STATE OF WISCONSIN

BEFORE THE ARBITRATOR

In the Matter of the Interest Arbitration of a Dispute Between MADISON TEACHERS, INC. and MADISON METROPOLITAN SCHOOL DISTRICT	VOLUNTARY IMPASSE RESOLUTION PROCEDURE

Appearances:

Kelly, Haus and Kats, Attorneys at Law, by Mr. Robert C. Kelly; and Mr. John A. Matthews, Executive Director, Madison Teachers, Inc.; appearing on behalf of Madison Teachers, Inc.

Davis, Kuelthau, Vergeront, Stover, Werner & Goodland, S. C., Attorneys at Law, by Mr. Mark F. Vetter and Mr. Walter S. Davis, appearing on behalf of Madison Metropolitan School District.

ARBITRATION AWARD:

Madison Teachers, Inc., hereinafter MTI, on September 11, 1981, and Madison Metropolitan School District, hereinafter Employer, on September 16, 1981, executed a Memorandum of Agreement establishing a Voluntary Impasse Resolution Procedure for Teacher Negotiations - 1981, wherein the parties selected the undersigned as Mediator-Arbitrator pursuant to said Agreement. The Voluntary Impasse Resolution Procedure reads:

> MADISON TEACHERS INC. and the MADISON METROPOLITAN SCHOOL DISTRICT by their undersigned agents, hereby agree to, and adopt, the following voluntary impasse resolution procedure for the purpose of expediting resolution of the currently pending collective bargaining dispute involving the reopening of the 1981 "teacher" Collective Bargaining Agreement:
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> 1. The parties stipulate and agree to waive mediation as provided for under Section 111.70 (4)(cm) 3, Wis. Stats.
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> 2. The parties further stipulate and agree to waive investigation as to whether mediation-arbitration should be commenced pursuant to Section 111.70 (4)(cm) 5 a, Wis. Stats.
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> 3. The parties agree to mutually select a mediator-arbitrator who shall first function as a mediator.[1]
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> 4. If the parties fail to reach a voluntary settlement after a reasonable period of mediation as determined by the mediator-arbitrator, the mediator-arbitrator shall provide written notification to the parties of his/her intent to resolve the dispute by final and binding arbitration and shall thereafter proceed as

provided in Sections 111.70 (4)(cm) 6 (c) and (d); or in the alternative such arbitration shall commence at the request of either party.

5. In making his/her decision, the mediator-arbitrator shall give weight to the "Factors Considered" all as set forth in Section 111.70 (4)(cm) 7, Wis. Stats.

1/ The parties have mutually selected Jos. B. Kerkman as Mediator/Arbitrator. This Memorandum of Agreement has been reviewed and is acceptable to the Mediator/Arbitrator.

Pursuant to the terms of the Voluntary Impasse Resolution Procedure of the parties, the undersigned conducted mediation proceedings with MTI and the Employer on September 22, September 30 and October 6, 1981. Mediation efforts failed to produce settlement, and arbitration hearing was held in the matter on November 11, December 3 and December 4, 1981, after the parties had waived the provisions of Section 111.70 (4)(cm) 6. c, which require the Mediator-Arbitrator to notify the parties in writing of his intent to arbitrate, and to establish a time frame within which either party may withdraw its final offer. The parties were present at arbitration hearing and were given full opportunity to present oral and written evidence and to make relevant argument. The proceedings were transcribed, and briefs and reply briefs were filed in the matter. The final briefs were exchanged by the Arbitrator on March 22, 1982.

THE ISSUES:

The impasse in the instant matter occurred over a reopener provision of the parties' Collective Bargaining Agreement which covers the period commencing October 16, 1980, and continuing through October 15, 1983. The MTI final offer proposes a base salary of $13,420 and the Employer final offer proposes a base salary of $12,850.

The Employer offer of $12,850 base salary, however, is qualified by the Employer's inclusion in its final offer of the following provision:

> The District agrees that during the contract year, October 16, 1981 through October 16, 1982, if the gross premiums for Group Hospital and Surgical Plan benefits are, in fact, less than the anticipated $61.36 for single and $157.32 for family and/or if the parties reach agreement changing the carrier and/or the present Group Hospital and Surgical Plan benefits, any reduction in premium contribution of the District hereunder, shall be passed-on to the bargaining unit of this contract by adjusting Track 1, Level 1 (BA Base) of Section III-A and all other levels and tracks accordingly, (a) effective as of the date the cost reduction to the District is realized, and (b) with the addition of such savings to the salary index, the total compensation of 1981-1982 continuing members of the bargaining unit shall not exceed a nine (9%) percent increase over their total compensation for 1980-1981 as computed by the Board of Education for negotiation purposes.

Subsequent to hearing the Employer, on April 12, 1982, advised the Arbitrator and opposing Counsel that he had been successful in negotiating a reduction in the premium cost of the group hospital and surgical insurance, and pursuant to the qualifications in his final offer the total cost savings of $84,119 improved the final offer of the Employer to a base salary of $12,880.

POSITIONS OF THE PARTIES:

POSITION OF THE EMPLOYER:

The Employer states his position in this matter in a summary of argument as follows:

The final offer of the Board of Education of the Madison Metropolitan School District should be accepted by the Arbitrator since it was established in a non-arbitrary or capricious manner. The Board of Education went through a conscientious decision-making process in developing its 1981-82 budget. That budget contained a total package compensation increase for the teachers which was justified based upon the District's financial condition.

The District does not have the "ability to pay" the economic demands mandated by the MTI final offer. The MTI final offer cannot be funded without cutting or eliminating programs, borrowing funds, raising taxes or exceeding the District's cost control limitations.

The Board has offered the teachers an increase which is comparable to the increases received by other employees in the District. It is desirable both in terms of good labor relations and general community interest not to impose different wages on the different groups of employees in the District, especially during a period when the District is experiencing financial problems.

The Board's final offer is more reasonable than the MTI offer when viewed in terms of increases in the cost-of-living. In fact, the teachers will be gaining ground on the cost-of-living if the Board's final offer is accepted.

MTI has submitted a final offer which attempts to better the "relative standing" of the teachers but which has failed to give any consideration to the District's financial problems. MTI has therefore failed to satisfy its burden of proving that its "catch-up" proposal should be accepted.

POSITION OF THE MTI:

The MTI makes the following argument:

1. The final offer of the Board reflects an arbitrary decision making process, and was contrived in a manner so as to conform to the principles set forth in School District of Greendale, Voluntary Impasse Procedure (February, 1981), Byron Yaffe, Arbitrator. The MTI further argues that the Employer bargaining tactics constitute Boulwarism.

2. The final offer of the MTI is affordable and the District has failed to meet its burden of proof with respect to its claim of inability to pay.

3. The final offer of the MTI will result in wages of the Madison teachers being adjusted only to the average which Madison's teachers have historically enjoyed over the years, as compared to those teachers in the agreed upon comparable school districts.

4. The final offer of the MTI restores the MTI to a position it had enjoyed among the comparable school districts, which had declined over the contract years of 1979-80 and 1980-81, whereas the District offer would further erode the relative position of Madison teachers in comparison to the comparable districts.

5. The reliance the Employer puts on the internal comparables is misplaced by reason of the comparative numbers in the unit of custodial-maintenance employees compared to the number of employees in the teacher unit; and by reason of the disparity in the percentage of settlements that had occurred in previous rounds of collective bargaining; and because the administrative salary levels were unilaterally set and, therefore, fail to establish a bargaining pattern.

6. The Employer argument with respect to cost of living should be rejected as manipulative and misleading.

DISCUSSION:

The parties in their Voluntary Impasse Resolution Procedure provide that the Mediator-Arbitrator, in making his decision, shall give weight to the factors considered, all as set forth in Section 111.70 (4)(cm) 7, Wis. Stats. The statutory criteria are:

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 cost 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, factfinding, arbitration or otherwise between the parties, in the public service or in private employment.

The parties direct their argument and evidence primarily to criteria c, d, e, f, and h. The undersigned, while considering all of the statutory criteria, will direct primary attention to the criteria on which the parties have focused their evidence and argument.

THE COMPARABLES

The parties have stipulated as to which school districts in the State of Wisconsin constitute comparables. They are the largest 14 school districts in the state. The school districts to which the parties stipulate as comparables are: Appleton, Eau Claire, Elmbrook, Green Bay, Janesville, Kenosha, Milwaukee, Oshkosh, Racine, Sheboygan, Waukesha, Wauwatosa, West Allis and Wausau.

Employer Exhibits Nos. 17 and 18 provide a basis for comparisons of salaries between the parties' final offers and the other comparable school districts. The data, however, is not complete with respect to two of the comparable school districts and, therefore, the comparison necessarily must be made between the parties' final offers and the 12 other school districts, since neither Milwaukee nor Sheboygan 1981-82 salaries were admitted into evidence. Employer Exhibits Nos. 17 and 18 provide comparisons at six separate lanes of the salary schedule, and at fifteen steps of the salary schedule. The undersigned has reviewed all of the comparisons, however, for the purpose of this discussion the undersigned deems the comparisons at the BA step 1 and the MA-30 step 15 to be representative of all of the comparisons offered in evidence in Employer Exhibits Nos. 17 and 18.

The evidence establishes that with respect to the base salary at BA step 1 the 12 comparable school districts at that step of the schedule have salaries ranging from $12,575 in Kenosha to $15,545 in West Allis. The Employer here proposes a base salary of $12,880, whereas the MTI proposes a base salary of $13,420. Thus, both parties propose a base salary within the range of the comparables. The Employer offer, however, is at the low end of the spectrum of comparables, and places the Employer at a base salary comparison eleventh in ranking. The base salaries of Elmbrook and Kenosha are the only base salaries lower than the Employer's proposal here. The MTI proposal of $13,420 would rank fourth among the comparables when comparing base salaries with Appleton, Oshkosh and West Allis, exceeding the base salaries proposed by the MTI. The evidence establishes that for the school year 1980-81 the base salary of $12,200 then in force in this District ranked seventh among the comparables. Therefore, the Employer offer erodes the relative position in this District when comparing base salaries from seventh position to eleventh, whereas, the MTI offer improves the relative position from seventh to fourth. Turning to a comparison of base salaries to average base salaries among the comparables, the evidence establishes that for the school year 1980-81 the average base salaries among the 12 comparable districts was $12,302, and the base salary paid in this district was $12,200. Thus, the base salaries in this district were $102 below the average base salaries of the 12 other districts. The evidence establishes that among the 12 comparable school districts for the school year 1981-82, the average base salary paid by the comparable districts was $13,297, therefore, the Employer offer is $417 below the average, whereas the MTI offer is $123 above. Given all of the foregoing analysis, the undersigned concludes that the MTI offer is preferable when comparing base salaries paid among the comparable school districts.

Turning to the comparison of salaries paid among comparable school districts at step 15 of the MA-30 lane, the evidence establishes that the Employer offer would result in a salary of $25,700 at that point of the schedule.[1] The evidence further establishes that at MA-30 step 15 the MTI offer establishes

1/ The $25,700 salary figure at MA-30 step 15 does not include the additional $30.00 added to the base by reason of the reduction of health insurance premiums, and there is no data in the record to establish the precise amount of increase the $30.00 on base will generate at MA-30 step 15. The undersigned concludes, however, that the amount of increase will not skew this data sufficiently so as to make these comparisons invalid.

a salary of $26,840. Again, in this comparison the offers of both parties fall within the range of salaries paid by comparable school districts at the MA-30 lane step 15. The Employer offer would result in a ranking of eighth among the comparable school districts, whereas the MTI offer would result in a ranking of fourth. Significantly, the 1980-81 comparisons at MA-30 step 15 establish a ranking of four at this step among the comparable districts. Thus, the MTI final offer would preserve the relative ranking at MA-30 step 15, while the Employer offer would erode it by four places. The evidence further establishes that the average salary paid at MA-30 step 15 for the year 1980-81 was $23,984, and that the Employer in this district paid $24,400 at that point of the salary schedule, an amount $416 above the average of the comparable districts at that point of the schedule. If the Employer offer were adopted here, the salary level at MA-30 step 15 would be approximately $25,700, an amount $391 below the average salaries now paid for the year 1981-82 among the comparable school districts, since the evidence establishes that the average salaries paid for the year 1981-82 among the comparable school districts at MA-30 step 15 is $26,091. The MTI offer at MA-30 step 15 is $26840, an amount $749 above the average salaries paid at that step. The evidence establishes that the Employer offer here would erode the relative position when compared to the average salaries paid among the comparables by $807, while the MTI offer would improve the relative position compared to the average salaries paid among the comparables by $333. Since the MTI offer maintains the relative ranking at this point of the comparison, and because the Employer offer drastically erodes the relationship at this step, the undersigned concludes that the MTI offer is preferable when comparing this step of the salary schedule.

The undersigned has earlier concluded that the two foregoing points of comparison are representative of all of the evidence with respect to the comparables. Having concluded that the foregoing points of comparison establish a preference for the MTI offer, it follows that the comparables, when considering comparable salaries among comparable school districts, favor the adoption of the MTI offer in this matter. The evidence does establish that the MTI offer will improve in certain points of the salary schedule the relative ranking of the MTI among the comparable school districts and the evidence also establishes that the salaries

paid at the points of comparison compared to the average salaries paid at those same points among the comparable school districts are improved. The Employer objects to what he terms the MTI attempt to catch up, arguing that the catch up proposed by the MTI is based on a mathematical calculation which attempts to restore prior losses incurred by reason of prior years' settlements when compared to settlements among comparable school districts. Employer claims that the MTI has established no case for catch up, since whatever prior erosion occurred in prior years' settlements was done voluntarily between the parties. The undersigned is unpersuaded by the Employer argument, principally because the Employer offer here results in such a drastic reduction in the relative position of the teachers in this district compared to the comparable districts. While the undersigned agrees that the case for catch up advanced by the MTI is marginal at best, there is, nevertheless, a basis for the MTI proposal based on the evidence adduced at hearing. It is clear that there has been erosion of relative position compared to the average salaries and to relative ranking among the comparables. While the Employer persuasively argues that the erosion occurred by reason of voluntary settlements of the parties and, therefore, should be discounted, there is, nevertheless, a reasoned basis for the MTI proposal for catch up, and the undersigned in reviewing the record can find no reason other than the Employer's ability to pay for such a drastic reduction in the relative rankings which the Employer offer would effectuate. The question of ability to pay will be discussed at length in a later section of this Award. The undersigned, therefore, concludes that the proposal of the MTI, when considering salaries paid at comparable points of salary schedules among comparable school districts is preferred.

PATTERNS OF SETTLEMENT

The Employer at Exhibits Nos. 9 and 10, costs the offers of the parties and calculates that his offer is 9.01% and the MTI offer is 13.52%. The evidence establishes that the method of costing by the Employer is a method commonly referred to as a cast back method. That is, the Employer has taken the 1981-82 staff and for the purposes of costing the offer established the 1980-81 base earnings by moving all of the 1981-82 staff back one step. The method in establishing cost used by the Employer is one commonly used in costing offers. The undersigned has reviewed the costing method and agrees that the calculations contained in Employer Exhibits Nos. 7, 8 and 9 are accurate.

Having determined that the costing method used by the Employer for the purposes of comparing patterns of settlement are accurate, it remains to be determined what the patterns of settlement show. The record contains evidence with respect to patterns of settlements of several types. There is evidence in the record with respect to patterns of settlements among the comparable 14 school districts described above. There is also evidence in the record with respect to patterns of settlement in the Madison community. There is further evidence in the record with respect to patterns of settlement with another bargaining unit and with unrepresented employees from this same Employer. The undersigned will consider the patterns of settlement in all three of the foregoing patterns in determining which offer is preferable by reason of patterns of settlement. In making that determination, however, different methods must be employed by the undersigned since there is no evidence in the record establishing patterns of settlements among the 14 comparable school districts using the same method the Employer here used in costing his final offer and the MTI's final offer. The evidence does, however, establish that the method used by the Employer in establishing the relative cost of the final offers in this unit and the method established for establishing the cost of unrepresented employees in his employ and the other bargaining unit employees in his employ is consistent. Finally, the evidence is disputed as to whether the settlements in the Madison community as reported in Employer Exhibit No. 13 include or exclude step increases.

The undersigned will first consider patterns of settlement among the comparable school districts. As noted above there is no evidence with respect to total package settlement costs of the settlements among the comparable school districts. The fact that the total package settlement costs are not in evidence in this proceeding does not, however, preclude a comparison of patterns of settlement on salary only. From the data contained in Employer Exhibits Nos. 17 and 18 the percentage increases to the cells of the salary schedule can be established, and in the opinion of the undersigned establish a pattern of settlement among comparable school districts. Using the same points of comparison as was used in comparing comparable salaries among comparable school districts in the preceding section of this Award, the evidence establishes that the Employer proposal improves the base salary by $680 at the BA step 1 lane, a 5.6% increase. The

MTI offer proposes a base salary increase of $1,220 or a 10% increase. From Employer Exhibits Nos. 17 and 18 the evidence establishes that the range of increase at base among the comparable school districts range from a low of $599 for the Kenosha school district to a high of $1,295 in the West Allis school district. The average dollar increase at base salary among the comparable school districts is $995, and the average percentage increase at base among the comparable school districts is 8.1%. From the foregoing it is clear that the dollars of increase proposed at base by both parties fall within the dollars of increase negotiated among comparable school districts at the base. The district, however, proposes a base salary increase which is $315 under the average increase negotiated at the base of the comparable districts, whereas the MTI proposes a base salary increase which is $225 over the same average. It is clear, then, that when considering the dollar increases proposed by the parties the MTI has proposed an increase closer to the average increase negotiated among comparable school districts at base salary. When considering percentage increases the evidence establishes that the percentage increases at base range from a low of 5% in Kenosha to a high of 9.9% at Elmbrook. Further, the evidence establishes that the average percentage increase settlement at base among the comparables is 8.1%. Comparing the proposed percentage increases to the average percentage increase, the Employer proposal at base salary is 2.4% under the average percentage increase at the base among comparable districts, while the MTI proposal is 1.9% over said average. While the 10% increase proposed at base by MTI is higher than any other settlement among the comparables, it is only one tenth of one percent higher than the base increase negotiated in the Elmbrook district, and is closer to the average settlement than the offer of the Employer.

Turning to the patterns of settlement among comparable school districts at the MA-30 step 15 position, the evidence establishes that the percentage increases applied at this step range from a low of 6.8% in Green Bay to a high of 9.9% in Elmbrook. Dollar increases established by settlements range from a low of $1,597 in Green Bay to a high of $2,435 in West Allis. The average dollar settlement among the comparables at this step is $2,106.75 and the average percentage increase at this step is 8.7%. Here the Employer proposes a $1,300 increase at this step of the salary schedule, while the MTI proposes a $2,440

increase. The Employer proposal amounts to approximately a 5.5% increase, whereas the MTI proposal amounts to a 10% increase. Therefore, the Employer proposal is $806.75 below the average settlement at this step of the salary schedule, while the MTI proposal is $343.25 above the average. Furthermore, the Employer proposal at this step is $297 below the pattern established at Green Bay, and it is the opinion of the undersigned that the Green Bay settlement is understated by reason of the blended values established in the Employer exhibits for the Green Bay settlement, Green Bay having established a settlement containing two increases within the span of the 1981-82 school year. In comparing percentages of settlements at this step of the salary schedule, the Employer percentage increase proposed at this step is 1.3% under the lowest percentage increase, Green Bay, while the MTI proposal is one tenth of one percent higher than the highest comparable increase in Elmbrook at that step. The foregoing establishes that the Employer offer, when compared to the patterns of settlement at this step of the salary schedule, is significantly below the patterns of settlement when considering the comparable school districts. Furthermore, the undersigned notes that when considering the comparisons of patterns of settlement at MA-30 step 15, Kenosha which had established a 5% increase at base now shows a 9.2% increase at the MA-30 step 15 step. All of the foregoing causes the undersigned to conclude that the patterns of settlement clearly favor the MTI proposal in this matter, when considering the patterns established among comparable school districts for teacher units. While the foregoing comparisons of patterns of settlement do not take into account the increases in health insurance premiums, the undersigned is satisfied from a review of Employer Exhibit No. 20 that the health insurance premium increase experienced by the instant Employer does not appreciably skew the results. Employer Exhibit No. 20 establishes that all of the comparable school districts have experienced health insurance premium increases. The increases range from a decrease of 1% in the Eau Claire school district to an increase of 50% in the Sheboygan school district, and the average increase among all the comparable school districts is 29%. Here the Employer has experienced a 37.5% health insurance premium increase which is 8.5% above the average increase experienced by the comparable districts. The undersigned, therefore, concludes that the differential between the amount

of health insurance premium increases fails to skew the patterns of settlement appreciably. For example, the Elmbrook school district which had the highest percentage settlement (9.9%) experienced a health insurance premium increase of 44%, 6.5% higher than that experienced by the present Employer. The undersigned, therefore, concludes that the patterns of settlement among the comparable school districts are a valid comparison and that those said comparisons favor adoption of the MTI proposal.

Turning to internal comparables, the evidence establishes that unrepresented employees were granted a unilateral compensation increase of 9%. The record further establishes by a post hearing submission from the Employer that the custodial and maintenance unit represented by AFSCME settled voluntarily for a package increase of 9%. The costing methodology is the same for this unit as for the unrepresented employees and AFSCME custodial-maintenance unit. Thus, the settlement with the custodial-maintenance unit and the increase granted unrepresented employees has precisely the same package value as the percentage increase proposed by the Employer to the MTI, whereas the MTI proposal carries the cost of 13.52%. With respect to the unrepresented employees the persuasive effect of the 9% increase unilaterally granted carries minimal impact because it is not a negotiated increase, therefore, it can hardly establish a pattern of settlement. The settlement with the AFSCME unit is a bargained settlement and bears closer scrutiny. Clearly, the final offer of the MTI is 4.52% above the settlement entered into between this Employer and the custodial-maintenance unit represented by AFSCME. The undersigned, however, is mindful of several other facts which influence this comparison. First, the 9% AFSCME settlement among custodials follows a 13.4% award to this same unit for the preceding year. (Union Exhibit No. 23) In his award Arbitrator Bilder indicated in his dicta that he felt the 13.4% award was high, and that the parties would be able to adjust for the high side award in the subsequent round of bargaining. The undersigned feels it is reasonable to conclude that the 9% settlement was influenced by the 13.4% award of the prior year. Furthermore, the dispute in the instant matter is over a wage reopener and, therefore, the undersigned considers it appropriate to consider the prior year's settlement along with the parties' proposals for the current year. The record establishes that the package settle-

ment to this bargaining unit was 10.74% for the 1980-81 contract year, 2.66% less than the AFSCME award. (Employer Exhibit No. 12) If the Employer offer were adopted here the sum total of the package settlements would total 19.74% compared to the AFSCME settlements over that same two year span of 22.4%. If the MTI offer were adopted, the two year package increases would total 24.26% compared to the AFSCME two year package settlements of 22.4%. Thus, if the Employer offer is adopted the instant unit would settle for 2.66% less over the two years than the total of the AFSCME settlement, whereas if the MTI offer is adopted the settlement would be 1.86% more than the total of the AFSCME settlements for the same two years. Therefore, viewed over the two year span the patterns of settlement when compared to the AFSCME custodial-maintenance unit settlement again favor the MTI offer.

Finally, with respect to patterns of settlement there is evidence entered in this record with respect to percentages of settlement among other Madison area employers and unions. The undersigned, with one exception, finds this evidence to be unpersuasive. There was testimony (TR 1, p. 76) in the record with respect to the percentages of settlements that step increases were included in the costing. Union Exhibit No. 84 establishes that step increases were not included in the costing of settlements for the City of Madison. Consequently, the undersigned places no reliance on the evidence with respect to other area employer settlements, except for the settlement awarded involving the teacher unit in a med/arb case involving Madison Area Vocational, Technical and Adult Education/District No. 4. In that matter Arbitrator Krinske on November 20, 1981, awarded the Employer's final offer of 11.88% package cost, which included a 7.75% increase to each cell of the salary schedule. The Union had proposed in its final offer a 9.95% increase at each cell for a package cost of 14.67%. Krinske in awarding to the Employer comments, however: "On salary offer and cost of total economic package, the data would seem to slightly favor the Union." Krinske then awarded for the employer by reason of other provisions proposed by the Union in its final offer, which he held to be unreasonable. Therefore, based on the Krinske award in Madison Area Vocational, Technical and Adult Education/District No. 4 both the award and the Union proposal on economics which Krinske slightly favored establishes a preference for the MTI proposal here.

Therefore, when considering all of the patterns of settlement for the reasons discussed in the preceding paragraphs, the undersigned concludes that the patterns of settlement favor the adoption of the MTI final offer.

COST OF LIVING

The parties have entered evidence with respect to cost of living increases into the record. The parties have made the classic arguments with respect to whether the CPI or the PCE is the appropriate measure of increased cost of living. The Employer further argues that his offer more nearly approximates the increase in the Consumer Price Index than does the MTI final offer; that the increases teachers in the District have received over the past ten years exceed the percentage increase of the Consumer Price Index. The MTI on the other hand opposes the Employer position in these matters. The undersigned has reviewed all of the cost of living data and concludes that the cost of living criteria is not the determinant criteria in this dispute. The undersigned has previously held that when considering the cost of living criteria, the measure of protection against inflationary increases should properly be measured by considering the voluntary settlements entered into among other employers and unions who have experienced the same cost of living increases as the parties to the present dispute. (See Merrill Area Public School District, WERC Dec. #17995, (1/81); School District of Port Washington, WERC Dec. #18726-A, (2/82)) Here the patterns of settlement favor the adoption of the MTI proposal and the undersigned, therefore, concludes consistent with his earlier holdings that said patterns of settlement are determinative of the insulation against cost of living increases to which the employees represented in this bargaining unit are entitled.

ABILITY TO PAY

The evidence credibly establishes the following facts with respect to ability to pay:

1. The differences between the values of the parties' final offer is $1,639,130 without rollups, and if rollups were added the difference would approximate $1,800,000.

2. The total dollars of tax levy have increased from $47,182,602 in 1977 to $56,212,512 in 1982, a 19.14% increase in taxes levied by the District.

3. The mill rates levied since 1978 are: 1978 - 17.56; 1979 - 15.70;

1980 - 13.13; 1981 - 12.55; 1982 (estimated) - 13.93.

4. The 1981-82 total operating budget was adopted in the amount of $78,600,573 which was approved by a 4 to 3 vote of the School Board, and was approved by the fiscal control authority by a narrow margin, after the fiscal control authority mandated a $200,000 cut in the budget.

5. Adoption of the budget required a tax levy increase of 11.11%.

6. The budget was constructed assuming a 9% package increase to the employees represented by the MTI.

7. The tax levy rate for the 1981-82 school year ranks the Employer, when comparing levy rates among the 14 comparable school districts, third highest in tax levy rate rankings.

8. The 1981-82 budget contains no surplus sufficient to fund the additional $1.8 million which will be required if the MTI final offer is adopted.

9. The 1981-82 budget contains budget cuts in many areas of the budget, including deferred maintenance on present maintenance needs.

10. The budget contains no flexibility with respect to capability of transferring sums from one budget account to another so as to fund the MTI offer.

11. An award for the MTI would result in a tax levy increase for the subsequent year in excess of 6% if no other actions were taken by the Employer to reduce the cost of the award.

12. The student teacher ratio has decreased from the 1977-78 school year to the 1981-82 school year from 16.1 to 14.8.

13. The student enrollment in the schools of the Employer has declined from the 1977-78 school year to the 1981-82 school year from 27,985 to 23,059.

14. The Employer has considered alternative means of financing the MTI final offer which includes reduction of personnel via layoff in order to reduce the impact on the budgetary increase for the subsequent year.

The question before the Arbitrator is whether the facts set forth in the preceding paragraph establish an inability on the part of the Employer to pay the proposed final offer of the MTI. The Employer contends that in preparing his 1981-82 budget he gave priority to a provision for employee increases, and established the total package increase for all employees at 9%. Thereafter, the Employer established all other budgetary items. The 9% total compensation

increase provided for in the 1981-82 budget was never adjusted in the budget making process after it had been initially set. The Employer in his brief argues that the circumstances by which the Employer here formulated his 1981-82 budget squares with the method used by the School District of Greendale where in a Voluntary Impasse Procedure Arbitrator Byron Yaffe in February, 1981, noted in his Award that the starting point for that Board's deliberation over its budget commenced with a determination of what constituted a fair salary offer, and later gave weight to said facts in concluding that the Board had gone through a conscientious, reasonable and non-arbitrary budget making process. Implicit in Yaffe's award is a determination as to whether the sum set aside in the budget constituted a fair salary offer. Obviously, in School District of Greendale, Yaffe concluded that the sum set aside there in the budget for a salary offer to the teacher unit was a fair amount. The undersigned will, therefore, determine whether the Employer here, in establishing a 9% total compensation increase, established a fair salary offer. If he did not, then the remaining portions of Arbitrator Yaffe's School District of Greendale decision has little instructive value. A review of the evidence satisfies the undersigned that the 9% which the Employer set aside here falls short of being a fair amount for total compensation increase purposes. The very patterns of settlement which have been discussed in the prior sections of this Award establish that the sums set aside for settling these negotiations, fall significantly short of the patterns of settlement. As discussed in a prior section of this Award, the Employer offer places approximately 5.5% to 5.6% increase on each cell of the salary schedule, while the patterns of settlement among the other comparable school districts to which the parties have agreed establish that the average percentage applied to the cells of the comparable districts' salary schedules range from 8.1% to 8.7%. Thus, the Employer offer falls 2.6% to 3.1% below the average of the patterns of settlement. This in and of itself establishes to the satisfaction of the undersigned that the sum set aside in the budget for salary purposes was not fair or sufficient. Furthermore, the Employer, when negotiating this Collective Bargaining Agreement, made a proposal for the 1981-82 school year in the amount of $12,950 base. The parties failed to agree on the $12,950 base for 1981-82, and they settled their agreement by providing for the

wage reopener which gives rise to the dispute now before this Arbitrator. The fact that the Employer had previously offered a base of $12,950 for the present year, whereas it's current final offer is $12,880, further reinforces the undersigned's conclusion that the sum set aside for salary increase settlements with this unit fail to constitute a fair amount.

The Employer further argues that the 9% proposed increase to this unit requires a reduction in all other budgetary items in the amount of $256,588. The undersigned believes the Employer to be inaccurate in this calculation and argument. The Employer argument is predicated upon the foundation that 75% of the budget goes to wages and fringe benefits, and that by applying the 75% factor multiplied by the 9% increase for new money for wages and fringes would result in a required budget increase of $4,948,487, compared to a total budget increase of $4,691,899. The Employer then reasons by subtraction it is necessary to have cut the $256,588 from other areas of the budget not directly bearing on wages and fringe benefits to employees. The undersigned concludes that the Employer is erroneous in his calculations because the 9% compensation increase which was budgeted is not a true budget increase of 9%. Earlier, it was determined that the Employer had used the cast back method in determining that his total compensation offer was valued at 9%. The 9% value of the Employer offer in this dispute is accurate in so far as it applies to the increases granted to the teachers remaining in the employ of the Employer. It is, however, not accurate with respect to the actual differential between the 1980-81 budget and the 1981-82 budget, because it fails to take into account the reduction in the number of teachers in the District. From Employer Exhibit No. 36, the 1981-82 adopted budget, the undersigned has totaled the increased budgeted personnel expenses for teachers, librarians, psychologists, etc. from pages 2 through 50 of the budget, and the sum total for said salary increases totals $1,827,508, a sum that approximates the true budgetary salary increase impact of the Employer's offer as it goes to the unit represented by the MTI. Furthermore, Union Exhibit No. 57 exemplifies the true budgetary impact of the parties' respective final offers when viewed from a budgetary viewpoint rather than from an employee compensation increase viewpoint. While the undersigned is not satisfied that all of the data contained within Union Exhibit No. 57 is accurate, the method

employed by the MTI is appropriate for comparing budgetary impact from the year 1980-81 to the year 1981-82. The undersigned estimates that the true budgetary impact of the proposed increase to teachers in this unit is in the vicinity of 5%. Since the overall budget increase is 6.4%, it follows that the budgetary amount the Employer has allocated for compensation increases for this unit falls below the percentage increase for the total budget.

The Employer argues that the concept of financial ability of the unit of government to meet the costs of the proposed settlement has been defined to include situations where the employer is required to raise taxes, borrow funds, exceed cost controls, or eliminate programs. In support of the foregoing definitions the Employer cites prior arbitration awards, including Two Rivers Public School District, WERC Dec. No. 18610-A (10/81); City of Wauwatosa (Police), WERC Dec. No. 12811-A (2/75); Sawyer County (Sheriff's Department), WERC Dec. No. 14112-B (6/76); City of Beloit (Police), WERC Dec. No. 14421-A (8/76); City of Oconomowoc (Police), WERC Dec. No. 12388-A (3/74); Herman Consolidated District #22 School Board, WERC Dec. No. 18037-A (5/81); School District of Greendale, Voluntary Impasse Procedure (2/81); Richmond Elementary School, Jt. District No. 2, WERC Dec. No. 18176-A (5/81). The Employer argues that if any of the foregoing factors exist it is sufficient to support an employer's argument of inability to pay, and contends that in the instant matter all four factors are present.

There is no question that an award for the MTI final offer in this matter will throw the 1981-82 budget into a deficit position. The facts as stated in the first paragraph of this section of the Award clearly establish that, and, furthermore, the MTI in its argument recognizes that awarding for their final offer will create a deficit budgetary position for the Employer for the year 1981-82. Given the time at which this Award issues, it is impossible for the Employer to consider reducing staff, eliminating programs, or increasing taxes of a sum sufficient for this budget year to offset the deficit. The undersigned further concludes that the deficit created if the MTI offer is awarded will carry negative impact into the budget year 1982-83 by the amount of deficit created by an award for the MTI. Furthermore, given the timing of this Award, based on the undersigned's experience that establishes that there is a lapse of

approximately thirty days before retroactivity can be calculated and paid, the actual payment of any sums of money will be on the threshold of the succeeding budget year, which commences July 1, 1982, and runs through June 30, 1983. From all of the foregoing, given the timing of this Award, the undersigned concludes that an award for the MTI impacts the 1982-83 budget rather than the 1981-82 budget. While the undersigned is reluctant to make an Award which would result in a budget deficit in the amount of approximately $1.8 million, because the Employer offer here has undershot the average pattern of settlement by a range of 2.5% to 3.1%, and because the actual budgeted amount for compensation increases to this unit is approximately 1.4% less than the increases budgeted for the total budget; the undersigned concludes that a finding of inability to pay because adoption of the MTI offer throws the 1981-82 budget into deficit should be examined very carefully.

The record establishes that the $1.8 million deficit which would be created by the adoption of the MTI final offer would require a tax levy increase of about 2.3% for the 1982-83 budget to fund the MTI offer for 1981-82, and that an additional amount of approximately 2.3% would have to be included to continue that increase for the year 1982-83, if no other actions were taken by the Employer. The Employer, however, has made it clear that he has an alternative method in mind to fund the budget deficit carryover into the 1982-83 budget, where in the testimony of Superintendent Hafeman and in Employer Exhibit No. 35 the Employer states that he is prepared to layoff teachers to implement the MTI offer if it is awarded. In a document (Employer Exhibit No. 35) entitled "Recommendations for the Operation of the Madison Metropolitan School District for the Year 1982-83" at Recommendation #11, pages 11 through 13, Superintendent Hafeman makes the following recommendation:

> The 1982-83 budget must be prepared with an alternative that is cognizant of an arbitrator's award in favor of the financial packages of Madison Teachers Inc. and Local #60 Custodians.
>
> If arbitration awards are made in favor of the positions taken by MTI and Local #60, the District will be approximately $2,000,000 over the 1981-82 authorized expenditure level. It will be necessary for the District to return to the Fiscal Control Group for permission to increase the 1981-82 expenditure level by that amount.
>
> The District does not have any unexpended surplus, so any additional expenditure must be supported by the tax levy. Since the Board and the union groups are bargaining 1981-82 wages and benefits, the impact of an arbitrator's award in favor of MTI and Local #60 would not have an

impact on the tax levy until 1982-83. At that time, the deficit of $2,000,000 would have to be added to the tax levy, thus increasing the levy 3.5 percent.

* * * * * *

The total impact of an arbitrator's award in favor of union positions, given the previous assumptions, would be to increase the 1982-83 tax levy by 7.0 percent or $4,000,000.

An alternative available to the Board of Education is to not assume a $2,000,000 carryover to the 1982-83 budget. Choosing that option would mean an additional reduction of $2,000,000 added to the reductions that will be necessary to limit the 1982-83 budget increase to 6 percent.

A reduction of $2,000,000 in addition to reductions necessary to limit the 1982-83 budget increase to 6 percent will require substantial reductions in both program and staff. If those reductions are not planned for in conjunction with the normal budget planning process, when the arbitrator's decision is made in March, it will be too late to reduce staff, thus eliminating staff reduction as an alternative to the Board of Education.

* * * * * *

As stated earlier, consolidation efforts will have to continue if the 1982-83 budget is to be maintained at a 6 to 8 percent increase. This will mean a reduction in 40 to 50 personnel and other program reductions. The consequences of reducing an additional $2,000,000 would be to reduce staff by an additional 50 positions and eliminate various support programs. Cost savings from school closings would aid reductions by approximately $400,000. However, the significant impact of reducing $2,000,000 would be to reduce the professional staff, increase class size, and reduce program support to specific students.

From the foregoing Superintendent recommendations, it is clear that the Employer has a means by which it can pay the MTI final offer. As noted above the 1981-82 budget deficit will impact the 1982-83 budget, and the recommendations establish that the offer can be funded in the 1982-83 budget without adverse impact on the tax levy for the 1982-83 budget year.

In his recommendations the Superintendent suggests the layoff of 100 staff employees. Significantly, the layoff of 100 staff employees would establish a lower pupil/teacher ratio than existed in the 1977-78 school year. Employer Exhibit No. 24 establishes that in 1977-78 there were 27,985 pupils and 1,732 teaching staff, a ratio of 1 teacher for every 16.1 pupils. In 1981-82 there were 23,059 pupils and 1,554 teaching staff, a ratio of 1 teacher for every 14.8 pupils. If the ratio were maintained at 16.1, the number of teaching staff required for 23,059 pupils in the 1981-82 school year would be 1,432 teachers, 122 less staff than actually employed in 1981-82. Since the layoff of 100 staff members recommended by the Superintendent to finance an award to the MTI would establish a pupil/teacher ratio at a level less than the ratio

which existed in the 1977-78 school year, the undersigned concludes that the reduction can be accomplished without adverse effect on programs.

The undersigned now concludes that the fact that the 1981-82 budget will be thrown into a deficit by reason of adoption of the MTI award fails to establish an inability to pay on the part of the Employer because the MTI offer can be implemented in the 1982-83 budget year where it need not have adverse effect on programs or on the tax levy, notwithstanding the fact that an award to the MTI will place the Employer in a position exceeding cost control limits.

SUMMARY AND CONCLUSIONS:

The undersigned has concluded that the MTI offer is preferred when considering salaries paid to teachers in comparable school districts, and also when considering patterns of settlement which have been established in comparable school districts for teacher units. The undersigned has further concluded that the Employer, under the unique set of facts as they exist here, has failed to establish to the satisfaction of the undersigned, that he has an inability to pay within the meaning of the statutory criteria found at Section 111.70 (4) (cm) 7, c. It follows from the foregoing that the MTI final offer in this matter is to be adopted. In awarding for the MTI final offer this Arbitrator is mindful that the MTI has achieved a settlement slightly in excess of what the patterns would normally dictate, and the undersigned would have preferred to adopt an offer for the MTI which was somewhat lower than the final offer they proposed. In view, however, of the extremely low offer of the Employer in this matter when compared to patterns of settlements among comparable school districts, and when compared to the salaries paid in comparable school districts, the undersigned concludes that the MTI final offer should be awarded. The undersigned further suggests that the Employer may defer the payment of the retroactivity created by this Award until the beginning of the 1982-83 budget year.

Therefore, based on the record in its entirety, after considering the arguments of the parties and the statutory criteria, the Arbitrator makes the following:

AWARD

The final offer of the MTI is awarded.

Dated at Fond du Lac, Wisconsin, this 21st day of May, 1982.

Jos. B. Kerkman, Arbitrator