WISCONSIN EMPLOYMENT RELATIONS COMMISSION

BEFORE THE ARBITRATOR

In the Matter of the Mediation-Arbitration Between WISCONSIN INDIANHEAD VTAE CLERICAL FEDERATION, LOCAL 4019, WFT, AFT, AFL-CIO and WISCONSIN INDIANHEAD VTAE DISTRICT	AWARD and OPINION Case XIV No. 25426 MED/ARB-555 Decision No. 17693-A

APPEARANCES: James M. Ward, Esq., Losby, Riley, Farr & Ward, Eau Claire, for the Employer

William Kalin, Exec. Director, WFT, Madison, for the Union

On December 6, 1979, Wisconsin Indianhead VTAE Clerical Federation, Local 4019, WFT, AFT, AFL-CIO (referred to as the Union) filed a petition with the Wisconsin Employment Relations Commission (WERC) pursuant to Section 111.70(4)(cm)(6) of Wisconsin's Municipal Employment Relations Act (MERA) to initiate mediation-arbitration. The Union and the Wisconsin Indianhead VTAE District (referred to as the Employer) had begun negotiations on or about November 12, 1979 for an initial collective bargaining agreement that was to be effective July 1, 1979 but failed to reach agreement on all issues in dispute covering this unit of approximately 54 regular full time and regular part time secretaries and clerical personnel employed by the Indianhead VTAE. On March 20, 1980, following an investigation by a WERC staff member, the WERC determined that an impasse existed within the meaning of Section 111.70 (4)(cm)(6)(a) and that mediation-arbitration should be initiated. On March 31, 1980, the undersigned, after having been selected by the parties, was appointed by the WERC as mediator-arbitrator to resolve the impasse. She met with the parties on May 22, 1980 in Shell Lake, Wisconsin to mediate the dispute. When these mediation efforts proved only partly successful, the undersigned then proceeded, under a prior agreement with the parties and after prior public notice, to hold an arbitration meeting (hearing) as required by Section 111.70(4)(cm)(6)(d) on that same date.

ISSUES AT IMPASSE

Prior to and during the mediation phase of mediation-arbitration, the parties were able to reach voluntary agreement on many issues. During the arbitration phase of mediation-arbitration, only two issues remained to be resolved: salary for 1979-80 and 1980-81 and vacations.

The final offers of the parties on the salary issue are stated in terms of an across-the-board increase on a monthly basis:

Employer: For fiscal year beginning July 1, 1979, Level I Technicians $25; all others $45. For fiscal year beginning July 1, 1980, Level I Technicians $20; all others $35.

Union: For fiscal year beginning July 1, 1979, all - $75. For fiscal year beginning July 1, 1980, all - $80.

On the vacation issue, the only remaining difference between the parties is that the Employer offers four weeks of vacation after 12 years and the Union's offer is stated in terms of four weeks of vacation after 10 years of service.

Since there is no voluntary impasse procedure agreement between the parties, the undersigned is required under MERA to choose either the entire final offer of the Union or the entire final offer of the Employer.

STATUTORY CRITERIA

Under Sec. 111.70(4)(cm)(7) the mediator-arbitrator is required to 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 and with other employes generally in public employment in the same community and in comparable communities and in private employment in the same community and in comparable communities.

E. The average consumer prices for goods and services, commonly known as the cost-of-living.

F. The overall compensation presently received by the municipal employes, including direct wage compensation, vacations, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

G. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

H. 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.

POSITIONS OF THE PARTIES

The Union

For the Union, the major issue before the arbitrator is the rate of pay for the two contract years. As to its vacation demand, the Union relies exclusively upon the Employer's treatment of other employees. The Union justifies its vacation proposal because it is intended to bring members of this bargaining unit into line with the VTAE's custodial personnel who have enjoyed such a vacation benefit for several years, the union asserts, and would be a step toward approaching equity with supervisory personnel who receive 20 vacation days beginning with their first year of employment. Finally, on the vacation issue, the Union notes that a maximum of ten employees would be eligible for this benefit. Further, replacements are not hired for clerical personnel when they are on vacation since other working bargaining unit employees are expected to "cover" for them; thus this is not a cost item.

On the main salary issue, the Union supports its final offer by first noting that not only are members of this bargaining unit the lowest paid group in Indianhead VTAE, but many are in the lowest end of the salary schedule (i.e. steps 1 or 2 and job classifications Level III, IV, or V). The present beginning salary for Level V positions is $3.35 or just 25 cents above the federal minimum hourly wage. Only three employees are now on step 7 of Level I or II, the highest pay category in the bargaining unit.

For comparables, which it emphasizes, the Union depends heavily upon salary data resulting from an Employer survey undertaken in the summer of 1979. The data concerns private sector and other public sector employers in the geographical area of Indianhead VTAE's five office locations. This data is most critical, maintains the Union, since this is the pertinent labor market where Indianhead VTAE must compete for its employees; data from other VTAEs upon which the Employer relies is less relevant since accordingly they are unrelated to the labor market for this bargaining unit. The Union then goes on to point out, however, that even using the Employer's VTAE comparables, employees would fall further behind if the Employer's offer for 1979-80 were to be implemented. Since the Employer's second year offer is even more insufficient, in the eyes of the Union, it concludes that the comparability factor necessarily favors the Union. The Union then argues that the Employer's failure to formulate an offer that is supported by appropriate comparability data is particularly illustrated by the position of clerk typist, the category where the largest number of VTAE bargaining unit members may be found. To a lesser degree, the Union relies upon two nearby VTAE Districts, District One and Western Wisconsin.

To justify further its final offer on salary, the Union offered evidence on general cost of living increases. It notes in its brief that the "annualized" cost of living from June 1979 to April 1980 amounts to over 14.4%. At the hearing, the Union offered an exhibit which "annualized" the first three months of 1980 increases at 17.2%.

Next, the Union contended that recent job reclassifications and salary increases for two confidential secretaries outside the bargaining unit to the new positions of Executive Secretary resulted in increases of 29-30%, noting that this

was far in excess of the amount contained in the Employer's final offer in this proceeding. Finally, the Union cautions that special care must be taken in dealing with the Employer's proposal for different and less favorable salary treatment for Level I Technicians since it is supported by little or no justification.

For all the above reasons, the Union concludes that its final offer should be selected because it more closely meets the stated statutory factors which the arbitrator must consider.

The Employer

Assuming that the Union will place heavy emphasis on the cost of living statutory factor, the Employer begins with some precautionary statements in regard to this criterion. It notes first that any cost of living data cannot be accepted at face value without certain qualifications. For example, this Employer pays the entire health insurance premium for bargaining unit members. Since rising health insurance costs are part of U. S. Department of Labor cost of living figures, an appropriate adjustment must be made to take this fact situation into account. Second, the Employer argues against the assumption that cost of living increases will continue at the present rate for the remainder of the calendar year noting that several prominent economists have predicted a severe decline in the current rate of inflation. Third, for the 1979-80 salary year, the Employer believes that it is more appropriate to use the prior year's cost of living figures rather than enjoy the "luxury of hindsight" by using actual 1979-80 figures in determining salaries retroactively for that year. Under this approach which would utilize 1978-79 cost of living increases, the Employer's 1979-80 salary proposal looks substantially better. Next, the Employer argues that salary "steps" or increments as well as across-the-board increases should be included in any calculations which are matched up against cost of living increases since increments as well as across-the-board increases represent actual additional income to the employees receiving them. In addition, the Employer notes that it has calculated not only the percentage increases for both parties' salary proposals but that it has also calculated the roll-up costs as well, certainly important factors to be considered. Finally, the Employer notes that the cost of living statutory factor while listed as an independent factor to be considered in its own right is also taken into account when comparables are considered since other employers (both public and private sector) have in turn taken into account cost of living trends in setting their salaries.

Turning next to the critical factor of comparability, the Employer observes that the parties agree that other VTAE districts may be comparables but sharply disagree over the extent to which other employers within the Indianhead VTAE area, particularly private employers, should be included in comparability discussions. While the Union places heavy emphasis on the Employer's 1979 survey (claiming it demonstrates that the Employer is lagging behind), the Employer disputes the accuracy of Union evidence in the form of graphs based upon survey data. The Employer also objects to the Union's survey evidence because the survey was based upon an explicit assumption of a 40 hour work week while members of this bargaining unit work a 37 1/2 hour week (32 1/2 hour work week in summers). An appropriate upward adjustment in the parties' offers must be. made if they are to be compared properly with survey data.

In addition, the Employer argues that the survey results are misleading because of their heavy reliance upon private employment salaries in Superior, the only large industrialized and heavily unionized city within the Employer's geographical area and the site of an Employer office employing approximately one quarter of this bargaining unit. Finally, and most basic, the Employer questions whether various job titles and salaries reported in the survey are truly comparable to those in the Indianhead VTAE district since there is great difficulty in making equivalency judgments and the survey includes many small employers where there are few formal salary schedules, but instead individualized compensation for employees who are required to be quite versatile (in contrast to this bargaining unit of over 50 employees).

The Employer next proceeds to examine its VTAE comparables (excluding four urbanized VTAE districts in southeastern counties) noting that its offer compares very favorably as to other 1979-80 VTAE salary figures and ranges. Viewing the submitted VTAE data in terms of overall percentage increases (including increments) for 1979-80, the Employer concludes that its offer is "well within the mainstream." Where higher percentage salary increases are found in some VTAE districts, the Employer explains them as "catch ups". The Employer uses a "benchmark" positions approach (where it attempts to control for differences in job duties) to demonstrate specifically the conclusion that the Employer's 1979-80 salary offer is solidly supported by appropriate VTAE comparables.

As for the salary increases received by two VTAE secretarial employees recently reclassified to a new job title as Executive Secretaries, the Employer submits that after reclassification had already taken place, these employees received a salary increase of approximately 10% for 1979-80 and 7% for 1980-81, figures which are in line with the Employer's final offer on salaries.

As for its 1980-81 salary offer, the Employer notes that a greater difference exists between the parties' offers for the second contract year than exists between their final offers for the first contract year. For the second year, the Employer has calculated its salary offer (including increments) as 7.62% versus the Union's offer of 13.24%. To support its second year offer, the Employer argues that its cost of living projections are more realistic than those of the Union which assume a continuing trend, noting that the VTAE's offer is in line with the "historical" rate of inflation which ranges between 5 to 9% annually. The Employer also argues that its second year offer a) must be considered in the light of a generous first year offer, b) should be viewed in terms of absolute dollar amounts (i.e. $45 per month in 1979-80 and $35 per month in 1980-81) which do not differ much, and c) should be analyzed in the context of the entire 1980-81 package which includes prior agreement on an anticipated 15% increase in group insurance premium rates (calculated to be 1 1/2% exclusive of other rollups).

The Employer continues by noting that there have been few VTAE 1980-81 settlements as yet. In the three VTAE districts which have settled, the Employer believes that these settlements resemble its own final offer more than the final offer of the Union. The Employer goes on to predict that settlements in other VTAE districts will fall "in the range" of the Employer's offer. In any case, the Employer requests

the arbitrator to take notice of the lack of settlements "remotely approaching the 18 percent zenith" in the cost of living increase. The Employer concludes its salary discussion by noting that its combined 17.8% two year salary package "will more than likely be considerably closer to the norm" than the combined 28.1% over two years proposed by the Union.

As to the vacation issue, the Employer disagrees with the Union's point that all the Union's demand attempts is to obtain for these employees what comparable custodial employees have had for several years. The Employer disputes this on several grounds: 1) custodial employees do not receive 20 days vacation until after they have completed 11 years of service; 2) the work week of the custodial employees is 40 hours in contrast to the shorter work week for members of this unit (particularly in the summer); 3) members of this unit receive vacation benefits after completion of a six months probationary period while custodial employees must wait until after a full first year of employment to receive vacation benefits; and 4) the Employer has already agreed to a significant concession in regard to vacation benefits for members of this bargaining unit. Accordingly, the Employer concludes that its vacation position is clearly more reasonable.

In its concluding remarks, the Employer conceeds that for the second year (1980-81) its final salary offer compares somewhat less favorably to the cost of living than does the final offer of the Union. Nevertheless, for all the above reasons, particularly considering the comparability data from other VTAEs and the Employer's prediction that increases in the cost of living rate will substantially decrease during the second year of this contract, the Employer urges that its final offer be selected as more reasonable.

DISCUSSION

Of all the Vocational, Technical and Adult Education Districts in Wisconsin, the Indianhead VTAE District encompasses the largest geographical area. The main District office is located in Shell Lake. There are also offices in New Richmond, Superior, Rice Lake, and Ashland. In recruiting and retaining employees belonging to this bargaining unit, the primary labor market is generally considered to be the general geographical area where the employing office is located. Because the city of Superior is so many times larger and different from the other areas where the Indianhead VTAE District offices are located, special problems are immediately evident. Fifteen members (or over 25%) of the bargaining unit are employed in the District's Superior office. These circumstances constitute only one of several special problems present in this mediation-arbitration proceeding.

In addition to the above situation, there is a more common but related issue: what constitutes appropriate comparables when the parties strongly disagree (as they often do)? For this bargaining unit, there is also the problem of determining what are similar private and public sector jobs since many secretarial and clerical jobs with the same title have different job duties and jobs with differing labels may be similar in content and responsibility. Moreover, while salary information may be made available by other employers, a comparison of salaries alone is incomplete without some knowledge of the accompanying fringe benefits picture.

Fortunately, in this case there is general agreement that the salary issue is the main one and should determine the arbitration outcome. The second issue, relating to a 20 day vacation benefit, is a very close one in that the parties are close in their offers and the equities are closely balanced too. The Union argues for parity with custodial employees, noting that there will be no direct cost for this fringe benefit to the Employer since replacements are not hired for vacationing bargaining unit members. The Employer counters that the custodial employees' collective bargaining agreement (which is ambiguous on this point) has been interpreted to give the 20 vacation days only after completion of the 11th year of service and not after ten years, as the bargaining unit herein seeks. Moreover, custodial employees work 40 hours per week during the entire year while bargaining unit employees work only 37 1/2 hours per week (with summer months at 32 1/2 hours per week for their same regular salary). If the vacation issue were the sole issue in dispute, the arbitrator would favor the Employer's final offer, but recognizing it as a close one.

However, as has already been noted, it is quite clear that the salary dispute dominates this proceeding. In considering salaries, it should be mentioned that although both parties addressed the cost of living factor, even the Union acknowledged that this should be a less important factor than comparability. The arbitrator agrees with this approach of both parties since the comparability factor, as has been suggested, already incorporates to some significant degree, changes in the cost of living.

Turning now directly to the salary dispute and comparability, as may be expected, the parties herein agree that comparability is key but they differ significantly as to what are the appropriate comparables. The Union emphasizes salaries paid by private and public employers in the geographical areas where Indianhead VTAE District offices are located and thus relies heavily upon the Employer's 1979 survey data. As a secondary grouping of comparables, the Union looks to two nearby VTAE Districts, District One and Western Wisconsin. On the other hand, the Employer emphasizes salaries paid by all the VTAE districts excluding only four urban ones in the southeastern part of the state. While both positions have some acceptability, the arbitrator believes that for job classifications in this bargaining unit, special weight should be given to the relevant labor markets within the Indianhead VTAE District. Having reached this conclusion, however, she is presented with additional problems rather than a key which will readily resolve the present salary dispute. First, in considering the 1979 survey data, how much weight should be given to the special Superior labor market versus the labor markets in the other areas where District offices are located. Certainly what is considered an appropriate wages level in Superior for bargaining unit work might be significantly different from the appropriate wage level in Shell Lake. Then there are the apparent defects of the 1979 Employer survey data. Unfortunately, the evidence presented in this proceeding relates only to salary. There is no indication relating to relevant fringe benefits to assist in interpreting the salary information. These same deficiencies are also to be found in the other comparability data presented herein.

In scrutinizing more closely the salary issue with the above problems in mind, each contract year merits separate consideration. For 1979-80, the parties are separated only

by $30 per month with the exception of Level I Technicians where the difference is greater because of the Employer's lower offer. The Board has costed its final offer to total 10.19% when salaries alone (including increments) are considered; with rollups, its offer amounts to 11.3%. The Board has similarly costed the Union's final offer to total 14.86% considering salaries alone (including increments); or with rollups, the Union's offer amounts to 17.38%. Looked at another way, for 1979-80, bargaining unit members will receive raises (including increments) ranging from 5.13% to 13.05% under the Board's final offer. Under the Union's final offer, the range (including increments) is 8.54% to 18.57%.

According to the Employer, its offer is in line with other VTAE Districts; according to the Union, the Employer's 1979 survey data and, to a lesser extent, District One VTAE and Western Wisconsin VTAE, there is a need to catch up, thus justifying larger than usual raises for 1979-80. This is another close issue. On its face, the Union's offer requires strong justification. It argues effectively that there are serious turnover problems with a majority of bargaining unit employees now on steps 1 and 2. The Union also argues that bargaining unit members' jobs carry significant and multiple responsibilities since they work in District offices where a single employee must perform a multiplicity of tasks. Moreover, the Employer offers little justification for its special (and lesser) treatment of Level I Technicians. Nevertheless, the Employer's 1979 survey data raises rather than answers many questions and does not represent the solid type of evidence that ideally should exist to justify larger than usual "catch up" raises. Again, if this were the sole issue in dispute, the arbitrator believes that this is a very close question with the Employer's position being slightly favored in the absence of more exact (although admittedly difficult to obtain) comparability data.

There are the 1980-81 salary offers also to be considered. For the second year of the contract, the salary positions of the parties are less close. For this year, there are few comparables to offer guidance and the cost of living trend is highly speculative. The parties' offers differ by $45 per month (with the exception of Level I employees who are treated differently in the Employer's offer as they were in the Employer's 1979-80 offer). The Employer has costed its final offer to total 7.62% when salaries alone (including increments) are considered; with rollups, its offer amounts to 8.95%. Similar cost figures for the Union's offer are 13.24% when salaries alone (including increments) are considered; with rollups, its offer amounts to 15.55%. Looked at another way, for 1980-81 bargaining unit members will receive from 3.79% to 9.75% over their 1979-80 salaries (including increments) under the Board's final offer. Under the Union's final offer, the range (including increments) is 8.39% to 16.28%.

In the arbitrator's judgment, the Union's 1980-81 offer, like its 1979-80 offer, appears to be on the high side. The Employer's 1980-81 offer, however, is clearly too low. The twelve most senior members of the bargaining unit will receive under the Board's final offer salary increases under 5%. All persons employed in 1978-79 even at the lowest pay rate will receive an increase, including increments, of less than 10%. This salary proposal discourages both newer and more senior employees from remaining with this Employer, thus aggravating an already existing problem. This offer in conjunction with

the Employer's 1978-79 proposal leaves the Employer in a difficult competitive situation in its own geographical area, particularly for its Superior District office and also when compared to several of the closer VTAE Districts. Moreover, as the Employer itself conceeds, its offer compares somewhat less favorably to the cost of living than does the Union's final offer.

Since in this arbitration the arbitrator is left with the sole choice of selecting either the whole package final offer of one party or the other, considerations surrounding the parties' 1980-81 salary offers compel the undersigned to select the Union's final offer package. She believes that implementation of the Employer's salary offer for 1980-81 to be against the best interests of all concerning, including the public. It should be noted, however, that the collective bargaining agreement that is the subject of this arbitration proceeding has less than one year to run from the date of this award. When negotiating for a successor agreement during the coming year, the parties will have a new opportunity to gather and examine relevant comparability, cost of living and other pertinent data. They then should be in an excellent position to utilize the collective bargaining process to adjust their own salary and other needs in a manner that is mutually satisfactory, something this arbitration proceeding, by its very nature, is unable to accomplish.

AWARD

Based upon full consideration of the testimony, exhibits and arguments presented by the parties and due weight having been given to the statutory factors set forth in Section 111.70(4)(cm)(7) of MERA, the mediator-arbitrator selects the final offer of the Union, Wisconsin Indianhead VTAE Clerical Federation, Local 4019, WFT, AFT, AFL-CIO, as modified by the parties' settlement agreement dated May 22, 1980, and orders that the Union's modified final offer be incorporated into a written collective bargaining agreement as required by statute.

July 28, 1980

Chilmark, Massachusetts

s/ June Miller Weisberger
June Miller Weisberger
Mediator-Arbitrator