal nor has the Board waived its right to reject a COLA provision in negotiations. The request for a salary adjustment for the second year must be in writing and submitted to the other party by April 30, 1978."

vision as proposed by the Union, given the advantage of the time at which this Award is being rendered, equates to a specific wage proposal for the second year of the Agreement of the full 5% cap spread over the first two adjustment periods, and additionally the 25¢ per hour general wage increase as proposed by the Union. The undersigned will consider in the next portion of this Award whether the specific wage increase proposed by the Union is more reasonable measured against the statutory criteria, or whether the Employer offer is the more reasonable measured against the same standards.

WAGE INCREASE

Both parties to the dispute have proposed an additional 2¢ per hour be added to the classifications of Secretary II and Computor Operator. Both parties also propose that an additional 4¢ per hour be added to the classifications of Secretary III and Senior Fiscal Clerk. Since there is no dispute with respect to the negotiated increases of 2¢ and 4¢ per hour over and above the basic wage increase, the undersigned will not consider the specific increases to the aforementioned classifications in arriving at his decision.

The wage offers of the parties compare as follows: the Employer offers 38¢ per hour effective July 1, 1978; the Union wage offer, with the cost of living calculation included, proposes 38¢ an hour effective July 1, 1978, an additional 12¢ per hour effective October 1, 1978, and an additional 3¢ per hour effective January 1, 1979. Thus, the rates proposed by the Union become 38¢ per hour effective July 1, 1978, which on July 1, 1978, is identical to the Employer offer. At issue, then, is whether an additional 12¢ per hour should be added to the employee rates on October 1, 1978, and an additional 3¢ per hour added to the employee rates on January 1, 1979. The end result of the Union proposal would net the employees 53¢ per hour on their wage rates over the second year of the Agreement. The evidence has shown that the average hourly rate prior to any increase becoming effective in the second year of the Agreement is $4.90 per hour. Using the $4.90 average hourly rate as a basis, the Union proposal would result in a 10.8% rate increase in the second year of the Agreement. The Employer offer of 38¢ per hour effective July 1, 1978, would result in a 7.8% rate increase in the second year of the Agreement. Because of the staggered timing of the increases proposed by the Union in its cost of living proposal, the undersigned agrees with the Union calculation, which shows that the budgetary impact over the Contract year, would have a 9.9% budgetary effect.

The Union argument advances the proposition that when comparing the percentage increase proposed by the parties to the percentage increase of cost of living, the Arbitrator should consider the 9.9% budgetary effect of the Union proposal against cost of living advances. The undersigned is not persuaded that the Union 9.9% figure is the appropriate one to use in comparing to the cost of living. Since the cost of living proposal in theory is designed to add monies to the wage rates as cost of living increases, the undersigned concludes that the total amount of rate increase is the appropriate number to use when comparing to the cost of living, in this case the rate increase proposed by the Union of 10.8% over the second year of the Agreement against the amount of cost of living increase measured by the Consumer Price Index. Likewise, the Employer offer of 38¢, which represents a 7.8% increase, will be measured against the increase in the Consumer Price Index. The Union urges that in comparing cost of living the Arbitrator use the annualized figure of 9.88%. The Union calculates the 9.88% increase in cost of living by calculating the cost of living increase from February to August, 1978, at 4.94% and then annualizing by multiplying by two to reach the 9.88% as a prediction. The undersigned does not accept the Union calculation with respect to percentage of cost of living increase. Data available at the time of hearing showed that the cost of living had increased 8.3% for all urban consumers in the year immediately preceding the month of September, 1978. Further, the cost of living increase for the full year 1978 is now reported on January 24, 1979, as 9.0%. Pursuant to the criteria found at 111.70 (4)(cm) 7 g, which directs the Mediator-Arbitrator to give weight to changes in any of the foregoing circumstances during the pendency of the

arbitration proceedings; the undersigned will use the Consumer Price Index data for the year 1978 as the proper basis for comparison. Having concluded that the appropriate cost of living increase to be utilized in determining this dispute is 9.0%, it follows that the rate increase of 10.8% proposed by the Union and the 7.8% rate increase proposed by the Employer should be compared to the 9.0% cost of living rise. From the foregoing analysis, it is obvious that the Union proposal would result in a rate increase of 1.8% in excess of the 9.0% rise in cost of living; while the Employer proposal would result in a 1.2% increase less than the percentage increase of the cost of living. From the foregoing the undersigned concludes that the Employer offer in this matter is slightly preferred when considering the cost of living increase which occurred for the year 1978, because it is closer to the percentage increase in cost of living than that of the Union.

The Union has further adduced evidence that over the years 1972 through 1978 the classifications of Secretary I and Secretary III have not kept pace with the increase of cost of living during that span of time. The Employer has objected to the Union argument, contending that the Union has included only five years of wage increase and compared it to cost of living increases of six years. The undersigned agrees that the Union data in comparing cost of living 1972 through 1978 includes only five years of wage increases. The undersigned, therefore, will not consider the comparative data offered by the Union comparing wage increases from 1973 to 1978 with cost of living increases from 1972 to 1978. Furthermore, since this is a wage reopener situation, the undersigned feels constrained to stay within the comparisons for the period of time to which the wage reopener applies.

Having concluded that the cost of living index would favor the Employer's wage offer, it would follow that the final offer of the Employer would be preferred, unless a comparison of the rates paid to the employees of the Employer in this dispute compare unfavorably with wage rates paid to similar classifications of employers in other communites. The undersigned has reviewed the evidence with respect to comparables and notes from all of the exhibits that the wage rates paid to the employees involved in the instant matter compare favorably when compared to other public employees employed within the same jurisdiction as that of the Employer, i.e., City of Kenosha, Kenosha County and Gateway Technical Institute. Additionally, the undersigned notes that based on the Employer's last offer the maximum wage rates proposed by the Employer would rank the employees of the Employer at the maximum rate, 6th out of 26 when compared to comparable school districts. The maximum wage rate would be exceeded only by the school districts of Madison, New Berlin, Elmbrook, Manitowoc and Racine. The foregoing comparison compares the maximum salaries paid under the Contract in the 26 largest school districts of the state, excluding Milwaukee. From the foregoing data the undersigned again concludes that the Employer's offer is the more reasonable when considering the comparison of rates paid by the Employer to rates paid by comparable employers in other communities.

CONCLUSIONS

The undersigned, in the foregoing discussion, has concluded that the Employer offer is the more reasonable when considering all of the statutory criteria, the evidence adduced at hearing, and the arguments of the parties. Based on the foregoing and the discussion set forth above, the undersigned makes the following:

AWARD

The final offer of the Employer is to be included in the Collective Bargaining Agreement for the period of time covered by the wage reopener running from July 1, 1978, through June 30, 1979.

Dated at Fond du Lac, Wisconsin, this 29th day of January, 1979.

Jos. B. Kerkman
Mediator-Arbitrator

JBK:rr