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IN THE MATTER OF MEDIATION/ARBITRATION PROCEEDING **MAR 6 1984**

BETWEEN

WISCONSIN EMPLOYMENT  
RELATIONS COMMISSION

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MADISON AREA TECHNICAL  
COLLEGE TEACHERS UNION  
LOCAL 243, WFT/AFT, AFL-CIO

Case XLI No. 32234

MED/ARB 2452

and

Decision No. 21178-A

MADISON AREA VOCATIONAL,  
TECHNICAL AND ADULT  
EDUCATION DISTRICT NO. 4.

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## I. BACKGROUND

This is a matter of final and binding interest arbitration pursuant to Section 111.70(4)(cm)6 of the Wisconsin Municipal Employment Relations Act. The Madison Area Technical College Teachers Union Local 243, WFT/AFT, AFL-CIO (Union) is the exclusive bargaining representative for the employees in a bargaining unit consisting of all professional classroom teachers teaching at least 50% of a normal teaching schedule, employed by the Madison Area Vocational, Technical and Adult Education District (District or Employer), but excluding administrative, supervisory, ancillary and classified employees.

The Union and the Employer were parties to a collective bargaining agreement which expired on June 30, 1983. On September 28, 1983, the Union filed a petition requesting that the Wisconsin Employment Relations Commission (WERC) initiate mediation-arbitration. An investigation was conducted by the WERC staff which disclosed that the parties were deadlocked in their negotiations. On November 4, 1983, the parties submitted to the WERC their final offers as well as a stipulation on matters agreed upon.

On November 10, 1983, the WERC certified that the conditions precedent to the initiation of mediation-arbitration had been met. The parties thereafter selected Jay E. Grenig as the Mediator/Arbitrator in this matter. The Mediator/Arbitrator was notified of his selection on December 1, 1983.

The parties waived mediation of the dispute and proceeded directly to arbitration. The parties further agreed to waive the arbitration hearing and submit their exhibits and respective briefs directly to the Mediator/Arbitrator. Upon receipt of the parties' rebuttal briefs, the hearing was declared closed on January 6, 1984. The Union was represented by William Kalin, Representative, Wisconsin Federation of Teachers, and the District was represented by Donald Johnson, Attorney at Law, Lee, Johnson, Kilkelly & Nichol.

## II. FINAL OFFERS

### A. THE UNION

1. 5.5% on each cell. (Same increase on substitute pay, additional assignments and extra compensation for travel.)

## 2. Paid Early Retirement

### Article VI, Section 7.

A contractual teacher who has been employed by the Board for a period of 15 or more years and who has attained the age of 62 years may elect to retire at the end of the year during which that teacher has attained age sixty-two (62) or in any year thereafter. Upon such an early retirement the teacher shall be eligible to receive the following benefit:

- a. A monthly retirement payment equal to that which the teacher would received [sic] from the State Teachers' Retirement System had retirement taken place at sixty-five (65). This payment shall be a combination reduced STRS payment and Board payment with the sum equal to age sixty-five (65) benefits.

### B. THE DISTRICT

Three percent salary increase on each cell. (Same increase on substitute teaching, additional assignments, and extra compensation for travel.)

### III. STATUTORY CRITERIA

In determining which offer to accept, the Arbitrator must give weight to the following statutory (Wis.Stats. § 111.70(4)(cm)7) criteria:

- a. The lawful authority of the employer.
- b. Stipulations of the parties.
- c. The interests and welfare of the public and financial ability of the unit of government to meet the costs of any proposed settlement.
- d. Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally in public employment in the same community and in comparable communities and in private employment in the same community and in comparable communities.
- e. The average consumer prices for goods and services, commonly known as the cost of living.
- f. The overall compensation presently received by the municipal employees, including direct wages, 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.

#### IV. DISCUSSION

##### A. WAGES

###### 1. INTRODUCTION

All issues have been settled except those contained in the final offers. The Employer's final offer is 3% at each step of the existing salary schedule. The Union's final offer is 5.5% at each step of the existing salary schedule. The parties agree that the Union's final offer generates a total cost to the Employer of \$1,056,692, 9.38% higher than the 1982-83 cost. The Employer's final offer generates a total cost to the District of \$783,285, a 6.95% increase over 1982-83.

###### 2. ANALYSIS

a. **LAWFUL AUTHORITY OF THE EMPLOYER.** There is no contention that the Employer lacks the lawful authority to implement either offer.

b. **STIPULATIONS OF THE PARTIES.** While the parties are in agreement on a number of facts and have stipulated to the inclusion of certain proposals in the new contract, there were no stipulations with respect to wages or early retirement other than those noted herein.

c. **ABILITY TO PAY AND INTEREST AND WELFARE OF THE PUBLIC.** There is no contention that the Employer lacks the financial ability to implement either offer.

The Employer argues that present economic realities in the public sector, especially in Dane County where its main campus is located, support its position. It points out that Dane County has proposed a wage freeze, the State of Wisconsin and University of Wisconsin employees have had their wages frozen. The City of Madison is proposing a wage freeze with the exception of Police who received one percent.

The Employer also has presented evidence that the equalized value in 1983 increased by only 1.5% from 1982. The average percent increase in property valuation in all VTAE districts (including the Employer) was 1.16% during this period. The Employer says that this drastic decrease in the rate of increase of property valuation increases the tax burden on the property taxpayers in the District.

The Employer has the second highest equalized valuation of the 16 VTAE districts.

d. **COMPARISON OF WAGES, HOURS AND CONDITIONS OF EMPLOYMENT.** The Employer is the second largest VTAE district in Wisconsin and serves the second largest city in Wisconsin. Of the sixteen VTAE districts in the state, ten have reached voluntary settlements. The range of percentage increases in those districts is from 5.25% to 5.8% in each cell. Seven districts settled with a 5.5% increase in each cell of the agreement.

The average settlement in the ten VTAE districts is 5.49% in each cell. The median settlement is 5.5% in each cell. The Employer's offer of 3% is 2.49% below the average and 2.5% below the median. The Union's offer of 5.5% is .01% above the average and the same as the median.

When salary schedule increments are taken into consideration, the average total salary increase in the ten districts is 7.46% and the median is 7.39%. The Employer's offer would result in a total salary increase of 5.01%, 2.45% below the average total salary increase and 2.38% below the median. The Union's offer would result in a total salary increase of 7.56%, .10% above the average and .17% above the median.

The Employer suggests it is appropriate to compare its wages with those of seven other VTAE districts:

Milwaukee Area Technical College  
Eau Claire  
Waukesha  
Blackhawk  
Gateway  
Northeast  
Southwest

An examination of selected salary schedule benchmarks in these districts discloses that the Employer ranked either second or third during the 1982-83 academic year. Both offers will maintain this relative ranking for the 1983-84 school year.

e. CHANGES IN THE COST OF LIVING. The cost of living as measured by the Consumer Price Index increased by 3.3% over the preceding year. The Employer claims that the CPI overstates the increases in cost of living through the inclusion of housing and non-current expenses.

f. OVERALL COMPENSATION. The Employer pays 100% of the coverage of a health maintenance plan. The current cost per month is \$184.80 for family and \$72.52 for single coverage. The average overall compensation for a District teacher is \$36,147.51 (salary of \$28,120.82 plus cost of fringe benefits of \$8,026.69).

If the Employer's offer is accepted, the average salary will be \$37,159.55. If the Union's proposal is accepted, the average salary will be \$38,002.92.

It appears that all 16 VTAE districts offer similar (although not identical) fringe benefits, vacation, holidays and excused time.

g. CHANGES DURING THE PENDENCY OF ARBITRATION PROCEEDINGS. No material changes during the pendency of the arbitration proceedings have been brought to the attention of the Arbitrator.

h. OTHER FACTORS. This criterion recognizes that collective bargaining is not isolated from those factors which comprise the economic environment in which bargaining occurs. See Cudahy Schools, Dec. No. 19635 (Gundermann, 1982); Madison Schools, Dec. No. 19133 (Fleischli, 1982).

There is no evidence that the Employer has had to or will have to reduce or eliminate any services that it will have to engage in long term borrowing, or that it will have to raise taxes substantially if either offer is accepted.

While the area within the District has suffered significant unemployment and low increases in equalized valuation, it has not been demonstrated that the Employer's economic problems are significantly different than those of other VTAE districts. In fact, the most recent increase in equalized valuation in the District is higher than the average increase in the other VTAE districts.

### 3. CONCLUSION

Interest arbitration (arbitration over the terms of a new contract) is a substitute for voluntary settlement through the collective bargaining process. The arbitrator attempts to place the parties in the position they would have been in had negotiations resulted in a voluntary settlement. The best guide is the pattern which has evolved from successful bargaining by other employers and employee organizations similarly situated.

Here a definite pattern of settlement in the VTAE districts has been established for 1983-84. Ten of the 16 VTAE districts have reached voluntary settlements. This settlement pattern has emerged under the same economic conditions, including CPI increases, equalized value changes and unemployment. Whether one relies on the range of settlements, the average settlement or the median settlement, the Union's offer is significantly closer to the settlement pattern than the Employer's. Seven of the 16 districts settled at 5.5%--- the same as the Union's offer. The same conclusion is compelled when the increments are included in determining the salary increase. The Employer's offer is considerably outside the range of settlements.

In determining appropriate salary increases, the basis for comparison should generally be what is paid for work in a particular profession. Employees in a particular profession or working for a particular type of employer will usually have similar conditions of employment. Thus, the State of Wisconsin, the University of Wisconsin, the City of Madison and Dane County settlements are not entitled to as much weight as is the settlement pattern established in the VTAE districts.

While the increase in the cost of living as measured by the CPI has been lower than the percentage increase requested by the Union, there is no reason to limit an increase to the increase in the CPI where a pattern of settlement has been established.

Because the Union's offer is substantially closer to the pattern of voluntary settlement that has been established in the VTAE districts, it is concluded that the Union's offer is more reasonable than the Employer's.

## B. EARLY RETIREMENT

### 1. INTRODUCTION

The Union has proposed the inclusion of an early retirement provision in the contract and the Employer opposes the inclusion of such a provision. The Union argues that most of the VTAE districts offer some type of an early retirement program. In addition, the Madison Public Schools has included an early retirement provision in its contract. Pointing out that all employees eligible for early retirement in 1984, 1985 and 1986 are at the top step of the salary schedule, the Union claims that they will be replaced by new hires who will be lower on the salary schedule with the result that the program will not cost the Employer.

The Union states it is not asking the Employer to pay the cost of fringe benefits during the early retirement period. It is only asking for a monthly retirement payment equal to that which the teacher would receive from STRS had retirement been taken at age 65.

The Employer argues that an early retirement program is not appropriate in a VTAE district where teachers must have a strong education background and in-depth occupational experience. Claiming it is not possible to predict which teachers approaching the age of 62 may retire, the Employer declares that a change of this magnitude should not be thrust upon the Employer by the arbitration process absent a showing that the Union is deprived of a benefit which is pervasive in the field.

### 2. ANALYSIS

The record shows that 10 of the 16 VTAE districts (and Madison Public Schools) have some form of early retirement program. Two of these 10 provide merely for a continuation

of health insurance benefits during the early retirement period. Several of the programs are for a stated period and provide for reevaluation of the programs at the end of the stated period. Some of the programs provide a more liberal program than that proposed by the Union here.

The Union's proposal does not provide for the payment of fringe benefits during this period. It seeks to place employees who elect early retirement in the same position as those employees who retire at age 65.

### 3. CONCLUSION

Although there is considerable merit to the Union's arguments on behalf of the inclusion of an early retirement program in the contract, an arbitrator should be wary of imposing such a provision on the parties in the absence of a showing that there are compelling reasons for the provision.

While the Employer argues that an early retirement program is inappropriate for a VTAE district, 10 of the 16 VTAE districts have agreed to some form of early retirement. However, only eight of the 16 VTAE districts have programs in any way comparable to that proposed by the Union here. Two of the 10 districts with early retirement programs pay only health and welfare benefits during the early retirement period. The number of VTAE districts with early retirement programs provides some support to the Union's position, but the fact that only half of the VTAE districts have programs paying more than health benefits makes one hesitant to conclude that the Union's early retirement proposal should be imposed on the parties through arbitration. It is the type of proposal that should be shaped through negotiations.

While the Madison Public Schools now have an early retirement program, the Madison public school system is not a VTAE district and the conditions of employment are too dissimilar to entitle the Madison Public Schools' settlement to more weight than the settlements in the VTAE districts.

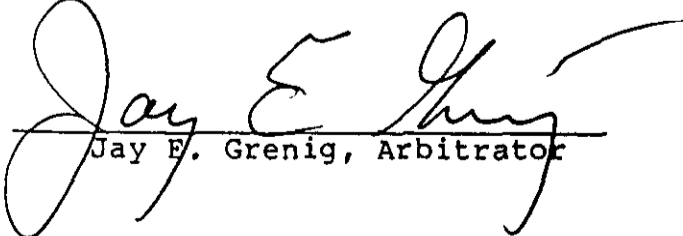
Accordingly, it is determined that the Employer's proposal with respect to early retirement is slightly more reasonable than the Union's.

### V. AWARD

Having considered all the arguments and relevant evidence, submitted in this matter, it is concluded that the offer of the Union is more reasonable than the Employer's. The parties' wage offers are of more significance to both the Employer and the employees than the early retirement proposal. The Union's wage offer is substantially more reasonable than the Employer's, while the Employer's early retirement offer is slightly more reasonable than the Union's.

The parties are directed to incorporate into their 1983-84 collective bargaining agreement the final offer of the Union together with all previously agreed upon items.

Executed at Waukesha, Wisconsin, this 4th day of March, 1984.

  
Jay E. Grenig, Arbitrator