STATE OF WISCONSIN

BEFORE THE MEDIATOR/ARBITRATOR

In the Matter of the Petition of

WEST ALLIS-WEST MILWAUKEE SCHOOL AIDES ASSOCIATION

To Initiate Mediation/Arbitration Between Said Petitioner and

SCHOOL DISTRICT OF WEST ALLIS-WEST MILWAUKEE, et al.

Case XLIII
No. 32437 MED/ARB-2506
Decision No. 21700-A

Sherwood Malamud
Mediator/Arbitrator

Appearances:

Sandra L. Schwellinger, Executive Director, West Suburban Council, 4620 W. North Avenue, Milwaukee, Wisconsin 53208, appearing on behalf of the Association.

Foley & Lardner, Attorneys at Law, by Ms. Carolyn C. Burrell, 777 E. Wisconsin Avenue, Milwaukee, Wisconsin 53202, appearing on behalf of the Municipal Employer.

JURISDICTION OF MEDIATOR/ARBITRATOR

On June 11, 1984, the Wisconsin Employment Relations Commission appointed Sherwood Malamud to serve as the Mediator/Arbitrator to attempt to mediate issues in dispute between the West Allis-West Milwaukee School Aides Association, hereinafter the Association, and the School District of West Allis-West Milwaukee, et al., hereinafter WAWM or the Employer. If mediation should prove unsuccessful, said appointment empowered the Mediator/Arbitrator to issue a final and binding Award, pursuant to Sec. 111.70(4)(cm)6.c. of the Municipal Employment Relations Act. A brief mediation session was conducted on August 24, 1984, which was followed by hearing in the matter. At the hearing, which was conducted at the Administration Building of the Employer, the parties presented testimony and evidence. A transcriptual record of the hearing was made. The parties submitted briefs and reply briefs which were exchanged through the Mediator/Arbitrator by November 3, 1984. Based upon a review of the evidence and arguments submitted, and upon the application of the criteria set forth in Sec. 111.70(4)(cm), Wis. Stats., to the issues in dispute herein, the Mediator/Arbitrator renders the following Arbitration Award.

SUMMARY OF ISSUES

SALARY

1983-84 School Year

The Association proposes an increase of approximately 3.63% on each step of the 1982-83 salary schedule.

The Employer proposes to increase each step of the 1982-83 salary schedule by approximately 2.98%.

1984-85 School Year

The Association proposes an increase of approximately 5.45% on each step of the 1983-84 salary schedule. This results in an 8.26% increase in salary costs over the 1983-84 salary costs for school aides.

The Employer proposes an approximate 0.35% increase in each step of the 1983-84 salary schedule. Together with the costs of the increment, this would

result in 3.01% increase in salary costs over the 1983-84 salary costs for school aides.[1] The Association's proposed salary schedules for the 1983-84 and 1984-85 school years are reproduced below:

WEST ALLIS-WEST MILWAUKEE SCHOOL AIDES ASSOCIATION

Proposal

ARTICLE 11

WAGES

1. Effective as of July 1, 1983, the rates of pay shall be as follows:

	Step 1	Step 2	Step 3	Step 4	Step 5
Instructional Aides (Teacher and Library Aides)	4.84	4.95	5.08	5.37	6.28
Handicapped Children's Aides	4.94	5.08	5.19	5.49	6.38
Therapy Aides	5.41	5.56	5.88	6.19	7.29

3. 2. To remain unchanged.

4. 3. To remain unchanged.

1. Effective as of July 1, 1984, the rates of pay shall be as follows:

	Step 1	Step 2	Step 3	Step 4	Step 5
Instructional Aides (Teacher and Library Aides)	5.10	5.22	5.36	5.66	6.62
Handicapped Children's Aides	5.21	5.36	5.47	5.79	6.73
Therapy Aides	5.70	5.86	6.20	6.53	7.69

3. 2. To remain unchanged.

4. 3. To remain unchanged.

The Employer's proposed salary schedule for the 1983-84 and 1984-85 school years is reproduced below:

SCHOOL DISTRICT OF WEST ALLIS-WEST MILWAUKEE, ET AL.
BOARD OF EDUCATION

FINAL OFFER PROPOSAL
May 7, 1984

ARTICLE 11

WAGES

1. Effective as of July 1, 1983, the rates of pay shall be as follows:

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[1]In the course of their negotiations, the parties agreed to exclude the increment in costing the first year of this two-year successor Agreement. However, the parties agreed to include the costs of the increment, on this five-step salary schedule for aides for the second year of the Agreement.

	Step 1	Step 2	Step 3	Step 4	Step 5
Instructional Aides (Teacher and Library Aides)	4.81	4.92	5.05	5.34	6.24
Handicapped Children Aides	4.91	5.05	5.16	5.46	6.34
Therapy Aides	5.38	5.53	5.84	6.15	7.24

3. 2. To remain unchanged.

4. 3. To remain unchanged.

1. Effective as of July 1, 1984, the rates of pay shall be as follows:

	Step 1	Step 2	Step 3	Step 4	Step 5
Instructional Aides (Teacher and Library Aides)	4.83	4.94	5.07	5.36	6.26
Handicapped Children Aides	4.93	5.07	5.18	5.48	6.36
Therapy Aides	5.40	5.55	5.86	6.17	7.26

3. 2. To remain unchanged.

4. 3. To remain unchanged.

OVERTIME

The Association proposes to add Section 4 to Article III, entitled Hours to the expired Agreement. This new section would provide as follows:

> "4. In the event overtime work is scheduled by the principal or supervisor, the employe shall be paid at time and one-half of his/her regular hourly rate."

The Employer proposes no change be made to the expired Agreement. Therefore, there would be no provision for overtime in the successor 1983-84 and 1984-85 Collective Bargaining Agreement.

STATUTORY CRITERIA

The criteria to be used for resolution of this dispute are contained in Sec. 111.70(4)(cm)7, as follows:

> In making any decision under the arbitration procedures authorized by this subsection, the mediator-arbitrator shall give weight to the following factors:
>
> a. The lawful authority of the municipal employer.
>
> b. Stipulations of the parties.
>
> c. The interest and welfare of the public and the 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 employes involved in the arbitration proceedings with the 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 employes, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

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

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

BACKGROUND

In the main, the Employer School District serves the communities of the City of West Allis and the Village of West Milwaukee and portions of the City of New Berlin and the City of Greenfield. The Employer employs 48 full-time equivalent aides in three classifications. Instructional Aides comprise the bulk of the unit, and 30 of the 48 are Instructional Aides. The Employer employs 12 Handicapped Children's Aides and 6 Therapy Aides.

Forty of the 48 Aides employed by the Employer are regularly scheduled to work six hours per day. Two Therapy Aides are regularly scheduled to work seven and one-half hours per day, and three Therapy Aides are regularly scheduled to work seven hours per day. One Handicapped Children's Aide is regularly scheduled to work six and one-half hours per day; one Therapy Aide is scheduled to work six and one-quarter hours per day. One Aide is regularly scheduled to work eight hours per day. The expired Agreement contains a provision which the parties have agreed to continue into a successor Agreement which provides that Aides shall work a minimum of six hours per day.

Although many school districts employ school aides, it has been difficult for the parties to clearly identify a pool of comparable districts for use as a basis of comparison in this Mediation/Arbitration proceeding. The Employer and the Association have both suggested several school districts as comparables, but over half the districts suggested by each were not agreed upon by the other. Unlike a mediation/arbitration proceeding involving a teacher bargaining unit where schools of similar student populations are grouped into the same athletic conference and are readily identifiable as comparables, here, some districts which may well be comparable for purposes of comparing the salaries and total compensation received by teachers, may only employ several aides. Such a district may be comparable for comparing teacher salaries, but may not serve as a comparable in a proceeding concerning the salaries to be received by school aides. The teacher collective bargaining agreement contains a provision which establishes ratios of teachers to aides, and it identifies several criteria in determining the number of Instructional Aides to be employed on the basis of the various criteria set forth in the teachers' agreement. There is no similar provision for Handicapped Children's Aides or Therapy Aides. This provision may have some impact on the size of the School Aide unit.

Other large school districts employ several times the number of aides that are employed by the WAWM District. This substantial variance in the size of the aide unit may impact on how aides are used by the various school districts. For example, the WAWM District does not employ Aides to monitor and supervise playgrounds. The WAWM District employs Therapy Aides who work with a physical therapist. These Aides assist in feeding, mobility and toileting of students. Special Education Aides or Aides for Handicapped Children as they are called in the WAWM District, assist the teacher in the instruction of children with exceptional educational needs (EEN). Both the Therapy and Special Educational Aides are licensed by the State of Wisconsin. The WAWM District has developed a fine program in servicing the needs of EEN students, one which is recognized by districts contiguous to WAWM. Several contiguous districts such as the School Districts of Wauwatosa, Greenfield and Greendale, send their severely handicapped children to WAWM.

The Arbitrator dwells on the number of aides employed and their respective duties to emphasize that these facts create a situation in which it is difficult to compare the duties, responsibilities and conditions under which school aides work. Consequently, it is difficult to clearly identify a pool of comparable school districts.

This difficulty is reflected in the arguments of the parties over the comparable school districts. It has also effected the arguments of the parties in that the Employer presents little evidence concerning the level of salaries or wages paid to aides at the entry level or top step of the salary schedule. Rather, the Employer views the principal issue in this case from the perspective of the total compensation received by aides; it compares the total compensation received by WAWM Aides to the total compensation received by aides in what it perceives to be comparable school districts.

On the other hand, the Association presented data at the hearing and arguments in its briefs concerning the levels of compensation received by aides at the entry and top step of the three classifications of aides employed by the Employer. Other than costing its total financial package, the Association presents no data or argument concerning the total compensation received by School Aides employed by the WAWM.

The parties have not only based their positions in great measure on different comparables, but they have limited their arguments to a divergent analysis of the comparability statutory factor. In this regard, the parties have focused their arguments on different facts, i.e., the Employer on total compensation; the Association on wage levels. They have also presented these arguments in relationship to different school districts.

This Mediation/Arbitration proceeding is further complicated by the events which occurred in the process of the certification of final offers and the events which occurred subsequent to that certification and prior to the hearing in this case. In preparing their final offers, which were certified in May, 1984, the parties projected that health insurance premium costs would increase from $58,301.00 in the 1983-84 school year to $69,961.00 in the 1984-85 school year. As a result of these projections, the total increase in the costs of the total packages of the parties were projected to be 10.23% under the Association's proposal and 5.81% under the Employer's proposal for the second year of this two-year successor Agreement at issue herein. However, in fact, the health insurance premium costs for the 1984-85 school year increased only very slightly from $58,301.00 to $59,988. As a result, at the time of the hearing, the actual cost of the Association's proposal was 7.97%, and the Employer's is 3.53%. Despite the dramatic change in the costs of the parties' proposals, no voluntary settlement was achieved in the mediation portion of the MED/ARB proceeding.

POSITIONS OF THE PARTIES

THE ASSOCIATION ARGUMENT

As noted in the Background Section, the threshold issue between the parties concerns the identification of the comparable districts. The Association argues that the comparable group of districts are Cudahy, Franklin, Greendale, Oak Creek, St. Francis, Shorewood and Whitefish Bay. The Association chose these districts as its comparables on the following basis: 1) All of these districts are located in Milwaukee County; and 2) the aides employed by these districts are organized and represented by a union. The Association notes the unique character of Milwaukee County, and it points to legislation such as Chapter 220 which provides state funding to support the voluntary transfer of students between the Milwaukee Public Schools and the suburban school districts in order to promote integration. The Association argues as well that arbitrators have long recognized the unique character of school districts located in Milwaukee County. In this regard, it cites the decision of Arbitrator Kerkman who, in Ozaukee County (16797-A), recognized that in interest arbitration matters Milwaukee County and the municipalities contained within it are unique unto themselves.

The Association argues that several of the school districts suggested by the Employer as comparables in this case should not be used by the Arbitrator

in this proceeding. The Association objects to the use of aides employed in the Wauwatosa and South Milwaukee School Districts as comparables in this case, because they are not organized or represented by a union. In this regard, the Association cites the decisions of several arbitrators, notably Zel Rice II in DeSoto Schools (16814-A); Fleishli in Outagamie County (20412-A); R.U. Miller in Dane County (18181-A); and David Johnson in Potosi Schools (19997-A). All of these noted arbitrators have observed that the dynamics of bargaining wage levels differ from the administrative establishment of wages; they have noted that when wages are administratively set there is no bargaining as such leading to the establishment of the wage rate. Accordingly, these arbitrators did not use the data from employers whose employees were not organized as a basis for comparison in the determination of wage rates in a mediation/arbitration proceeding.

The Association also objects to the use of the School Districts of Elmbrook, Racine and Waukesha as comparables in this case, because they are not located within Milwaukee County. Although these districts are presently in the same athletic conference with schools from the WAWM, the Association notes that in the 1985-86 school year, the athletic conferences in the area will undergo realignment with the result that the WAWM schools will not be in the same athletic conference with schools from Elmbrook, Racine and Waukesha.

On the salary issue for 1983-84, the Association proposes an increase of 3.63%. It asserts that the average cents per hour generated under this proposal is closer to the increases achieved in the settled comparable districts than the Employer's proposal. For instance, at the top step for 1983-84, the average cents per hour increase among the settled comparable districts is 39¢ per hour. The Association proposes an increase of 22¢ per hour, and the Employer proposes an increase of 18¢ per hour for the 1983-84 school year. In fact, the Association notes that the increases generated by its proposal for both years is lower than the two-year increases of the average in the settled comparable districts. The Association charts in its brief the benchmark salaries at the minimum and maximum rates for instructional and special education aides (Handicapped Children's Aides and Therapy Aides were treated as special education aides in the Association's brief). The Association argues that the Employer's position would erode the ranking of the WAWM aides as compared to the other comparable districts. The Association asserts that its proposal would at least maintain the present relationship between the wage rates received by WAWM aides and those received by other school districts. The Association argues that its proposal is more reasonable in that it keeps pace with increases in the Consumer Price Index over the period of 1971 through 1984-85. The Association's proposal does not keep pace with that increase, but it comes closer than the Employer in matching the increases in the CPI during this period of time. The Association notes that at the time final offers were certified in May, 1984, the CPI for Milwaukee was 7.2% from May, 1983 to May, 1984. The Association proposal to increase the salary schedule by 5.45% is closer to the CPI than the 0.35% offered by the Employer.

The Association argues that the internal comparables support the Association proposal. The teacher bargaining unit of the WAWM settled for the 1984-85 school year by increasing the salary schedule by 5.45% with the average increase for each returning teacher at 6.57%. The average wage increase per aide is 8.26% which is closer to the teacher settlement than the Employer's 0.35% and the average wage increase generated by that, which is 3.01% average wage increase per aide.

The Association discounts the economic factors cited by the Employer as a reason for selection of its final offer. The Association notes first, that in 1984-85 the Employer will receive $2,000,000+ in state aids. The Association acknowledges that in 1983-84 and in years prior, the Employer has received very little state aids. The Association cites the observation of Arbitrator Imes who noted that the formula concerning state aids generates less dollars for districts with a greater ability to sustain the costs of educating the children of their residents. The Association points to the fact that the costs of the aides' salaries is but 1.3% of the total WAWM budget. Since the Employer has a residency requirement, the aides are impacted in the same manner by the taxes imposed by the Employer and the economies achieved by the WAWM District as are the other residents of this district.

The Association raises a serious question with regard to the weight to be given to Employer Exhibits No. 4, 5 and 6 introduced at the hearing. The Association asserts that 41 aides are used in the costing of these exhibits. Yet, 48 aides was used as the number for costing purposes by both parties during negotiations. Furthermore, the Association notes that by agreement the costs of the increment and longevity were not to be included in the costing of the proposals of each side. In fact, Employer Exhibts 1A and 2 reflect the costing agreements reached during negotiations and which were to be the basis for costing the offers of the parties in this Mediation/Arbitration proceeding. The Association argues as well, that Employer Exhibit No. 7 should be given little weight. In that exhibit, the Employer purports to establish common full-time equivalencies based on six hours of work per day, seven hours of work per day and eight hours of work per day as a basis for computing the annual average cost for each full-time equivalent aide and comparing that cost for the WAWM and the other districts which the Employer views as comparable. The Association notes that none of the full-time equivalency numbers used in Exhibit No. 7 is equal to the 48 full-time equivalency agreed to by the parties in the course of their negotiations for the costing of their proposals. The Association argues that the variance in full-time equivalency numbers generated by Employer Exhibit No. 7, mandates that the Arbitrator not use that exhibit in making his decision.

On the overtime issue, the Association notes that at present and under its proposal, the Employer maintains total control of the scheduling of overtime. The Association argues that since the Districts of Oak Creek, Whitefish Bay, St. Francis, Greendale and Franklin pay time and a half for overtime to their aides, that establishes a substantial basis for the adoption of the Association's overtime proposal. The fact that the Association has seen fit to set no fixed point beyond which overtime is to be paid, but rather has established the point at which overtime is to be paid as the time worked beyond the normal schedule of each individual aide, preserves the flexibility accorded to the Employer to establish and maintain a normal work day which varies from employee aide to employee aide. The Association argues that since the Employer provides overtime pay to other non-professional bargaining unit employees, such as the custodial maintenance employees under their agreement and the clerical/secretarial employees under their agreement, the aides should receive overtime for time worked in excess of their normal work day. The Association concludes that settlements in other school districts establishes the reasonableness of the Association salary proposal. The Association position is closer to the hourly rate paid by comparable schools and, therefore, the Association position should be adopted by the Arbitrator.

THE EMPLOYER ARGUMENT

The Employer argues strenuously that the total economic impact of the proposal of the Association and the Employer must be thoroughly examined and weighed. In this respect, the Employer emphasizes that, except for computing the total cost of its final offer, the Association limited the exhibits presented at the hearing to a comparison of salary schedules included in the collective bargaining agreements of what the Association views as comparable districts. However, the evidence submitted by the Association at the hearing totally ignores the cost impact of the salaries paid by these comparable districts to their aides.

It is with regard to the comparables, that the Employer argues that the athletic conference provides a ready and accepted method (with the exception of the Milwaukee Public Schools) of identifying the pool of school districts which are to serve as a basis of comparison and evaluation of the final offers of the Association and of the Employer. In addition, the Employer includes several districts which are contiguous to it as comparables for this proceeding. The school districts included with the WAWM schools in the same athletic conference and used by the Employer as a comparable in this proceeding are: Cudahy, Racine, Shorewood, South Milwaukee, Waukesha, Wauwatosa and Whitefish Bay. Wauwatosa is contiguous with the WAWM District as is Elmbrook. Three of the above districts, namely, Cudahy, Shorewood and Whitefish Bay are suggested as comparables by the Association as well.

The Employer argues that other Milwaukee County school districts suggested as comparables by the Association generate little useful information. Oak

Creek informed the WAWM Business Manager, Mr. Buchholtz that they do not employ aides. St. Francis employs only three school aides, and it has no special eduaction aides on its staff. Greendale has always been the number one school district in ranking in the amount of salary paid to its aides. These districts, the Employer concludes, should not be used as comparables in this proceeding.

The Employer argues that by using the total compensation paid to WAWM aides a more accurate picture of the level of compensation received by these employees is accomplished. In light of the diverse classifications and duties performed by aides from school district to school district, and in light of the disparate number of hours worked by aides from district to district, the method it has used as reflected in its Exhibit No. 7 provides a consistent and readily ascertainable method of comparing the total compensation paid to aides in each of the comparable districts. The Employer in the amended Exhibit No. 7 provides full-time equivalencies which are projected on the basis of either a six-hour, seven-hour or eight-hour work day. The full-time equivalency factor so identified was then used as a divisor by which the total costs of a school district for salary and fringe benefits paid to aides is divided in order to ascertain the annual salary per full-time equivalent aide for each of the comparable districts. Based on these figures, and even using the six-hour per day full-time equivalency, the cost of employing an aide in 1983-84, the first year of the two-year Agreement at issue herein, is exceeded by only the total compensation paid to the aides employed by the Shorewood School District. WAWM pays its aides under its proposal $8,442.00 for 1983-84 and under the Association's proposal, these aides would be paid $8,486. The Shorewood District pays its aides $8,616. Elmbrook pays its aides $8,062.00 and Waukesha pays $4,320. For 1984-85, the Employer notes that the cost of employing an aide in WAWM is $8,743.00 under the Employer's proposal and $9,161.00 under the Association's proposal. Shorewood's cost at $9,195.00 exceeds the cost of the proposal of both the Association and the Employer. Elmbrook's cost for 1984-85 for the employment of a full-time equivalent aide is $8,595.00 and South Milwaukee pays $6,661.00 in total compensation to its aides.

The Employer concludes from this data that its total compensation package is more comparable to that paid by a majority of comparable districts. The Employer concludes that its proposal is more reasonable under the statutory factor listed at Sec. 111.70(4)(cm)7d of the statute quoted above.

The Employer further justifies its emphasis on the total compensation paid to employees as the key factor to be considered by the Arbitrator in his determination of this Mediation/Arbitration dispute, because of the cost impact the total compensation paid to aides has on the tax levy. The Employer notes that in the WAWM School District, the costs of sustaining the operations of the school district are paid by the local taxpayer. The Employer points out that even though its budgets from the 1980-81 through 1983-84 school years grew by 0.36%, the tax levy has increased by 21.17% during the same period of time. This gross distortion between this minimal increase in the size of the district's budget, as compared to the substantial increase in the tax levy, is due to the fact that 90% of the district's budget costs are funded by local taxes as compared to the average of 57% which is the burden of the taxpayers in other Milwaukee County school districts. The Employer notes further that this higher tax burden falls on a community with a lower percent of upper income residents living within its boundaries than generally found in the greater metropolitan Milwaukee, Waukesha, Ozaukee and Washington County area.

On the overtime issue, the Employer notes that the intent of the Association proposal is to provide overtime pay, "for all overtime worked in excess of the individual's 'normal' work day or work week at a rate of time and one-half." The Employer points out that 40 aides work six hours per day and that the other eight aides work schedules ranging from six and one-quarter to eight hours per day. The Employer asserts as well that other provisions in the expired Collective Bargaining Agreement establish the minimum number of hours to be worked by aides. This provision does not establish or define the normal work day for any particular classification of aide.

The Employer urges rejection of the Association overtime proposal for several reasons. By tying the payment of overtime to the hours worked in excess of the aides' normal work day, the Association attempts to establish the contractual minimum referred to above and transform these minimums into contractual maximums. If the Employer were to work aides additional hours, it would have to pay overtime. The determination of when overtime would be paid to different employees would vary from employee to employee under the Association's proposal, and as such that proposal is inherently unfair. The Association proposal is unjustified, the Employer asserts. Except for the St. Francis School District, which pays overtime for hours worked in excess of seven and one-half hours per day, the four other districts who pay overtime do it for hours worked in excess of eight per day or 40 per week. As for the non-professional employees covered by collective bargaining agreements in the WAWM School District, both the clerical and custodial bargaining units contain provisions for the payment of overtime. However, overtime is paid to these employees for hours worked in excess of eight per day and 40 per week.

REPLY BRIEFS

In its reply brief, the Association notes that it is difficult to compare the duties performed by aides, because few, if any, of the agreements contain job descriptions. Nonetheless, the Association maintains that the unique character of Milwaukee County should be recognized by the Arbitrator. The Association takes exception to the Employer's characterization of the Association's comparison of wage schedules as an abstraction. The Association argues that the total economic impact argument presented by the Employer is misleading and fraught with error. The Association argues that the Employer has failed to present any comparison of benefits; nor has the Employer in its exhibits or in its brief delineated the nature of the full-time versus part-time employment of aides in what the Employer perceives to be as comparable school districts under its total compensation argument. The Association charges that the Employer "has changed data to fit its purpose for various exhibits." In this regard, the Association notes that the parties agreed in their negotiations to use full-time equivalency of 48 for costing purposes. In its amended Exhibit No. 7, the closest full-time equivalency to the agreed full-time equivalency of 48 is 49.6 which is based upon an assumption that aides work six hours per day. The Association argues that the comparison of benchmarks which it uses is the well-accepted method of comparing the salaries paid by different employers.

The Association discounts the Employer's argument concerning the detrimental impact the adoption of the Association's proposal would have on the Employer's finances. First, the Association points out that the salaries of the aides comprises but 1.3% of the Employer's total budget. Furthermore, the Association notes the testimony of the Employer's Business Manager Buchholtz to the effect that the percentage increase in property taxes suffered by the WAWM's taxpayers is not appreciably different from the property tax increases experienced by other area communities. The Association cites the statement of Arbitrator Krinsky in Waunakee Schools (29771) in which he indicates that in order for the tax burden and health of the economy argument to be given any substantial weight, there must be a showing that the economic conditions in the affected community are better or worse than the economies of comparable communities. The Association argues that the Employer presented no evidence demonstrating that the economy of the WAWM District is in any different condition from the economy of school districts in the area.

On the overtime issue, the Association notes that overtime is defined in the dictionary as: "1. Time beyond the established limit of working hours; 2. paid for work done in such time."

The Association argues that it should not be penalized for its willingness to accommodate the Employer with flexibility in setting employee work hours as a reason for not paying overtime to the aides. The Association emphasizes that the alternative proposed by the Employer in this case is that no overtime be paid to aides of the WAWM School District.

In its reply brief, the Employer cites the decision of this Arbitrator in DeSoto Schools (21184-A) 7/84 in support of its argument that the athletic conference is the simplest way of identifying and the universally accepted grouping of school districts for purposes of establishing comparability.

The Employer notes that the Association chose different comparables but also chose to approach the presentation of evidence and argument in this case in a manner which is substantially different from that chosen by the Employer. It notes that the Association has provided the Arbitrator with no basis for comparing the total cost of employing the aides of the WAWM School District.

The Employer argues that the Association's presentation on the minimum rates is not useful in this case, since 94% of the WAWM adies are not at the minimum rate. The Employer highlights the fact that the Association acknowledges that this record is devoid of any evidence with regard to the duties performed by aides in the various school districts suggested as comparables in this case. This problem assumes greater significance since the Association suggests the School District of Greendale and Franklin as comparables here. The Franklin School District does not distinguish between instructional and special educational aides. The Employer maintains that its method of comparing the total costs of aides' salaries and fringe benefits minimizes the inherent difficulties in presenting an argument in support of the total final offer of one side or the other. Since by establishing full-time equivalency, any variation in the number of hours worked by individual aides is thus eliminated and a universal system for purposes of comparison is established. The Employer denies the Association charge that its costing methods are in variance with the Agreement to use 48 as the full-time equivalency. The full-time equivalency used by the Employer does not disadvantage the Association.

The Employer dismisses the Association claim that aides' salaries constitute but 1.3% of the total budget of the WAWM School District. The Employer argues that in order to control costs an employer is required to consider each and every item in its budget as the object for this cost cutting concern. Otherwise, it will fail in its attempt to keep costs under control.

On the overtime issue, the Employer notes that no aide was asked to work overtime during the 1983-84 school year. The Employer notes further that under the Association's proposal the payment of overtime differs substantially from the manner in which overtime is paid to other non-professional bargaining unit employees of this Employer. The Employer concludes in its reply brief by noting that in the October 27, 1984 edition of The Milwaukee Journal it was reported that, "The Bureau of Labor Statistics report for the first nine months of 1984 shows that yearly wage increases averaged 2.5% in the first year and 2.8% over the life of contracts negotiated by unions representing 1,000 or more private sector workers."

DISCUSSION

The Discussion Section is organized in the following manner. First, the threshold issue of what are the appropriate comparable districts in this case is analyzed. Then the Arbitrator turns to discuss three facets of the comparison factor delineated at Sec. 111.70(4)(cm)7d. A comparison of the salary levels paid to aides of the comparable districts is the first facet of the comparability factor discussed below. Then, the internal comparability factor is analyzed. The discussion on the comparability factor is concluded with a comparison of the total compensation paid by the WAWM School District as compared to the other comparable districts. The Arbitrator then notes his conclusion with regard to the preferability of the offer of the Association or the Employer on the basis of this factor alone.

The Arbitrator then turns to consider the cost-of-living factor, and then the factor "the interests and welfare of the public," is discussed. The remaining statutory factors provide little basis for distinguishing between and selecting the final offer of the Association or the final offer of the Employer in this MED/ARB case. The Arbitrator then weighs the factors noted above and indicates his preference for the offer of the Association or the Employer on the salary issue.

Then, the statutory factors are applied to the overtime issue. After noting the Arbitrator's conclusion on that issue, in the final section of this Discussion, the Arbitrator states the basis for his selection of the final offer of the Association or the Employer.

COMPARABLES

The threshold issue in this case, and one that impacts upon the presentation of evidence and argument is the comparability issue. Because some school districts employ few aides or use their aides differently, or employ aides mostly on a part-time or full-time basis, it is difficult to identify an appropriate group of comparable districts. In the course of its presentation, the Employer identified full-time equivalencies among the school districts it views as comparable to the WAWM School District. According to the Employer's figures, Racine employs 320.6 aides (assuming six-hour per day full-time equivalency) and Waukesha 210.67 aides. The size of these aide units are many, many times the size of the WAWM aide unit of 48 or 49.6 (as noted in Employer Exhibit No. 7). The Arbitrator concludes on that basis that these two districts are inappropriate for use as a comparable in this case.

The aides employed by the School District of South Milwaukee and Wauwatosa are unorganized. For that reason, the Arbitrator finds it inappropriate to include these two school districts in the group of comparables. It is difficult to establish the wages and benefits provided by an employer in a situation where there is no collective bargaining agreement and where the benefits are not published in such an agreement. Secondly, the establishment of wages, hours and conditions of employment through an administrative process by unilateral action of the employer provides little insight as to the pull and tug occurring at the bargaining table. What is happening at the bargaining table is an important consideration in the MED/ARB process which is concerned with the resolution of disputes which arise from the competing interests which are part and parcel of the collective bargaining process. The use of groupings of employees who are unorganized provides information which is tangential at best to the statutory MED/ARB analysis mandated by the statutory factors quoted above.

Of the comparables suggested by the Employer, therefore, the Arbitrator finds that the Racine and Waukesha districts employ units of aides which are so much larger than the WAWM aide unit that it is inappropriate to include them in the group of comparables. Similarly, the Arbitrator finds that the inclusion of the Wauwatosa and South Milwaukee school districts are inappropriate in this case. The Employer here suggests that the Elmbrook School District be used as a comparable. The Arbitrator agrees. The Association's objection to Elmbrook is premised on the fact that this school district is located in Waukesha rather than Milwaukee County. However, Elmbrook employs approximately the same number of aides as are employed by the WAWM District. Although arbitrators dealing with units outside of Milwaukee County recognize the unique character of Milwaukee County municipalities, there is nothing in the record to indicate with regard to the aide unit at the WAWM District that the mere location of WAWM in Milwaukee and Elmbrook in Waukesha justifies deleting Elmbrook from the comparability grouping.

Although the number of full-time equivalent aides employed by the Districts of Cudahy, Shorewood and Whitefish Bay range from 11 to 17 aides, and although each of these units is substantially smaller than the WAWM aide unit, both the Employer and the Association have identified these three districts as comparables. Accordingly, the Arbitrator has included them in the group of comparables.

Now turning to look at the remaining school districts suggested as comparables by the Association, the Arbitrator agrees with the Employer that St. Francis and Oak Creek School Districts should be excluded from the group of comparables. St. Francis employs but three aides. WAWM is many times the size of the aide unit in St. Francis. With regard to the Oak Creek School District, the Association provided wage information for the library clerk or aide employed in the Oak Creek School District. The Employer presented credible evidence at the hearing that Oak Creek in response to the Employer's survey of that district indicated that it does not employ instructional or special education aides. Accordingly, the Oak Creek School District is not included in the group of comparables. The Association includes the School District of Greendale and Franklin, which are also located in Milwaukee County. The size of the Franklin unit of aides is approximately 12 full-time equivalents. Its size is similar to that of Whitefish Bay, Cuday and Shorewood. Although the School District of Franklin does not employ special

education aides, it is appropriate to use Franklin as a basis for comparison and for determining the wage level of instructional aides. And, in that limited manner, the Arbitrator has employed the data with regard to the Franklin aides in the discussion below. The only objection voiced by the Employer to the use of Greendale as a comparable is that that district is consistently number one in the level of pay it provides to its aides. This objection is insufficient to exclude Greendale from the group of comparables. Therefore, the Arbitrator includes both Franklin and Greendale in the list of comparables. The New Berlin School District is contiguous to the WAWM District. In fact, some residents of the City of New Berlin are included in the WAWM District. Although the salary levels for aides employed by the district were provided at the hearing, the record contains no indication as to the number of aides or duties performed by these aides. Because of the limited record with regard to this district, it is not included in the list of comparables.

The six comparable districts are, therefore: Elmbrook, Shorewood, Whitefish Bay, Greendale, Franklin (Instructional Aides), and Cudahy.

With the comparable districts so identified, the Arbitrator now turns to consider the comparability factor.

Salary - 1983-84 and 1984-85

Only .5% separates the final offers of the Employer and the Association for the 1983-84 school year. The difference between the parties for the 1984-85 school year is approximately 4.5%. This large and substantial difference between the parties in the second year of the two-year successor Agreement provides a meaningful basis to distinguish between the salary proposals of the parties. Therefore, the discussion below is limited to an analysis of the parties' proposals for the second year of the Agreement. The proposal found to be more reasonable for the second year will establish the preferability of that offer on the salary issue for both years of the Agreement.

Comparison of Wage Levels or Schedules

The Employer presented no evidence for the comparables it suggested above on the facet of the comparability factor concerning the comparison of wage levels or salary schedules of the aides in the WAWM District and the aides employed in the school districts identified by the Employer as comparable districts. In the discussion below, Elmbrook is not listed in the group of comparables, because the Association does not identify Elmbrook as a comparable. Since the Employer provided no evidence with regard to this facet of the comparability criterion, the Arbitrator has no evidence in the record with regard to the salary schedules under which the aides of the Elmbrook School District are paid.

From the data submitted by the Association, the Arbitrator has prepared Chart A for Instructional Aides and Chart B for Special Education Aides. These charts reflect the maximum wage rates paid by the comparable districts, as identified by the Arbitrator, to Instructional and Special Education Aides. The Arbitrator did not compare wage rates at the starting or minimum rate, since in 1984-85 38 of the WAWM 48 aides will be at the maximum step of their applicable schedule.

CHART A

Instructional Aides - Maximum or Top Step Salary Schedule

District	1983-84 Hourly Rates	1984-85 Hourly Rates	Amount of Increase	% Increase
Cudahy	6.46	6.78	0.32	4.95%
Whitefish Bay	5.35	5.64	0.29	5.42%
Greendale	7.77	8.07	0.30	3.86%
Franklin	6.40 (Avg.)	6.82	0.42	6.56%
Shorewood	6.35	6.68	0.33	5.2%
Average of the Above Comparables	6.46	6.80	0.34	5.1%
WAWM Employer	6.24	6.26	0.02	0.32%
WAWM Association	6.46	6.80	0.34	5.1%

CHART B

Special Education Aides - Maximum or Top Step Salary Schedule

District	1983-84 Hourly Rates	1984-85 Hourly Rates	Amount of Increase	% Increase
Cudahy	6.64	6.97	0.33	4.97%
Whitefish Bay	6.12	6.46	0.34	5.56%
Greendale	7.77	8.07	0.30	3.86%
Shorewood	6.98	7.33	0.35	5.01%
Average of the Above Comparables	6.88	7.21	0.33	4.8%
WAWM Employer	6.34	6.36	0.02	0.32%
WAWM Association	6.38	6.73	0.35	5.2%

*NOTE: Franklin is not listed in this chart. The record is not clear that Franklin employs a separate classification of Special Education Aides.

The data contained in both Chart A and B demonstrates that the Association's proposal to lift the rates paid at the maximum by 34¢ per hour for 1984-85 school year for the Instructional Aides and 35¢ per hour for the Special Education Aides is equal to the average increase to be received by aides who are employed in comparable districts. The 2¢ per hour lift in rates proposed by the Employer for 1984-85 is far off the mark. Based on this facet of the comparability criterion the Association's proposal is preferred.

INTERNAL COMPARABLES

The Association notes in its Exhibit No. 22 that in the 1982-83 school year the teachers' salary schedule was increased by 9.5%. The custodial/maintenance employees employed by the WAWM School District had their salary schedules increased by 8.5%. The clerical/secretarial unit had its salary schedule increased by 9.0% and the top rates for the aides increased by 8%.

In 1983-84, the first year of the disputed successor Agreement, the teachers' salary schedule increased by 3.13%. The custodial/maintenance employees' salary schedule increased by 3.0%. The clerical/secretarial salary schedule increased by 9.5%.

In 1984-85, the teachers' salary schedule increased by 5.45%. The remaining bargaining units were unsettled at the time of this Arbitration hearing.

What is apparent from Association Exhibit No. 22 is that there is no fixed pattern of settlement nor is there any fixed relationship between the settlements achieved in the aides unit and that reached in any other unit of the district. Internal comparables therefore provides no assistance in the determination of the salary issue.

TOTAL COMPENSATION

The Association provides little information with regard to this facet of the comparability factor. The Association noted in its exhibits and its brief the total cost of the final offers of both the Employer and the Association. It provides no data as to the total compensation paid by the school districts which it identified as comparable to the WAWM District. However, the Association does raise some serious questions with regard to the method used by the Employer in making its total compensation comparisons. In its amended Employer Exhibit No. 7, which is the principal vehicle for the Employer's comparison of the total compensation paid by other districts with the total compensation provided to aides of the WAWM District, the Employer used the following method in calculating the figures used as a basis for that comparison. First, it established the full-time equivalency for each district. It did this by converting the data provided by all of the districts into a full-time equivalency based either on a six-hour, seven-hour or

eight-hour day. It then took this full-time equivalency factor and divided that factor into the total costs associated with the employment of school aides by the districts identified by it as comparable to the WAWM School District. Employer Exhibit No. 7 therefore is a four page document. The first page lists the full-time equivalency of the comparable districts as identified by the Employer. The remaining three pages lists the annual earnings of a full-time equivalent aide at each of these districts based on either a six-hour, seven-hour or eight-hour day. On this basis, the Employer compares the total compensation paid to persons who worked a full 180-day educational calendar for the six, seven or eight hour day.

The Employer presents no evidence demonstrating that:

a. This method of calculating full-time equivalency has been employed in other MED/ARB cases concerning the comparison of total compensation received by non-professionals;

b. Aides of other districts ever worked seven or eight hours per day;

c. Forty of the WAWM District's aides work six hours per day;

d. Other districts which it identifies as comparable districts calculate full-time equivalency in the manner proposed by the Employer.

The Arbitrator finds that it is inappropriate to use the equivalency numbers calculated on the assumption of an eight or seven hour day. There is simply no evidence in this record to indicate any relationship that a seven or eight hour day bears to the work of school aides in any of the school districts. The full-time equivalency identified by the Employer in Exhibit No. 7 for a six-hour day more closely approximates at least the work day for aides employed at WAWM School District. The Arbitrator uses the six-hour day full-time equivalency figures for the comparables identified by the Arbitrator which are to be used in determining the salary issue in this MED/ARB proceeding.

Under the methodology employed by the Employer in Exhibit No. 7, the differential in wage rates paid to Special Education and Instructional Aides is obliterated under this method of calculation. If there is a desired level of differential in pay rates between these two classifications of aides, it will not be considered under the above method of comparison of total compensation paid to these classifications of employees. The record clearly indicates that the WAWM District primarily employs full-time as opposed to part-time aides. The difference that may result from the employment of full-time and part-time aides would be highlighted if the total annual salaries and total annual compensation were listed. Those districts that employ part-time aides who receive few fringe benefits would then appear in such a chart with total compensation figures which closely approximate that of the salaries paid to these employees. That comparison was not made by the Employer in its Exhibit No. 7 and, consequently, the difference between full and part-time employment is not noted in the data provided by the Employer.

Nonetheless, total compensation is a very important facet to be considered in the determination of the salary issue in a MED/ARB case. Since the six hour per day full-time equivalency appears as a constant in the calculation of annual salaries for all of the districts to be ranked by using the FTE based on six hours per day which very closely approximates the parties' agreed-upon FTE of 48, the Arbitrator finds that this portion of Employer's Exhibit No. 7 provides relevant information for distinguishing the final offers of the Employer and the Association on the salary issue for 1984-85. The problems associated with the Employer's presentation of this facet of the comparability criterion affects the weight to be given this facet in the summary section of the salary issue. Since the parties agreed to exclude the cost of longevity from their calculations, and the Employer included that cost in its computations leading to the preparation of Exhibit No. 7, this further reduces the weight to be given this factor in the selection of a final offer of the Employer or the Association which appears in the Summary below.

Chart C reflects the 1984-85 total compensation for one full-time equivalent aide employed six hours per day for the 180-day school year; the

dollar and percent increases paid by the comparable districts in 1984-85, as well as the average total compensation paid to aides, the average dollar and percent increase for 1984-85.

CHART C

1984-85

District	1984-85 Total Compensation Per One Full-Time Equivalent	$ Increase Per Equivalent Over 1983-84 Total Compensation	% Increase In Total Compensation
1. Cudahy	7,237.00	437.00	6.4%
2. Elmbrook	8,595.00	533.00	6.6%
3. Shorewood	9,195.00	314.00	4.36%
4. Whitefish Bay	6,820.00	248.00	3.78%
5. Average	7,961.75	383.00	5.01%
WAWM Employer	8,743.00	301.00	3.56%
WAWM Association	9,161.00	675.00	7.95%

On the basis of Chart C, the Employer's offer is 1.45% and $82.00 below the average increase paid by the four comparable districts to its full-time equivalent aide. On the other hand, the Association's proposal is $292.00 and 2.94% above the average increase in total compensation paid to a full-time equivalent aide for 1984-85 in the comparable districts. The Arbitrator concludes that this facet of the comparability criterion provides greater support to the position of the Employer rather than the final offer of the Association.

COST-OF-LIVING

It is well recognized in the arbitral community that the impact of inflation upon employees and employers is most accurately reflected by the level of contract settlements reached during the period in consideration. This view has been specifically noted by the following arbitrators: Mueller in North Central DTAE (18070-A) 1/81; Kerkman in Merrill School District (17955-A); R.U. Miller in Marshfield Schools (18111-A) 5/81. However, in this case, with the problems associated with the identification of meaningful comparables and the conflicting character of the evidence presented, it is useful to take a closer look at how the final offers of the parties compares to the cost-of-living.

The Association suggests in its brief that the cost-of-living factor be applied to the percent increase on the salary levels provided by the proposals of the parties. The cost-of-living measures the increase in the cost of items such as health care, food, etc., and given the broad number of items included in the cost-of-living factor, it is best to apply the cost-of-living factor to the percentage increase in total compensation. In light of the problems associated with identifying the level of total compensation in this case, the Arbitrator compares the cost-of-living factor to the total cost percentage increase identified by the parties and agreed upon by the parties in their exhibits.

The use of the cost-of-living as a factor contains an inherent time lag. In applying the cost-of-living, it is well-accepted to identify the increase in cost-of-living for the year prior to the year at issue and apply that factor to the year in dispute. The cost-of-living for the 1983-84 school year which is the first year of this agreement increased from July, 1983 through

July, 1984 in Milwaukee for urban wage earners and clerical workers by 5.1%.[2] The percentage increase in the total costs of the salary, health insurance and other roll-ups under the Association's proposal is 7.97%. The percentage increase in the cost of salary, health insurance and other roll-ups under the Employer's proposal is 3.53%. The cost-of-living from July, 1983 through July, 1984 increased by 5.1%. The Employer's proposal is 1.47% below the cost-of-living. The Association's proposal is 2.87% above the cost-of-living. Therefore, the proposal of the Employer more closely approximates the increase in the cost-of-living experienced by urban wage earners living in the Milwaukee Metropolitan area. This factor supports the final offer of the Employer rather than that of the Association.

INTERESTS AND WELFARE OF THE PUBLIC

The Employer presents extensive argument on this factor. It argues that the taxpayers of the WAWM District more than other than other taxpayers of school districts located in Milwaukee County bear 90% of the costs of running the school district. The taxpayers of other Milwaukee County school districts bear but 57% of the costs of running their local school districts. The Employer demonstrated most convincingly that, although its budget increased only very slightly from the 1981-82 through the 1983-84 school years, the tax levy on the local property taxpayer increased by 21.17%. The Employer does not make an ability-to-pay argument. The Arbitrator notes the political difficulty which this budget to tax levy relationship causes the Employer.

Nonetheless, Mr. Buchholtz, the Employer's Business Manager acknowleged at the hearing that the percent increase in tax levy suffered by the taxpapers of the WAWM School District is about the same level of increase over the same period of time experienced by residents of other area school districts. Since WAWM has suffered no greater increase in the percentage increase in their tax levy, the Arbitrator does not find the record supports the use of this factor to distinguish between the offers of the parties.

Similarly, the factors -- "the lawful authority of the municipal employer"; the stipulations of the parties; changes in any of the foregoing circumstances during the pendency of this proceeding; and the catch-all (h) "such other factors ...," provide no additional assistance in selecting which offer on the salary issue is to be preferred.

SUMMARY OF THE FACTORS ON THE SALARY ISSUE

A comparison of the salary rates and the increase in those rates for 1984-85, clearly supports the position proferred by the Association. In fact, the increase in rates proposed by the Association equals the average increase of the comparable districts for which there was data.

The total compensation facet of the comparability factor supports the Employer's position. In the discussion above, the Arbitrator noted the reduced weight to be given to this factor because of the assumptions and the problems the Arbitrator had with the methodology used by the Employer in its computation of the total compensation received by aides in the comparable districts. Accordingly, in this case only, the total compensation facet of the comparability factor as it was presented here is given much less weight than the wage level comparisons which formed the principal basis of the Association's argument.

The cost-of-living factor supports the Employer's position. Its proposal is closer to the increase in the cost-of-living. None of the other statutory

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[2]Association Exhibit No. 25 lists the percentage change as 5.2%. The Department of Labor Consumer Price Index in the possession of the Arbitrator lists the percentage change as 5.1%.

criteria provide any assistance in the process of selecting the final offer of the Association or the Employer on the salary issue.

On the basis of the above factors, the Arbitrator concludes that the strong record evidence on the comparison of wage rates presented by the Association outweighs the evidence presented by the Employer on total compensation and on cost-of-living on the salary issue for 1984-85. Since the difference between the parties for the 1983-84 school year is so slight, the Arbitrator finds that the Association position and offer on this issue is preferred.

OVERTIME COMPENSATION

The Association proposes the addition of section 4 to Article III, the "Hours" article of the expired Agreement. The new section to be included in the successor Agreement would provide that:

> 4. In the event overtime work is scheduled by the principal or supervisor, the Employe shall be paid at time and one-half of his/her regular hourly rate.

At the hearing, the Association defined overtime to mean time worked in excess of an aide's normal work day. For most aides, the normal work day is six hours. For others, it is between six and seven hours; one aide works eight hours per day. The Association argues that it should not be penalized for providing flexibility to the Employer so that it may vary the length of the normal work day for its aides.

On the other hand, the Employer proposes no change be made in the expired Agreement. The selection of this position would provide for no overtime pay in the successor Agreement.

In applying the statutory factors to this issue, Sec. 111.70(4)(cm)7a, b, and c provide no assistance in evaluating the Association's proposal.

COMPARISON OF ... HOURS AND CONDITIONS OF EMPLOYMENT

Internal Comparables

The other non-professional units, both the custodial/maintenance and clerical/secretarial units of the WAWM have overtime provisions in their collective bargaining agreements. However, those agreements specify that overtime shall be paid for work in excess of eight hours per day and 40 hours per week. Those agreements also define a normal work day/work week as eight hours per day and 40 hours per week.

The Association is correct when it states that by refraining from defining a normal work day and work week, the Employer enjoys a greater flexibility in the assignment of work to school aides. On the other hand, the Employer has agreed that its school aides will work no less than six hours per day. By failing to identify what is a normal work day for purposes of overtime, the Association's proposal differs substantially from the overtime provisions contained in the agreements of the other non-professional units of the WAWM School District.

External Comparables

Similarly, the overtime provisions cited by the Association for comparable districts all establish a fixed point in the day and/or week for the payment of overtime for hours worked in excess of that fixed point. The comparable school districts identified by the Arbitrator which have overtime provisions in their collective bargaining agreements fix eight hours per day and 40 hours per week as the point beyond which overtime will be paid. Here, too, the external comparables support either no change from the status quo or an overtime provision which substantially differs from the one proposed by the Association.

Overall Compensation

In the first year of the Agreement, no aide was asked to work beyond his/her normal work day. Apparently, on one occasion in the past, an aide was paid straight time for attending an in-service at the request of supervision. This record indicates no pressing need for an overtime provision. There is no indication here that aides are asked to work beyond the work day scheduled for them at the commencement of the school semester/year.

Such Other Factors

The Association's proposal is sufficiently vague and ill-defined so that the parties may find themselves in grievance arbitration to clarify the language. For instance, if the Employer changed an aide's work day from six to six and one-half hours per day in mid-semester should it be required to pay overtime for the half hour worked in excess of six hours. Six hours used to be that employee's regular work day. Or, is six and one-half hours the new established normal work day for that individual for overtime purposes. Obviously, some aides would have to work in excess of eight or seven hours before overtime kicked in. However, this apparent inequality is not as serious a problem as the failure of the Association proposal to define the point at which overtime is to be paid.

Summary of Factors on the Overtime Issue

On the basis of the above discussion, there is nothing in this record which supports the Association's proposal or its inclusion in a successor Agreement. Beyond that, the lack of clarity and definition in the language of the proposal makes this proposal a serious and substantial negative factor in the total final offer of the Association.

SELECTION OF THE FINAL OFFER

The Arbitrator concludes that the Association's offer on the salary issue for 1983-84 and 1984-85 is better supported by the weight of the evidence in this case. Were the salary issue the only issue in this case, the Arbitrator would adopt the Association's proposal for inclusion in a successor Agreement. However, it is not the only issue. The Association proposes the inclusion of the overtime provision quoted above. This proposal has a substantial negative impact on the total final offer of the Association. The salary issue is the more important of the two issues in this case. The Arbitrator prefers the Association's position on that issue. However, the Association's offer on the salary issue was not preferable to that of the Employer by an overwhelming margin. The Employer's salary offer is supported by the cost-of-living factor. The total compensation factor was given little weight by the Arbitrator in the overall analysis of the salary issue. However, the overtime proposal submitted by the Association has a substantial negative impact on the total final offer submitted by the Association. On balance, therefore, the Arbitrator finds that the total final offer of the Employer which contains no proposal which carries with it a substantial negative impact on its total final offer is preferred and included in a successor Agreement.

A further word on the outcome of this proceeding. The Arbitrator has selected the final offer of the Employer substantially on the basis of the negative impact of the Association's overtime proposal. Yet, that proposal probably has no cost impact for the duration of this Agreement. The difference between the parties on the salary issue is just under 5% for 1984-85. The difference between the proposals of the parties for both years of the Agreement is in excess of 5%. That is a substantial difference.

The MED/ARB process is supposed to serve as a substitute for the strike. It is supposed to permit the implementation of wages, hours, and working conditions on the basis of a "rational" process. The final offer process is supposed to encourage the parties to narrow their differences. If settlement is not achieved, the Arbitrator should have before him/her only those substantive issues which are of critical importance to the parties and upon which agreement was not achieved. Under this legislative scheme, a party which leaves to arbitration proposals which are not of critical importance is at risk.

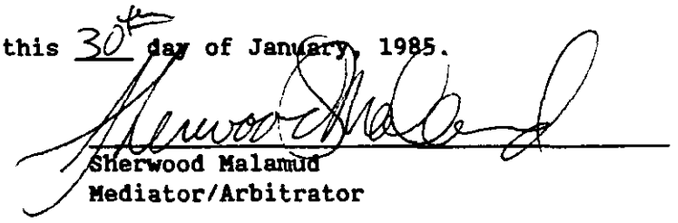
Here, the Association proposal contained an issue in addition to the economic issue of salary. Since the Employer had no other proposal than the salary issue, and since the Association prevailed on salary by a substantial rather than an overwhelming margin, the negative impact of the overtime proposal was sufficient to tip the balance, ever so slightly, but tip it nonetheless in favor of the Employer.

On the basis of the above Discussion, the Mediator/Arbitrator issues the following:

AWARD

Based upon the statutory criteria in Sec. 111.70(4)(cm)7a-h of the Municipal Employment Relations Act, the evidence and arguments of the parties, and for the reasons discussed above, the Mediator/Arbitrator selects the final offer of the District of West Allis-West Milwaukee for inclusion in the Collective Bargaining Agreement which is to commence on July 1, 1983 and which is to expire on June 30, 1985.

Dated at Madison, Wisconsin, this 30th day of January, 1985.



Sherwood Malamud
Mediator/Arbitrator