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WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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BEFORE THE ARBITRATOR/MEDIATOR

In the Matter of the Mediation/ Arbitration of a Dispute Between	
GREEN BAY AREA PUBLIC SCHOOL DISTRICT	
and	AWARD AND OPINION
GREEN BAY BOARD OF EDUCATION CLERICAL EMPLOYEES UNION LOCAL 3055-B, AFSCME AFL-CIO	Decision No. 21568-A

Case No.	LXXII, No. 32515 Med/Arb 2528
Hearing Date	May 29, 1984
Appearances:	
For the Employer	MR. THOMAS E. KWIATKOWSKI, Staff Attorney
For the Union	MR. JAMES W. MILLER Representative
Mediator/Arbitrator	MR. ROBERT J. MUELLER
Date of Award	September 13, 1984

BACKGROUND

The Green Bay Area Public School District, hereinafter referred to as the District, and the Green Bay Board of Education Clerical Employees Union Local 3055-B, AFSCME AFL-CIO, hereinafter referred to as the Union, reached an impasse in bargaining for a Collective Bargaining Agreement for the 1983-84 contract term. The Union filed a Petition with the Wisconsin Employment Relations Commission requesting the Commission to initiate mediation/arbitration pursuant to Section 111.70(4)(cm)6 of the Municipal Employment Relations Act. A member of the Commission staff conducted an investigation and determined that a deadlock existed. The parties thereafter selected the undersigned to serve as the mediator/arbitrator. Mediation was conducted on May 29, 1984, and when the parties remained deadlocked, the arbitration hearing was conducted on the same date. Both parties presented documentary evidence in support of their respective positions and entered such testimony and arguments as they deemed relevant. Subsequent to the hearing, the parties filed post-hearing briefs which were exchanged through the mediator/arbitrator.

FINAL OFFERS OF THE PARTIES

UNION FINAL OFFER

"Wages: Effective July 1, 1983

"Wage Proposal

Level 1	6.71
Level II	6.85
Level III	7.12
Level IV	7.73
Level V	8.04

"No employee to receive less than a 25¢ per hour wage increase. Any employee over the rate established shall continue to be paid over the established rate until said employee leaves for any reasons and/or the position becomes vacant."

DISTRICT'S FINAL OFFER

"1. WAGES

"APPENDIX 1 - provide the following pay schedule:

"CLASSIFICATIONS	WAGE RATES 7/1/83
Level 1	$6.71
Level 2	$6.85
Level 3	$7.12
Level 4	$7.73
Level 5	$8.04

"2. HOLIDAYS

"Article XIII Authorized Absence - provide additional half day to the half day currently provided the day before New Year's. Accordingly, 'Holiday Leave' (page 15, lines 18-21 of the expired agreement) would be modified as follows:

'HOLIDAY LEAVE: Employees shall be paid for each of the following holidays: 1/2 the day before New Year's, New Year's Day, Good Friday, Memorial Day, Independence Day (12-month employees), Labor Day, Thanksgiving Day, day after Thanksgiving, day before Christmas and Christmas Day...'

"3. POSITION DELETION

"Article VII Seniority - insert new language on page 6, between lines 12 and 13 of 1982-83 agreement:

"Whenever a position is deleted and no longer exists in the Table of Organization the employee who occupied that position shall be involuntarily transferred to a position with similar terms of employment according to the following procedures:

1. Should a vacancy exist at the same classification level, the employee shall be placed in that position.

2. Should a vacancy not exist at the same classification level, the employee shall be placed in the position held by the least senior person in that classification unless the employee opts instead to be placed in an existing vacancy in a lower classification at that classification's pay rate.

3. An employee displaced from his/her position as a result of an involuntary transfer of another employee shall be involuntarily transferred to a position in the next lower classification applying the principle of Nos. 1 and 2 above. If no position is available after exhaustion of the procedures, the employee shall be placed on layoff status.

"An employee involuntarily transferred under these procedures shall be given preference over the posting procedure for vacancies within his/her former classification for a period of two years. An employee involuntarily transferred under these procedures does not lose his/her seniority date as a result of an involuntary transfer.'

"4. All agreements as stipulated between the parties (See attached 'Stipulated Agreements of the Parties').

"5. All remaining provisions of the 1982-83 collective bargaining agreement not otherwise modified by this final offer or the stipulations of the parties.

"Clarification of point 2 of District's final offer:

"All employees in the bargaining unit on December 31, 1983 shall be paid an additional half day at their hourly rate as set forth in this final offer."

DISCUSSION

Before setting forth the respective positions of the parties on the issues, it is necessary to detail some of the background facts which led to the dispute.

During the years 1982 and 1983, the Employer undertook a complete reorganization of the clerical unit. Job descriptions were rewritten, some existing jobs abolished, some new jobs were created, etc. The parties were able to mutually agree upon most of the reorganization and job descriptions. Those that they were unable to agree upon were resolved through a special umpire proceedings.

The matter of placing wage rates on each classification was thereafter undertaken by the Employer and Union and agreement was reached between them with respect to the wage level assigned to each classification for the year 1983-84. The parties also undertook the matter of negotiating the implementation and application of the new reclassification to the various employees. Agreement was reached upon placement of all but 14 or 15 of the 150 approximate total clerical employees into the respective classification levels. Approximately 135 of the employees were placed in the respective classification levels that had been negotiated. The 14 or 15 upon which agreement was not reached, was the basis of the impasse that resulted. The Employer took the position that such employees should be placed at the assigned wage level of their classification without regard to what rate they had previously been paid. The Union took the position that the 14 or 15 employees should receive a minimum of 25¢ per hour increase which would then place them at a red circle rate above the classification rate of the classification to which their job was assigned.

At or about September 1983, the position of an employee classified as secretary 2 was reclassified to secretary 3 and pursuant to the agreement of the parties, said new job was posted for bidding. The incumbent employee who had filled the previous secretary 2 job, was unsuccessful in her bid to the newly reclassified secretary 3 position, which was awarded to a more senior bidder. The incumbent employee thereafter attempted to bump a less senior employee in the higher rated secretary 3 level which the Employer denied. A grievance was thereafter filed and was pending at the time of the arbitration hearing. Subsequent to the arbitration hearing a decision was

issued and was submitted along with the briefs of the parties and argued by the parties as a part of this case.

As a result of such pending grievance, however, the Employer decided to submit as a proposal more detailed provisions respecting the procedure to be utilized in cases of layoff and bumping. The Union rejected the Company's proposal and proposed to retain the language as contained in the previous contract and to be bound by whatever interpretation that may issue from the grievance arbitration that was then pending.

UNION'S POSITION

The Union testified that they took the position at the start of the reorganization that no employee should be hurt as a result of the organization. The Union states as follows in its brief:

> "...The parties have agreed to a wage level for each classification for the year 1983-84. The fifteen people in dispute fall outside of the plan. There is one employee, Lorraine Georgeson who would take a cut in pay of 27 cents per hour (see Union Exhibit #2). The Employer takes the uncaring and totally absurd position that this is alright and in total we did a good job. For openers, Ms. Georgeson is an employee with 22 years of service with the Board of Education (see Union Exhibit #1). Over the years, she was paid at a higher rate and was really doing a different job. Under the reorganization, it was determined she was not to do that work anymore. The Employer, in his attempt to thank her for her years of service proposes to reduce her hourly rate by 27 cents per hour. Three other employees also get the Employer's fairness treatment: Janice Acken, 24 years of service 7 cents per hour increase; Barb Bridenhagen, 8 years of service 3 cents per hour increase; Margaret Kocken, 8 years of service 7 cents per hour increase. The balance of the 15 employees (11 for sure) get a 20 cents per hour increase. The Union's position was, and is, that this method was not fair. We, the Union, said give everyone a minimum of 25 cents per hour. Level I is the lowest paid group and as the people move up, we would move out of the overpaid classification and soon all employees would be on the pay plan with no one being hurt. The Employer said no. Then in the Employer's final offer they have the nerve to offer a paid half (½) holiday that the Union did not request. We, the Union, said use that money to give those fifteen people a minimum of 25 cents per hour. We can treat these people fairly and you, the Employer, can save money (see Union Exhibit #6 and 7). The holiday would have affected all employees, but they, the Union, said no, give the money to those 15 employees. We didn't want the holiday, nor did we make that a part of our final offer. Under the Union's proposal, the Employer saves $847.78 for the year. The Union is not going to ask 15 employees to pay for a half (½) holiday for everyone else. If, and when, the holiday comes, we will ask for it and all will pay equally for it."

> "...We have not asked that the reclassifications be changed by this Med/Arb. We are only seeking that 15 employees not be hurt by implementation of a new pay plan, not reorganization of classifications."

In addressing the District's proposal of new language in the seniority article dealing with position deletion and bumping procedure the Union states and argues as follows in its brief:

> "Seniority Language Changes: The Employer here is misusing the Med/Arb Process. The Employer admits that a grievance is properly before a rights arbitration under the Collective Bargaining Agreement (see Employer Exhibit #20) and he, the Employer, does not like it. They come before a Mediation/Arbitration and say we want you to settle a grievance. They are hedging their bets. If they lose before the right Arbitrator, they want the interest Arbitrator to change that decision and they don't even know yet if they have lost. That is a gross misuse of the Med/Arb procedure. They use this false argument to hide the real reason for the change in language. They not only want to limit upward bumping but they would also have this interest Arbitrator limit the employees use of seniority in any type of bumping. The Employer's language leaves many questions: What if the employee would rather bump a Junior employee in a lower class rather than take a vacancy in their same classification? Why should an employee only be able to go to a vacancy in a lower classification? Why should an employee who has to go to a lower classification be only able to bump the least Senior employee in the lower classification? In the end an employee with a great amount of seniority could wind up being laid off and Junior employees working. This procedure is absolutely certifiably insane. Then to top this madness off, they give a laid off employee super seniority for Job opening in their former classification. This could mean a Junior employee on lay-off could get a choice job over senior employees in the same classification for a period of 2 years (see Employer Exhibit #4, No. 3 Position Deletion).... If the Arbitrator would even consider this proposal, it would set the seniority rights of these people back 20 years and make seniority for job posting or lay-off meaningless and cause more labor unrest than a rippling effect bumping.... They have no basis; in fact, for this change but only conjecture. They cannot point to any AFSCME Agreement with the Board of Education that has this limiting language in it. In fact, the Union submitted a number of AFSCME Contracts in the Green Bay, Brown County Area and none of them have this limiting language. The Employer sees ghosts and wants the language changed but readily admits there has been no problem with the current language."

DISTRICT'S POSITION

The District argued that the Board has established a 5% guideline for increases to support staff for 1983-84 collective bargaining. During the course of bargaining, the Board authorized an additional 1% for the purpose of purchasing desired language changes in the contract. The additional offer of a one-half paid holiday was an additional bonus that the District placed in its offer in an attempt to purchase language changes which they deemed desirable and necessary.

The language and procedure dealing with position deletions and the rights of employees to transfer and bump constituted the desired language sought by the District.

The District addresses the Union's footnote proposal providing for a minimum 25¢ increase to the 15 designated employees in its brief as follows:

> "The Union's footnote proposal to the five wage rates for the five classification levels increases the cost for wages to the District by .2% for no good reason. The application of the 25 cent per hour minimum increase extends perferential treatment to a select number of employees beyond the level set for all other employees in their respective classification level for no rational reason. Clearly, the reorganization of clerical classifications from four levels to five levels assumes a uniform wage rate attributable to each classification level. Within the classification level, employees should earn the same rate. Indeed, evidence at the hearing established that the parties submitted disputes as to proper level placement to an 'umpire.' See TR 11. Thus, through the process of consultation and agreement or dispute resolution the employees in the previous four levels were distributed among five levels on the basis of performance expectations and qualifications. See TR 12-13. The concern for proper level placement reflects the concern for wage equity withinthe respective level.
>
> "The Union proposal would distort the objective assignment of employees among these levels by arbitrarily varying the most important component of the level placement - the wage rate. Indeed, such variances proposed for approximately 10% of the unit members, see District Exhibit 9, is really a repudiation of the objective assignment of employees to the levels and the concomitant wage equity of that assignment. Most significantly, the Union proposes to force these 'adjustments' to the District's job classification system for no express reason. It alludes only once to a 'safety net' without explanation. An allusion to a 'safety net' to insulate employees from the consequences of improper assignment to pay level must be rejected, especially where the reorganization to properly assign employees to new levels in fact increased wages of all the employees in the unit but one. See TR 12, District Exhibit 8 and Union Exhibit 2. It should always be kept in mind that these placements were either decided by a third party umpire where there was a dispute as to the propriety of placement or accepted by the Union and employee by virtue of its not being disputed. See TR 12, line 1-14.
>
> "...The wage rates of the District without the minimum cents per hour proposal of the Union are significantly above those of other districts in the immediate geographic and, therefore, market area."

Select portions of the Employer's argument as set forth in its brief addressed to the bumping language proposal of the District is as follows:

"The District's demand for language governing the placement of employees whose positions are abolished, and the District's subsequent specific proposal regarding same, resulted from problems immediately posed by a grievance filed by the Union, as well as from problems that would be posed in the future. The existence of the grievance as well as the real operational questions posed by it no matter how the grievance arbitrator rules require that the contract's silence in this area be ended."

The District pointed to testimony by Dr. Kampschroer concerning the Union's contentions taken during the grievance steps of the grievance that went to arbitration before Arbitrator Rubin wherein he testified that the Union contended that if the grievant could not bump up, that she must then be allowed to choose any position within her level which was occupied by an employee with less seniority. The District argued that such procedure would create indiscriminate bumping and would cause ripple effects over a long period of time. Such concern led the District to propose the solutions as set forth in their final proposal that were intended to avoid future uncertainty to both employees and the District in similar situations.

The District addresses the Union's argument that the District is basing their proposal on conjecture and imagined effects in its brief as follows:

"Thus, the resolution of the issue of upward bumping, as it was resolved in the District's favor subsequent to this hearing by Arbitrator Rubin on June 21, 1984, (copy attached) addresses only a collateral problem that exists in the contract administration of the parties, i.e. the upward bump. The fundamental problem that exists is the absence of any mechanism to deal with employees displaced as a result of the abolition of their position. Contrary to what the union suggests, such a problem is not hypothetical. It exists. It existed as a real concern in the lower steps of the grievance procedure. TR 26-27. It exists as a real problem now because it is the immediate concern of the parties as a result of Rubin's award denying the upward bump. Where and how shall such an employee now be placed?...

"The Union will argue that the District cannot be allowed to prevail with a proposal to change the status quo based on hypothetical problems. Such an argument by the Union is based upon two mistaken assumptions, to-wit: that a status quo exists and that the problem is hypothetical. As explained in the previous paragraph, the problem is not hypothetical, but actual. Furthermore, no status quo on the matter exists, but instead there exists a contractual void with respect to principles and procedures for the placement of these employees....

"Clearly, then, if a status quo exists in this matter it is that of uncertainty. The Union's apparent 'solution' to the problem would be to fill the void by continued recourse to the grievance arbitration procedure. Such a reliance on the grievance arbitration procedure to impose rights and procedures where no such provisions exist withinthe contract is a perversion of grievance or rights arbitration which is limited to the interpretation of actual provisions of an agreement.... Interest Arbitration after impasse in voluntary negotiations is the appropriate forum for the resolution of this matter. Here the evidence establishes that both

parties are aware of the silence of the contract; yet, the Union failed to respond meaningfully to the contractual defect as evidenced by the absence of any procedures for bumping in its final offer.

"Although the Union may object to elements of the District's language proposal, it has offered no other alternative in its final offer other than the continued status quo of silence and its consequent uncertainty. The District, on the other hand, has set forth a structured language proposal embodying principles based on the legitimate interests of both parties. These principles may be identified as follows:

(1) Certainty of one's status after the position is abolished. The employee will know what position s/he may bump and, if s/he cannot bump, then the employee would be laid off. This certainty of operation is in sharp contrast to the current situation where the parties are litigating a determination of placement without reference to any contractual principles or procedures. The current ad hoc approach is neither good management nor good contract administration.

(2) Deference to seniority. Seniority is still accorded significant weight under the District's proposal. Indeed, the only restriction of seniority is limiting its exercise to the position held by the least senior employee with similar terms of employment in the level. This restriction is warranted, however, as an accomodation to the third principle.

(3) Minimizing the disruption to the District's operations. An ad hoc approach to the problem leaves all junior employees in protracted limbo whenever placement is subjected to case by case arbitration. Similarly, an unrestricted right to bump any junior employee would set in motion a chain of bumps through multiple classifications within the level. Such a process takes time, affects morale and reduces efficiency as the various employees familiarize themselves with their new classification's duties throughout the chain. Under the District's proposal, the disruption is minimized by isolating the bumps to the position of the least senior employee with similar terms of employment (i.e. months of employment and number of hours per week, see TR 16-17) in that level."

The District addressed the offer of an additional one-half paid holiday and the wage rate level with respect to the comparability factor as follows:

"District Exhibits 12 to 16 demonstrate Green Bay's wage leadership among the contiguous school districts. District Exhibit 17 demonstrates this same leadership with respect to number of paid holidays. Given this leadership, the District is, nevertheless, willing to offer a 6% average increase in its overall wage package to the clerical unit, despite a 5% average for other internal units (District Exhibit 10) and a moderately low increase in the CPI (District Exhibit 18), as an offset to its language demand. Similarly, the District has

offered an increase in the already high number of paid holidays. The Union, on the other hand, offers no justification for a wage settlement in excess of the internal comparables without even the offer of a counterproposal in its final offer to the employee placement problem. Consequently, the Employer's offer overall is the more reasonable and should be adopted by the Arbitrator."

FINDINGS AND CONCLUSIONS

The mediation/arbitrator is mandated by the statute to select one or the other of the final offers without modification. The statute also provides that such mediator/arbitrator shall consider and give weight to those factors set forth in Section 111.70(4)(cm)7.

Before determining which, if any, factors are applicable to the dispute herein, and considering same under the statute, it is desirable to first pinpoint precisely what the dispute is between the two final offers of the parties.

In the first instance, there is no dispute between the parties as to the wage rate assigned to each of the five classifications. The parties have mutually negotiated and agreed upon those rates as set forth as being the appropriate rates for the contract year 1983-84.

The sole issue concerns the placement of 15 employees into the new classified rates. The Employer contends that the employees should be placed in the classification to which they have been assigned either by mutual agreement between the Employer and Union or as a result of a determination by an impartial umpire, and that they should be afforded the negotiated rate assigned to their classification.

The Union argues that said 15 employees should be entitled to and should receive a minimum 25¢ per hour increase for the contract year irrespective of whether that places them above the classification rate in which their job is found. The Employer's and Union's position therefore raises an economical issue to be resolved. The Union's proposal constitutes a somewhat greater cost to the Employer than does the Employer's offer with respect to placement of the 15 employees.

The other item involved in the final offers which constitutes a monetary item is that of the one-half holiday as contained in the Employer's final offer. It therefore appears that the difference in the parties' positions with respect to placement of the 15 employees serves to generate an economic cost variance and that the one-half holiday also constitutes a cost item.

In reviewing the exhibits presented into evidence by the two parties, the mediator/arbitrator finds that the District's cost analysis of the District's final offer and the Union's final offer found as Exhibit No. 6 under the District's submission, is somewhat at variance with the computations submitted by the Union. On close analysis, the explainable difference constitutes the fact that in the Union's computation, it included the cost of the additional one-half holiday whereas in the Employer's computation, the one-half holiday was not considered in the cost calculations. If one takes the Board's computation of the total package cost of the Union proposal and deducts therefrom the Board's computation of the total package cost of the District's proposal, one finds that the difference in the two offers, excluding any inclusion of the holiday cost item, to be $2,624.00. The Union offer, according to the District's analysis, is $2,624.00 higher than the District's final offer.

The Union computed the difference between the Union's final offer on wages only and the District's final offer on wages only to be in the sum of $3,182.50, with the Union's final offer being that much more costly than the District's final offer.

The Union calculated the cost of the additional one-half day holiday contained in the District's final proposal as costing $4,030.28. According to the Union's calculations, the District's total monetary proposal therefore was more costly than the Union's final proposal in the amount of $847.78.

What statutory factors does one then bring to bear on such issue and the monetary difference of the parties' two final offers?

The statutory factors as specified in the Wisconsin Statutes are as follows:

"a. The lawful authority of the municipal employer.

"b. Stipulations of the parties.

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

"d. Comparison of wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with wages, hours and conditions of employment of other employes performing similar services and with other employes generally in public employment in the same community and in comparable communities and in private employment in the same community and in comparable communities.

"e. The average consumer prices for goods and services, commonly known as the cost-of-living.

"f. The overall compensation presently received by the municipal employees, including; direct wage compensations, vacation, holidays, and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and other benefits received.

"g. Changes in any of the foregoing circumstances during pendency of the arbitration proceedings.

"h. Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment."

Neither party presented any evidence, either documentary or through testimony, nor made any argument as to the application of factors a, b, c, e, or g, above listed with respect to the monetary aspect of their final offers. That leaves one with factors d, f, and h.

The Union entered no comparability data into the record. The District entered into evidence written documents involving internal comparables of other support staff units and entered into evidence wage rates of comparable clerical positions in

contiguous districts. The District also entered into evidence a document showing a comparison of the number of paid holidays afforded employees in contiguous districts.

If one then applies factor d involving the comparison of wages of the municipal employees involved in this arbitration proceedings with the wages of other employees performing similar services, etc., as therein referred, one would conclude that the District's offer is to be favored because the Union's offer exceeds the cost of the District's offer by slightly in excess of $3,000.00. The comparability data clearly shows that the pay levels of the District are substantially higher than the contiguous districts shown by the District's exhibits.

If one, however, includes the overall cost of the monetary offers of the two parties within the application of factor f which calls for a comparison of the "overall compensation," one would be required to conclude that the Union's offer should be favored because the total offer of the District exceeds the cost of the Union's final offer.

This case is an anomaly. Normally the Union is the party arguing in favor of an offer that is of higher cost and the Employer is arguing against the offer that costs the most. In this case, it is the exact opposite. Factually, however, both parties placed the greatest accent and directed their argument more at the merits of their respective positions and neither argued that comparability was a decisive factor.

The parties have therefore brought factor "h" into consideration to the monetary portion of their dispute. Factor "h" would include the matter of considering the relative merits of the respective positions.

The Union argued that the District's offer was not fair to the 15 employees. The District argued that the Union's offer recreates the exact ineqalities that the recent reclassification was designed to eliminate.

The undersigned is of the judgment that the District's position contains the greater merit on this issue. In the first instance, the reclassification system is of recent origin. The parties negotiated the proper grouping of the various classifications into five distinct and separate groups. For those jobs upon which agreement could not be mutually reached, the proper placement was placed before an umpire and the umpire then determined the proper placement. The parties thereafter negotiated the proper and appropriate rates to be attached to each classification group. The premise is that employees performing the various jobs within a particular group are then being paid the appropriate rate of pay for the skill and responsibility attendant to their particular job. The premise is that the work has been properly evaluated so that the proper rate is being paid therefor. When one therefore seeks to have a select employee paid more than the called for rate, the result would be overpayment to the employee for the work being performed, it would make the classification system meaningless, and it would create an unfair treatment to those employees performing the same level of work at the lower classified rate.

The second aspect of the reclassification that needs to be examined concerns the premise that a reclassification is generally recognized as correcting inequities that previously existed. Reclassification is generally intended to raise the

pay or upgrade those jobs that are underpaid for the skill and responsibility attached thereto and to bring to its proper level those jobs that may be overpaid so that each job after reclassification is paid equally based on the respective comparable worth of the duties and responsibilities of each job, one to the other. The length of service of an employee in a particular job under a true reclassification system is not relevant. Long tenure of an employee is rewarded through payment of greater vacation benefits, greater security through seniority, greater and better transfer rights over less senior employees, etc. The true reclassification system is intended to equate the proper rate for the work to be performed. Where one allows one employee to perform a job at a rate higher than called for by the classification rate while working next to another employee performing the same type work at the classified rate, one is creating a clearly unfair and inequitable situation. That is exactly what the Union is requesting in this case. Clearly, the approximately 12 or 13 employees who would receive a 20¢ increase under the Employer's proposal by being placed into their proper classified rate, are not injured in any respect by being placed into that classification at the called for rate of the classification. Clearly, an additional 5¢ would not make a claimed unfair situation fair.

If the 12 or 13 employees affected were employees whose jobs were reclassified without there being an attendant change of duties or responsibilities associated therewith, it would seem that where all other employees whose jobs as a result of reclassification had received a 30 or 30¢ an hour increase, that the 12 or 13 employees jobs would have been ones that in comparison would have been too highly paid prior to the classification and as a result of properly assessing the true worth of their jobs, the resulting 20¢ increase in the classification rate was the proper result. The same could be said about the other employees with the exception of employee Georgeson which the evidence indicates had previously performed a job that included work that was taken from her position at the time of reclassification. As a result of revising the job in which Georgeson was placed, some of the work was taken from her job and the true worth of the job remaining which she is presently performing, was determined by the impartial umpire. It is not unusual, but in fact it is quite common that in implementing reclassifications, where an employee might otherwise suffer a cut in earnings, that an employee is red circled at their current rate and kept at such rate without any other increase until the new classification rate in which the employee is placed catches up to such employee's higher rate. The fairness in such treatment is that an employee generally sets their living standards according to their earnings and if their earnings are suddenly reduced, a hardship may occur. It is not usual, however, to grant an increase so as to perpetuate an unequal treatment and pay to employees performing the same type work.

The normal situation wherein a red circle rate is implemented, is where an employee may be working at a specified contractual rate in a job and the Employer requests the employee to perform some additional duties above and beyond or outside of the work included in the normal job or classification in which the employee is employed. As a result of an employee undertaking such additional work or responsibility, an employer may grant and pay an additional amount to such employee thereby creating a red circled rate that is above the contractual rate for the job classification of the employee. When, however, such additional work is discontinued and the employee no longer

performs it, frequently such additional pay is discontinued. The same type situation is found where employers utilize leadmen and pay leadmen an additional 10, 15, or 20¢ per hour for such additional responsibility. Employees normally are paid leadmen rates only when they factually work as leadmen and discharge the greater responsibility of leadman. When they do not work as leadmen, they do not receive leadmen pay. One returns to the basic premise that where a rate is properly set for the duties and responsibilities and skills required of a particular job, all employees performing such work should be paid the same rate. To pay one more than another, is to discriminate against a lesser paid employee. On its merits, the arbitrator would find that the Employer's proposal on this issue is more reasonable and acceptable.

The remaining issue in this case concerns the proposal of the District to include specific language governing the rights of employees to bump other employees when they are displaced from a job because of abolition of their position. The arguments of the parties on this issue have been set forth in the earlier portions of this decision. In the judgment of the arbitrator, the Union's position contains the greater merit on this issue. Clearly, the stringent and very limited right to bump afforded employees under the Employer's proposal is not reasonably necessary in a unit of the size here involved and one that is situated in but the one locale of the Green Bay area. Where one has a bargaining unit that is spread over a wide geographical area, to allow indiscriminate bumping may result in requiring employees to move from one geographical area to another as a result of being bumped and of bumping. A more limited right to bump is therefore more justifiable in that type situation. In this type case, it is a wide departure from what appears to be only general recognition of seniority rights along with an Article IV maintenance of practice provision contained in the previous agreement between the parties to be applied in conjunction with the Article XXIV provision concerning new jobs and vacancies.

The Union properly raises concerns and questions about the application and potential inequitable results flowing from the District's language with respect to affording priority recall rights that could adversely affect more senior employees. It seems to the undersigned that the potential impact and effect of the proposed language of the District could have potential lasting adverse impact on employees in the event that one or more jobs are abolished. The effect on one or more employees could be of a nature that no equitable remedy would be available.

It would seem that under the non-specific language presently in effect and reference to the past practices utilized by the parties, that a great deal of flexibility is available to meet the various situations that may arise. Under the newly proposed language of the District, it leaves very little flexibility as it strictly defines and limits the rights of employees to bump.

This case is clearly one that does not properly belong in the med/arb process. The arbitrator is cast in a position of not being required to choose the most reasonable of two final offers, but rather is placed in the position of choosing what is the least unreasonable of two unreasonable offers.

In the final analysis, the monetary issue favors the Union proposal by application of the comparability factors and favors the District's proposal from the application of the merit consideration. As a result, neither party's offer on the monetary issue including the wage and holiday issues

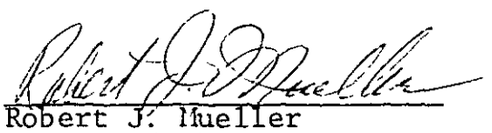
is worthy of favor over the other. While the Union's proposal for minimum 25¢ per hour increases to the approximately 15 or 16 employees constitutes direct deviation from the intended purpose of the reclassification in the first instance, it is a matter that is of only the contract term duration and one that the parties then can therefore correct at the next opportunity so as to move employees onto the classified rates. Additionally, the Union's offer constitutes a lower cost expenditure for the contract year and any violation of the reclassification results by having employees work for a year above those rates, constitutes no great harm that carries any lasting effect.

The bumping language proposed by the District, on the other hand, carries the potential of creating a lasting effect upon any employee that might be affected by its application during the term of its application and the correction of any such inequitable impact may or may not be able to be corrected by later actions of the parties.

It therefore follows on the basis of the above facts and discussion thereof, that the undersigned, being obligated under the statute as mediator/arbitrator to select one or the other final offers of the parties without modification, is in the discharge of such duty moved to select what the arbitrator finds to be the least unreasonable of two unreasonable final offers. It is therefore awarded as follows:

AWARD

That the final offer of the Union be incorporated along with the stipulations and prior agreements of the parties as and for the 1983-84 Collective Bargaining Agreement.



Robert J. Mueller
Mediator/Arbitrator

Dated at Madison, Wisconsin
this 13th day of September, 1984.