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In the Matter of Arbitration

Between	WISCONSIN EMPLOYMENT RELATIONS COMMISSION	AWARD
MADISON METROPOLITAN SEWERAGE DISTRICT	:	Case XXI No. 25551
and	:	MED/ARB-574 Decision No. 17709-A
LOCAL 60, WISCONSIN COUNCIL OF COUNTY AND MUNICIPAL EMPLOYEES, AFSCME, AFL-CIO	:	

I. HEARING. A hearing in the above entitled matter was held on May 6, 1980, beginning at 2:30 p.m.

II. APPEARANCES.

WALTER J. KLOPP, District Representative, Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, appeared on behalf of Local 60

THOMAS J. KENNEDY, Attorney, BRYNELSON, HERRICK, GEHL & BUCAIDA, appeared on behalf of the Madison Metropolitan Sewerage District

III. NATURE OF THE PROCEEDINGS. This is a matter of final and binding final offer arbitration between Local 60, Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, and the Madison Sewerage District under Section 111.70 (4) of the Wisconsin Municipal Employment Relations Act. Local 60 petitioned the Wisconsin Employment Relations Commission on January 3, 1980, alleging that an impasse existed between it and the District in collective bargaining. A Commission investigator, Mr. Robert McCormick, conducted an investigation and submitted a report on the impasse. The parties had been in negotiation since October 22, 1979.

The Commission found that an impasse existed within the meaning of Section 111.70 (4) (cm) 6 of the MER Act, certified that the conditions required by the statute prior to mediation-arbitration existed and ordered mediation-arbitration on March 31, 1980. The parties having selected Frank P. Zeidler of Milwaukee, Wisconsin, as mediator-arbitrator, the Commission appointed him on April 9, 1980.

Mediation was attempted on May 6, 1980, but the impasse remained. Accordingly, on the same day a hearing was held with the parties being given full opportunity to present all issues and arguments. Briefs were exchanged on June 10, 1980.

IV. THE OFFERS.

A. The Final Offer of Local 60.

One Year Agreement.

1. Article V - Grievance and Arbitration Procedure.  
Section 5.02, Step 1. Amend third line by changing "ten days" to "fifteen days".

Section 5.03(c). Amend by deleting last sentence of this subsection and replace with the following, "The grieving employee and not more than one (1) Union representative (Steward) may be present at the arbitration hearing without loss of regular pay during their scheduled work hours. In addition, no more than four (4) employees called by the Union to appear at an arbitration hearing scheduled during working hours to testify, may appear without loss of pay for their scheduled work hours."

2. Appendix A - Classification - Salary Schedule.  
Increase all employee rates of pay and the classified rate ranges in the amounts of: Effective 1/1/80, increase of eight per cent (8%) across-the-board. Effective 7/1/80, increase wages an additional three per cent (3%).

B. The Final Offer of the District.

Employer's Final Proposal

- I. One year contract January 1, 1980 through December 31, 1980
  - II. Wages: 9 percent across the board effective January 1, 1980
  - III. Balance of contract "as is" in the last labor agreement except as to the agreed-upon changes annexed hereto.
- V. FACTORS TO BE CONSIDERED. Section 111.70 (4) (cm) 7 is as follows:

7. "Factors considered." In making any decision under the arbitration procedures authorized by this subsection, the mediator-arbitrator shall give weight to the following factors:

- a. The lawful authority of the municipal employer.
- b. Stipulations of the parties.
- c. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.
- d. Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services and with other employees 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 employees, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

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.

VI. LAWFUL AUTHORITY OF THE UNIT OF GOVERNMENT.

There is no question here of the lawful authority of the unit of government to meet either offer.

VII. STIPULATIONS OF THE PARTIES.

All other matters involving a new collective bargaining have been resolved between the parties. The parties have stipulated to changes in seven other sections of their agreement.

VIII. THE INTERESTS AND WELFARE OF THE PUBLIC AND THE ABILITY OF THE UNIT OF GOVERNMENT TO PAY.

There is no issue here of the ability of the unit of government to pay. There is a question raised by implication in the arguments of the District as to whether it is in the interests of the public to meet the offer of the District. The arguments will be noted in appropriate sections following.

IX. COMPARISONS - DISTRICTS AND UNITS OF GOVERNMENT USED FOR COMPARISONS.

A. The Union has several orders of priority in comparison. It considers as its first order of priority the comparison between the sewerage districts of Madison, Kenosha and Racine. The Union in Exhibit 2 cited data related to the cities themselves. These data include the following information:

<u>City</u>	<u>Population</u>	<u>Valuation per Person</u>	<u>Full Value Tax Data</u>
Madison	170,238	15,663	.0305
Kenosha	80,889	12,958	.0265
Racine	94,580	11,344	.0308

As a secondary comparable "arena" the Union uses "Madison Total Manufacturing" and the City of Madison Waterworks, the City of Madison and Local 60 agreement, and the agreement between Local 60 and the Monona Grove School District.

The District uses for comparison purposes an agreement between the City of Madison and City Employees Local No. 236, Laborers International Union; Dane County Local 65, AFSCME, and Dane County; City of Monona and Teamsters Local 695; Town of Fitchburg and Local 695; City of Madison and Firefighters' Local 311; City of Madison and Madison Police Supervisors; and City of Madison and Madison Professional Police Officer's Association.

B. The Union Position. The Union holds that the basic comparison must be made between the Madison Sewerage District and the Racine and Kenosha Districts. The character of the work is such that stigma is attached to it and to the person of the employee. The primary basis for comparison must be among groups performing a similar work. The nature of working with sewage effluent in refinement and removal is extraordinary; and as compared to operating water purification facilities, sewerage employment is more complex and dangerous. The Union argues that there are three dimensions of comparability: particular occupation, sector of industry, and a geographical location.

The use of inter-city comparisons is therefore valid because of the character of the operation of the District. When such a comparison is used, it shows that Madison has a superior ability to pay wages.

The contention of the District that Kenosha and Racine are part of the Chicago labor market is false; Kenosha and Racine Counties are autonomous labor markets.

The Union says that the Employer in its comparisons violates the central rule of wage comparison, by not comparing comparable jobs.

C. The District's Position. The District holds that its use of Madison area units of government is a more reasonable type of comparison, and cites Arbitrator Kerkman to the effect that communities within a radius of 30 to 50 miles constitute the area of comparability.

The District holds that wage rates in total manufacturing, a comparison used by the Union, has no relevance to the facts here. Further the use of Racine and Kenosha as comparable communities is invalid, because these are cities heavily influenced by Milwaukee and Chicago; and Racine and Kenosha are in the heavily urbanized part of southeastern Wisconsin. The District cites this arbitrator to the effect that communities in the same area, with the same population, and similar valuation or industrial or residential character are to be compared. Under these terms Racine and Kenosha are not comparable communities. The District cites Arbitrator Johnson to this same specific effect.

D. Discussion. The arbitrator believes that the primary area for comparison in this case, is the Madison area. The arbitrator recognizes that several of the positions in the District have a unique grouping of functions, functions to be found only in other sewerage districts. Nevertheless the general character of the work, which is in the area of skilled labor and technical work, is sufficiently alike to skilled labor and technical work generally, thus justifying holding that the primary area of comparison is the Madison area.

At the same time, the arbitrator will give a secondary weight to comparisons in the Racine and Kenosha sewerage districts, because of the specific character of certain sewerage work.

The comparisons of specific positions in the Madison District to other positions in other governments which is also a subject of difference, will be addressed later.

X. COMPARISONS - BASE WAGES.

A. The Union offered information on wages of certain types of sewerage operators in Racine and Kenosha. The following table is taken from Union exhibits:

TABLE I  
COMPARISON OF CERTAIN SEWERAGE PLANT POSITIONS  
IN MADISON, RACINE, AND KENOSHA, HOURLY RATES (1)

Year and Month	Madison Sludge Works Operator Range 11	% Inc.	Racine Sewerage Plant Operator	% Inc.	Kenosha Sewerage Plant Operator	% Inc.
1/76					5.62	
1/77	6.30				5.84	3.9
1/78	6.61		7.00		6.26	7.2
7/78	6.75	7.1	7.23			
		Top Rate				
Aver. '78	6.68	6.0	7.115			
1/79	7.09		7.59		6.74	7.6
7/79	7.30	8.2	7.87	8.9		
		Top Rate		Top Rate		
Aver. '79	7.195	7.7	7.73	8.6		
				Aver.		
3/80 Union					7.69	1.5(3)
1/80	7.88	8.0(1)				
		9.5(2)				
7/80	8.12	3.0(3)				
		12.8(2)				
Aver.	8.00	11.2(1)				
		12.9(2)				
City						
1/80	7.96	9.0(1)				
		10.6(2)				

(1) % Inc. above 1979 top.  
(2) % Inc. above 1979 average.  
(3) % Inc. above 1/80.

The following information is derived from Union Exhibit 7:

TABLE II

COMPARISON OF A RATE IN THE MADISON SEWERAGE DISTRICT WITH A RATE IN THE CITY OF MADISON

<u>Year</u>	<u>Madison S.D. Certified Works Operator, Range 12(1)</u>	<u>% Change</u>	<u>Madison City Water Works Operator 1, Range 12</u>	<u>% Change</u>
1976	6.13		6.03	
1977	6.49	5.9	6.45	7.0
1978	6.95	5.0+2.0	6.90	3.5+\$10 Bi-Weekly 1.0+\$ 2 " "
1979	7.52	5.0+3.0	7.35	6.5
Increase 1976-1979		22.7(2)		21.8

- (1) This position was not identified on the Union exhibit, but the wage cited conforms to the pattern of a Certified Works Operator.  
 (2) Union Exhibit 7 gave this figure as 18.4%. The arbitrator does not know how this figure was arrived at.

The Union also supplied a copy of the agreement between the Monona Grove District which shows a January 1, 1980, rate of pay of 8.03 per hour for a Building Custodian II, and a rate of 7.80 per hour for a Building Custodian I.

The Union also presented the following information in Union Exhibit 1:

TABLE III

COMPARISON, MADISON CITY WATERWORKS OPERATOR I AND MADISON SEWERAGE CERTIFIED SLUDGE OPERATOR 1979-1980

<u>Year</u>	<u>Water Works Operator</u>	<u>Sludge Works Operator, Range 11</u>
1/1/79	7.21	7.09
7/1/79	7.35	7.30
1/1/80	7.89	
Union Offer		7.88
District Offer		7.96
7/1/80		
Union Offer		8.12
District Offer		7.96
8/1/80	8.16	

The Union reported that the wage for production employees in Madison for December 1979 was \$8.07. Presumably this is an average wage.

Employer's Exhibit 1 was a copy of a resolution before the Dane County Board advising the Board that a tentative agreement had been reached with the Dane County Joint Council of Unions on a 1980-81, two year agreement, with a wage increase of 9.50% the first year and 9.25% the second year. Total costs were 9.3% and 8.7%, with an average total package cost of 9.0%. A reopener on wages was agreed to if the Consumer's Price Index for Urban Wage Earners and Clerical Workers exceeds 10.5% in 1980. This resolution was adopted (Employer 6).

In its Exhibit 2, the Employer gave extensive data on what it considers wage costs and overall costs. At the time of the hearing there were 76 employees of the District, of which 46 were in the bargaining unit. The Employer made some comparisons of basic wage rates with several public sector employees which it considers comparable in that they represent what the District considers similar type operating functions. The following is derived from Employer's Exhibit 2, pages 1 and 2:

TABLE IV

BASE WAGES AND 1980 SETTLEMENTS FOR SELECTED MADISON AREA MUNICIPALITIES AND UNIONS IN OPERATING FUNCTIONS CONSIDERED BY MADISON METROPOLITAN SEWERAGE DISTRICT TO BE SIMILAR OR COMPARABLE

<u>Municipality</u>	<u>Union</u>	<u>No. in B.U. 1979</u>	<u>Aver. 1979 Base Wage (Oct. '79) Hrly.</u>	<u>Aver. 1980 Base Wage</u>	<u>1980 Settlement Date</u>	<u>%</u>	<u>Effect. % Wage Inc.</u>
Dane County	Local 65 AFSCME	193	6.69	7.33	1/1/80	9.5	9.5
Madison City	Local 60 AFSCME	307	6.94				
	Local 236 Laborers	238	6.74	7.31	12/23/79	6.5	8.4
	Fire Fighters				12/23/79	5.0	
	Local 311				5/25/80	5.4	8.3
Monona City	Local 695 Teamsters	12	6.20	6.63	1/1/80	5.95	
					7/1/80	2.0	7.0
Fitchburg, Town of	Local 695 Teamsters	7	7.00	7.42	3/15/80	6.0	
Madison Metro. Sewerage Dist. Offer	Local 60 AFSCME	45	6.84	7.45	1/1/80	9.0	9.0

In Attachment #1 of Employer's Ex. 2, the Employer says that its economic package includes an additional cost for health insurance for married employees which amounts to a 0.45% increase in cost. Payment for 75% of unused sick leave over 150 days will come to another 0.15%. Thus the total cost of the Employer's economic package will be 9.6% as compared to an economic cost of only 9.3% for Dane County.

The Union cost will amount to 9.62% on base wages plus 0.45% plus .15% or a percentage cost of 10.22%.

Employer Exhibit 3 listed the following information among other information:

TABLE V

HOURLY RATES FOR RANGES 7-14 INCLUSIVE AT TOP STEP (STEP 5) UNDER THE OFFERS FOR 1980

Range	District Offer	Union Offer	
	<u>1/1/80-9%</u>	<u>1/1/80-8%</u>	<u>7/1/80-3%</u>
7	7.04	6.98	7.19
8	7.29	7.22	7.44
9	7.48	7.41	7.63
10	7.70	7.63	7.86
11	7.96	7.88	8.12
12	8.20	8.13	8.37
13	8.45	8.37	8.62
14	8.83	8.75	9.01

B. The positions of the parties on wages and the arbitrator's discussion will be reserved for the next section.

XI. COMPARISONS - OVERALL COSTS.

A. In Employer's Exhibit 2, Attachment 2, the Employer produced calculations to show that its overall costs for a complement of 39 employees in the last six months of 1979 came to \$414,790.72. This included gross pay, retirement, social security, health and life insurance, shift pay, overtime, and sick leave over 150 days. In the 1980 calculation step increases were added. In 1980 under the District offer, and holding to the same complement of employees, the costs would come to \$455,470.77, an increase of 9.81% for the Employer under its own offer. This is an increase above the top pay in the previous split schedule of pay for 1979. Extrapolating this percentage to all of 1980, the Employer holds that its overall costs would come to 9.81%.

Using methods of calculation described above, the Employer compared the costs of the proposed Union offer for the first six months of 1980 with the costs of the last six months of 1979. The percentage increase used for the Union offer is not the 8% requested for the first six months, but the annual average of 9.62%. A complement of 39 employees is also used.

As noted above, the Employer calculated the last six months of 1980 to have an overall cost of \$414,790.72. Using the 9.62 percentage and a complement of 39 employees and step increases, the Employer calculated its overall costs to come to \$457,931.94, or a 10.4% increase for the first six months of 1980.

The Employer reported that its 1979 total cost (gross wages and benefits) came to \$727,926.15 for a complement of 39 men. This came to \$8.97 per hour. It calculates that its total costs under its own offer of 9.0% for 1980 for a complement of 39 men will be \$811,222.30 or \$10.00 per hour. The percentage increase is 11.44% overall (Emp. Ex. 2).

Using the same type of calculations for the Union offer of 9.62%, the District says the total cost for 1980 will come to \$815,593.57 or \$10.05 per hour, an increase of 12.04% (Emp. Ex. 2).

The District also furnished the following information:

TABLE VI  
WAGE SETTLEMENT PERCENTAGES

Year	% Increase	
	Madison City	MMSD
1974	6.0	6.0
1975	8.0	8.25
1976	6.05	6.25
1977	5.9	5.9
1978	6.3	5.0 1/1 2.0 7/1
1979	5.0 1/1 2.0 7/1	5.0 1/1 3.0 7/1

B. Position of the Union on Compensation. The Union holds that the arbitrator should make a primary comparison of the employees of the sewerage districts of Madison, Racine and Kenosha, but Madison area comparisons are also pertinent. The Union points to the differential between the classification of Water Works Operator I and Sludge Works Operator, to the disadvantage of the Sludge Works Operator, which is a more difficult and disagreeable job. In effect, this imposes a penalty contrary to the observation of Adam Smith, the 18th century economist, that it is customary to pay the more disagreeable work higher wages.

The Union developed a chart to make the contention that the overall percentage increase between January 1976 and July 1979 was 21.7% for a Madison City Waterworks Operator I and only 19.1% for a MMSD Sludge Works Operator. The chart is here reduced to its essence:

<u>Month and Year</u>	<u>WWOI</u>	<u>SWO</u>
January 1976	6.04	5.95
July 1979	7.35	7.09

The Union notes that the Dane County wage increase is higher than that provided by the Employer. The Union contends that classification-to-classification comparison is spurious, but the magnitude of the specific pay increase for 1980 in Dane County is significant: 9.5% for first year and 9.25% for the second year. The Union also notes that a Custodial Worker I in the Monona Grove School District earns \$7.40 an hour after 18 months of service, as compared to the wage rate offered by the Employer of \$7.95 to Sludge Works Operator.

The Union claims that the average 1979 wage rate for Madison production employees was \$8.07, up 14% from \$7.08 in December 1978. Madison sewerage workers do work similar to production workers, except that their work is normally repugnant and therefore should be compensated more.

The Union contends that the Employer by using an average wage for a range of employees is to reduce a rational wage structure to absurdity. The average wage of \$6.94 cited for the City of Madison is the classification of "Storekeeper", which is a position whose duties cannot be compared with that of a Certified Works Operator.

The Union also calls questionable the method of the Employer in determining the "average" wage rate of the City of Madison. The Employer unilaterally decided that certain upper level classes of the City were not comparable to their bargaining unit and decided not to include them in determining the average, and did not explain what it was doing anywhere in its exhibit. The Employer did not first evaluate jobs and then compare them, but lobbed off six top ranges and two lower ranges without having a statistical basis for doing so. Of the top ranges eliminated, some are as comparable to employees in the sewerage district as those classifications the Employer included. Thus plumbing, heating and electrical inspectors, or maintenance electricians are comparable to electricians in the sewerage district.

C. Position of the District on Compensation. The District states that the comparisons within Dane County and the Madison area are most pertinent. Wage trends in the area have consistently been reflected in wage increases enjoyed by the District employees who, in the case of comparison with Madison City employees, have equaled if not surpassed settlements granted to Madison City employees. The District says that its exhibits show that among comparables listed in Dane County, the wage offer of MMSD results in the highest average 1980 base wage rate. The District also notes that in the case of Dane County with a 9.5 per cent settlement, the cost to the Employer for wages and fringes only rises 9.3% because of lower insurance premiums. The District also notes that its offer when coupled with payments for insurance and sick leave results in a 9.6 per cent increase over the 1979 top, whereas the Union offer would require a total equivalent wage increase of 10.22 percent. The Employer says that its exhibits show that when salary and roll-ups are taken together, the MMSD employees are generously compensated. The exhibits show that the cost to the Employer is more than apparent as a result of ripple effects, including effects from an anticipated minimum step increase the employees receive on top of negotiated raises.

The Employer also objects to Union Exhibit 1 which sets forth wage rates for Madison "total manufacturing" and a Waterworks Operator I. The wage rate for manufacturing employees in the private sector has no relevance here since MMSD cannot be equated to a factory like the Oscar Mayer Company of Madison. MMSD is a public sector employer meeting a public need and not engaged in manufacturing. Also a Waterworks Operator (WVO) cannot be compared with a Sludge Works Operator (SWO). Further the SWO is only one category in the MMSD constituting only a handful of MMSD employees. It is invalid to project any conclusions about classifications across the entire unit. It does not reveal conclusions about the wages in the rest of the unit. Further it should be noted that a Union witness, Mr. Wolters, said that the Madison Water Department always paid its employees more than the MMSD.

D. Discussion. Differing views of the validity of comparisons have been presented by the parties in this matter. Since the factor of comparison is always of great significance in the arbitration of interest matters, it is necessary to inspect the claims of the parties on their methods of comparison.

The Union states that the highest value in comparisons should be given to wages in similar operations in Racine and Kenosha. This has some value because of the special functions of sewerage districts. Using this standard, the MMSD rates for a SWO have been less than those in Racine for a Sewerage Plant Operator, but more than the rates in Kenosha (Table 1). Presumably the Madison District serves a larger population than Racine, and an argument could be made that the employees of the Madison District should be paid as much as those in a Racine District.

Against this must be weighed prevailing conditions in public employment and municipalities in the Madison area. Here one encounters the problem of whether like jobs can be compared; and, if not, can groups of employees in labor and semi-skilled work be compared? If this is not valid, can wage settlements among public employees be compared?

The Union has compared a WWO at the Madison Water Department with a SWO, although it says this is a secondary comparison. The District objects to this because the jobs are unlike. The arbitrator believes that the comparison of WWO and SWO positions has a limited value only. The Union argues that because a SWO has a more hazardous and disagreeable job, the SWO should be paid as much, if not more, than a WWO. The arbitrator, while recognizing the more disagreeable nature of sewerage work, does not have enough expert testimony about the wage that should accrue to these differing positions to hold that the claim of the Union is fully supportable. What is left, then, is to make a comparison of the wage increases experienced by the two classifications over the years, to see if they have kept pace. The Union claims they did not in Union Exhibit 7, and again in a corrected exhibit in its Brief. It claims that the WWO has experienced an increase of 21.7% in wages between January 1976 and July 1979, and the SWO has experienced only a 19.1% increase. The arbitrator believes that this conclusion of the Union is in error based on an erroneous assumption that the wage rate for a SWO in July 1979 was 7.09. The evidence according to Joint Exhibit 1 is that the SWO at the top step had a rate of \$7.30 per hour, and thus had a raise since January 1976 of 22.7%.

In effect, therefore, the general conclusion of the Employer about its own raises over the years being superior to those offered Madison Waterworks employees is confirmed, and it is further confirmed by the data in Table VI.

The matter of the comparison between groups of employees made by the Employer and the MMSD employees in the bargaining unit on the basis of average pay must be considered. This type of data is shown in Table IV.

The arbitrator regards the comparison of average base rates with groups of employees selected by the Employer as subject to several criticisms. These are that the work of the employees is only very generally similar; that there is no agreement between the parties as to what classifications should be included in the groups if there should be groupings; and that the degree of skill required across a range of classifications presents a different mix in each case. Hence the Employer argument that its offer is supported by comparing average base rates is not persuasively supported.

What is more valid however is the percentage of settlement and the effective per cent increase in settlement. These afford more solid bases for comparison. Referring to Table IV, one determines that the MMSD offer is superior to settlements in the municipalities, but not superior to the settlements in Dane County. The Union makes the argument that it's offer should be equal to the Dane County offer; and the Union makes the general argument that sewerage workers should be better paid because of the disagreeable character of the work and its hazards.

The arbitrator weighing all these matters believes that on the matter of base wage increase alone, the District has made a reasonable offer on the basis of comparability of settlements known in the Madison area among public employers. This is further confirmed in the consideration of costs of the economic package comparing the first six months of 1980 with the last six months of 1979; and by the roll-up costs of the District which will come to 11.44% overall, including assumed step increases.

The total package costs to the District exceeds in percentage the total package costs received by Dane County employees in the Joint Council, and this is a factor in favor of the District offer, even though for base wages alone, the District is 0.5 per cent less.

## XII. COST OF LIVING CHANGES.

A. The parties furnished a number of exhibits relating to the cost of living changes. Union Exhibit 6 A was a release of statistics by the Bureau of Labor Statistics, U.S. Department of Labor, which showed that the February 1980 Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) stood at 236.5, up 1.4% from January 1980 and up 14.2% from February 1979. The Union also presented an exhibit (Un. Ex. 6) which was in part as follows:

### TABLE VII

REAL SPENDABLE PURCHASING POWER, JANUARY 1977 TO  
JULY 1980 UNDER THE OFFERS, CERTIFIED WORKS OPERATOR, RANGE 12 (1)

The Union entitled Union Exhibit 6 as "Real Wage Decline". Union Exhibit 19 supported the value of the current method of constructing the CPI. It was a New York Times article of February 10, 1980.

Employer's Exhibits 10 and 11 were copies of articles of January 1980 in MONEY, and in U.S. NEWS & WORLD REPORT, 2/4/80, which challenge the method of constructing the CPI on two grounds: one, people have changed their buying habits to buy less expensively; and, two, the CPI overstates the cost of shelter.

Employer's Exhibit 2, Attachment 8, consisted of the work sheets showing the percentage increase in an employee's wage over the time of employment, such wage including promotions, step increases, and longevity pay. From these worksheets the Employer drew the following conclusions:

1. Average pay increase for employees between 1967 and 1979, including promotion, step increase and longevity (1976 = 110) - 299.5
2. Average pay increases for District employees between 1967 and 1979 for those employees remaining in the same position and not subject to promotions or merit increases (1967 = 100) - 275.6
3. Inflation rate for Milwaukee between Nov. 1967 and Nov. 1979 (1967 = 100) - 232.5.

B. The Union's Position on the Cost of Living. The Union says that the increases in the cost of living have caused a precipitous decline in the real purchasing power of the dollar income of the employees. It argues that on the basis of the average seniority of the members of the bargaining unit which is 7.38 years, the CPI for 1972 should be used as the base of calculations. The CPI-W for January 1972 was 123.2. Using this figure the Union contends that there was a decline in real wages for Pay Range 11 from January 1972 to December 1979 of 16.4%. Using a projection of another 12% increase in the CPI-W to December 1980, the Union declares that this will produce a decline of 18.5% between January 1972 and December 1980 for the District offer and a decline of 16.8% under the Union offer.

The Union also objects to the Employer's Exhibit 2, Attachment 8, which deals with Employee Pay Increases. The Union objects to this exhibit as erroneous and misleading. The Union cites cases of specific employees and holds that their real wages have declined. It also objects to the Employer's use of longevity pay, step increases, and promotions to arrive at its claim that wage increases exceeded the rise in the CPI-W. This mix of factors is different for individual employees. Their individual accomplishments in duration of service and increased skills should not be considered when considering a general increase in base wages. Incremental increases under the President's "Guidelines" in wage/price controls, for example, were exempted.

The Union notes that in the past two years employee increases were dramatically lower than the rise in the CPI. The wage increase in 1979 was 6.5% whereas the CPI increased 14.7%.

C. The Employer's Position on the Cost of Living. The Employer asserts that the Union sought to prove an alleged wage decline in its Ex. 6, but Union Exhibit 2, Attachment 8, shows that from 1967 to 1979 the District employees have enjoyed wage increases exceeding the CPI from 1967 to 1979. The longer span of time is justified as against the arbitrary selection of a shorter span.

The Employer also notes that, contrary to the Union claim, its wage increases kept pace with area trends including the City of Madison.

The Employer notes that even if an employee was frozen in his position since 1967, his rise bettered that of the rise in the CPI; but further the testimony is that it is nearly impossible for the employee not to have advanced or gained merit increases. The Employer has been fair and reasonable in the short and long term.

The District challenges the CPI on the ground that it is loaded and exaggerates the cost of living in housing costs, and includes the cost of health care which is irrelevant, because the Employer in this case assumes the preponderance of costs.

D. Discussion. The first matter to be addressed is whether the CPI-W has any validity or whether it is improperly weighted in claimed costs to the disadvantage of the Employer here. While the theory of how the CPI is put together is subject to critical scrutiny (e.g. is the "market basket" the same now as it was when the Index was revised?) Nevertheless there is no real substitute for the CPI as a means of measuring the change in the cost of living. The arbitrator believes it is adequate enough to use here as a standard for measuring changes in the cost of living.

The next question is to what section of changes in employee income is the CPI to be compared. In Employer Exhibit 2, the Employer in effect measured the total change in employee income including longevity pay and increments to assert that the employee income on the average exceeded the change in the CPI. Of course an arbitrator must look at total costs of employees to employer; but in the case of changes in the CPI, it is customary and useful to compare the CPI to base wages only, as giving a truer measure of how employees fared.

One way of performing this latter function is to use the Union example of finding actual wage or real spendable earnings. The evidence is that in terms of real spendable earnings for base wages, the employees' income dropped over a long period of time, and also substantially in the last year. The evidence also is that the Union offer on base wage and in terms of overall cost more nearly conforms to the statutory guideline than does the Employer's offer.

### XIII. OVERALL COMPENSATION AND BENEFITS.

A. The Union Position. The Union made comparisons between the fringe benefits offered by the Racine, Kenosha and Madison districts. The arbitrator after inspecting Union Exhibit 3 concludes that in shift differential the Racine premium pay at \$0.26 per hour for shifts 1 and 3 is superior to the Madison premium by \$0.01 per hour. Kenosha's premium pay apparently is less extensive than Madison's.

Madison's holiday provision with 9.5 holidays is less than the provisions in the Racine and Kenosha districts with 11 holidays in those districts.

Racine and Kenosha provide full coverage in health insurance. Madison provides full single coverage and pays three fourths of the premium for dependents.

Longevity payment in the Madison District does not rise as rapidly in the first years as it does in Racine, but goes to a higher level of 15% as compared to only a 5% top in Racine.

The Union notes that there are licensing premiums for sewerage operators in Racine and Kenosha and says there are none in Madison.

The Union notes that the Racine and Kenosha contracts are superior to the Madison District proposal in holidays, insurance premiums, and wages, and Madison has assumed last place in this wage contour for the first time.

The Union also claims that the City of Madison longevity plan is better than the District offer by providing a 3% increase after five years and a 6% increase after ten years, as compared to the District contract offering 1% and 3% respectively for these periods.

The Union says that in the past two years the City paid 88.2% of the health insurance costs while in the 1980 contract for the District the District will pay only 85% coverage. Also City employees get 20 days vacation sooner and a premium for Sunday work.

Likewise the Dane County contract is superior not only in wages, but in payment of 90% of the premium for health insurance including dental insurance. The Union contends that the County provides for eight holidays and three floating holidays while the District provides for six holidays and two floating holidays. The 1980 agreement provides for substantial increases through reclassification, subsidizes bus passes and increases the pay for work at undesirable hours.

The Union also contends that other area contracts are superior and cites the City of Monona and Monona Grove school contracts as examples.

B. The District Position. The District challenges Union Exhibit 3 on comparisons of Madison with Racine and Kenosha in fringe benefits. The District says that the comparison of the districts is inappropriate, and further the exhibit contains errors. These errors are in the Union assertion that the District pays only 75% of the premium for dependents when it pays 85%. The District also pays a licensing premium in the form of a pay range increase of 21% per hour. Also longevity in Madison is better.

C. Discussion. In the matter of fringe benefits, the evidence is too scanty for the arbitrator to make a substantial comparison. In the matter of the Racine and Kenosha comparisons, which are secondary comparisons to this arbitrator, the fringe benefits of Madison on the whole are superior to those of Kenosha in shift pay, longevity, and licensing. The Madison fringes are superior to Racine in longevity and licensing, slightly inferior in shift pay, and less in holidays and insurance. No conclusive case can be made that the District benefits are so substantially inferior to those of Racine as to warrant rectifying this through an award of higher base pay.

With respect to fringe benefits generally, the exhibits of the parties were not exhaustive, and not much specific reference was made to them. The arbitrator examined the exhibits of the parties where complete contracts were given. The following is a sufficient summary of some of the major fringe benefits alluded to, without including contracts relating to Madison firemen or police.

TABLE VIII

SUMMARY OF SELECTED EMPLOYEE BENEFITS  
IN SELECTED AGREEMENTS

<u>Municipality</u>	<u>Longevity</u>	<u>Insurance</u>	<u>Shift Pay</u>
Madison City Local 60 ( '79-'80)	3%/5 yr. to 11%/20 yr.	\$46 single \$94 family	25¢, 6 p.m. to 6 a.m. 40¢ Sun.
Local 236 ( '80-'81)	3%/5 yrs. to 11%/ 20 yr.	\$43 single \$99 family (88.2%)	25¢, 6 p.m. to 6 a.m. 35¢ Sun.
Dane County Jt. Council ( '78-'79)	3%/5 yr. to 11%/20 yr.	Full single 90% depend.	6 p.m.-6 a.m. approx. 25¢/hr.
Local 65 ( '78-'79)	3%/5 yr. to 11%/20 yr.	Full single 90% depend.	6 p.m. - 6 a.m. approx. 25¢/hr.
Monona City Teamsters 695 ( '79)	\$15 @ 5 yrs./pr. yr. \$18/16 yr.	Full	\$1.50 per shift Sat. and Sun.
Monona Grove Dist. Local 60 ( '79-'80)	11%/17 yrs.	Full single 80% depend.	6 p.m. - 6 a.m. 25¢
Fitchburg Township	\$25 x yrs.	90%	After 3 p.m. 25¢
MMSD Dist. offer to Local 60	1%/5 yrs. to 15%/ 22 yrs.	Full single 85% family	4 p.m.-8 a.m. 25¢

An examination of Table VIII reveals that the District is competitive in major fringes. While it does not reach the early heights of longevity payments that some municipalities do, its top payment is highest. It is in the lower group in health insurance, offers a longer period of undesirable hours pay, is in the middle range on holidays, and offers vacation and sick leave benefits among the highest.

The arbitrator concludes that in major fringe benefits the Employer's position is reasonably comparable to governments in the area.

XIV. CHANGES DURING THE PENDENCY OF THE PROCEEDINGS.

The Consumer Price Index for Urban and Clerical Workers (CPI-W) for June stood at 247.8, a 1.1% increase above May and a 14.2% increase above a year ago. The CPI-W for Milwaukee stood at 255.2%, a 3.0% increase above March and a 16.3% increase above a year ago.

The change is a factor in favor of the Union's offer.

XV. OTHER FACTORS - GRIEVANCE AND ARBITRATION PROCEDURE.

A. The Union is proposing to extend the time limits for filing a grievance at Step 1 from 10 to 15 days (exclusive of Saturday, Sunday, and holidays). It is also proposing that a grievant, a steward, and four witnesses can appear at any arbitration hearing scheduled during working hours without loss of pay.

The parties submitted exhibits on practices in the Madison area on who can appear at arbitration hearings without loss of pay. It is useful to summarize these exhibits in their pertinent parts now.

TABLE IX

SUMMARY OF SELECTED PROVISIONS ON INITIAL GRIEVANCE  
FILING AND PAYMENT OF WITNESS IN SELECTED  
MADISON AREA MUNICIPAL AGREEMENTS

Dane County

- |                                 |  |
|---------------------------------|--|
| a. Joint Council.<br>( '78-'79) | Oral grievance within 10 days of knowledge of event. No mention of payment of witnesses. |
| b. Local 65<br>( '78-'79)       | Oral grievance in 10 days of knowledge of event. No mention of payment of witnesses.     |

Madison City

- |                            |   |
|----------------------------|---|
|                            | Grievance within 30 days of event or knowledge of event.  |
| a. Local 60<br>( '79)      | Grievant, steward and 5 witnesses present without loss of pay.  |
| b. Local 236<br>( '80-'81) | Written grievance within 10 workdays of knowledge, or not more than 30 days after event. Parties pay witnesses. |

TABLE IX - continued

c. Firefighters Local 311 ( '79-'81)	Grievance 30 days after awareness, not later than 90 days after occurrence. Parties bear expense of witnesses.
d. Police Supervisors ( '79-'81)	Grievance 10 calendar days after knowledge, not more than 30 days after occurrence. No statement on payment of witnesses.
e. Police Officers ( '79-'81)	Same as for Police Supervisors.
<u>Monona City</u> Local 695 ( '79)	Oral grievance in 5 days. Parties bear own costs.
<u>Monona Grove School</u> <u>District</u> Local 60	Written grievance 30 days after knowledge of event, witness fees borne by parties.
<u>Fitchburg Township</u> ( '78-'81)	Oral grievance within 5 days of occurrence. Parties bear own additional costs.
<u>MMSD</u> Local 60 Previous contract	Oral grievance 10 days after knowledge of occurrence, not more than 30 days after event. Parties bear costs of witnesses.
<u>Kenosha City</u> Local 71 ( '80-'81)	Oral grievance first, written grievance within 30 days of event. No statement on pay of witnesses.
<u>Racine WW Comm.</u> Local 2807 (79-'80)	Oral grievance within 10 days of knowledge.
<u>Madison Bd. of</u> <u>Education</u> Local 60 ( '79-'80)	Oral grievance within 30 days of knowledge of event.
<u>Madison Metro.</u> <u>School Dist.</u> Madison Teachers, Inc. ( '79-'80)	Oral grievance within five days of knowledge, not later than 15 days after event.

At the hearing Mr. Darold O. Lowe, District Representative of Council 40, AFSCME, stated that he was basically familiar with AFSCME contracts with municipalities in the area. He stated that to his knowledge Dane County pays for grievants, Union officers and witnesses who testify in arbitration cases. He stated that in arbitration in the Sun Prairie school system the grievants, officers and witnesses receive their salaries. He also says that this is true of the Monona Grove system. He states that he is not aware of the contract provisions in Dane County, but at one appearance for Local 705 before the County in a hearing, the grievant, two witnesses and the President of the local union did not suffer loss of pay.

B. The Union's Position on the Grievance and Arbitration Changes.

The Union states that the testimony of Mr. Lowe shows that in the Madison area the District alone refuses to pay bargaining unit employees in their pursuit of justice through the grievance/arbitration procedure. Legislative guidelines and community comparisons support the validity of the Union position completely in asking for no loss of pay for the grievant, a Union official, and up to four witnesses in an arbitration hearing. The contracts which contain provisions that the parties are to pay the cost of their own witnesses is not adhered to in deference to good and accepted practice of decent labor-management relations.

The Union states it has not called an excessive number of witnesses, as shown in the current arbitration. The Employer has produced no evidence that its position is tenable in light of the general practice. In limiting its own number of witnesses, the Union has not attempted to limit the number management can call.

C. The Employer's Position. The Employer has numerous objections to changes both in the grievance and arbitration procedure. The Employer says that the request to extend the time from 10 to 15 days is unnecessary since there has been no problem in the past. The District never interposed a timeliness defense. The Union is thus introduced into the area of good faith on the part of the Employer. It further thwarts the speedy resolution of grievances by prolonging the time between the event and an attempted settlement, allowing dimmed memories and misperceptions and understandings to occur. The District, on the contrary, seeks expeditious resolution of grievances.

The Employer also states that the Union proposal for the Employer to pay the wages of a steward, a grievant and four witnesses at an arbitration hearing held during work hours defeats the purpose of the grievance procedure. The Employer is presently paying for their involvement in the four grievance steps before arbitration. For one party to bear all the costs in arbitration can only lead to abuses. Incentives to settle will be lost and the grievance procedure will be a conduit to lead all grievances into arbitration. The Employer fears that under the Union proposal employees will regard arbitration as an additional floating holiday.

The Employer says that the loss of manpower under the Union proposal can cripple the operation of the District. It has only 45 employees to cover an operation of 24 hours per day. The loss of four or five employees for one half to one day in arbitration in certain segments can impair the ability of the District to accomplish its work. The public health aspects of the District's operations are involved.

The burden of proof on the Union to justify the changes suggested has not been met. Promptness in settlement of grievances is essential according to the authorities, Elkouri and Elkouri, and other contracts in the Madison area support the current position of the District.

The Employer states that contrary to the contention of the Union, in the Milwaukee Sewerage District, expenses of witnesses are borne by the parties. The Employer notes a number of districts that do not provide for the payment of the witness fees by the Employer, and the Employer cites Wisconsin arbitrators to the effect that arbitrators are not to initiate changes in basic working conditions absent the showing that the conditions are unfair or unreasonable.

D. Discussion. There are two distinct matters here: one, the Union proposal on lengthening the filing time for initiating grievances, and the other the Union request to have the Employer pay the cost of certain persons attending for the Union in an arbitration hearing. These matters can be measured by the statutory criteria of the welfare and interest of the public, and then by comparability.

On the matter of lengthening the time of grievance initiation from 10 to 15 days excluding Saturdays, Sundays and holidays, from Table IX, one ascertains that seven of the districts in which a reporting time of grievance initiation is made in Table IX have a period of 10 days or less for grievance initiation. Five have a 30 day limit. On the basis of comparability, the Union offer does not meet the criterion of comparability, since there is not a clear preponderance of contracts with the provision of allowing more than ten days for the first step in grieving.

As to whether the public interest demands that the Union proposal be instituted in any event, the arbitrator believes that no persuasive showing was made by the Union for the change. While the arbitrator does not fully agree with the Employer that a change from ten days to fifteen days for a first step time limit is as deleterious as the Employer contends, nevertheless, no showing was made by the Union of abuses under the present contract term, and therefore the burden of proof for a change has not been met.

On the matter of the Union request in its offer to have the Employer pay for a grievant, a Union official, and four witnesses at an arbitration hearing, this request does not meet the standard of comparability required to be applied here by the statutes. Other contracts in the majority do not contain this proposed provision. It is true that a highly credible witness, a Staff Representative of District 40, AFSCME, stated that to his knowledge other public employers in the area see to it that grievants, stewards and witnesses for the Union suffer no pay loss for arbitration hearings held during working hours; yet this must be weighed against the evidence of what is contained in the various contracts. Here the criterion of comparability favors the Employer because of the absence of the provision in most contracts. Nothing, of course, prevents the Employer from adopting the practice of paying grievants, stewards and witnesses in hearings during working hours, but there is no standard of comparability in contracts to lead the arbitrator to apply this factor in favor of the Union request. The establishment of evidence that there is a general practice without contract provision is not enough to judge that in this contract it should be an expressed provision.

The arbitrator therefore holds that in the matters of time limits on the first step of a grievance, and in the matter of compensation for grievants and stewards and witnesses in arbitration hearings, the Employer's position on both matters conforms more closely to the statutory criteria of comparability in the area.

XVI. SUMMARY.

The following is a summary of the conclusions of the arbitrator:

1. There is no question here of the lawful authority of the unit of government to meet either offer.
2. There is no issue of the ability of the government to pay.
3. The interests and welfare of the public are considered where appropriate to the issue.
4. In the matter of units of government to be used for comparison, the arbitrator finds that units of government in the Madison area furnish a primary set for comparison, and the sewerage districts of Racine and Kenosha are useful for a secondary set for comparison.
5. In the matter of base wages and total compensation, the District offer meets the guideline of comparability. Its base wage offer is second highest in the list of comparables in the Madison area, Dane County having offered a higher base settlement; however, the total cost of compensation offered by the District exceeds in percentage the total cost experienced by Dane County. On this basis of total cost of compensation the District has a reasonable offer under the guidelines of comparability.
6. In the matter of changes in the cost of living, the Union offer more nearly conforms to the changes in the CPI-W.
7. In the matter of major fringe benefits, the Employer's position is reasonably comparable to other governments in the area, being in the low range in some and the high range in others.
8. The increases in the CPI-W during the pendency of the proceedings is a factor favoring the offer of the Union.
9. In the matters of time limits on the first step of the grievance procedure, and of the Employer compensating a grievant, a steward, and four witnesses at an arbitration hearing, the Employer's position on both matters conforms more closely to the criteria of comparability with provisions in municipal contracts in the Madison area as shown in the exhibits.

The weight in the matter of the cost of living falls to the Union offer. The weight in the matter of total compensation, grievance procedure change, and arbitration procedure change favors the District. In total these latter three weights outweigh the factor of the change in the cost of living. The new agreement, therefore, between the parties should include the District offer.

XVII. AWARD.

In the new agreement between Local 60, Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, and the Madison Metropolitan Sewerage District, the final offer of the District should be included.

*Frank P. Zeidler*

FRANK P. ZEIDLER  
Arbitrator

*August 12, 1980*