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WISCONSIN EMPLOYMENT  
RELATIONS COMMISSION

STATE OF WISCONSIN

BEFORE THE MEDIATOR/ARBITRATOR

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 In the Matter of the Petition of :  
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 AMERICAN FEDERATION OF TEACHERS :  
 LOCAL 212, WFT, AFL-CIO :  
 :  
 To Initiate Mediation-Arbitration : Case No. CCVIII  
 Between Said Petitioner and : No. 31698 MED/ARB-2296  
 : Decision No. 21860-A  
 :  
 MILWAUKEE AREA VOCATIONAL, :  
 TECHNICAL AND ADULT EDUCATION :  
 DISTRICT :  
 :  
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APPEARANCES: STEVE KOWALSKY, Representative, Wisconsin  
 Federation of Teachers, appearing on behalf  
 of the Union.

Quarles & Brady, Attorneys at Law, by JAMES  
 URDAN, appearing on behalf of the District.

ARBITRATION AWARD

Milwaukee Area Vocational, Technical and Adult Education District, hereinafter referred to as the District or Employer, and American Federation of Teachers Local 212, WFT, AFL-CIO, hereinafter referred to as the Union, were unable to voluntarily resolve certain issues in dispute in their negotiations on behalf of paraprofessional employees, which provisions were to be included in a new, 1983-1985 Collective Bargaining Agreement to replace the parties' 1981-1983 Collective Bargaining Agreement, which expired on June 30, 1983. The Union, on June 9, 1983, petitioned the Wisconsin Employment Relations Commission (WERC) for the purpose of initiating mediation/arbitration pursuant to the provisions of Section 111.70(4)(cm)6. of the Wisconsin Statutes. The WERC investigated the dispute and, upon determination that there was an impasse which could not be resolved through mediation, certified the matter to mediation/arbitration by Order dated July 20, 1984. The parties selected the undersigned from a panel of mediator/arbitrators submitted to them by the WERC and the WERC issued an Order dated August 2, 1984, appointing the undersigned as mediator/arbitrator. The parties agreed that mediation and, if mediation proved unsuccessful, arbitration should be conducted on October 5, 1984, since neither party desired to withdraw its final offer and both parties desired to proceed immediately to arbitration if mediation was unsuccessful. At the outset of the meeting on October 5, 1984, the parties resolved one of the two issues in dispute, that which related to dental insurance. However, further mediation in the matter proved unsuccessful and a hearing was conducted, at which time the parties presented their evidence. Post-hearing briefs were filed and exchanged on November 9, 1984. Full consideration has been given to the evidence and arguments presented in rendering the award herein.

ISSUE IN DISPUTE

In their negotiations the parties entered into a number of tentative agreements which were included in the stipulation of

matters agreed to submitted to the WERC. In addition, as part of their final offers, the parties made specific reference to those stipulated items. The only remaining issues in dispute, which were reflected in the parties' final offers, related to the across-the-board wage increases to be granted effective July 1, 1983 and July 1, 1984 and the Union's proposal to increase the Employer's contribution toward dental insurance premiums to 100%. At the outset of the hearing, the parties settled the issue relating to the amount of dental insurance premium to be paid by the Employer and the terms of that settlement were added to the stipulated agreements. In essence, the parties agreed to increase the Employer's contribution toward dental insurance premiums by adopting language contained in the existing Collective Bargaining Agreement between the District and the Union covering teaching employees, which provide that the Employer will pay full single premiums and that the employees will pay 25% of the premium for dependent coverage (but not more than \$6.00 per month), with the Board to pay the balance. Under the terms of the prior agreement the Employer had only agreed to pay 50% of the premium for dependent coverage.

There are approximately 76 employees in the paraprofessional bargaining unit represented by the Union. Those employees fall into two groups, consisting of "teaching paraprofessionals and teacher aides," who have been represented since 1972 and "certain recruiters, specialists, and technicians," who have been represented since 1979. The first group of employees are all classified as Instructional Aides I, II, and III, or Educational Assistants. The wage schedule for said employees is expressed in hourly rates which are earned during the first, second, third, fourth, and fifth years of employment in each classification. In addition, there is a "senior worker" rate which applies one year after an employee has reached the maximum wage for his or her classification and has completed at least ten years of service. The 1982-1983 hourly wage schedule for said employees was as follows:

|                        | <u>1</u> | <u>2</u> | <u>Years of Service</u> |          |          | <u>SW</u> |
|------------------------|----------|----------|-------------------------|----------|----------|-----------|
|                        |          |          | <u>3</u>                | <u>4</u> | <u>5</u> |           |
| "Instructional Aide I  | \$5.768  | \$6.051  | \$6.366                 | \$6.681  | \$7.028  | \$7.374   |
| Instructional Aide II  | 6.681    | 7.028    | 7.374                   | 7.753    | 8.130    | 8.540     |
| Instructional Aide III | 7.753    | 8.130    | 8.540                   | 8.949    | 9.391    | 9.863     |
| Educational Assistant  | 8.949    | 9.391    | 9.863                   | 10.366   | 10.904   | 11.438 "  |

The second group of paraprofessionals are all classified as Educational Service Assistants I, Library Technicians, Media Technicians, Student Recruiters or Student Services Specialists I and II. The wages for said employees are all expressed in the form of bi-weekly rates. In all other respects, the salary schedule for said employees is the same as that for the first group of instructional aides and assistants. However, promotion from Student Services Specialist I to Student Services Specialist II is treated as an "in series promotion" upon completion of two years of satisfactory service and the recommendation of a supervisor. The salary schedule for said employees as of the end of the prior agreement was as follows:

|                        | <u>Years of Service</u> |          |          |          |          |           |
|------------------------|-------------------------|----------|----------|----------|----------|-----------|
|                        | <u>1</u>                | <u>2</u> | <u>3</u> | <u>4</u> | <u>5</u> | <u>SW</u> |
| Ed. Serv. Asst. I      | \$650.53                | \$677.47 | \$706.64 | \$735.80 | \$767.21 | \$800.87  |
| Library Technician     | 650.53                  | 677.47   | 706.64   | 735.80   | 767.21   | 800.87    |
| Media Technician       | 650.53                  | 677.47   | 706.64   | 735.80   | 767.21   | 800.87    |
| Student Recruiter      | 650.53                  | 677.47   | 706.64   | 735.80   | 767.21   | 800.87    |
| Student Serv. Spec. I  | 719.23                  | 754.71   | 792.68   | 833.17   | 876.27   | 919.30    |
| Student Serv. Spec. II | 852.97                  | 894.59   | 937.06   | 983.51   | 1,032.59 | 1,084.19. |

Most of the paraprofessional employees in the bargaining unit are classified as Instructional Aides II and III or Educational Assistants. A total of 52 employees are so classified, consisting of 15, 18, and 19 employees in each respective classification. There are only two Instructional Aide I's, two Educational Services Assistants, four Library Technicians, five Media Technicians, and three Student Recruiters. Currently there are a total of eight Student Services Specialists, all classified as II's.

In its final offer, the District proposes to increase the wage rates set out above by 3%, effective July 1, 1983 and by an additional 3%, effective July 1, 1984. In its final offer, the Union proposes to increase those same rates by 5.5%, effective July 1, 1983 and by an additional 5.5%, effective July 1, 1984. Neither party proposes to modify the two salary schedules in any other respect and the wage schedule for the first group would continue to be expressed as an hourly rate, whereas the salary schedule for the second group would continue to be expressed as a bi-weekly rate. Nevertheless, in their evidence and arguments, the parties sometimes refer to the rates in hourly terms for both groups, for comparison purposes.

#### UNION'S POSITION

According to the Union, the four appropriate comparables for purposes of this proceeding consist of similar groups of paraprofessional employees employed in other VTAE districts and in the Milwaukee Public Schools. Based upon size, geographic proximity and the industrialization of the regions involved, the Union argues that the Madison, Waukesha, and Gateway VTAE districts are the most comparable districts. In support of this argument the Union points to evidence concerning equalized valuation of property and FTE student population.

A "second level" comparable, according to the Union, consists of the Milwaukee Public School System. Admitting that the use of K-12 comparisons is unusual in a VTAE district proceeding, the Union points out that Milwaukee employs paraprofessional employees who work and live in the same community and the two districts draw students from the same population and taxes from the same property base.

According to the Union, the recent arbitration award of Mediator/Arbitrator Byron Yaffe, which involved the 1983-1985 Collective Bargaining Agreement for teachers employed by the District and represented by the Union, supports its position on comparables. Citing language in that award, the Union argues that the arbitrator therein found that the most comparable employee groups to be utilized for purposes of that proceeding were those who performed similar services, who had similar

that other public employee settlements are not irrelevant, but stated that they should be given consideration when more relevant comparables are not available or when reference to such comparables does not prove to be dispositive of the issue at hand.

The Union also relies upon the arbitration award of Mediator/Arbitrator Frank Zeidler in a recent case involving the Madison Area Technical College<sup>2/</sup> in support of its position on comparables. Citing language in that decision where the arbitrator stated that the pattern of settlements of persons doing like support staff work in VTAE districts and the "internal pattern" between support and instructional staff was deemed to be "more weighty," the Union argues that its proposed comparables should be considered the most persuasive in this proceeding. Similarly, the Union relies upon another recent decision, also involving Madison Area Technical College, issued by Mediator/Arbitrator Jay Grenig,<sup>3/</sup> wherein the arbitrator stated that, in determining appropriate salary increases, the basis for comparison should generally be what is paid for work in a particular profession and that employees in a particular profession or working for a particular type of employer will usually have similar conditions of employment.

According to the Union, if any internal comparison is drawn, the only valid comparison within the District consists of the teacher bargaining unit. This is so, because the paraprofessional unit has a significant community of interest with the teacher unit, according to the Union. The Union points out that they are members of the same local union, have the same bargaining chairperson, and have the same bargaining goals and aspirations. More important, according to the Union, is the relationship between the paraprofessionals and the teachers in terms of educational credentials and day-to-day working relationships. In support of this argument the Union relies upon information contained in the job descriptions for certain paraprofessional and professional classifications. In particular, the Union points out that, with the exception of a few employees, all paraprofessionals are required to possess from 30 college credits up to a bachelor's degree as an entry level requirement for their position. Also, the functions and duties and responsibilities of the positions, as described, reflect a community of interest with teaching employees. While not all paraprofessionals work with teachers, those who don't, work closely with other professional employees such as counselors and routinely participate in joint meetings with such professional employees, according to the Union.

With regard to the District's claim that the agreement with the Union representing its clerical employees, AFSCME, Local 587, constitutes a better comparison, the Union points out that there are as many similarities between the paraprofessional contract and the teachers contract as there are between the paraprofessional contract and the clerical contract. This is in part due to the fact that the paraprofessional employees were once jointly represented by AFSCME and the Union, according to the Union, and a number of the benefits spelled out in the AFSCME contract are also spelled out in the teachers contract. The Union also notes that the Employer recently entered into a shared health insurance

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2/ Decision No. 21257-A, dated March 26, 1984.

3/ Decision No. 21178-B, dated March 4, 1984.

premium agreement with AFSCME but failed to insist on incorporation of similar language in its agreement with the Union herein. For these reasons, the Union argues that a comparison of contracts is inconclusive for purposes of determining the most appropriate internal comparison that can be drawn.

Drawing upon comparative data introduced into evidence at the hearing, the Union argues that such data demonstrates that its offer is more reasonable than the Employer's. According to the Union, its proposed 5.5% cell increase fits the pattern established by comparable VTAE districts, Milwaukee Public Schools, and Milwaukee VTAE teachers, for both years of the agreement. In effect, according to the Union, the Employer is attempting to break this pattern by imposing an arbitrated salary increase which it could not have achieved in free collective bargaining.

Drawing upon data concerning dollar increases at various benchmark points in the salary schedules involved, the Union argues that its offer should be favored under this analysis as well. Thus, the Union acknowledges that comparable percentage increases can generate dollar increases which differ by a significant amount, depending upon the existing level of salaries. However, an analysis of the available data demonstrates that this is not the case, according to the Union. Even though the District is an acknowledged wage leader in comparison to the other districts in question, the Union argues that its proposal would generate salary increases that are roughly equivalent to those experienced by employees in similar districts. The Employer's offer, on the other hand, would generate weekly salary increases that were significantly below those generated in every comparable district over the two-year period, according to the Union. While there might be some justification for slightly lower cell increases, to allow other districts to "catch up," the Employer's position is "outrageously low" and unreasonable, according to the Union. It was this same set of circumstances that persuaded Arbitrator Yaffe to conclude that the District's final offer for the teachers bargaining unit was less reasonable than was the Union's.

The Union takes issue with the Employer's information concerning total package costs because the District has offered no comparable data with regard to any other district. Thus, according to the Union, the arbitrator has no way of knowing if the Union's package is high or low in comparison to other districts.

The Union also takes issue with the District's data concerning settlements with other Milwaukee taxing districts because those municipal employers do not employ paraprofessionals who perform work of the type performed by the employees in the instant bargaining unit. For this reason they should not be viewed as valid, or, at least not as compelling as the Union's comparables. Also, if it is assumed that other VTAE districts and Milwaukee Public Schools gave consideration to such comparisons, such consideration led to settlements in the 5.5% area, according to the Union.

With regard to the cost of living criterion, the Union argues that the National Consumer Price Index data relied upon by the Employer is irrelevant, because the employees in question live in the Milwaukee area and are more directly affected by the cost of living in that area. According to the Union's data, the CPI increase for all urban consumers in the Milwaukee area for July 1983 was 4.5% and, for July 1984, was 3.7%. Further, the best measure of what is reasonable in the economic climate of 1983 and 1984 is the evidence of settlements which have occurred under the same economic conditions, according to the Union. Those settlements, which the Union

maintains may be found in its comparable districts, favor its position, it is argued.

With regard to the ability to pay and the interests and welfare of the public, the Union notes that the Employer does not claim an inability to pay the increases proposed by the Union. Further, according to the Union, the Employer offered no evidence which would indicate that the interests and welfare of the public would be adversely affected by the Union's offer. There was no evidence of a budget crisis or a need to cut programs or services and the amount of the difference between the two final offers (approximately \$157,000) is only one-tenth of the difference which existed in the arbitration involving the teachers unit, where the arbitrator found no adverse affect upon the interests and welfare of the public. On the contrary, the Union argues that the interests and welfare of the public would best be served in this case by selection of its final offer since the treating of employees fairly by comparison has an important impact of the morale of employees and the success of a quality educational program.

In conclusion, the Union argues that the Employer is dragging the Union into arbitration in this proceeding on an "identical issue" that was litigated in the arbitration proceeding involving the teachers bargaining unit in the spring of 1984. This is so even though the identity of the parties, the comparables, the state of the economy and the Employer's ability to pay are the same. According to the Union, the arbitration involving the teachers bargaining unit should have precipitated a voluntary settlement but the Employer is insisting upon a "second kick at the cat." The arbitrator should not allow the Employer to achieve a more favorable outcome, based upon the same issues, facts and arguments, because such an outcome would have an adverse affect upon the process of collective bargaining in the future.

#### DISTRICT'S POSITION

In its brief, the District first reviews the positions of the parties and notes that it relies upon the fact that its wage proposal is identical to the general increase which was reached through voluntary negotiated agreements with the major bargaining unit of non-professional employees as well as with television employees and printing trades employees. According to the District, there is a "long history" of internal comparability among the various employee groups within the District. Further, it argues that its proposal is consistent with the general pattern among non-professional employee groups employed by the major public employers in the Milwaukee area. On the other hand, according to the District, the Union's argument is based upon the theory that the percentage increase for the instant bargaining unit should be identical to the percentage increase received by employees of certain other VTAE districts. According to the Employer, the Union's argument ignores actual salary levels, past history of bargaining within the District, and the significance of the trends in the cost of living and other relevant factors. Such a "single-minded" approach does not conform to the statutory criteria or common sense, it is argued.

The District reviews existing contractual benefits available to employees in the bargaining unit and notes that they are substantial. In addition, it reviews improvements in those benefits included within the stipulated agreements, particularly the District's agreement to limit employee contributions toward the premium for dental insurance coverage for dependents to 25% or a maximum of \$6.00 per month. The District also notes that the agreement to pay 100% of the cost of health insurance

coverage insulates employees from the "very drastic cost increases" which have been experienced in 1983 and 1984 and are likely to continue in 1985.

According to the District, the most relevant comparables for purposes of this proceeding are the general salary increases for other District and Milwaukee area non-professional public employees. The District acknowledges that the general salary increases for various District employees have not always been precisely identical but points out that increases over a 15-year period of time have been "very similar" and were identical for the three years ending June 30, 1983. The District notes that settlements were reached for the two years in question on the basis of 3% annual increases in both years with each of the unions representing its other non-professional employees with one minor exception. The second year of the agreement with the union representing its television employees remains unsettled. Non-represented employees received similar 3% general wage increases, it is pointed out. In fact, the only departure from this pattern was the higher increase awarded to the bargaining unit which represents teachers and other non-teaching professionals.

According to the District, this settlement pattern for non-professional employees is consistent with settlements reached by other major Milwaukee public employers. According to the District, there has been a "close correspondence" between the pattern of settlements among such employers and the District over a lengthy period of time. Such comparisons are particularly important in Milwaukee since the City and County comprise a very substantial portion of the total area covered by the District. There is a substantial identity of taxpayers and settlements in these various taxing units are deemed significant for purposes of such comparisons.

The District relies upon the rationale contained in the award of Mediator/Arbitrator Zel Rice involving this same bargaining unit for the contract period of 1981-1983,<sup>4/</sup> in support of its position on the importance of internal settlement patterns. The District acknowledges that the pattern established by the facts in that case was "more consistent" because the teachers bargaining unit had reached a voluntary settlement, but argues that the basic principle discussed in that case is still applicable to this proceeding. According to the District, the Union made no claim in that proceeding that other VTAE districts should be regarded as comparable, but rather argued for comparability based upon other public employers in the Milwaukee area. On the other hand, according to the District, its position herein is consistent with its position in that prior proceeding. According to the District, it is the Union which has shifted its theory as to the appropriate measure of comparability by such reliance. This demonstrates a tendency to choose a claim which will best support the Union's purposes from year to year and provides no proper basis for sound analysis of the relevant factors, according to the District.

The question in this proceeding thus boils down to whether the bargaining unit involved here is best compared with the other non-professional employees of the District or with teachers and

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<sup>4/</sup> Decision No. 19183-A, dated June 10, 1982.

other professionals. According to the District, there are numerous factors which require the conclusion that the pattern applicable to employees other than teachers should be controlling. First, the District notes that the total cost impact of the Union's proposal is much more substantial for this group than was true in the case of teachers. The total package cost for the first year would be 7.13% under the District's proposal and 10.25% under the Union's proposal. For the second contract year the respective total package costs would be 7.47% and 10%. (These cost calculations ignore the cost of the compromise on dental insurance which would increase the percentage for the District and decrease the percentage for the Union.) These percentage figures are substantially greater, based upon similar percentage offers, than was the case in the teachers bargaining unit because of the higher value of the increments in this bargaining unit. Thus, the estimated cost of the increments in the teacher bargaining unit were only 1.3% in the teacher bargaining unit but are closer to 3% in each year for this bargaining unit. For this reason the District's offer of 3% is "more comparable" to the cost of the increases granted to the teachers under the award than would be the cost of the Union's 5.5% proposal, which would "far exceed" the total package award for the teachers.

Secondly, the District argues that the bargaining unit here is more comparable to the other non-professional employees of the District than it is to the professional bargaining unit. It bases this position on the structure of the salary schedules, the general level of salaries and the general fringe benefit packages made available to the various bargaining units. The salary structure and salary levels for this group bear no comparison to those for teachers because the employees are non-professional and their general salary increase should be consistent with the prevailing pattern of voluntarily negotiated settlements for other non-professional employees of the District and other major Milwaukee public employers, according to the District.

The District takes issue with the Union's arguments in relation to the 5.5% general increases granted employees by Waukesha and Madison VTAE districts. According to the District, what is significant about those increases is the fact that they were granted to non-professional employees who happened to include paraprofessional employees. In particular, the District points out that the Madison paraprofessional employees are part of the general support staff unit which includes clerical, custodial, and maintenance workers. Similarly, in Waukesha, paraprofessional employees are included in a clerical/technical bargaining unit. While these non-professional bargaining units received higher percentage increases than that proposed by the District, that fact does not entitle Milwaukee paraprofessionals to similar increases since the key point is that the paraprofessional employees here should enjoy the same increase as that which was established for other non-professional employees of the District.

According to the District, the Union has offered no rationale for granting an increase to paraprofessionals which is equal to the increase granted teachers other than the fact that paraprofessionals participate in certain meetings along with the professionals with whom they work. According to the District, the fact that they must coordinate their work activities has no relevance to the appropriate salary increases which should be granted to the two groups. The most appropriate and relevant comparison relates to what other non-professional employees of the District and Milwaukee public employers have received in the way of wage increases for the two years. On the basis of that comparison, the District's offer is directly in line with the relevant comparables and the Union's offer is "drastically



excessive" and substantially exceeds the cost of the award granted to the District's teachers.

According to the District, the Union's own comparables also support the District's offer. Thus, the "fallacy" of the Union's position is that it focuses upon the percentage increase in the years in question rather than the more important question of actual salary levels. An analysis of actual salary levels demonstrates that the District's offer is "more than ample." According to the Board, a comparison of its rates with the rates at Waukesha reflect that the District's rates will still be significantly higher even under the District's offer. The District acknowledges the difficulty of comparing rates between institutions but argues that its comparisons are more reliable than the Union's because it was based upon a comparison of job descriptions at the two institutions by management personnel at both institutions. Even when consideration is given to the fact that certain job classifications "overlap" because of the existence of more than one classification for the same work within the District, the data demonstrates that the Board's proposal is "more than competitive."

Because salary levels at other VTAE districts, such as Waukesha, are substantially behind the District's levels, it is understandable that the percentage increases granted at such institutions in a particular year might exceed the percentage increase at the District. The key point, according to the District, is not the percentage increase in a particular year, but the fact that the District will continue to stay substantially ahead of the other institutions, even with a somewhat lower increase for this time period.

According to the District, other Union data demonstrates that the salary levels at Gateway are drastically below those at the District and that the salary levels at the Milwaukee Public Schools are even lower. Under the District's offer, Madison would be comparable at the minimum but lower at the maximum, it is argued. According to the District, the only higher salaries referred to in the Union exhibits are at Waukesha, but the District contends that such data is erroneous because the Union compared a relatively low classification (Instructional Aide III) with the highest paraprofessional classification at Waukesha. The Union's comparisons with Milwaukee Public Schools are also misleading, according to the District, because the general salary levels are lower and because the increases there were part of a three-year agreement, negotiated at the time when the District had granted 3% increases. If a three-year basis for comparison is utilized, the cumulative percentage implicit in the District's offer is closer to the cumulative percentage for Milwaukee Public Schools, than is the Union's.

Other relevant factors also support the Board's offer, it contends. The general economy, general pattern of wage settlements and cost of living are all major elements in a collective bargaining setting and have a direct impact on the level of settlements in any particular year. The relative tax effort and tax burden of a particular public employer are also significant in a public employment context. According to the District, the Union totally ignores these factors, even though the statute commands that they be given consideration. According to the District, the evidence is overwhelming that the contract covers a period of relative wage stability and that the average wage increases on a national basis support the Employer's proposal. The District's proposal substantially

exceeds the changes in the cost of living, as measured by the Consumer Price Index for the year preceding the first contract year, and approximates the 3% increase which will be granted during that year and the second year of the agreement. In this connection the District points out that health insurance costs, which are a substantial element of the CPI data, do not affect the employees in this bargaining unit because the Employer fully pays health insurance premiums. It is unlikely that inflation will change substantially in the future since a substantial period of the 24-month contract has already expired and available data suggests that there is no imminent resurgence of inflation on the horizon.

With regard to the tax burdens placed upon the taxpayers of the District, the District points out that it is no longer experiencing large increases in the valuation of taxable property. According to the District, the increases in taxable valuation have been negligible in the last four years and substantial increases in the District's budget could only be met by increased tax rates. It notes in this regard that the tax rate for the current year will very closely approach the statutory maximum of 1.5 mills. Thus, taxpayers of the District are already making a "maximum tax effort" and the negligible rate of growth of taxable property suggests that any future increases in District costs can only be met by reductions in staff or programs. Thus, while the District can pay the increase demanded by the Union at this time, there is no justification for such an "excessive increase" on a longer term basis.

#### DISCUSSION

The dilemma presented by the facts in this case might best be described as a conflict over the weight to be attached to the parties' respective proposed comparables. For this reason, some discussion of the background of that dispute is appropriate.

In his 1982 arbitration award, Mediator/Arbitrator Rice was confronted with a situation where the Union sought wage increases which, when expressed in percentage terms, exceeded those which had been uniformly negotiated with other, larger and smaller units of District employees. A close reading of the award in that case discloses that, in the arbitrator's view, the Union's principal argument related to its proposed "reclassification" or reallocation of one of the existing job classifications (Library Technician) to a pay level equal to the pay level for another existing classification (Student Services Specialist I). With regard to its proposed wage increase, the Union argued that its wage proposal was more comparable to the settlements with other public employers in the Milwaukee area. It is clear that the decision in that case did not turn upon a rejection of those proposed external comparables or an indication that other comparables, such as those proposed by the Union in this proceeding, were inappropriate. Basically the outcome in that case turned upon the arbitrator's conclusion that it would be inappropriate to grant the increase sought by the Union, absent evidence indicating that there had been a substantial change since the other agreements were negotiated with District employees, because it would tend to "disrupt relationships between the Employer and its Unions by making an award giving an increase in wages substantially higher than the increases agreed upon by the other bargaining units in a free collective bargaining atmosphere...." The arbitrator in that case emphasized that he was attempting to achieve a result that was comparable to that which should have been agreed upon between a "strong and realistic Union and a strong and realistic Employer."

In this case, the bargaining unit of professional employees was able to achieve, through arbitration, percentage wage increases which exceed those negotiated with the District's non-professional employee unions. The award of Mediator/Arbitrator Yaffe clearly indicates that this result occurred, in part, as a result of his conclusion that the other VTAE districts relied upon by the Union were "most comparable." He indicated that the most comparable employee groups to utilize in such proceedings are those who perform similar services, have similar levels of training and responsibility, and work for employers which are of relatively similar size, geographically proximate, and have relatively similar abilities to provide their employees with comparable conditions of employment. He also noted that the District is significantly larger than any of the proposed VTAE comparables, which fact distinguished it somewhat from the group and helped explain its leadership status in salary levels. He concluded that settlements with the Milwaukee Public School System were also relevant, but somewhat less so and that other District and Milwaukee area settlements had "some relevance to the relative equities of the parties' positions" but merited less consideration "since there are sufficient numbers of comparable employee groups involved in public education to utilize based upon this record."

The undersigned does not disagree with the opinions expressed by Mediator/Arbitrator Yaffe in the prior case referred to, nor does he disagree with the opinions expressed by Mediator/Arbitrator Jay Grenig in the case involving Madison Area Technical College. In that decision Arbitrator Grenig clearly stated that, in determining appropriate salary increases the basis for comparison should generally be what is paid for work in a particular profession. Thus, for example, the settlements with City, County, and Sewerage District employees relied upon by the District herein, may present persuasive comparisons for purposes of typical blue collar and white collar positions that represent the bulk of those bargaining units but those settlements have little persuasive value when comparing the salaries of professional educators. The problem here is two-fold: paraprofessional employees are arguably comparable to other non-professional employees, such as those who have settled for 3% increases with the District, and the settlements with other VTAE districts which are relied upon by the Union are arguably unpersuasive, to the extent that they cover non-professional employees other than paraprofessionals. The rationale of Mediator/Arbitrator Zel Rice does not necessarily contribute to the resolution of this problem, since he acknowledged that subsequent events, affecting an internal "pattern," might require a different outcome.

The undersigned has carefully reviewed the available evidence concerning the actual job duties and responsibilities, as well as the education and training expected, of the paraprofessionals involved in this dispute. It would appear that the paraprofessional employees employed by the District are true paraprofessionals and not clerical employees. Thus, while they obviously perform some clerical tasks in the completion of their paraprofessional obligations, the work performed by these employees is not only in close proximity and cooperation with professional employees, but approaches a professional level. Consistent with the functions and duties and responsibilities of the jobs, the District requires substantial skills, training and experience for the positions in question. Thus, while an Instructional Aide I may acquire such a position based upon high school graduation or G.E.D. equivalency, along with specialized knowledge and abilities, the other classifications all require college training and additional experience in the

area of specialization, ranging from a low of 30 undergraduate credits to a bachelor's degree.

It is in the nature of paraprofessional work that the duties and responsibilities of a paraprofessional position will vary considerably, depending upon the employer's needs and preferences. The limited data available in the record suggests that the lower salaries enjoyed by paraprofessionals of the Milwaukee Public School System probably relate to such differences and that the salary levels enjoyed by some of the paraprofessionals employed by the other VTAE districts also vary in relation to this difference. Notwithstanding these admitted difficulties the undersigned concludes that comparisons to settlements with other VTAE districts, especially those involving paraprofessional employees, must be considered to be of greater weight than internal comparisons to clerical employees or external comparisons to clerical employees of non-educational, governmental units.<sup>5/</sup>

As Mediator/Arbitrator Yaffe indicated in his decision involving the professional bargaining unit, comparisons can be made on at least three levels. In this case percentage comparisons tend to favor the Union's position, when controlling weight is given to the VTAE comparisons. The District's existing hourly and bi-weekly rates compare quite favorably under either offer and, it can be argued -- as the District does -- that granting the 3% increases proposed herein will not substantially affect the relative standing of the employees in question in relation to their counterparts at other VTAE institutions nearby. However, it must be remembered that the District is, by far, the largest VTAE district in the State and there is considerable evidence to suggest that paraprofessional employees in this District are utilized in a way which justifies relatively high compensation, among the comparables. Because the other institutions are relatively close in salary range, the 5.5% increases proposed herein will not substantially widen the gap. Thirdly, based upon actual dollar increases generated, the Union's offer appears to be the more reasonable, for the same essential reason. Thus, under the 3% proposals advanced by the District, the monthly or weekly increase in income would be substantially less than that granted other paraprofessional employees at the comparable institutions.

In the view of the undersigned, the District makes valid points with regard to the cost of the increases sought by the Union in relation to the cost of the increases granted the professional bargaining unit and with regard to its relative tax effort expended to meet its current obligations. While the relative tax effort will not be immediately or substantially affected by the Union's proposal, it will contribute toward that problem in the future. The undersigned would, if the statute permitted it, pare back the Union's proposal slightly for this reason and in recognition of the fact that the actual value of the increments to the existing work force in this bargaining unit is apparently greater than in the professional bargaining unit. However, with regard to this latter point, it is noted that the increments available to professional employees are not necessarily of lesser value and the explanation for this phenomenon apparently lies in turnover in this bargaining unit and/or stability in the professional bargaining unit.

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<sup>5/</sup> It should be noted that Mediator/Arbitrator Ziedler reached the same conclusion with regard to all non-professional employees of the Madison Area Technical College.

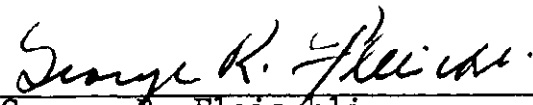
While the undersigned agrees that the National Consumer Price Index data relied upon by the Employer is more appropriate than the localized and more volatile Consumer Price Index data relied upon by the Union, the choice between the two sets of data does not result in a dramatic difference. The available data suggests that the Employer's offer would bearly keep even with the current rate of inflation unless the increments are also included in the analysis and that the Union's offer would, unlike agreements reached in prior years, possibly place employees slightly ahead of the increases in the cost of living. On the facts in this case this criterion would not appear to provide a persuasive basis for selecting between either of the two final offers, especially since data concerning comparables tends to reflect the local consensus concerning the appropriate increases to be granted, given the current rate and recent rate of inflation.

In summary, the undersigned concludes that, based upon the external comparisons, which are deemed controlling based upon the facts present in this case, the Union's final offer is more reasonable than the District's final offer. When appropriate weight is given to this conclusion and to the other arguments and applicable criteria in this case, the ultimate conclusion is reached that the Union's final offer, while slightly higher than justified based upon those considerations, is more reasonable than is the District's final offer. For these reasons, and based upon the entire record, the undersigned renders the following

AWARD

The final offer of the Union, together with the issues resolved in negotiations, shall be incorporated in the parties' 1983-1985 Collective Bargaining Agreement, along with the provisions therein which are to remain unchanged.

Dated at Madison, Wisconsin this 29<sup>th</sup> day of December, 1984.

  
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George R. Fleischli  
Mediator/Arbitrator