RECEIVED

MAR 23 1981

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

In the Matter of Mediation/Arbitration	
Between	AWARD and OPINION
MADISON METROPOLITAN SCHOOL DISTRICT	
-and-	Case CIX No. 26434 MED/ARB - 773 Dec. No. 18028-A
CITY OF MADISON EMPLOYEES, LOCAL 60, AFSCME	

INTRODUCTION

The City of Madison Employees, Local 60, AFSCME, AFL-CIO (Custodial-Maintenance Workers) (hereafter the Union) and the Madison Metropolitan School District (hereafter the District or Board of Education)began negotiations on May 21, 1980 for a successor agreement to their agreement ending June 21, 1980. Negotiations were not successful and, pursuant to Wis. Stat. 111.70, the Union petitioned the WERC for Mediation/Arbitration. On August 21, 1980 the WERC decided that an impasse existed and that a Mediator-Arbitrator should be appointed. The parties selected Professor Richard B. Bilder of Madison, Wisconsin to act as Mediator-Arbitrator and he was appointed by the WERC on September 18, 1980.

The parties met with the Mediator-Arbitrator for mediation on October 20, 28 and 29 in Madison. After mediation efforts proved unsuccessful, the Mediator-Arbitrator served notice on the parties that he intended to resolve the matter by arbitration. Hearings were held on November 26 and December 1 in Madison, at which both parties had full opportunity to present evidence and argument. The transcript was delivered to the parties and Mediator-Arbitrator in late January 1981, and post-hearing briefs were received by the Mediator-Arbitrator in late February 1981.

APPEARANCES

Walter J. Klopp, District Representative, appeared for the Union.

Clarence L. Sherrod, Legal Counsel, appeared for the District.

FINAL OFFERS

The Final Offers of the parties, as presented by each of them on August 15, 1980, are as follows:

(a) Union's Final Offer

1. Article V. Classification & Compensation

   Sect. 5.05 E: Delete, "--for five (5) days or more ---" & replace with "---two (2) consecutive shifts or more---."

2. Art. X - Leave of Absence.

   Sect. 10.07, Funeral Leave. Subsection A. Add, in defining "Immediate Family", a number "11". to provide, "other in-laws, including brothers/sisters-in-law".

3. Article XI - Insurance, Sect. 11.01. Any change in insurance benefits, such as dental or vision care, and any change in premiums which is granted to any other bargaining unit shall also be accorded to Local 60 on the date such change(s) becomes effective.

   Sect. 11.06 Disability Income Plan. Same consideration as set forth for Sect. 11.01 immediately above.

4. Article V - Classification & Compensation.

   Amend current wage schedules & employee rates in the amount of ten (10%) per cent.

5. Article VII - Holidays. Sect. 7.02. Delete reference to five (5) years for entitlement.

   One year Agreement, effective June 22, 1980.

(b) District's Final Offer

1980-81

effective June 22, 1980

1979-80 Carryover + Longevity	$142,061
Salary Increase (6.5%)	260,184
Retirement a 5%	13,009
LTD @ .41%	1,066
	$416,320

Compensation package = 9.57%

1981-82

effective June 21, 1981

Base Salary Increase (9.5%)	$404,986
1% Longevity	42,630
Retirement a 5%	22,380
LTD @ .41%	1,835
Total Compensation Package	$471,831

9.9%

ISSUES AT IMPASSE

To facilitate comparison of the two final offers, the basic differences and issues at impasse are as follows:

I. Period of Contract

A. Union Position

One year agreement (June 22, 1980-June 21, 1981)

B. District Position

Two year agreement (June 22, 1980-June 21, 1982)

II. Wage Increase

A. Union Position

10% increase on base effective June 22, 1980

B. District Position

6.5% increase on base effective June 22, 1980
9.5% increase on base effective June 22, 1981

III. Total Compensation Increase

The District maintains that its proposal will result in a 9.6% total compensation increase for the employees in the unit in the first year of the agreement and a 9.9% total compensation increase for these employees in the second year of the agreement.

The District maintains that the Union's proposal will result in a 13.40% total compensation increase for these employees in the one year agreement proposed by the Union.

The Union has not made any specific proposal cast in terms of total compensation increases and disagrees with the District's calculation of these total compensation increases.

IV. Classification and Compensation

A. Union Position

In Article V, Section 5.05 (E) (Salary Increment Increases), which presently reads:

"Any employee who is assigned to a job classified in a higher pay range than his own for five (5) days or more shall receive fifteen cents (15¢) per hour when the assigned job is one (1) pay range higher than his own; twenty cents (20¢) per hour for each additional pay range. Such assignments as are made shall be in writing."

delete "for five (5) days or more" and replace with "for two consecutive shifts or more".

B. District Position

No proposal - would leave provision as is.

V. Funeral Leave

A. Union Position

In Article X, Section 10.07, which currently reads:

" When a death occurs in the immediate family of an employee, the employee shall be granted up to three (3) days off to arrange for and/or attend the funeral without loss of pay and without charge to accrued sick leave or vacation credits. Additional time off required must be requested of and approved by the Employer and shall be charged to accrued sick leave of the employee. The term "immediate family" as used in this sub-section shall be limited to the following relatives of the employee or spouse:

1. Father and Mother; 2. Husband or Wife; 3. Children;

4. Brother or Sister; 5. Grandparents; 6. Grandchildren;

7. Stepparents; 8. Stepchildren; 9. Son-In-Law

10. Daughter-in-Law.

Where a death occurs in the family of an employee other than the immediate family or the employee acts as a pallbearer, the Employer in his discretion, may authorize such employee to be absent from work, which absence shall be chargeable to accrued sick leave, vacation of the employee. The use of sick leave for pallbearer duty is restricted to funeral of family other than immediate family. "

add, in defining "Immediate Family", a number 11, to read "other in-laws, including brothers/sisters-in-law".

B. District Position

No proposal - would leave provision as is.

VI. Insurance

A. Union Position

In Article XI, Section 11.01, the Union proposes that any change in insurance benefits, such as dental or vision care, and any change in premiums which is granted to any other bargaining unit shall also be accorded to Local 60 on the date such change(s) become effective.

B. District Position

No proposal - would leave provision as is.

VII. Disability Income

A. Union Position

In Article XI, section 11.06, any change in disability income benefits or any change in premiums which is granted to any other bargaining unit shall also be accorded to Local 60 on the date such change(s) become effective.

B. District Position

No proposal - would leave provision as is.

VIII. Floating Holidays

A. Union Position

In Article VII, Section 7.02, which reads:

> "Following an employee's fifth anniversary date with the District, such employee shall be entitled to one (1) floating holiday each year. ..."

delete reference to five (5) years for entitlement.

B. District Position

No proposal - would leave provision as is.

STATUTORY CRITERIA

Under Wis. Stat. 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.

ARGUMENTS OF THE PARTIES

A. The Union's Arguments

1. The Arbitrator should evaluate the Districts'offer in terms of the actual wage increase involved (6.5%) rather than, as the District proposes, an "annualized total compensation" increase. A wage increase is properly and usually measured by the "in-pocket" increase in wages - that is, the amount of increase in money an employee actually receives based on the classified rate of pay in the proposed new contract as compared with the rate in the expiring contract. Neither the costs of "roll-ups" nor any increased earnings resulting from a "carry over" of wage increases during the period of a persons contract can properly be included. Moreover, the District's figures overstate total compensation. The District's arguments otherwise are incorrect and intended to confuse the Arbitrator.

2. The wage increase proposed by the Union is more in accord than is the District's proposal with present levels of compensation and wage compensation increases granted to employees doing similar work in public and private employment in the same and comparable communities, particularly the immediate labor market in Dane County. The Union argues that typical recent wage settlements in Dane County have exceeded that offered by the District.

3. The wage increase proposed by the Union is more in accord than is the District's proposal with the increase in cost-of-living, which in 1980 has exceeded 12%. The Consumer's Price Index is a valid measure of that increase and the one which the legislature intended be used in applying the statutory criteria. The increased cost of living particularly affects the members of this unit since the majority of them are in relatively low salary classifications, have little longevity, and have received only limited increases in the past which have not kept up with inflation.

4. The District's offer is substantially below the settlements which it recently reached with the Madison teachers and administrative employees for 1980-81, and would create an inequitable and undesirable differential as between the Custodial-Maintenance workers and these other employees as respects both wage increases and other benefits. Thus, the District has agreed to pick up an additional $14 per month for health insurance for these other employees commencing December 1980, but under the District's proposal,

the custodial-maintenance workers would not be entitled to these benefits during the entire period of the two-year contract proposed by the District. The Union argues that other workers in the District and community have picked up increased premium payments. Moreover, under the District's proposal for a two-year agreement, the custodial-maintenance workers would not be entitled to the family dental plan benefit which the District has agreed to provide the teachers effective October 16, 1981. Finally, the custodial-maintenance workers would be tied to a 9.5% wage increase during the second year of the proposed agreement while the teachers agreement contains an economic reopener for the second and third years of that agreement, raising the possibility that the amount of increase for the custodial-maintenance workers for the second year of their contract might again fall well below that eventually granted the teachers or other units employed by the District during that period.

5. The Union's proposal that workers receive out-of-class pay after working only two, instead of five consecutive days in a higher-rated job is equitable, administratively workable and will involve only small additional costs to the District. The Union has made clear its intent that its language apply to two consecutive days, not two consecutive shifts, resolving any possible ambiguity in this respect.

6. The Union's proposal that workers be entitled to leave to attend the funerals of brothers/sisters-in-law is equitable, administratively workable, will involve little additional cost to the District, and will resolve a sensitive irritant regarded as important by employees. The Union has made clear its intent that its language apply only to this limited additional category of relatives, resolving any possible ambiguity in this respect.

7. The impact of the costs of the Final Offers should take account of the fact that, due to delays in reading agreement and resolving the impasse which are not of the Union's or employees' making, the real value of the wage increases and payment of insurance premiums denied to employees over those past months of negotiation and mediation/arbitration have already declined through the effects of continuing inflation, and these funds have in the meanwhile been available to District for investment.

B. The District's Arguments

1. The evidence establishes that the total compensation percentage increase calculated by the comptroller of the District relative to the final offers is fair, accurate and consistent with the Board of Education's past practice. The only proper measure of the increases reflected in the various offers is the difference between the total compensation received by an average employee in the 1979-80 contract year as compared with what that employee would receive under each offer in the 1980-81 contract year. The percentage increase figures for each offer presented by the District accurately reflect this calculation, and the District has supported the accuracy of its computation by expert testimony from an independent certified public accountant. In contrast, the Union's figures are inaccurate and misleading since they focus solely on the wage rate increases proposed in 1980-81 as contrasted with the wage rate last prevailing under the 1979-80 contract. This neglects the fact that the previous contract provided for a raise in wage rates during the last 20 weeks of the contract (that is, there were two wage rates in effect during the contract) and that longevity and other benefits increased real compensation. Thus, the parties' wage proposals should properly be compared not with the last wage rate in effect at the end of the previous contract year, but with the weighted average of the two rates which were in effect during the 1979-80 contract year. This method of computation indicates that the wage increase proposed by the District's is in fact well in excess of 9% for the first year of the agreement, and that the Union's proposal is in effect well in excess of 13%.

2. The evidence establishes that pursuant to the Board of Education's past practice in establishing the same total compensation percentage increase for all its bargaining units based on economic considerations, the District's final offer is consistent with the percentage increase set by the Board for all its bargaining units and administrators. The ceiling set by the Board for 1980-81 was 9.5%. While the teachers, under the Board's method of calculation, received a 10.75% total compensation increase for the current year, this exception was acceded to only because the teacher's represented the largest bargaining unit, the unit most directly affecting instructional

programs, and the settlement was believed to be consistent with the parameters set by the Board and in the best interest of the District and community.

3. The District's final offer is reasonable when compared to compensation received by custodial-maintenance workers in other school districts. The most relevant comparables are school districts contiguous to the Madison school district and other large school districts in Wisconsin. The evidence shows that, as compared to almost all relevant school districts except Milwaukee, the District's final offer will produce higher minimum/maximum and/or average rates of pay than are presently in effect in these comparable other districts.

4. The Union's proposal on out-of-class pay is ambiguous and inappropriate to accomplish the Union's stated purpose, since it refers to "two consecutive shifts" rather than "two consecutive days". If the proposal is accepted, it will increase the likelihood of litigation over this matter, and involve administrative and implementation problems.

5. The Union's proposal on funeral leave is overbroad, ambiguous, unnecessary (since the present language permits discretionary grants of leave in such cases), will increase the possibility of litigation over its interpretation, and will create administrative problems.

6. The Union's proposals for parity ("me-too") with insurance benefits provided other bargaining units will create inequities and logistical and other administrative problems of retroactive application. The increase in the Board's health insurance contribution negotiated with the teachers was reached only on November 18, 1980 just prior to hearings in this matter, and only one of the six units with which the District bargains presently has it. Moreover, under the Union's proposal for a one year contract, the Unit will in any event not be entitled under that contract to pick up the dental plan benefits accorded the teachers, which will take effect only in October 1981.

7. The Union has presented no evidence supporting its proposal that the five-year requirement for eligibility for an employee to receive a floating holiday be eliminated, and the Union carries the burden of proof on this issue.

8. The Union has similarly presented no evidence to support its proposal for a one year rather than a two year contract. In view of the

time which has already elapsed in negotiation and mediation/arbitration of this matter, if the Arbitrator accepts the Union's proposal, the parties will be right back at the bargaining table, since the one year contract will end on June 21, 1981.

9. The Board of Education's Final offer is reasonable and fair in view of the totality of the Board's economic circumstances relative to fiscal considerations. Every non-wage proposal in the Union's final offer will have a fiscal impact on the District which exceeds even the 13.4% total compensation increase calculated by the District. Thus, the out-of-class pay, leave of absence, floating holiday and insurance proposals will, if accepted, add to the District's burdens. Moreover, the CPI index is subject to criticism as overstating the rise in the cost of living and inflation, since it includes the cost of buying a home to which most employees are not subject. Finally, economic circumstances which have developed since the arbitration hearing, such as the need to pay certain tax refund obligations to the City of Madison and Village of Shorewood Hills, and the impact of Senate Bill 10 and the 4.4% aid reduction ordered by the Governor, have added to the District's financial burdens.

DISCUSSION

1. Determining the Percentage Increase in Compensation Represented by the Two Offers

The issue on which the parties are most at odds concerns the measurement of the percentage increase in compensation represented by the two offers. The issue arises because their previous 1979-80 contract provided for two different wage rates, one applying to the first 32 weeks of the contract and a second increased rate taking effect during the last 20 weeks of the contract. The dispute is whether the Arbitrator, in assessing and comparing the two offers as to wages and compensation, should (as the Union contends) use the last wage rate in effect under the previous contract in measuring the percentage increase reflected by each offer, or whether he should (as the District contends) instead use a weighted average of the two rates in effect during the year. The parties also disagree as to whether the Arbitrator should (as the Union contends) look at the increase in wages

alone in measuring the percentage increase, or whether he should (as the District contends) look instead at the increase in total compensation, including longevity and other "roll-ups".

The two methods produce dramatically different figures. Thus, the Union contends that the real increase proposed by the District for the 1980-81 contract year is only the 6.5% wage increase on the base effective as of the end of the previous contract year, as stated in the District's offer, and proposes instead a 10% wage increase on that base. The District, on the other hand, maintains that the 6.5% wage increase it offers should properly be compared with the weighted average of wages during the past contract year, and should include "roll-ups". It thus calculates the real percentage increase in total compensation which would be produced by its offer as 9.5% during the first year, as compared with what it calculates to be a real percentage increase in total compensation which would be produced by the Union's offer of 13.4%. The District's position that an "annualized" comparison based on average rather than final wage rates during the past contract year should be used to determine the real increase in value of its offer is reflected in the "carry over" figure set out in its final offer, which puts a money value on these imputed additional earnings.

Each party has argued its position forcefully. The District points out that only through its method of comparing the total annualized costs of the new contract with the old can the real increased value of the new contract and its real additional costs to the District be revealed. It maintains that it has consistently followed this method in calculating the costs of labor settlements in the past, and has presented independent expert testimony to verify the accuracy of its computations and validity of the method it has used. The Union, on the other hand, urges that the only commonly accepted, commonly understood and meaningful measure of an increase in wages is how much more "in pocket" wages an employee gets under the new contract as compared with how much he was getting when the old contract ended. It argues that the mid-year increase under the old contract was bargained for and agreed to as part of the previous contract, and that the District is seeking improperly to "carry-over" and charge these already-won gains against the Union in the

new contract. It claims that, if an employee is only getting 6.5% more in wages on the first day of the new contract than that employee received on the last day of the old, it is impossible to view the raise as more than 6.5% certainly, no employee would understand or regard it otherwise.

This problem seems inherent in the special circumstances of the previous contract between the parties, under which two different wage rates were in effect, and I can understand how each party, from its own perspective, can view its own position as alone correct. I am not aware of, nor have the parties referred me to, any authorities or precedents which resolve this question one way of the other. The District argues that the annualized earnings of unit employees under its proposal will in fact exceed their earnings under their old contract by the percentage figure they indicate, whether the employees understand this or not. But it can also be argued, as the Union has, that it is important to good management-labor relations and in the community interest that workers not only receive but understand and believe they have received an equitable increase in wages, and it was apparent in the mediation and arbitration proceedings that the District's theory and method of computation can be comprehended only with some study.

I do not consider it necessary to attempt a conclusive determination of this issue here since, as will appear, my decision in this matter turns principally on other considerations.

2. Comparability of Compensation

The parties have each introduced extensive evidence regarding comparability. The District argues that the most relevant comparables are the compensation of similar workers in other school districts in Dane County and school districts of comparable size in other parts of the state such as Milwaukee, Racine and Kenosha. The Union argues that the most relevant comparables are the compensation of similar workers in Dane County more generally. However both parties, in their evidence and briefs, have noted the difficulty of making accurate comparisons among compensation for custodial-maintenance worker jobs in different places, given uncertainties as to both the precise responsibilities of each job and the nature and extent of the fringe and other benefits relevant to each case.

In my opinion, the evidence offered of comparability of either present compensation or current settlements regarding maintenance-custodial workers is uncertain, inconclusive and insufficient to affect my decision in favor of either one offer or the other. It seems relatively clear that the members of this bargaining unit receive less compensation than similar workers in Milwaukee (and perhaps Racine), but receive better compensation than similar workers in smaller school districts and cities, such as Monona, McFarland, Janesville and Eau Claire, which is what one would expect. But beyond this I find it hard to go with any confidence.

I believe, however, that the settlement reached between the District and the Madison Teachers introduces an element relevant to the issue of comparability which appropriately bears on my decision, and will treat this question separately in the next heading.

3. The Teacher's Settlement

On November 18, 1980, while this matter was in mediation/arbitration, the District reached a settlement with the Madison Teachers unit. According to the evidence, this three-year settlement provides for a direct salary increase of 9.5% and a total compensation increase of 10.75 for the current year; for a $14 per month pick-up of health insurance premiums commencing December 1980; for a $19.50 per month pick-up of premiums for a family dental plan to go into effect October 16, 1981; and for economic reopeners as to wage increases in the second and third years of the agreement.

While the teachers do not perform "similar services" to custodial-maintenance workers, they are clearly "other employees generally in public employment in the same community" and I am bound under the statute to take a comparison of their wages, hours and conditions of employment, together with "changes in any of the foregoing circumstances during the pendency of the arbitration proceedings", into account. Indeed, such a comparison appears particularly relevant since the Teachers are also employed by and bargain with the District and work in the same buildings and in continuing association with the District custodial-maintenance workers.

A comparison between the District's offer to the custodial-maintenance workers and the District's settlement with the Teacher's indicates substantial differences. The Teachers will, even on the basis of the District's method

of calculation, receive for the first year of their agreement 3% more in direct wage increases and 1.25% more in total compensation than that offered the custodial-maintenance workers. Moreover, they will, as of December 1980, be entitled to a $14 pick up in health insurance premiums, which is not included in the District's offer to the custodial-maintenance workers. As of October 1981, the Teachers will be entitled to a $19.50 pick up of premiums for a dental plan, which is also not included in the District's two-year offer to the custodial-maintenance workers. Finally, while the Teacher's settlement includes an economic reopener for its second year, the District's offer establishes a fixed and binding figure for the total compensation of custodial-maintenance workers during the second year of the two year contract which would be established under the District's offer.

In my opinion, the District's final offer to the custodial-maintenance workers is less favorable than that which it has reached with its Teachers, even assuming the correctness of the District's method of computing the percentage of total compensation increase. On the other hand, if one again assumes for the purpose of discussion the correctness of the District's method of calculation, the Union's offer is more favorable than the settlement the District has reached with the Teachers. Assuming the Union's method of calculation, the District's offer is much less favorable than the settlement reached with the Teachers, while the Union's offer roughly approximates that settlement.

4. Cost-of-Living

The issues relating to the appropriateness of the use of the Consumer's Price Index as a measure of increases in the cost-of-living have been thoroughly discussed in other mediation/arbitration opinions and elsewhere, and I see no need to repeat those discussions in detail here. There appears to be agreement that the rise in the Index itself during 1980 was in excess of 12%. The District argues, with some persuasiveness, that the Index tends to overstate increases in the cost-of-living, through the inclusion of housing and noncurrent expenses. The District has not, however, suggested any other more adequate measure or an alternative figure for the obvious high increase in the cost-of-living. Thus, in the absence of

alternatives, I am constrained to use the CPI as at least a rough measure of the statutory criteria. By this measure, using the District's method of calculation of the measure in compensation under the two offers, the District's offer is somewhat below the increase in the cost-of-living and the Union's offer is somewhat above that figure. By the Union's method, the District's offer is slightly more than half the increase in the cost-of-living, and the Union's offer is still somewhat less than that increase.

The Union argues that the Arbitrator should take into account that, in its view, wage increases for the unit in past contracts have not kept up with inflation; that most of the workers in the unit are at relatively low wage levels; and that, because of this lower wage base, a given percentage increase in wages for these worker's produces less increase in actual "in pocket" money than does the same or an even smaller percentage increase for more highly-paid employees, such as teachers or administrators. I agree that these are factors of which I should take some account.

5. The District's ability to pay

The District has pointed to the considerable strain on its resources produced by a variety of factors. I am aware to these financial pressures and take them into account. However, the District has presented no evidence of specific difficulties to which it would be subject in meeting a contract as proposed by the Union"s offer, and the evidence indicates that the District in fact substantially exceeded its bargaining guideline of 9.5% in the Teachers settlement. It is also relevant that the Teacher's unit includes some 1750 employees whereas the custodial-maintenance unit includes only some 230 employees, typically at lower wage classifications than are the teachers.

6. Period of Agreement

A major difference between the offers is that the Union proposes a one year agreement while the District proposes a two-year agreement. I am inclined to give this difference considerable weight in reaching my decision, particularly in view of the settlement which the District has reached with the Teachers during the pendency of this mediation/arbitration.

As indicated, the Teacher's settlement is not only more favorable to the Teachers as regards increases in compensation than is the District's offer to the custodial-maintenance workers, but it also gives the Teachers health and dental insurance benefits not extended to the custodial-maintenance workers

by the District's offer. The Teachers settlement also includes an economic reopener for the second year, in contrast to the fixed increase contained in the District's offer to the custodial-maintenance workers. I believe that in considering my decision I should properly take into account the fact that my acceptance of the District's offer would involve binding the custodial-maintenance workers to a contract less favorable in these respects than that accorded the teachers, not only for the 1980-81 contract year but for the 1981-82 contract year as well.

This is not to suggest that the employees in this unit either necessarily should have or will in practice be able in the future to negotiate such equivalent benefits, but only that my decision accepting the District's offer would necessarily, for the two year period of the contract, preclude them from even attempting to do so. There may be valid reasons justifying or explaining differences in either compensation increases or other benefits as between different bargaining units. But I am concerned as to the effects of any decision on my part which will bar the parties, for a substantial period, from resolving any questions in this respect through their own negotiations.

The District correctly points out that, due to the time that has already expired in negotiation and mediation/arbitration of this matter, the contract year 1980-81 is almost over. Thus, a decision in favor of the Union's one year offer will mean that the parties will almost immediately have to return to the bargaining table. In my opinion, this result is not necessarily undesirable. As indicated, I believe that it is preferable for the parties to negotiate their own agreement than for them to have an agreement which one or the other considers undesirable imposed on them by an outside arbitrator.

7. Other issues

I regard the other issues raised by the offers as subsidiary and of marginal significance to my decision.

The Union's offer would include a "me-too" provision regarding the District's pick-up of insurance premiums. This would require the District to grant the custodial-maintenance workers the health-insurance premium pick-up it has accorded the teachers, as of the date that took effect. The District has suggested no reason for distinguishing between employees in the two units in this respect, and I would regard this proposal as reasonable. However, acceptance of the Union's offer would have no immediate bearing on

the dental insurance plan, since that plan will take effect only after the one-year contract proposed by the Union has expired. This would, of course, involve some additional financial and administrative cost to the District.

The Union's offer would also provide for out-of-class pay after assignment to a higher rated job on two consecutive days rather than five consecutive days. This proposal does not seem to me on its face inequitable, and it is understandable that employees may feel entitled to higher pay if they are assigned to a more responsible job for a continuing period. I believe that the Union has made clear its intent that its proposal in fact relates to "two consecutive days" rather than "two consecutive shifts", and that, if its offer was accepted, it would act in good faith in making whatever adjustments in language or otherwise as were necessary to avoid future disputes in this respect. This would involve some additional financial and administrative costs to the District, though the Union argues that these would be only minor.

The Union's offer would also provide funeral leave for employees to attend the funerals of their brothers or sisters-in-law. This seems to me a minor adjustment, designed to remove an irritant to employees, which is unlikely to involve any substantial additional expense to the District. Again, the Union has made clear that its intent is solely to cover this limited additional case, and I assume that, if its offer is accepted, it would act in good faith to make whatever adjustments in language or otherwise as might be necessary to avoid future disputes in this respect.

The Union's proposal would, finally, remove the five-year requirement for entitlement to a floating holiday. Neither party has addressed this issue in depth, either in evidence or briefs, and I cannot with confidence discuss its merits or drawbacks. It would certainly have some financial implications for the District but the extent of these is unclear.

The Union argues that, due to the long pendency of this dispute, the real value of any wage increases paid the employees has already declined due to the effects of inflation, and that these funds have in the meanwhile been available to the District for investment. It urges that I weigh these factors as at least a partial balance against any increased costs which would be involved in the additional items in its offer should I accept it. While I do not regard these arguments as determinative, I have taken them into account.

CONCLUSION

The choice which I must make between these two offers is a difficult and unsatisfying one. In my view, the compensation offer of the District is too low, particularly as compared with that given by the District to the Teachers, while the wage offer of the Union is too high. Both parties believe strongly in the correctness of their own way of calculating these increases and both positions have arguments to support them. Neither the statutory criteria of comparability nor that of cost-of-living suggests a clear decision in favor of one offer or the other.

In this circumstance, I find the determinative factor which tips the scales to be the length of the agreement under the respective offers, particularly in view of the changed situation resulting from the November 1980 Teachers settlement. Primarily on that ground I decide in favor of the Union's one year proposal rather than the District's two year proposal.

The employees in this unit work in the same buildings and in continuing association with the Teachers. It seems to me undesirable, both in terms of good labor relations between the parties and in terms of the more general community interest, to impose a two-year agreement on the custodial-maintenance workers which would deny them an opportunity to seek to obtain significant benefits recently accorded employees in a related bargaining unit-the teachers - and from which they cannot escape. A one year agreement will at least provide some equivalence in benefits and leave it open to the parties to further negotiate concerning these matters should they so desire.

While the Union's wage proposal is higher than I would have preferred to accept, I believe that this is to some extent balanced by the fact that most of the unit employees are employed at relatively low wage classifications and are particularly vulnerable to the effects of severe inflation; that the wage increases payable have, as the Union points out, already lost some value as a consequence of inflation; and that my choice of the Union's one-year proposal leaves it open to the District shortly to seek to rediscuss and readjust for any preceived imbalance in this agreement in negotiations for a new 1981-82 agreement. The additional proposals contained in the Union's offer do not

seem to me of sufficient significance or financial impact as to outweigh the advantages which I see as pertaining under the circumstances, both to the parties relations and to the public interest, by my selection of a shorter rather than a longer agreement, which does not freeze the custodial-maintenance workers for an extended period from securing or seeking benefits already accorded the Teachers.

AWARD

Based upon full consideration of the arguments and evidence presented by the parties, and due weight having been given to the statutory factors set forth in Wis. Stats. Section 111.70(4)(cn)(7), it is my award that the Union's final offer should be and hereby is selected, and that the final offer of the Union be incorporated into a collective bargaining agreement between the parties as required by statute.

Dated this 19th day of March, 1981.

Chapel Hill, North Carolina

Richard B. Bilder

Richard B. Bilder
Mediator-Arbitrator