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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

STATE OF WISCONSIN
BEFORE THE ARBITRATOR

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APPEARANCES:

On Behalf of the District: Stephen Weld, Attorney at Law, Mulcahy & Wherry, S.C.

On Behalf of the Union: James A. Ellingson, District Representative, Wisconsin Council 40, AFSCME

I. BACKGROUND

On July 29, 1984, the Parties exchanged their initial proposals on matters to be included in a new collective bargaining agreement to succeed the agreement that expired on July 1, 1984. Thereafter, the Parties met on two occasions in efforts to reach an accord on a new collective bargaining agreement. On September 6, 1984, the Union filed the instant petition requesting that the Commission initiate Mediation/Arbitration pursuant to Section 111.70(4)(cm)6 of the Municipal Employment Relations Act. On October 10, 1984, a member of the Commission's staff, conducted an investigation which reflected that the Parties were deadlocked in their negotiations, and, by December 6, 1984, the Parties submitted to said Investigator their final offers, as well as a stipulation on matters agreed upon, and thereupon the Investigator notified the Parties that the investigation was closed and advised the Commission that the Parties remain at impasse. The Parties were then ordered to select a Mediator/Arbitrator. The undersigned was selected, and he was appointed by the Commission on January 3, 1985.

The Mediator/Arbitrator met with the Parties on May 7, 1985, in an attempt to mediate a settlement, however, no settlement occurred. Both Parties waived their right to withdraw final offers and their right to written notice of the Arbitrator's intent to proceed to Arbitration. Thereafter, an Arbitration hearing was conducted at which the Parties presented evidence. Post-hearing briefs were filed July 11, 1985. The Union filed a reply brief on July 24, 1985. Based on the relevant statute, the evidence and the arguments of the Parties, the Arbitrator renders the following award.

II. ISSUES

There are three issues presented in the final offers. These are (a) duration, (b) wages, and (c) sick leave payout.

A. Contract Duration

The District proposes a one-year contract, ending July 1, 1985. The Union proposes a two-year contract ending July 1, 1986.

B. Wages

The bargaining unit covers two types of employees: custodians and secretaries. At the end of the previous contract, the rate for custodians was \$8.10 per hour. The rate for one secretary was \$7.30 per hour, and the other secretary, Grace, received \$7.52 per hour.

The District, in its final offer, proposes to create a new hire base or probationary rate, which is approximately ten percent less than the "post-probation rate" (after 90 calendar days). In addition, they propose to pay Grace 0.22\$ per hour more than the secretarial rate. Thus, the rates the District proposes are as follows:

Custodian:

<u>New Hire</u>	<u>After 90 Days</u>
\$7.45	\$8.26

Secretary:

<u>New Hire</u>	<u>After 90 Days</u>
\$6.70	\$7.45

The Union proposes to raise all rates by six percent on July 1, 1984, and 5.5 percent on July 1, 1985. Thus, the new rates under their offer would be:

	<u>July 1, 1984</u>	<u>July 1, 1985</u>
Custodian:	\$8.59	\$9.06
Secretary:	7.74	8.16
Secretary (Grace):	7.97	8.40

C. Sick Leave Payout

The Union proposes to "change the pay out of accumulated sick leave upon retirement to 50 percent".

The District proposes no change in the existing language which reads:

"Upon the retirement or death of a custodian, said custodian or his/her estate shall be entitled to compensation for all unused sick leave at the rate of Ten Dollars (\$10.00) per day. At the custodian's option, the monies shall be retained by the school district to be used on behalf of the custodian to

continue participation in the Hospital Surgical group coverage plan, or may be taken in one lump sum payment based on the formula contained therein. (This section also applies to the secretarial staff pursuant to the appendix to the 1981-84 Custodial Agreement)."

III. ARGUMENTS OF THE PARTIES

A. The Union

The main thrust of the Union's case is that the employees of the bargaining unit should receive an increase in their year-end wage rates, similar to the wage rate increases in -- what they believe to be -- comparable school districts. They emphasize that the year-end rate should be used for wage increase comparisons. Thus, they compare their six percent proposed increase, and the two percent increase in rates proposed by the Board, against the rate increases in 1984-85 in other districts. Moreover, they believe these comparisons to support their offer.

They object to the District's costing of the wage increase as "intellectually dishonest", in that it averages the four split increases received by custodians during the 1983-84 school year, and then costs the increase in wages off the average rate increase, instead of the last rate in effect.

In this connection, they cite Arbitrator Sharon Imes, Case LXXIV No. 32770, MED/ARB-2636, Decision No. 21480A, AFSCME Local 3055 and Green Bay Area Public Schools, in which Arbitrator Imes states:

"Generally, wage increases negotiated each year are costed in the year in which they are negotiated and are not considered as part of an increase in the following year. There is no question that with a split salary schedule, unless the split salary increase is continued in succeeding years, there are wage cost increases which will incur over and above wage costs of the preceding year. However, split salary schedules are primarily lift which they might ordinarily expect during a particular contract year without a simultaneous increase in the actual dollar cost to the employer. When the split salary schedule is agreed upon both parties realize the next year's negotiations will start with a higher base and that the schedule will build in additional costs in ensuing years. Consequently, unless there is a difficulty to pay or an inability to pay argument advanced, the understanding reached in a previous year should not be allowed to determine the reasonableness of an offer in subsequent years."

Accordingly, since the Parties negotiated the split increases, they believe the higher base, as a result, should be used.

Their argument also details the history of the negotiations resulting in the split increases under the July 1, 1981 through June 30, 1984 contract. Instead of the cost of living increases proposed by the Union, the Parties agreed on fixed quarterly increases over a three-year period. The 0.64\$ per hour lift only costs the District 6.7 percent, instead of the actual 10.8 percent increase in rates. Because of this four percent "break" received by the District, the Union's argument implies it would be improper to continue to cost this against the employees by utilizing the average rates. In their opinion, this is the crux of the problem. The Board was more than willing to accept the favorable first year contract, but they are unwilling to accept the unfavorable third year of the

contract. They assert that the Board members have short memories. By basing their wage calculation on an imaginary average yearly wage, rather than the final wage rate, the Board is seeking to renege on its agreement of July 1, 1981.

In terms of specific wage increase comparisons, they note that in exhibits prepared by AFSCME Council 40, Research Assistant Greg Dellomo, the Union showed that the average wage settlements in the area have been 6.1 percent for the 1984-85 school year. They also draw attention to Employer Exhibits 21 and 22, and the teacher settlement in the District. Employer Exhibit 21 -- Comparative Districts, Custodian Wage Rates, shows an average of 6.42 percent minimum for the 1984-85 school year and a 7.13 percent average of maximum increases for the 1984-85 school year. Employer Exhibit 22 Comparative Districts, Secretary Wage Rates, shows an average minimum wage increase of 6.02 percent for the 1984-85 school year with an average maximum 7.18 percent wage increase for the 1984-85 school year. Also an exhibit submitted by the District on July 6, 1985, indicates that the settlement between the Hurley School District and the Teachers Union for 1984-85, averages 6.5 percent. Thus, they assert in summary, that both the figures presented by the District and the Union, for 1984-85 settlements for Custodians and Secretaries, support the position of the Union.

The Union also offers argument concerning the Employer's economic evidence. They characterize this as an unwillingness to pay argument. Thus, it should not be given any weight. In respect to the private sector comparisons utilized by the District, the Union notes that those exhibits stress small business savings and loans, and insurance agencies, and state that it is likely that they are all non-Union situations -- which are traditionally disallowed by Arbitrators. Regarding the large number of retirees in the community, they state that the District's reference to retirees being on a "fixed income" is an inaccurate cliché. Retirees drawing Social Security are granted cost of living increases. The difference between the cost of living and interest rates has been at an all time high. Retirees with invested money were able, in 1984, to invest money in the 12 to 15 percent range, while the cost of living was slightly over four percent. In most cases, retirees have raised their families, bought their houses and built up investments. With the security of Medicare, they have more than enough disposable income to meet their retirement needs.

In addition, the Union argues the District is attempting to disrupt the status quo. This relates to their proposal to adopt a probationary rate, and their proposal to designate part of Grace's salary as longevity. With respect to Grace's situation, they argue that the effect of this move will be to lower the wage rate for any secretary following Grace, thereby eliminating the opportunity for Phyllis to move into a higher paid secretarial position when Grace retires. As such, the District is attempting to gain in Mediation/Arbitration, two major benefits which they could not obtain through voluntary negotiations. In their opinion, this runs contrary to the "Krinsky Doctrine". They also note the decision by the instant Arbitrator in Local 216-H and the City of Ashland, Case XXXVI, No. 32659, MIA-841, Decision No. 215 36-A, in which the same principal of reluctance to change the status quo was expressed. With respect to their proposal to increase sick leave payout, they contend this is not seeking to change the status quo, since the principal of a payout of sick leave upon retirement has already been established, and that this proposal deals with additional pay for an established practice. Additionally, they argue the change in the payout of accumulated sick leave is consistent with AFSCME contracts in the area. The uncontroverted testimony of AFSCME District Representative Jim Ellingson is that the City of Hurley pays 100 percent of accumulated

sick leave up to 100 days, and that Iron County has a payout of accumulated sick leave of 60 percent for up to 100 days upon "honorable termination". The Ashland School District pays 50 percent of accumulated sick leave up to 120 days for the Custodians and Food Service employees represented by AFSCME. The Secretaries represented by the American Federation of Teachers in Ashland do not have a payout of sick leave at this time, although negotiations for a July, 1985 contract have started.

B. The District

On the issue of wages, the Board notes, as background, that the cost of the Board's final offer will equal \$135,142.20 for wages only. The Board's final offer will result in a wages increase of \$6,364.80, or five percent, over their 1983-85 wage cost in the school year 1984-85. On a total package basis, they note that the total package increase will be \$7,798.68 or 4.6 percent. On the other hand, they note that the Union's offer for the 1984-85 contract year, increases the 1983-84 year-end wage rates by six percent, and the Union's 1984-85 wage offer generates an actual wages only increase of \$11,712.90 or 9.1 percent, and a total package cost increase of \$14,161.79 or 8.5 percent. Regarding, the cost of the Union's second year proposal, they note that the 1985-86 Union proposal will generate a wage increase of \$7,671.50 or 5.5 percent. Thus, assuming relatively modest insurance premium increases of 10 percent, they project the total package increase generated will result in a "rolled-up" increase of \$12,323.22 or 6.7 percent. The "roll-up" results because effective January 1, 1986, the employee's share to the Wisconsin Retirement System (WRS) will increase from five to six percent. Pursuant to the collective bargaining agreement, the Board will be required to pay the increase.

Against this, the Board maintains that a critical issue is the method of costing of the wage increases. They note that the Union claims the "end-rate" costing must be considered appropriate in the instant case. However, the Board submits that the Green Bay decision they cite runs counter to long-standing arbitral determinations, including prior decisions by the instant Arbitrator, and that actual costing must be considered in the instant case. Thus, the Board asserts that for costing purposes, the quarterly wage adjustment in 1983-84 must be annualized (or averaged) in order to determine the appropriate base. They cite Arbitrator Stern in City of Manitowoc, WERC Dec. No. 17643-A (1981), Arbitrator Yaffe in School District of Greendale (1981) and School District of Spooner, WERC Dec. No. 19986-A (5/83), and the instant Arbitrator in School District of Marion, WERC Dec. No. 19418-A (7/82).

Next, they note that Section 111.70(4)(cm) of the Wisconsin Statutes directs the Arbitrator to weigh the interest and welfare of the public in determining the reasonableness of the final offers. In this respect, they offer extensive argument on the national and local economic situations. They believe that a unique set of economic variables exists which enables the District to distinguish itself from other school districts in non-mining areas in northern Wisconsin. This analysis discusses the mining industry, the percent of the population in non-earning age groups and on fixed incomes, the per capita income levels, and equalized property values. Also mentioned, are increasing tax delinquencies.

The District also maintains that the Board's economic offer is more reasonable when compared with wages received by private sector and municipal sector employees in the Hurley area. This is important in their estimation, for a variety of reasons. Most noteworthy, is the fact that, unlike teachers or other professionals, who are recruited on a regional and area

wide basis, the District recruits only in the local labor market for support personnel - custodians and secretaries. Current custodians and secretaries will seek other positions in the same area. If the District is not competitive in its wage or benefit levels, it will be unable to recruit and retain its custodial and clerical staff. In fact, recruitment has not been a problem. The District had 67 applicants for a recent vacancy and 65 of those were from people employed by competitors. They also detail the wage increases and wage levels in the private sector. They note that the average maximum hourly rate for custodians in the private sector equals \$4.69 per hour. Thus, custodial employees in the District, under their offers, would receive \$3.57 more per hour than do their private sector counterparts. In terms of secretaries, they note that the average maximum secretarial rate in the private sector in Hurley equals \$5.49 per hour. Secretaries in the school district, under their offer, would earn from \$1.96 to \$2.18 more per hour than do their colleagues in the private sector, without factoring in the summer bonus of two hours pay. In comparison with the private sector, custodial rates detailed on Board Exhibit 19, the Union's offer of \$8.59 at the maximum, will exceed the average maximum custodial rate of \$4.69 in the private sector by \$3.90 per hour. Similarly, the Union's offer with regard to the District's clerical staff will result in a wage range of \$7.74 per hour to \$7.96 per hour. This will exceed the average maximum hourly rate of \$5.49 per hour for clerical staff in the private sector by \$2.25 and \$2.47 per hour, respectively. Clearly, they argue there is no need for "catch up" -- the only possible justification for a double digit wage increase.

The District also notes that the level of municipal settlement in Hurley and Iron County do not support the Unions's wage demands. The Union has proposed an increase that will raise the maximum wage rates for custodians by 0.79\$ per hour, or 10.1 percent. Iron County has only increased its maximum hourly rates by 0.31\$ per hour, or 5.2 percent. The increase provided to the City of Hurley custodians equals 0.15\$ per hour, or two percent. The same holds true with respect to the Union's offer to the secretarial staff. The Union's offer provides the District's secretaries with a wage increase of 0.44\$ per hour, or six percent. In contrast, the average increase provided to secretaries in Iron County and the City of Hurley equals 0.34\$ per hour.

The District also presents arguments concerning the cost of living data. To summarize, they argue that their offer is most consistent with this factor since the total package increase under the Union's final offer of 8.4 percent will exceed the June, 1984 increase in the CPI-W by 4.2 percent, and it will exceed the June, 1984 CPI-W by 5.4 percent.

Using the group of comparable Wisconsin districts, the Employer contends is most reliable, they assert that their offer is most reasonable when comparisons are done. More specifically, they argue, based on rank analysis, that the Board's final wage offer maintains the District's preeminent position among the comparable school districts. They also argue that a comparison of the actual rates shows Hurley is far in excess of the rates and actual wage increases in the comparables. The District engages in a similar analysis and arrives at similar conclusions with respect to the Michigan Border schools.

The District also offers a position on the Union's proposal to change the sick leave payout language. This could increase the present liability of the Board from \$1,200 to \$4,123. They contend that the only evidence submitted at the Arbitration proceeding with regard to this issue was presented by the Board of Education. Board Exhibit 24 outlines the

benefit provided to the non-certified school employees in comparable school districts. A number of conclusions can be drawn from an analysis of this exhibit. First, non-certified employees in Butternut, Glidden, Lakeland, Mellen, Ondossagon and Park Falls receive no payout for their accumulated, unused sick leave. Ashland provides no payout provision to its clerical staff. Only Mercer provides any payout provision for accumulated sick leave to their non-certified staff, and that provision is one half (\$5.00 per day) of the District's current practice. Clearly, Mercer does not justify the Union's proposed change. The large Ashland District does provide the benefit, but only to its custodians.

IV. OPINION AND DISCUSSION

A. Wages

In this respect, the Parties disagreement over the appropriate method of costing is as sharply disputed as the issue of wages itself. The Union costs the wage increase based on year-end rates. Calculating the increase in this way shows how much the wage rates have increased from year-end. The Board concentrates its attention on the increase in actual dollars received from one contract year to the next. They utilize actual earnings under the quarterly increases received in 1983-84.

Each Party believes their calculation to be the most appropriate. The fact is that both calculations yield data that must be given some weight. The amount that rates increase, and the actual amount received under a proposal, both shed valuable light on the reasonableness of a proposal. Whether one approach should be given more weight than another, depends on the individual facts and circumstances of each case. In this case, the percent increase in rates, definitely favors the Union, and the percentage increase in actual dollars received, definitely favors the Employer.

However, in this case, a more balanced statistical measure is a comparison of the actual wage rates themselves -- especially since the Parties have been in a catch up position in the past. In this case, the actual wage levels are more important than wage level changes. Both Parties here have put too much emphasis on measuring the increases in rates or the increase in actual compensation. After all, an increase in actual compensation, or in rates, is simply a vehicle to get to a higher wage level. Thus, in this case, less emphasis should be put on how we measure how much of an increase there has been, and more attention should be focused on where the wage levels, or rates, will end up under the respective offers. The wage levels cannot be disputed because the wage rates under each offer here are known and constant and not subject to manipulation or distortion. By comparing the actual wage rates in this case, a more balanced view results.

Having concluded which statistical view is most appropriate for this case, a set of external public sector comparables must be established. The Parties have differences here as well. The Union did submit a group of comparables which they claimed were comparable because they were in the same "athletic conference". This was the only basis of comparability. However, Hurley is not a member of an athletic conference, and the schools submitted by the Union had merely engaged in athletic competition of one sort or another. This does not establish comparability. Arbitrators often accept the athletic conference as the comparable group because the WIAA tends to group similarly sized schools that are geographically proximate to each other for competitive purposes. This is what makes

athletic conference comparables, not the mere fact that the schools compete against each other. Accordingly, the mere fact that the District made an administrative decision to compete with a certain school does not make it comparable.

On the other hand, the District did present a number of exhibits showing a variety of statistics which convinces us that the group they offer is in fact comparable. However, the Arbitrator will make a couple of additions to this list. Principally, this is done to get more unionized schools in the comparable group. Normally, unorganized schools are not given great weight, but in this case there are not many fully organized schools, and both Parties use unorganized schools as comparables. So apparently, this is not a problem for these Parties. The additions are Northland Pines, Phillips and Tomahawk -- all members of the Lumberjack Athletic Conference as are Ashland and Park Falls, schools which both Parties agree are comparable.

After considering the data and arguments presented by the Parties, the following schools are deemed comparable, either based on geographic proximity, size and other comparability factors, or a combination of all these factors:

Ashland	Ondossagon
Butternut **	Park Falls **
Glidden	Tomahawk
Mellen **	Phillips *
Mercer **	Northland Pines *

The following chart reflects 1983-84 wages for custodians in the comparable schools:

	<u>1983-84</u>	
	<u>Minimum</u>	<u>Maximum</u>
Ashland	7.43	8.15
Butternut		6.32
Glidden	5.82	7.05
Mellen	4.59	6.89
Mercer		4.65
Ondossagon	6.50	6.75
Park Falls		6.88
Tomahawk		7.62
Phillips	5.50	6.35
Northland Pines		6.43
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AVERAGE		6.70
Hurley		8.10
		(+\$1.40/21%)

* only secretaries unorganized

** both secretaries and custodians unorganized

The following chart reflects 1984-85 wages for custodians in the comparable schools:

<u>1984-85</u>		
	<u>Minimum</u>	<u>Maximum</u>
Ashland	7.91	8.68
Butternut		6.57
Glidden	6.14	7.47
Mellen	5.43	7.65
Mercer		5.12
Ondossagon	6.48	7.12
Park Falls		7.29
Tomahawk	8.08	8.52
Phillips	6.35	7.35
Northland Pines		6.68
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AVERAGE	6.73	7.25
Median		7.35
	(regardless of which offer is accepted)	
District Offer		8.26
	(+\$.01/14% more than average 0.91\$/12.5% more than median)	
Union Offer		8.59
	(+\$.34/18% more than average \$1.24/17% more than median)	

This analysis shows that the catch up plan that the Parties agreed to in the last three year contract for the custodians, resulted in -- relative to these comparables -- a wage rate, which at the end of 1983-84, exceeded the comparable average by a dramatic margin (more than 20 percent). Under the Union's 1984-85 offer, the margin will only be moderated by three percent. They still would be over the average by 18 percent. Even in spite of the fact that the Board offer is only two percent on the year end rate, custodians in Hurley will still be paid one dollar more per hour than employees performing similar work. Even when the unionized schools are isolated, Hurley custodians in 1983-84 were earning \$1.05 (14.8 percent) more per hour. The only school which exceeded it is Ashland, more than twice the size of Hurley. Thus, it should be discounted some. Isolating the unionized schools in 1984-85, even under the Board's offer, the custodians would be earning over eight percent more. Under the Union's offer, they would be earning almost thirteen percent more.

A similar analysis can be done for secretaries.

1983-84

	Minimum	Maximum
Ashland	5.28	7.42
Butternut		5.60
Glidden	no position	
Mellen	4.59	6.89
Mercer		5.89
Ondossagon	5.00	5.93
Park Falls	5.10	6.06
Tomahawk	6.10	6.76
Phillips	5.48	6.55
Northland Pines	5.68	5.94
AVERAGE	5.31	6.33
Hurley	7.30 (+0.97\$/15% to	7.52 +1.19/19%)

1984-85

	Minimum	Maximum
Ashland	4.53	7.90
Butternut		5.82
Glidden	no position	
Mellen	5.76	8.39
Mercer		6.48
Ondossagon	5.27	6.26
Park Falls	5.40	6.42
Tomahawk	6.47	7.17
Phillips	5.85	6.94
Northland Pines	5.93	6.19
AVERAGE		6.84
Board's Offer	7.45 (+0.61\$/9% to	7.67 +0.83\$/12%)
Union's Offer	7.74 (+0.90\$/13% to	7.97 +1.13\$/16.5%)

Based on the analysis above, there, in the Arbitrator's opinion, simply is nothing unreasonable with an offer coming off a catch up contract that results in the kinds of healthy positive wage level margins that occur under the Board's offer. This must be given more weight than the fact the actual rate increases are less in Hurley than other places. The fact they are, is justified as some moderation of the excessive catch up, is in order.

It does weigh against the Board's offer that they are changing the status quo by creating minimum rates. However, the negative preference that arises from the Union's excessive wage levels outweighs this consideration. Even if it did not, some negatives arise concerning the Union's two year offer on wages, because there are few 1985-86 settlements to gauge their offer. It is seen from the above analysis that on the basis of similar position/public sector comparability, the District's offer is more acceptable because there is no particular justification for Hurley employees to be paid more than

other employees to the degree which would result under the Union's offer. Another factor weighing in the Employer's favor is the dramatic wage level differences between the District and the private sector. Private sector comparisons in these kinds of positions deserve some weight because the function they perform is readily found in the private sector.

B. Sick Leave Payout

In this proposal, the Union seeks a substantial increase in an already established benefit. However, the Arbitrator fails to find it justified, based on the comparables.

C. Duration

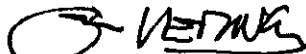
The Arbitrator's preference on the duration proposals is really a function of his analysis on wages. The better alternative concerning duration, is to adopt the Board's offer, which moderates the excessive catch up on a one year basis, while still resulting in some rate increases and still resulting in an increase in actual dollars earned over the previous year.

D. Summary

The Board's final offer, for reasons discussed above, is more reasonable on the issues of salary, sick leave payout and duration.

Award

The 1984-85 contract of the Parties shall include the final offer of the District as well as those items in the stipulation of agreement.



Gil Vernon, Mediator/Arbitrator

Dated this 10th day of November, 1985, at Eau Claire, Wisconsin.