STATE OF WISCONSIN

BEFORE THE ARBITRATOR

In the Matter of Final and Binding Arbitration	Case XXIV
between	No. 30682
MID-STATE VOCATIONAL, TECHNICAL, AND ADULT EDUCATION DISTRICT	MED/ARB-2000
	Decision #20294-A
and	Gordon Haferbecker, Arbitrator
MID-STATE VOCATIONAL, TECHNICAL FACULTY ASSOCIATION	6-7-83

APPEARANCES:
Mr. Dean R. Dietrich, Attorney at Law, Mulcahy & Wherry, for the Employer.
Mr. David W. Hanneman, Executive Director, Central Wisconsin Uniserv-South, for the Union.

ARBITRATOR'S AWARD

BACKGROUND

This arbitration case concerns an impasse in the negotiations of a successor agreement between the Mid-State Vocational, Technical & Adult Education District (hereafter "Board," "Employer," "District," or "MSTI") and the Mid-State Vocational, Technical Faculty Association (hereafter "Association," "Faculty," or "Union"). The agreement, which has an expiration date of August 15, 1982, covers the wages, hours and conditions of employment for all full-time teaching personnel who teach fifty percent or more of a full teaching schedule including classroom teachers, librarians, media specialists, and guidance counselors.

On April 5, 1982, the parties exchanged their initial proposals on matters to be included in the contract for 1982-83. Thereafter, the parties met on seven other occasions in an effort to reach an accord, but became deadlocked. On November 12, 1982, the Union filed a petition with the Wisconsin Employment Relations Commission (Commission) requesting that the Commission initiate Mediation-Arbitration in order to resolve the impasse. On November 30, 1982, Robert M. McCormick, a member of the Commission staff, conducted an investigation and determined that the parties were indeed deadlocked in their negotiations and, upon notice to the parties of his determination, each submitted their final offers and a stipulation on matters agreed upon.

On January 31, 1983, persuant of the appointment of an impartial arbitrator, the Commission submitted to the parties a panel of five Mediator-Arbitrators from which one was selected by the parties on February 10, 1983. Then, on February 14, 1983, based upon the selection of the parties, the Commission appointed the undersigned as Mediator/Arbitrator to endeavor to mediate the issues in dispute and, failing to resolve the impasse through mediation, to issue a final and binding award selecting either the total final offer of the Union or the total final offer of the Board.

There was no citizen petition for an initial public hearing on the matter.

The parties and the Mediator/Arbitrator met at 7:00 p.m. on March 17, 1983, in the Board Room of the Mid-State Technical Institute in Wisconsin Rapids, Wisconsin. The Union was represented by David W. Hanneman, Executive Director of the Central Wisconsin Uniserv-South. The Board was represented by Dean R. Dietrich of Mulcahy & Wherry Law Firm, Wausau, Wisconsin. Members of the Union local bargaining committee, and members of the Board negotiating team and District Director were also present.

During the mediation session the Mediator met with the parties jointly and separately. As a result of these negotiations, the parties reached an agreement on one item in the Union final offer concerning extended-time wages (holiday pay) for employees on extended contracts. However, mediation was unsuccessful concerning the remaining issues. Upon agreement to amend the Union's final offer, it was agreed to proceed to schedule the formal arbitration hearing at 10:00 a.m. on April 7, 1983, at the County Board Caucus Room, County Court House, Wisconsin Rapids, Wisconsin.

The hearing of record was conducted as scheduled on April 7th. It was understood by both parties at the outset that there would be no transcript made of the proceedings. However, since there was no objection, Mr. Dietrich was allowed to make an audio tape recording of the session as long as copies would be available to the Association and Arbitrator if so requested.

During the hearing Mr. Hanneman presented 42 exhibits and gave testimony for the Union. Mr. Dietrich presented 55 exhibits and Mr. Melvin Schneeberg, District Director, as witness, gave testimony for the Board.

Prior to adjournment, the parties agreed to file written briefs by May 13, 1983, and to submit reply briefs one week after receipt of the briefs by the parties. Briefs were filed as scheduled by Mr. Hanneman for the Union and by Mr. Dietrich for the District. Reply briefs were filed by both parties as agreed and received by the Arbitrator May 25, 1983.

FINAL OFFERS

During mediation negotiations, both parties reached an agreement on one point of the Union final offer. The parties added the following to their stipulation of agreed-upon items:

"Section 4 - School Calendar and Extended-time Wages.

4. Employees who work extended contracts shall receive payment for the holidays of Memorial Day and Fourth of July provided the employee works the last workday both before and after the paid holiday."

Both parties agreed to amend the Union's final offer to exclude this point.

Final Offer of the Union

ARTICLE VI

WORKING CONDITIONS

Section B - School Day and School Week

1. - 4. (Repeat the 1981-82 language.)

5. Beginning in the 1983-84 year, each employee assigned to more than thirty seven and one-half (37 1/2) hours per week shall be compensated at 1/1330 of the employee's salary for each additional hour. Beginning in the 1984-85 year, each employee assigned to more than thirty-five (35) hours per week shall be compensated at 1/1330 of the employee's salary for each additional hour.

ARTICLE VIII

Section I - Fringe Benefits

1. Health Insurance

   a. A group health insurance program is available on an optional basis to all professional employees. It is available on both the single and family plan.

   b. The Board will pay $667.44 annually towards the cost of the individual plan or $1,730.64 annually towards the cost of the family plan. Deductions for participants shall be made monthly starting in September.

   c. The District may change the insurance carrier so long as equal or greater benefits are provided to the employees. The District agrees to consult with the Association prior to any change.

2. Dental Insurance

   a. A group dental insurance program is available on an optional basis to all professional employees. It is available on both the single and family plan.

   b. The Board shall pay up to $142.80 annually toward the cost of the individual plan or up to $411.36 annually towards the cost of the family plan. If during the term of this agreement the insurance carrier raises the rate such that the afore-referenced amounts are insufficient to pay the full premium, the Board agrees to pay the increased amount so as to maintain fully paid dental insurance.

   c. The District may change the insurance carrier so long as equal or greater benefits are provided to the employees. The District agrees to consult with the Association prior to any change.

3. Group Life Insurance: (repeat the 1981-82 language)

4. Retirement - Pension (repeat the 1981-82 language)

5. Long Term Disability Insurance

The Board will pay the full premium for a long-term disability insurance plan. The plan selected shall provide at least the following coverage; Ninety percent (90%) of the employee's gross salary after a ninety (90) day waiting period.

The first day of coverage of this LTD Plan shall be May 1, 1983. (Note: upon implementation of the LTD Insurance on May 1, 1983, the sick leave bank found in the 1981-82 agreement as Article VII Section A. 5 shall be dissolved and all employees who are members of the bank at that time shall receive a pro-rata payout of the days remaining in the bank less any days required for a current user of the bank, and said days shall be added to the employee's accumulated sick leave. Any employee who is a member of the bank on May 1, 1983, and who is withdrawing days from the bank at that time, will be allowed to continue the use of days until the LTD Plan begins to make payment to the employee.)

All remaining items of the 1981-82 Labor Agreement shall be incorporated into the 1982-83 Labor Agreement without change.

Final Offer of the Employer

1. ARTICLE VIII, Section I - Fringe Benefits, Paragraph 1 - Health Insurance shall read as follows:

   "a. A group health insurance program is available on an optional basis to all professional employees. It is available on both a single and family plan.

   b. The Board shall pay $667.44 annually toward the cost of the individual plan or $1,730.64 annually toward the cost of the family plan. Deductions for participants shall be made monthly starting in September.

   c. The District may change the insurance carrier so long as equal or greater benefits are provided to the employees. The District agrees to consult with the Association prior to any change."

2. ARTICLE VIII, Section I - Fringe Benefits, Paragraph 5 - Long Term Disability Insurance shall read as follows:

   "a. Effective May 1, 1983, the Board shall provide a long term disability insurance policy for all professional employees with the Board paying the full cost of such coverage. Coverage shall be based upon the professional employee's salary with payment of 67% of monthly salary if disabled with a ninety (90) calendar day qualification period. The District may change the insurance carrier so long as equal or greater benefits are provided to the employees."

3. ARTICLE VII - LEAVES OF ABSENCE, Section A - Sick Leave,

   Paragraph 5 shall evaporate from the Labor Agreement on May 1, 1983. Any professional employee who previously made a contribution to the Mid-State Vocational-Technical Faculty Association Sick Leave Bank shall be reimbursed on a prorated basis for days contributed to the Sick Leave Bank on the basis of the total number of days in the Bank up to a maximum of ten (10) sick days." Any employee who is a member of the bank on May 1, 1983 and is withdrawing days from the Bank will be allowed to continue to use days until the LTD Plan makes payment.

4. All remaining items of the 1981-82 Labor Agreement shall be incorporated into the 1982-83 Labor Agreement without change.

Note: The original final offers included the salary schedule but the parties have agreed upon the schedule for 1982-83.

THE ISSUES

As the final offers indicate there are three issues to be resolved by this arbitration. They are (1) the "extra pay" provision relating to employees assigned to more than 37½ hours per week in 1983-84 and 35 hours per week in 1984-85, (2) the amount of the employee's gross salary to be protected under long-term disability coverage and, (3) the appropriate Employer contribution towards dental insurance as well as the expression of that contribution.

It appears from the briefs and reply briefs of the parties that the major issue in this dispute is the work day/work week. Most of the exhibits are also related to this issue.

The Arbitrator will review the positions of the parties on each issue separately, followed by the Arbitrator's analysis and conclusion on that issue. Union Exhibits will be referred to as U-7, etc., and Employer Exhibits as E-2, etc.

THE HOURS ISSUE

Union Position. The turning issue in this dispute involves a future promise of equity. It is the work day/work week question. The Union proposal is that the inequitable work week currently in effect be phased out in 1983-84 so that in 1984-85 all bargaining unit members will have a thirty-five hour work week. If this issue had been resolved, then the arbitration proceeding would not have gone forward because the other two issues involve only a total of $1,319.

In the recent past there has been a variable work day/work week in effect at the Mid-State Technical Institute. Almost all instructors, regardless of what they have taught, have had a thirty-five hour work week and a seven-hour work day. However, instructers in affiliation, guidance counselors, media specialists, librarians and curriculum specialists, have been required to work forty hours per week without any additional compensation. This small group of people, less than twenty percent of the bargaining unit, have been required to work 14.3% more time each year for the same amount of pay. This has been a divisive issue with the membership of the Association and the Association has tried to correct the matter in a number of ways. In 1980, a Rights' Arbitration was held concerning this question (U-28). The Union position was not sustained and thus the Union tried to get contract language change in the 1981-82 and 1982-83 agreements.

On the basis of contract provisions on recognition, working conditions, and salary, the Union concludes that the positions in question (counselors, librarians, affiliation teachers, etc.) are part of the bargaining unit, have a work week that varies from other teachers, and should receive on the basis of their educational background and experience, the same pay regardless of the length of the work day/work week (Union Brief, pp. 4-5).

This inequity (40 hours instead of 35) has produced problems for the parties. Dr. Schneeberg, District Director, testified at the hearing that the work day/work week issue had created problems over the years, including a grievance arbitration.

The Union has the burden of showing that a problem is present and that other districts have been able to resolve the problem. The Union has done this.

Union Exhibits 5 through 27 deal with a 1982 survey conducted by the Mid-State Union concerning work hours for professional employees in most Wisconsin Technical Institutes. The one non-union school, Nicolet, was not included and there was no response from MATC (Madison) and GTI (Gateway).

Union Exhibits 12 through 14 summarize the survey results. Concerning counselors, 10 of the 13 responses indicated that counselors were not required to work more hours per day or per week than a regular classroom teacher. Of the three that responded that more hours were required, Milwaukee indicated a seven-hour day, a twelve-month contract, and a different salary schedule than other faculty. WCTI indicated that counselors work a 39½ hour work week and are on a different salary schedule reflecting their additional work hours. WITI indicated that counselors and librarians work a 7½ hour span (including one hour lunch) until 6-30-83 when the span will become 7 hours (U-12-13).

Of the librarians in the schools surveyed, two responded that librarians were required to work more hours than other faculty. In WITI, as indicated above, it is becoming a 7-hour daily span. For media specialist and for instructors on affiliation, there were two schools each that required more hours of those positions than the regular faculty (U-12-13). The Union concludes that a work week of thirty-five or fewer hours is the rule for schools other than Mid-State where the work week is thirty-five or forty hours per week. Where employees have to work longer hours in other vocational-technical districts, they usually receive additional compensation.

The Union points out that paper mill employees--the major industry in Wisconsin Rapids--are paid on a straight hourly basis but with hours over forty at a time and one-half rate (Union Brief, p. 8).

In the K-12 school system, all teachers are paid on the basis of degrees and experience. This includes media specialists, librarians, counselors, and traveling specialists (Union Brief, p. 10).

The Union proposal in this matter will have no monetary impact in 1982-83 (since hours remain the same). In 1983-84 the schedule can be fashioned by the Administration and/or Board in such a way that all bargaining unit members will receive the same level of pay. During 1983-84, the positions in question are to have a maximum of thirty-seven and one-half hours per week before extra compensation is paid. In 1984-85 all bargaining unit members are to have a thirty-five hour week. Thus the Administration and the Board have the summer of 1983, all of the 1983-84 school year, and the summer of 1984 to "get their house in order" and schedule bargaining unit members for a thirty-five hour week.

Concerning the question of productivity the Union suggests some possibilities in adjusting to the thirty-five hour week. These include (1) hiring additional professional personnel to assume the time which is lost, (2) pay the additional compensation to employees who are compelled to work the longer week, (3) transferring some duties of the professional personnel to secretarial or para-professional personnel. This might not detract from the quality of the work performed by the professional personnel.

The overtime pay rate proposed by the Union states that the employee would receive 1/1330 (190 x 7) additional salary per hour of instruction. This is the same rate that now applies if a contract is extended beyond the normal school year. The Union is not proposing the industrial model of time and one-half pay for hours over thirty-five.

Arbitrator Zeidler in a recent decision (U-29) held that the circuit instructors had good reason to have their forty-hour week reduced to thirty-seven and one-half hours to bring it closer to the on-campus standard. This was a disparity in hours among the faculty.

This is also what we have here. Zeidler recognized the inequity but did not approve the request because it was too costly. In this Mid-State case, there is no cost for 1982-83 and the costs for 1983-85 can be minimized.

The Union also states that if there are future costs associated with the implementation, these can be charged to the Union wage package for 1983-84 or 1984-85 (Union Brief, p. 15).

The District arguments concerning the authority of an arbitrator to intervene into the language which has been bargained face-to-face by the parties would be well taken if this were a right's matter. However, the parties are here involved in interest arbitration. Arbitration under the Statute 111.70 is not intended to prevent any and all new benefits. Arbitrators under the law have the right and the duty to decide differences which the parties have not been able to resolve in face-to-face bargaining.

The Employer Brief states that the Union has not presented any list of employees who would potentially be affected (Employer Brief, pp. 22-23). The Union did discuss the issue at the June 4, 1982 bargaining session between the parties (Union Reply Brief, p. 6).

The District argues on page 23 of the Employer Brief that the Union proposal is unclear and ambiguous. The Union proposal clearly says that 1/1330 additional pay will be given for each assigned hour over thirty-seven and one-half hours in 1983-84 and for each assigned hour over thirty-five hours in 1984-85. The word "assigned" is not ambiguous. The District has administrators to make the assignments and they know how long the assignments will take (Union Reply Brief, p. 7).

The Union agrees that instructors teaching or working in different areas have different types of preparation that need to be done. Each has work that he or she performs after hours in his or her own home.

The District in its comparables has not directly addressed the question of work week. It has instead concentrated on the bogus issue of work load (Union Reply Brief, pp. 9-11).

The District charges that the Union proposal may disrupt the affiliation programs where the teacher's work day does not correspond to the normal eight hour hospital shifts (Employer Brief, p. 35). The Union responds that four days per week is the maximum for affiliation instructors and most spend only two or three days per week. With four eight-hour days or thirty-two hours in a week, there would still be three hours left before the thirty-five hours per week was achieved (Union Reply Brief, p. 11).

The Employer says, "The District takes serious exception to the Union's exhibits 5-25. . . and they are, in several instances, at full variance with the contract language included in both the Employer and Union exhibits" (Employer Brief, p. 36). No proof follows this serious charge. The parties agreed at the hearing that there would be a time period to challenge each other's exhibits. The District did not challenge these exhibits during that time.

Employer Position. The Employer is using all VTAE Districts in the State as comparables except Nicolet which is non-union. While this includes districts which are significantly larger and more industrialized, such considerations are not significantly related to the issues at hand here.

The Employer cites various arbitrators who have held that the burden of proof for changes in working conditions falls on the party proposing the change--in this case the Union (Employer Brief, pp. 11-14).

The Employer contends that the Union has not met the burden of proof requirement with any persuasive demonstration of need to change the current contract language.

The current district practices were voluntarily negotiated between the parties and they are fair and reasonable.

The Employer quotes Dr. Schneeberg, District Administrator, concerning the rationale for distinctions in the work day. The District contract distinguishes between those who are involved in active classroom responsibilities versus those who are involved in the instructional process outside of the formal classroom. The classroom teacher normally must be involved outside of the normal work day with such things as instructional preparation, involvement with curriculum, and review of the literature. The librarian, on the other hand, deals with those educational matters on an hour-to-hour basis during the work day (Employer Brief, p. 18).

The hours distinction has been voluntarily accepted by the Union in prior agreements. The Union has not demonstrated that the conditions under which these provisions were negotiated have changed. The language in question was negotiated into the agreement in August, 1978 (1978-79 contract). For the 1980-81 agreement, the Faculty Association proposed overtime payments for work performed over 35 hours for teachers and over 40 hours for counselors, librarians and media specialists to be spread over a full semester (E-21A). A subsequent proposal was made for the 1981-82 Agreement (E-21A) but was dropped by the Association for a voluntary settlement. Thus, the Association has even in the recent past found the current District practices reasonable and acceptable.

The parties have never found it necessary to incorporate a workload formula into the Agreement.

The Association's proposal would destroy teaching load flexibility and would impose a chilling effect on the comparative attitude heretofore established between the parties (Employer Brief, p. 21).

The Association has not presented a list of employees who would be affected by the proposal. Theoretically, all instructors at MSTI could be affected by this "overtime pay" provision. It is unclear when an employee would be considered to be "assigned" more than 37½ hours per week. The District avers that the proposal could lead to more years of grievances with respect to the application of the proposed language.

The State VTAE Board distinguishes among five distinctly different types of instruction which are prevalent in vocational districts in Wisconsin. These include classroom presentations; on-campus laboratory, clinical, or shop experience; individualized/independent instruction; simulated or actual occupational experience such as affiliations; and on-the-job experience (E-22A & 22B).

MSTI practices recognize the differences in instruction and in their respective requirements upon the student and the instructor (see Chart, p. 25 of Employer Brief contrasting student numbers and costs for General Education, Agriculture, and health occupations).

The nature of the instruction must be recognized. The Association proposal merely measures the length of the work day as the only factor. The proposal does not account for the time which may be spent by a general education teacher in correcting papers vis a vis the type of work required of a counselor, librarian or affiliation instructor.

Other VTAE Districts treat different types of instructional personnel differently. They have provided special language for counselors, librarians, media specialists, affiliation instructors, and agricultural instructors. Most of these are not included in the district's workload formula (Employer Brief, p. 27).

When these personnel are covered by the workload formula in the contract, special provisions are made for them and the collective bargaining agreement recognizes the distinctions in the type of work performed. When the workload formula is applied to these instructors, overload pay applies only on a semester or yearly basis, not on a weekly basis as the Association proposal here provides.

Employer Exhibits 7, 8, 9, 10, 11, and 12 establish that the hours required of an affiliation teacher at MSTI vary not only during the week but also over the length of the program. The provisions in other VTAE contracts allow flexibility over the semester or over the school year. Employer Exhibits 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, and 37 show how workload factors are applied or not applied in some cases to such positions as guidance counselor, librarian, and clinical instructors (summarized also in Employer Brief, pp. 28-33).

There is a wide disparity in the practices among the VTAE Districts. No two workload formulas are identical. In many cases counselors, librarians, affiliation, and agriculture instructors are excluded from the formula due to difficulties in application. The districts are generally allowed to balance the workload out over a period of a semester, a year or more before additional pay is afforded.

The Association proposal here allows no flexibility for balancing an employee's workload beyond a five-day work week. This proposal is highly restrictive and will force the District to pay excessive amounts of weekly overload pay, which could be avoided if on the balance, the workload were viewed over a period of a full school year.

The harmful and disruptive consequences of the Association's proposal may well include reduced counseling and library services to students, disrupted affiliation programs where the teacher's work day does not correspond to the normal eight hour hospital shifts, disrupted agriculture programs due to restricted availability of instructors, and finally, grievances from other instructors who believe their "assigned work" exceeds the hours limitation.

There is another disconcerting problem with the Association proposal. The current contract language provides a procedure for compensating an Affiliation Instructor whose work extends beyond the normal nine-hour span of time. The Association's Final Offer also establishes a procedure for compensating affiliation instructors who exceed a maximum number of hours each week. The Union offer by the ambiguity, could very well apply to all Instructors in the District. These two provisions could result in duplicate payment to an Affiliation Instructor for services provided to the District.

The Association's comparisons in the K-12 school districts includes no evidence to show the duties and responsibilities of instructors in the K-12 system as compared to instructors in the vocational system.

The Association has provided no data concerning the morale of employees impacted by this proposal. There is no individual testimony from any Affiliation Instructor, Guidance Counselor, or Librarian as to morale problems.

Arbitrator's Analysis and Conclusion. After carefully weighing the evidence presented by the parties, the Arbitrator finds that the Union position, overall, is more reasonable.

The Union has carried the burden of proof and has shown a need for change. As the District Director testified the matter of the hours' schedule has been a problem in recent years. It has been the subject of a grievance arbitration and has been a Union concern in the last two negotiations.

While it is true that the present hours' schedule was voluntarily negotiated about five years ago, it is very apparent that the teachers' perception of what is fair and equitable has changed since that time. It is not rare and unusual for such perceptions to change. For example, advisory arbitration of grievances was once accepted as fair and equitable by some teachers and was voluntarily bargained and accepted by a number of local unions. However, not too many years later, binding arbitration came to be regarded as a necessity by most teachers' locals and it replaced most of the advisory arbitration clauses. Among the considerations, of course, were prevailing practice and the willingness of employers to move on this issue.

It is apparent that while the hours' proposal affects only a minority of members, it has become a major goal of the local in recent negotiations. Apparently, the majority of the members are willing to give up some part of future general wage increases if the Employer can show that this proposed new clause causes significant cost increases as it is implemented (Union Brief, p. 15).

The Union has presented substantial and credible evidence concerning the hours schedule in most other Wisconsin Vocational-Technical schools. As indicated in the Union Brief and exhibits, most of the Wisconsin Vocational-Technical schools do not require counselors, media specialists, librarians, and instructors on affiliation to work more hours than regular classroom teachers. In those cases where the hours are greater, the employees usually receive additional compensation.

The Union has also shown that what it is proposing is the established practice in K-12 school systems for positions such as counselors, media specialists, and librarians. Their contracts do not provide a different schedule of hours than for classroom teachers. While I agree with the Employer that comparisons with paper mill employees do not seem pertinent, I do find the K-12 comparison valid. While the duties of librarians and counselors are not identical in the two systems, it is obvious from their titles that the work is very similar and teachers do move from such positions in the public schools to similar positions in the Vocational-Technical schools.

The Union has also shown that the Zeidler Arbitration decision has some relevance since it relates to the question of equity in hours among employees of the same employer. That is also at issue here.

While the Employer has been critical of the Union's survey of the comparables, he has not provided any significant refutation of the data or its results. The Employer has not established that it is common practice for other vocational-technical schools to require more hours per week for such positions as librarian and counselor without additional compensation. The Union evidence on this question does seem credible.

The Employer has provided extensive information on the kinds of teaching in the Vocational-Technical schools and on the variety of workload formulas that prevail. Many of these formulas treat counselors and librarians differently than general classroom teachers. However, the Employer has not shown that this generally leads to a longer work week for such persons. The matter of work load has some relevance to the question before the Arbitrator but it is not the central issue. The Union and the Employer have not established a workload formula at Mid-State and neither party has proposed one. The Union has provided more evidence than the Employer that is directly related to the issue here--weekly hours of work.

The monetary impact of the Union proposal is of concern to both parties. I believe that the Union approach here is reasonable and credible. There is no cost impact for 1982-83. The Union has shown some possibilities for minimizing the cost impact in future years but it has recognized that there still may be some productivity loss and some cost impact and has stated that such costs could be included in future union wage packages. The Union proposal is reasonable in not seeking any retroactive pay in 1982-83, in phasing in the hours change over the next two years, and in not asking for hours over the schedule to be paid at a time and one-half rate.

The Employer has raised some legitimate concerns as they relate to duplicate pay situations, possible grievances, and the problems of adjusting loads that vary during the semester or school year. The Union has answered some of these concerns; for example, showing that most hospital affiliate teachers do not work enough weekly hours to create an overtime problem.

The Arbitrator is confident that the Mid-State Board and Administration can work out reasonable adjustments to the proposed hours schedule and that the Union will be cooperative in minimizing the cost impact of the new schedule. As the Union stated it does not want to unduly enrich any part of the faculty but is interested in equity and in a reasonable solution.

I find some merit in the Employer's argument that the regular classroom teacher may have to put in more time at home on matters such as correcting examinations and preparing lessons than would the librarian or counselor. It is also true that the out-of-school time probably varies some with the kind of teaching-laboratory, lecture, group discussion, etc., and with the size of class. The parties have not indicated a desire to set up different hours' schedules for each different kind of teaching situation.

In view of the fact that K-12 schools and other vocational-technical schools do not make the kind of hours distinction that has prevailed at Mid-State, it appears that these teachers and their employers are willing to set aside the question of differences in out-of-school time in the interest of a more uniform approach to the question of hours.

Again, the Employer position has some merit, but the Arbitrator found that the weight of the evidence favored the Union position on work hours.

DENTAL INSURANCE

Union Position. For the past two years, these Union members have had dental insurance coverage. The Employer has paid 100% of the premium, expressed as a dollar amount in the agreement. When final offers were exchanged in January, 1983, the actual premium cost for renewal of the policy was not known. The dental insurance premium increased as of June 1 by 46 cents per month for single coverage and $5 per month for family coverage. This translates into an additional total cost of $765.95 for the period June 1 through August 15, 1983, under the 1982-83 agreement.

It is more economical for both the employees and the District for this cost to be paid by the Employer as compared to a wage increase of an equal amount. That is because of the income taxation of the wage increase and the roll-up costs to the Employer associated with a pay increase.

The cost to the District of continuing fully-paid dental insurance is relatively minor, less than 4/100 of 1% of the $2,200,000 package cost. Perhaps the District forgot to put an increase for Dental Insurance into their proposal or perhaps they hoped the Union would ignore this item.

The District is the moving party and must meet the burden of proof for this change. The Union favors the status quo of fully-paid dental insurance. The District has not claimed that they have a need for cost-sharing nor have they claimed that they have paid their employees so well that the employees should assume this cost.

The District has submitted Employer Exhibit 45 which shows the most common position taken by the entire Vocational-Technical System in Wisconsin is to fully pay the Dental Insurance premium. The Employer position at Mid-State would reduce single coverage to about 96% of payment and family coverage to about 85% of payment. The comparables in E-45 do not pay such a proportion.

The District's proposal is regressive, not status quo. Since the District has always argued total package costs to the Association, no disadvantage flows to the District by the Association's proposal. Next year, the District will, because of the new dental rates, assign the excess costs to the Association's package just as they have in the past. The new higher rates will apply from August 16, 1983 through June 30, 1984.

Employer Position. The Board asserts that the comparables on the issue of dental insurance support the status quo. Only one other VTAE district (Indianhead) has language similar to that offered by the Association (E-45).

On the basis of their premium renewal dates, a number of other VTAE district teachers will be subject to premium increases prior to the commencement of their next collective bargaining agreement. This is not uncommon.

The amount paid by other VTAE districts toward dental insurance is generally less than that paid by Mid-State on behalf of its instructors. One other district, Blackhawk, expresses the Board's contribution as a dollar amount. Four others pay less than 100% for the family plan (75%, 90%, 85%, 95%). The benefit at Mid-State is significantly better than that offered in those four districts. The family plan dental insurance offered at Mid-State is the third highest among the 12 districts showing a separate dental insurance plan.

The District objects to the language proposed by the Association which would require the District to maintain "full payment" from year to year. The District would always be required to assume any and all premium increases, prior to the formalization of any new collective bargaining agreement. If the Association's language were to be included as part of the collective bargaining agreement, it would be difficult, if not impossible, to delete that language since at that time the Board would bear the burden of proof. While the Union's cost estimate is low for these few months of the insurance ($798), their proposal represents another instance where the potential long-term damage to the Employer would be significantly greater than the benefit to be derived on a very short-term basis by the teachers in the bargaining unit.

Employer Exhibit 46 shows that the District's total compensation increase for 1982-83 clearly exceeds the increase in the cost of living. Therefore, the increased premium payment towards dental insurance is not necessary to afford the employees a compensation level which exceeds the cost of living (Employer Reply Brief, p. 42).

Arbitrator's Conclusion. Each party claims to be maintaining the status quo and asserts that the other party has the burden of proof for making change. The Union claims the status quo is 100% payment of the dental premium by the Employer. The Employer claims that the current contract specifies only a dollar amount and does not commit the Board to 100% payment if premiums change.

I find that it is the Union that is proposing a significant change. It wants to add language that provides that if the insurance carrier raises the rate during the term of the agreement, "the Board agrees to pay the increased amount so as to maintain fully paid dental insurance." This is a new provision not found in the old contract. It is also not found in the health insurance language where the Board also states the dollar amounts that it will pay.

The Union has not established that these few months of payment by the employees would create a significant hardship. The present language leaves dental insurance costs open to negotiation in the next contract. As the Employer points out the Union proposal makes it more difficult for the Employer to change the insurance cost arrangements in the future.

The Employer has not proposed cost sharing for the future and the parties have not really explored the pros and cons of that question. The Employer Exhibit does show that the majority of the districts do pay 100% of the premium and as the Union has pointed out, there are financial advantages to both the employees and the District if the District pays such costs rather than an equivalent amount of wages.

I find the Employer position on this issue to be more reasonable because it leaves the question of insurance costs at more nearly the status quo and lets the parties start 1983-84 bargaining from the previous language which stated dollar amounts and did not guarantee 100% of any future premium increases.

I note also that this is a secondary issue and will not be determinative of the final decision.

LONG-TERM DISABILITY INSURANCE

The parties have agreed that long-term disability insurance will be part of the 1982-83 agreement. The Board's proposal covers 67% of the employee's gross salary while the Union's proposal would require coverage of 90% of the employee's gross salary. On an annual basis the cost difference between the premiums under the parties' offers is $1,897.

Union Position. In the recent past, because of the agreement containing a sick leave bank, there was not a critical need for LTD insurance. However, the District has said that the sick leave bank has become a problem for them and they asked the Association to remove this section of the agreement and replace it with a substitute which arguably would prevent future problems. The parties agreed that an appropriate substitute would be LTD insurance. The Union proposed the 90% plan to eliminate the problem that the District identified earlier with the sick leave bank language. However, the District has proposed a 67% plan as the replacement for the sick leave bank. The Union feels the Employer is trying to reduce the benefit level to the employees in this critical area.

LTD Insurance is not equal to a sick leave bank for two reasons: (1) the employees receive less income from LTD Insurance than they do from a sick leave bank, (2) the employee must wait at least ninety days before receiving any benefits from LTD Insurance whereas there is no waiting time to receive benefits from a sick leave bank.

The cost difference between the 90% and 67% plans is minimal but the benefit difference between the 67% plan and the sick leave bank is difficult to calculate because it is so large.

The Union questions the Employer's figures for the premium difference for 1982-83. The Union estimates it be $553 for May 1st through August 15th. If the wages for MSTI faculty remained constant for 1983-84, then the Employer proposal would cost $8,970 compared to $10,867 for the Union proposal, a difference of $1,897 (for 1983-84).

The District argues that the comparables support the 67% plan. The real question before the Arbitrator is what is a true good quid pro quo for the sick leave bank? The sick leave bank provided full pay when the individual's sick leave was exhausted. The Employer offer will only provide 67% pay and the Union offer 90% pay but only after a waiting period of ninety days. Obviously 90% of salary is much closer to full pay than is 67% of salary.

The 67% plan in effect in other districts should not be used as a persuasive reason to award 67% at MSTI. Other districts do not and did not have a sick leave bank.

The Union in its Exhibit 36 has analyzed the effect of the income tax on the amount left to be used by someone receiving LTD Insurance. Under the 90% plan the teacher has only 92.79% of their normal spendable income available. Under the 67% plan the teacher has only 72% of their normal spendable income available.

Employer Position. In all of the districts surveyed (E-42) the Employer pays 100% of the disability premium for LTD. In all but one of the districts, 67% of the employee's salary is covered. In the Eau Claire District, 80% is paid for the first 6 months and 67% thereafter.

Since this is a new benefit, it should not begin at a level of benefits above other VTAE district employees.

Mid-State offers an average level sick leave benefits and 100% of health insurance and the full amount of dental insurance expressed as a dollar amount. On the basis of other insurance benefits as well as the sick leave provision it cannot reasonably be concluded that higher long-term disability coverage is justifiable.

The longest period of time sick leave was used by a District employee in the lists submitted by the Employer (E-47-52) was 26½ days. Thus, no District employee has been eligible for long-term disability coverage based on prior sick leave experience. Under the 90 calendar day waiting period, the employee must miss approximately 65 work days before the long-term disability benefit accrues.

The only earlier argument offered by the Union was that relative to taxability of benefits. The same tax schedules apply to all of the fourteen other VTAE Districts, all but one of which insures 67% of the employees' salary. Therefore, on the basis of comparability, the Employer's offer is the more reasonable.

The District did not force the Union to delete the sick leave bank nor does the record support the assertion that the sick leave bank has been a problem for the District. The sick leave bank contained only partial protection for employees during short-term illnesses and absences. It did not provide long-term coverage.

The record also shows that the sick leave bank was not used excessively by Union members nor did it represent an onerous financial liability to the District as suggested by the Union. Long-term disability insurance is applicable to all members of the Association while the sick leave bank was available only to those participating as contributors to the bank.

Since very few employees have used the sick leave bank in the past five years, the employees are gaining through long-term coverage while losing little in the form of short-term coverage.

Arbitrator's Position. Each party has one major strong argument for its position. The Employer points out that all but one of the VTAE comparables have a 67% LTD plan. The Union points out that the other districts did not have a sick leave bank and that the Mid-State employees are giving up a plan which had some real advantages and thus should have the better LTD plan to compensate for that.

These two major arguments are closely balanced but I find the Union position a little more reasonable. As the Union pointed out the employees will receive less income (67 or 90% vs. 100%) (at least for shorter illnesses) under the LTD plan than under the sick leave bank and they will need to wait 90 days for the benefit whereas there was no waiting period for the sick leave bank. These are significant benefits that are being given up and the 90% plan is a more reasonable alternative than the 67% plan.

The Employer says that the LTD plan will apply to all Union members whereas the sick leave bank was available only to those participating as contributors. From Employer's Exhibits 47 and 53, it appears that about 90% of the eligible employees were participating in the sick bank so it did apply to most Union members. As I read the contract they could not join until they had accumulated at least 15 days of sick leave which would be in their second year of employment (80 employees earning sick leave in 1982-83, 6 not eligible, 66 members in the sick bank $\frac{66}{74} = 90\%$).

Even though very few employees in the past few years have had long periods of illness and even though few have used the sick bank, the sick bank protection or the LTD protection are very important for employee morale and peace of mind. Life insurance death benefits are not used by many employees in any one year but that does not negate the high value placed on such protection in the minds of employees and their families.

In view of the moderate cost differences between the two plans, and in view of the fact that the employees are giving up some advantages that the sick leave bank plan had, I find the Union LTD proposal a little more reasonable than that of the Employer.

CONCLUSION

In this arbitration only a few of the statutory factors were substantially involved. The principal one was the comparables under standard d and to a slight extent cost-of-living and overall compensation. Both parties presented comprehensive and well-prepared exhibits and briefs. Neither side's position was without considerable merit.

After reviewing the exhibits, the briefs, and the reply briefs and considering the statutory standards, the Arbitrator has found the Union position to be more reasonable on the major issue--the work week and also on the long-term disability insurance. I found the Employer position more reasonable on dental insurance. The Arbitrator must select the total final offer of the Union or the Employer. On the basis of the above, I have therefore selected the Union's Final Offer.

AWARD

The Final Offer of the Mid-State Vocational, Technical Faculty Association, along with the stipulations previously agreed to by the parties, shall be incorporated into the 1982-83 contract between the Area Board of Mid-State Vocational, Technical and Adult Education District and the Mid-State Vocational, Technical and Adult Education District.

June 7, 1983

Gordon Haferbecker

Gordon Haferbecker, Arbitrator