WICONSIN EMPLOYMENT RELATIONS COMMISSION

BEFORE THE MEDIATOR/ARBITRATOR

In the Matter of the Mediation-Arbitration Between	:	
MADISON AREA VOCATIONAL, TECHNICAL AND ADULT EDUCATION DISTRICT	:	
and	:	AWARD AND OPINION
MADISON AREA TECHNICAL COLLEGE TEACHERS UNION LOCAL 243, WFT, AFL-CIO	:	Decision No. 19793-A

Case No.	XXIX No. 29999 MED/ARB - 1785 Decision No. 19793
Hearing Date	September 3, 1982
Appearances:	
For the Employer	Lee, Johnson, Kilkelly & Nichol, S.C., Attorneys at Law, by MR. DONALD D. JOHNSON MR. NORMAN MITBY District Director
For the Union	MR. WILLIAM KALIN, Staff Representative
Mediator/Arbitrator	MR. ROBERT J. MUELLER
Date of Award	November 22, 1982

BACKGROUND

The Madison Area Technical College Teachers Union Local 243, WFT, AFL-CIO, hereinafter referred to as the "Union," and Madison Area Vocational, Technical and Adult Education District No. 4, hereinafter referred to as the "District," reached an impasse in bargaining for a successor Collective Bargaining Agreement to a labor agreement that expired June 30, 1982. Following proceedings by the Wisconsin Employment Relations Commission on a Petition to initiate mediation/arbitration pursuant to Wisconsin law, the undersigned was appointed to serve as the mediator/arbitrator and to resolve the impasse between the parties pursuant to the procedures provided by statute.

Mediation was conducted on September 3, 1982. The parties remained deadlocked despite mediation efforts. At the conclusion of such efforts, the parties were given opportunity to amend or withdraw their respective final offers and each party declined to either amend or withdraw their respective final offers. The matter then proceeded to be heard in arbitration on the same date. The parties subsequently filed post-hearing briefs which were exchanged through the mediator/arbitrator.

FINAL OFFERS OF THE PARTIES

The parties had reached mutual agreement and stipulations as to all terms and conditions to be contained in the successor agreement with the exception of one issue, being that of the appropriate percentage increase to be applied to each cell in the 1981-82 salary

schedule for the contract year 1982-83. Each of the respective offers are as follows:

DISTRICT'S FINAL OFFER: Increase each cell in the 1981-82 salary schedule by 6.25%.

UNION'S FINAL OFFER: Increase each cell in the 1981-82 salary schedule by 8.5%.

POSITIONS OF THE PARTIES AND DISCUSSION

Each of the parties presented evidence and directed their presentation and arguments in a mutually professional and concise manner at the statutory factors specified in Wisconsin Statutes, Chapter 111.70(4)(cm)(7). Both parties expressed agreement by both words and evidence submitted that some of the statutory factors were not subject to substantial relevance to the bargaining relationship in this specific case.

Both parties agreed that factor, "a. The lawful authority of the municipal employer," was not an issue in this case. They further agreed that factor, "b. Stipulation of the parties," is not at issue as all other terms of the agreement have been agreed upon with the exception of the single salary issue. The arbitrator would note that any consideration due such factor would be in conjunction with other factors to the extent that the stipulations involve impact on total compensation, (factor f) or possess relevance as to comparability consideration, (factor d).

Both parties presented evidence and argument with respect to consideration of factor c, which provides,

> "The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement."

Before embarking on a discussion of the issue, the evidence, the statutory factors and the parties positions, it is necessary to delineate matters on which the parties are in agreement. Both parties agree on the cost of their respective proposals. The District's final offer of 6.25% increase on each cell of the 81-82 salary schedule generates a total increase in cost of 8.3208%, or a total dollar budget increase of $853,687.00. The Union's final offer of 8.5% increase on each cell of the salary schedule generates a total increase in cost of 10.4923%, or a total dollar budget increase of $1,076,471.00.

In addressing the impact of the Union's final 8.5% offer on the factors expressed in factor "c", the District observes in its brief as follows:

> "The employer raises no issue relating to funding the arbitrator's award. This, however, totally disregards Wisconsin Statutes Sec. 38.29, 9.5% operational budget limitations. . . . Under this mandate the municipal employer is prohibited from exceeding a 9.5% operational budget increase over the prior year. This law has been effective since the 1975-76 fiscal year. The budget adjustments necessary to enable the district to fund the 8.3208 have already been finalized."

The contentions of both parties appear to have reasonable bases and support in the total factual circumstance. Each party has skillfully pointed out and argued those factual matters that most aptly support their respective position.

The District stated that when the budget for the 1982-83 fiscal year was first presented to the Board, that it exceeded the 9.5% cost control constraint by a substantial margin. The Board then directed that the budget be reduced by $2,288,819.00 so as to comply with the 9.5% cost control constraint. The history related

that after a public hearing on the budget, that the Board approved a budget that was then within the 9.5% cost control. Under such budget, however, the salary increase projected within the constraints was that of a 2% increase or a total package cost of 4.073%.

Subsequent to the adoption of such budget, negotiations took place between the District and the Union. As a result of such negotiations, the Board concluded that a realistic settlement could not be achieved at a 2% salary increase level and they then revised the budget so as to yield a salary increase of 6.25%, which constitutes the District's final offer in this case, so as to result along with the costs and/or reallocations of budgetory items in other areas of the budget, to keep the total budget within the 9.5% constraint. The District contends that the Union's final offer would violate the cost control by almost a full percentage point.

The Union addresses the constraint referred to in Section 38.29 of the Wisconsin Statutes in its brief as follows:

> "The employer may argue that the 9.5% operational budget limitations prohibits them from exceeding the 9.5% 'allowable budget', this is not the case. Before the district would be placed in a position of exceeding the 'allowable budget' there are appeal systems contained in the Wis. Stats. 38.29(3) & (4).
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> "In addition to the appeal system it must be realized that the only significance of the budget limitation is that if the district does not appeal or the appeal is denied and thus is considered over the 'allowable budget' the district will not receive state aid on that portion in excess of the 'allowable budget' or the District's aidable cost' Ref. Wis. Stats. 38.28 (1) (1m) (a) (1). It also must be noted that the district is presently at only 9.3% 'allowable budget'. (Union Exh. 16)
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> "District Director, Norman Mitby, in the publication of 'Alumni Update', Summer 1982 (Union Exh. 17) stated 'District #4 has consistently had the lowest mill rate for operations of any of the 16 vocational districts in the state.' He further stated 'while other educational institutions and systems are experiencing declining enrollments, District #4 continues to experience increasing enrollments, obviously this causes an increase in the budget.'
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> "The following problems are to be gleaned from the above statements: a. It would appear that District #4 can only maintain the lowest mill rate shaving operational costs somewhere. The shaving has consistently been coming at the expense of the salaries of the teachers of District #4."

Each party made reference to the taxable base of the District, the percentage increases of the equalized value over the years, the level of tax rate required to raise the budgeted monies each year and generally pointed out aspects thereof which were each intended to support their respective positions.

The District pointed out that where the equalized value growth of the District had averaged approximately 12% over the past several years, that it increased but 6.6% from 1980 to 1981, and that it was their estimate that the increase from 1981 to 1982 would be approximately 4%. The District further contends that there is to

be anticipated cuts in federal funding and that due to the widespread unemployment in the District and the escalation of delinquent property taxes within the District, that a greater burden is thus placed upon the taxpayers who pay their taxes, and upon the students through potential increased tuition and fees.

The Union countered such argument by the District in contending that in the prior year the District had based their budget and position on estimates which proved to be low. They contend that the District is doing the same thing this year specifically to the effect that where the District has estimated a 4% increase in the District's equalized valuation, that the actual percentage increase is in the amount of 4.87%. Additionally, the District underestimated the excess in the prior fiscal budget that would be carried over and available for the 82-83 budget to the extent that allowed the District to revise and lower its property tax levy by an additional $247,000.00. Such reduction served to reduce the tax levy when in fact the District 4 tax levy has historically been lower than that of other districts.

In this case, there apparently did not exist any significant differences between those fringe benefits contained in various labor agreements covering employees performing similar services in other employing areas to those provided employees under consideration in this case. It appears from the evidence that the parties have basically agreed that any differences that may exist are differences that do not warrant major consideration in this case.

The evidence does indicate that among the agreed upon issues not submitted for resolution herein, that the parties had agreed to a modification involving a nominal improvement as to accumulation and use of sick leave, which cost was computed on the basis of the total cost computation of constituting a .1462 percentage cost within the total percentage cost of the District's offer of 8.3208%. The evidence reveals that such exact sick leave use provision was contained in the Milwaukee VTAE District contract and that similar language was contained in the Waukesha VTAE contract. Aside from reference to such improvement in the fringe benefit area, the parties did not otherwise present evidence or address arguments to the "overall compensation" factor as contained in paragraph "f" of Wisconsin Statutes 111.70(4)(cm)7.

Such arguments as were utilized by the parties, and evidence submitted, address the factors contained in paragraph "d" and paragraph "f" of the statute without differentiation as to which of the two factors the evidence or argument is directed.

The major thrust of the Union's presentation and argument under those elements of factors "d" and "f" of the statute was to review the percentage level of settlement that the District attained for the 1981-82 contract year in comparison to those other districts consisting of Milwaukee, Waukesha, Gateway and Blackhawk, and to compare the percentage offers of each of the parties in this case to those settlement levels that are in place in other districts for the 1982-83 school year.

The Union described the level of settlement for 1981-82 and its claimed relevance to this case in its brief as follows:

> "Madison Area Technical College (Dist. #4) is the second largest VTAE District in Wisconsin on the basis of District and pupil population and it serves the second largest city in the state. (Union Exh. 4). It has been the history of bargaining and arbitration between the employer and the union to compare with three Voc-Tech districts, Milwaukee, Waukesha and Gateway. During the arbitration for the 1981-82 salary schedule the employer introduced Blackhawk as a possible comparable (testimony during hearing).
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> "Increases in salary schedules in the three comparable districts for 1981-82: (Union Exh. 10)

	BA Minimum	BA Maximum	MA Minimum	MA Maximum
Milwaukee	8%	8%	8%	8%
Waukesha	8.25%	8.25%	8.25%	8.25%
Gateway	9.0%	11.70%	9.0%	9.0%
Madison	7.75%	7.75%	7.75%	7.75%
*Blackhawk	10%	10%	10%	10%

(*-District proposed comparable district in arbitration for 1981-82 salary schedule)"

The Union also contends that the arbitrator who awarded the Employer's final offer for the 1981-82 contract, was required to chose between the Employer's offer of 7.75% increase to each cell of the salary schedule, which constituted a total package cost of 11.88% as compared to the Union's final offer of 9.95% increase at each cell of the salary schedule with a total package cost of 14.67%. The Union points out that in awarding for the Employer in such case, that the arbitrator made the observation that the data which he considered as bearing on the salary offer only, seemed to slightly favor the Union but that the award for the Employer was based upon a finding that other provisions proposed by the Union in its final offer were unreasonable. The Union contends that they very carefully considered that statement by the arbitrator in arriving at its final offer in this case. The Union in essence contends that where their salary offer of 9.95% increase of last year was found to be more adequately supported by the comparative data, that a lesser final offer of 8.5% salary increase on this occasion, should likewise be found to be more appropriately favored by application of the comparative salary data.

With respect to the percentage increases of those districts who have settled for the 1982-83 academic year, the Union states in its brief as follows:

> "Of the three or four comparable districts (Arbitrator should consider past bargaining history and union Exh. 4 in determining comparables) only Milwaukee has settled for the 1982-83 academic year. Each cell was increased by 8% generating a total package cost of 10.20%. (Union Exh. 6)
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> "Union Exh. 6 'percentage increases--1982-83' also shows two other districts having voluntarily settled for 1982-83.
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> "Moraine Park, 8% increase each cell, total package cost, 12.3% and Western Wisconsin, 6% increase each cell, total package cost 9.95%. With respect to WWTI, the parties further agreed to rebid health and dental insurance with the savings going directly to the teacher's income. The only other settlement for 1982-83 to occur in the VTAE Districts, since the arbitration hearing was the ratification of the Southwest Tech settlement contained in Employer Exh. 13.
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> "By comparing the 1981-82 salary of Southwest Tech (Union Exh. 8) with the 1982-83 schedule in Employer Exh. 13, we find that the Schedule increased by 8% with a total package cost including improved fringe benefits of 14.8% over the previous year.
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> "Based on the proceeding, it is obvious that District #4's settlement for 1981-82 was not only below the comparable district but below all VTAE Districts in the state. It is also clear that the employer's offer of 6.25 percent of each cell generating a cost of 8.32 percent is below comparable

district cell increases and below all settled VTAE Districts total package increase for 1982-83.

"It has been well established that the district which is most comparable to District #4 is Milwaukee. As pointed out previously, Milwaukee has settled for an 8% increase for the 1982-83 academic year. Surely a request by the Union for 8.5% (which is only .5% higher than Milwaukee) is much more reasonable than 6.25% offered by the Employer (which is 1.75% lower than Milwaukee)."

The District presented salary data of 15 other VTAE districts and made comparisons with this District at various levels of the salary schedule at the 1981-82 salary levels. The District analyzes its respective comparative position with select other districts in its brief as follows:

"Of the above listed institutions, District No. 4 historically has occupied the third position in the State behind MATC-Milwaukee and Waukesha. We are now ahead of Waukesha. Patently the Board's final offer will maintain that position. The Union goes to great lengths to dwell on percentage increases in some of the smaller districts. We submit that when objectively viewing this material the percentage increase applies to smaller annual salaries and even with the increase they will not approach parity with District No. 4. The leadership position which District No. 4 occupies is also manifest in Employer's Exhibit 1, Pg. 27. Chronicle of Higher Education. It is particularly important to note that in the State of Wisconsin system - only full professors in the University system have a higher average salary. Associate professors and assistant professors are less than the $26,000.00 average annual salary paid at MATC - Madison. Moreover, MATC is the leader among vocational and technical schools according to the publication. By way of comparison with other institutions of higher education, within the vocational system we believe as does the Union that the following districts are the most comparable to-wit:

	Area VTAE Dist. 4	Black-hawk	Gate-way	VTAE Dist.1 (EauClaire)	North-east (Green Bay)	Waukesha VTAE Dist.	Madison Public Schools
B.A. Minimum	$15,349	$14,019	$13,945	$14,608	$13,420	$14,206	$13,420
B.A. Maximum	26,136	21,474	22,978	22,232	19,755	25,169	22,814[2]
M.A. Minimum	16,914	15,585	15,213	16,600	14,810	15,421	14,762
M.A. Maximum	27,989	24,562	24,583	25,436	25,125[1]	28,636	24,156[2]
M.A.+ or Ph.D.	17,679	16,843	17,115	17,986			16,775
M.A.+ or Ph.D. Maximum	30,749	26,550	26,561	27,298			28,182[2]

[1]$500 additional if on twelfth step of schedule 1979-80 school year.

[2]$671 additional upon principal or supervisor approval and four credits

Clearly there is no need by District 4 to pay any catch up."

The District further argued that the 8% settlement that is effective for the Milwaukee District, is the settlement for the second year of a two-year agreement. They contend that such 8% should be discounted because of it having been entered into at a time when the economy was much more aggressive, layoffs were substantially less than at the

present time, inflation was substantially higher, and that the amount of the second year settlement was substantially influenced by such more optimistic facts that then existed.

The District entered into evidence the fact that there have been no settlements in VTAE districts other than those referred to by the Union in Western Wisconsin, Moraine Park, and Southwest Tech. They contend that with respect to all three of such districts, that while the percentage increase may be somewhat higher than that offered by the District in this case, that such percentage operates on a salary schedule that is substantially lower than that of District 4 and that it thus results in total dollar cost that would be closer to the dollar cost at a lower percentage as applied to the salary levels of this District and that a portion of such increases at the lower rated districts may properly be viewed as catch up type increases to some extent. The District pointed out that other than such settlements, in the Blackhawk District there has been no Board offer as of the date of the arbitration and that the Board offers have been as follows at the following districts as of the date of the arbitration hearing in this case: Gateway District - 6.5%; VTAE District No. 1 (Eau Claire) - 5.11%; Northeast Wisconsin (Green Bay) - 5%; and Waukesha VTAE District - 5%.

Both the Union and the District contend that an application of the considerations expressed in factors "d" and "f" of the statute to the comparability data utilized by both parties, more properly supports their respective positions.

With respect to the factor specified in paragraph e of the statute, being "cost-of-living," the Union utilized the percentage increase as applied to all urban consumers in small metro areas of 9.1% in addressing this factor while the District utilized the percentage for small metro areas for urban wage earners and clerical workers, which percentage was 8.8%. Such percentages constituted the percent change in the cost-of-living from June 1981 to June 1982.

In arguing this factor, the Union referred to the percentage offer of 6.25 by the District as compared to the Union offer of 8.5% in making comparison to the 9.1% increase for all urban consumers over the one-year period. The Union also pointed out that as a result of the 1981-82 arbitral settlement, that the District's total package settlement at that time was more than 2.5% below the CPI percentage for the previous year at that time. They contend that the Union's final offer of 8.5% is much closer to the corresponding CPI change but is still .6% below the 9.1% CPI yearly change.

The District argued that the CPI indexes overstate increases in the cost-of-living through the inclusion of housing and non-recurrent expenses. They suggest that the true impact of inflation on employees of the District is something less than the 8.8% increase in the CPI index. They contend that the gross percentage cost of 8.3208% more closely approximates the true increase in the CPI as it impacts on the employees of the District than does the Union's total package offer which constitutes a percentage increase of 10.4923.

With respect to the consideration of factor "g" of the statute concerning changes in any of the circumstances during the pendency of the arbitration proceedings, the District contended that there have been no substantial changes in such circumstances except to the extent that all persons have become more accutely aware of the depressed state of the economy, the high percentage of unemployed that continues to prevail, and the increased attention on the part of public employers to the need to cut costs and minimize loss of funds and shortfall in budgets.

The Union, on the other hand, contended that the changes that occurred during the pendency of the arbitration proceedings were changes that reflected more favorably on the Union's final offer to the effect that the true equalized valuation of the District increased .87% more than the 4% estimated by the District when preparing their budget. As a result of such higher equalized valuation subject to taxation in the District, the District was able to reduce its mill rate and in addition, due to a greater carryover of funds from last year's budget, were able to reduce the property tax levy by a significant amount.

The subject case is all the more difficult for resolution by the undersigned for the simple reason that the final offers, as submitted by both parties, are reasonably supportable by application of the various factors so that on balance, both offers must be regarded as being reasonable. Stated conversly, one cannot conclude that either offer is unreasonable.

Each final offer draws its support from the same basic supporting data and the support for one or the other final offer depends upon how such supporting data is applied to each final offer. For instance, in the approach taken by the Union in reviewing the level of settlements by percent that exists by virtue of those few who have settled for the 1982-83 year, along with the level of settlement presented by the second year of the Milwaukee District contract, one would find that such approach does, in fact, give greater support to the Union's final offer.

Where one, however, takes the actual compensation afforded employees at the various levels of the salary plan and compares such levels of compensation to the appropriate comparable levels of other VTAE Districts, one must conclude that the District's final offer is reasonably sufficient to maintain the same relative standing in relationship to other such districts despite a somewhat different percentage increase that may be effective in those that have previously settled. One can only conjecture as to what level of settlement may hereafter result through either voluntary settlement or settlements resulting from mediation/arbitration in those greater number of districts that remain to be resolved.

There is nothing in Section 111.70 of the Wisconsin Statute which in any way prescribes that a mediator/arbitrator shall give greater weight to one factor over that of others. It would thus appear that the factors must be given such weight as the facts and circumstances of each particular case and circumstances of the area involved, status and circumstances of the employees, the public employer, and the interests and welfare of those who must provide and pay the monies to fund the budgeted expenditures demand. Factor "h" of the statute refers to "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 private employment."

As above stated, the final offers of both parties are subject to ample and reasonable support by application of the evidentiary data directed at the various factors specified under the statute. In the considered judgment of the undersigned, the arguments of the two parties are basically balanced and of equal persuasiveness within the application of the criteria and factors expressed in paragraph d, e, f, and g. That leaves one with those factors specified in paragraphs c and h.

In the considered judgment of the undersigned, the state of the economy, which is referred to as a severe recession and by some as a depression, is the greatest overall circumstance that is presently exerting controlling influence on the level of labor management settlements at the current time. The high level of workers on layoff along

with the ever increasing publicity attendant to shortfall in funds that is occurring or which is predicted at all levels of public employment from the smallest public employer to the very top of the federal government, has contributed to a marked suppression of generous optimism. The increase in delinquent real estate taxes as pointed out by the District, has likewise had an impact on the public employers.

In the final analysis of applying the statutory factors to the facts and circumstances of this case, the undersigned concludes that the comparative data presented into evidence reasonably supports the final offer of either party, depending upon the viewpoint and application of such data that is applied. A literal application of the bargaining data to the two final offers in this case, does not serve as a basis for choosing one final offer over the other.

The same may be said with respect to the cost-of-living factor. The CPI index is becoming recognized to some extent as not being a true measurement of the true impact of inflation upon an employee in a particular setting. Several suggested modifications and revised indexes have emerged which arguably reflect such impact with some greater degree of accuracy. Again, however, one is unable to conclude that by application of the cost-of-living factor, that one or the other of the final offers of the parties is clearly preferable over the other.

In the considered judgment of the undersigned, the considerations that are entitled to dominant consideration and greater weight in this case, concern that consideration for the state of the economy and a recognition of its impact primarily on the practical and feasible ability of the public employer to maintain or increase a particular level of funding, and the impact on the public. Such considerations are ones which the undersigned views as being within the factors expressed and referred to in paragraphs "c" and "h" of the statute.

In the first instance, the evidence shows that the level of compensation received by the employees in this case are amongst the highest of the comparables. Under either final offer, the employees maintain that relative position. There is no showing or any evidence that any inequitable situation exists with respect to any specific or general salary level or group of employees that would require special consideration and application of the factors to their particular case. The arbitrator is unable to find on the basis of the evidence, that the employees are disadvantaged or in any way compromised were the District's final offer to be implemented. Conversely, there has been no specific showing by the evidence that the slightly higher final offer of the Union is required to correct any wrong.

In this present state of economy, a large number of employees are without jobs. Clearly, simply a retention of a current job would be a most desirable fact to such employees. Their concern most certainly would not be about whether or not they obtain an 8.5% increase as opposed to a 6.25% increase, but would be concerned simply with retention of an adequate paying job.

Such observations leads one to what the arbitrator considers as another consideration referred to in factor "f" of the statutes and that is the reference to, "the continuity and stability of employment."

Up to this point in time, those in public employment have enjoyed substantially greater continuity and stability of employment than have employees in other sectors of the economy. In fact, there has been a significant difference in that element over the past year or more. In many sectors, employees have been laid off or have worked reduced work weeks. In some cases, the layoffs have been of substantial duration and in others they have been of short but frequent occurrence. There is no showing that anything similar has occurred or even been considered with respect to the employees in this case.

With respect to the overall economy, at the time of the arbitration hearing and during the pendency of the arbitration proceedings, no bright shining lights have come on to indicate any substantial upturn in the economy. In fact, several flickering lights of hope have diminished. There is ever increasing concern amongst most public employers, with the State not being the least, about a shortfall of funds and the possibility of huge deficit Such fears simply announce the realities and effects of the down economy, the effects of which are coming increasingly into reality.

It is the considered opinion of the arbitrator that an application of the statutory factors contained in Section 111.70(4)(cm)(7) more reasonably supports the final offer of the District and on the basis of such finding, the above facts and discussion thereon, the undersigned renders the following decision and

AWARD

That the District's final offer be incorporated into the 1982-83 Collective Bargaining Agreement along with the stipulations and otherwise agreed upon provisions of the parties.

Robert J. Mueller
Arbitrator

Dated at Madison, Wisconsin
this 22nd day of November, 1982.