JUL 0 1 1986

In the Matter of the Petition of

FOND DU LAC SCHOOL DISTRICT

To Initiate Mediation-Arbitration Between Said Petitioner and

FOND DU LAC SECRETARIAL/CLERICAL ASSOCIATION

WISCONSIN EMPLOYMENT
Case 35 No. BERATIONS COMMISSION
Decision No. 23063A
MED/ARB-3246
Mediator - Arbitrator
Stanley H. Michelstetter II

Appearances:

John A. St. Peter, Attorney at Law, appearing on behalf of the Employer.

James Strasser, Representative, appearing on behalf of the Association.

MEDIATION - ARBITRATION AWARD

Fond du Lac School District, herein referred to as the "Employer", having petitioned the Wisconsin Employment Relations Commission to initiate Mediation-Arbitration, pursuant to section 111.70(4)(cm), Wis. Stats.1/between it and Fond du Lac Secretarial/Clerical Association, herein referred to the "Association", and the Commission having appointed the Undersigned as Mediator-Arbitrator on January 27, 1986; and the Undersigned having conducted Mediation on January 20, 1986 and having conducted a hearing on February 20, 1986,2/ both in Fond du Lac, Wisconsin, and the parties having both filed post hearing briefs and reply briefs, the last of which was received May 5, 1986.

ISSUES

The following is a summary of the issues remaining in dispute between the parties:

- 1. Term; the Association proposes a contract term from July 1, 1984 to June 30, 1986. The Employer proposes a term from July 1, 1984 to June 30, 1987.
- 2. Wages; the current salary schedule is appended hereto and marked appendix A. The proposal of the Association is appended hereto and marked appendix B. The proposal of the Employer is appended hereto and marked appendix C.
- 3. Vacation; Association proposes to add the underlined language to the current vacation provision in Article XI, Section G of the collective bargaining agreement:

G. Vacations-Ten and One-Half Month Employees

- 1. Individuals employed on a $10\frac{1}{2}$ month basis who have completed one full $10\frac{1}{2}$ month work period shall be granted five (5) days of vacation.
- 2. Individuals employed on a $10\frac{1}{2}$ month basis who have completed two (2) full $10\frac{1}{2}$ month work periods shall be granted then (10) days of vacation.
- 3. Individuals employed on a 10½ month schedule who have completed ten (10) full 10½ month work periods shall be granted vacation days for all the days during the Christmas and Spring/Easter recess. In no instances will an employe be granted less than ten (10) days.
- 4. Individuals employed on a 10½ month basis will take their paid vacation time during school vacation periods, such as Christmas and Spring/Easter vacations. Any deviation from this policy must include a formal request recommendation by the principal/supervisor and the approval of the

^{1/111.70} (4)(cm), has since been amended; however, those amendments are not effective for this dispute.

^{2/} The parties waived notice of intent to arbitrate.

Director of Personnel.

Individuals employed on a 10½ month schedule will be paid during the Christmas and Spring/Easter recess when any of the following conditions is satisfied:

- a.) an authorization to work is granted by the Director of Personnel as the result of a request from the principal
- b.) accrued vacation time is being used.

The Employer opposes any change in the current collective bargaining agreement on this issue.

- 4. Association's right to grieve; the Association proposes to amend current Article III, Section B to add the underlined language:
 - B. "A grievance is defined as an alleged violation of a specific article or section of this Agreement. When any such grievance arises, the aggrieved employee shall continue to fulfill the responsibilities pursuant to the employee's assignment, and such grievance shall be submitted in the manner set forth herein." A grievance is defined as an alleged violation of a specific article or section of the Agreement. When any such grievance arises, the grieved employee shall continue to fulfill the responsibilities pursuant to the employee's assignment, and such grievance shall be submitted by the Association or aggrieved employe in the manner set forth herein."

The Employer opposes any change in the current language.

- 5. Layoff and recall (application to hours reduction and notice of layoff); The Association proposes to amend the current Article VIII, layoff and recall language by adding the underlined material;
 - A. "In lay off and recall situations, one (1) seniority list will be used.
 - B. If a reduction in the number of <u>days or hours</u> of employees becomes necessary in the district, the Board shall first layoff all temporary employees before any bargaining unit employees are laid off. A notice of layoff shall be given the effected employe no less than thirty (30) days prior to the effective date of layoff.
 - C. If a further reduction is necessary, the following procedure shall be followed:
 - The affected employee within the affected classification shall exercise his/her seniority by replacing the least senior employee within the same classification, i.e. classification I, II, III, etc., and 10½ month or 12 month.
 - 2. The displaced employee shall then be allowed to replace the least senior employee within the same classification by crossing over to a 10½ month or 12 month position.
 - 3. An employee who is the least senior employee within a specific classification shall be allowed to exercise his/her seniority and replace the least senior employee within the next lower classification, i.e. IV to III to II.
 - D. Employees who are laid off shall be recalled in reverse order of layoff.
 - E. Employees who have been laid off will have recall rights for a period of two (2) years from the date of layoff. If an employee is on layoff and turns down a job, the employee loses his/her recall rights.
 - F. Employees who are laid off shall have their health and

dental insurance coverage paid by the Board through the end of the following month. Employes shall be informed in writing of their right to continue insurance coverage under the group rates at their own expense.

The Employer opposes any change in the current collective bargaining agreement language on this issue.

DISCUSSION

Wages-Positions of the Parties

The Employer takes the position that unit employees should receive wage increases basically appropriate to adjust for inflation. It takes the position that unit employees should receive the same percentage increase in salary and/or total package clerical employees in the City of Fond du Lac, Fond du Lac County, Moraine Park Technical Institute and North Fond du Lac Schools. It denies any comparison of any kind should be made to the Fond du Lac Schools custodial or teacher units. In this regard it denied the Association has laid any foundation of testimony of comparability of positions for any comparison to the other two internal units. In any event it notes that the teachers' contract resulted from arbitration and should, therefore, be given less weight.

The Employer takes the position that its costing is appropriate. It takes the 1983-84 staff and moves them forward as if they continued through each year of the agreement. By this method it concludes the offers are the following total package:

<u>Contract Year</u>	Employer	Association
1984-85	6.18%	9.15%
1985-86	7.15%	9.91%
1986-87	7.01%	_

It notes this method is the method historically used by both the Association and the Employer in costing for the teachers and supported by arbitral authority. It also argues the Association's position reduces the package by cost savings attributable to turn over. It compares its figures to the following wage rate increases:

Institution	Contract Year	Increase
Moraine Park Technical Institute	1984-85	5.45%
City of Fond du Lac	1984	4.8%
Fond du Lac County	1984	3.06%
North Fond du Lac Schools	1984-85	6.0 %

It also takes the position that the interest and welfare of the public favor its position. It argues that Fond du Lac County is in the midst of a recession and has very high unemployment. It notes wage freezes in both public and private sector are not uncommon. It alleges its offer keeps pace with inflation, while the Association has not demonstrated any cost of living basis for its position.

It denies that the Association should be allowed to rely on a argument that selected unit positions are paid less than selected positions with comparable employers because the Association has failed to lay a foundation (produce testimony) to establish that any of the positions share similar duties.

The Association takes the position that the increase it proposes is necessary to catch unit employees up to maintain historical relationship between this unit's classification pay ranges and the same classification pay ranges in the custodial unit. It also relies on the size of increases received by teachers. It alleges the secondary set of comparisons should be to unionized external public sector clerical units; Moraine Park Technical Institute in the City of Fond du Lac. It concedes that comparison to the non-union clerical employees of Fond du Lac County may be of some value, but denies that comparison to North Fond du Lac School's clericals is appropriate because the unit has different tax base.

The Association challenges the costing method of the Employer because 1. it includes costs attributable to movement in the wage schedule to the package. 2. The district's method contains alleged inconsistencies. It includes retention of three resigned employees and adjustments occurring during the year. It uses two employees at $10\frac{1}{2}$ months instead of 12 months in the base and attributes their movement to 12 months again. The Association (but not the Employer's) proposal for 1985-86, thus inflating it by \$4,440.66. The Employer also costs the loss of Title I funds for one position against both packages for 1985-86 (\$6,292.02). 3. It also disagrees with the Employer's continuing to move three employees through the 1985-86 year who were no longer employed in 1984-85. 4. The Employer has reduced the number of vacation days in 1985-86 and this should be deducted from the package for 1985-86 (\$1,719.59). On the basis of its costing, it costs its 1984-85 total package increase as 8.1%. Using adjustments to the Employer's method of costing, it concludes the Employer's 1984-85 total package is 5.5%

The Association contends that its proposal is reasonable in light of internal comparisons even if its percentages are higher than those of both teachers' and custodial settlements. It argues this unit is the lowest paid and past percentage adjustments have expanded the difference between this unit and the others, particularly the custodial unit. As to the custodial unit, it indicates that total package and wage increase data is not available, but compares the adjustment in schedules. It states that the custodial schedule adjustment for 1984-85 range from 6.06% to 6.23% and for 1985-86 from 6.98% to 7.07%. By contrast it notes the Employer's 1984-85 adjustment ranges from 5.84% and its 1985-86 2.97% to 7.18% whereas the Association's for 1984-85 is 8.31% to 8.46% while its 1985-86 adjustment is 7.12% to 8.27%.

It alleges its proposal compares better to the teacher settlements in both years. For 1984-85 the Employer arbitrated proposals of 7% salary only, 5.75% total package and 8% salary only and 7.06% total package. The parties voluntarily agreed to an 8.4% salary only and 9.2% total package.

It compares its wage rates and the length of time it takes to reach this rate to those of similarly titled positions at Moraine Park Technical Institute, City of Fond du Lac and Fond du Lac County. It alleges the County should be given less weight because it is non-union.

Wages - Discussion

The fundamental issue in this case is whether unit employees are entitled to a "catch-up" increase or merely a cost of living adjustment. Section $111.70\ (4)(cm)$, Wis. Stats., requires that I select the final offer of the party which most nearly meets the statutory criteria. I may not modify the offers.

There is a costing dispute which has a major impact on the nature of the final offers. The Employer applied an approach of taking staff which was employed as of June 1984 and treating them as if they had been employed throughout the 1983-84 base year. It then rolls this staff forward through each of the contract years even though some of these employees may have left, to determine the nature of the increase. The method applied by the Association takes into account turn over savings. The method applied by the Employer is an appropriate method of costing. And is one which has been used, in essence, by the Association and the Employer with respect to its teachers. Accordingly, the Employer's basic method is acceptable.

The Association has pointed out a number of errors in the Employer's method. Thus, the Employer mistakenly includes employees treated as 10½ month employees as 12 month employees in costing the 1985-86 Association proposal. I have deducted this amount. The Employer has not treated employee C. Kurth as full-time even though he was employed on a full-time basis. This is because he was Title I. However, later in its proposal it treats employee Kurth as full-time. I have added the amount necessary to make Mr. Kurth full-time for the base year. The Association has indicated that it has lost one vacation day as a result of a shortening of Christmas vacation. I have not made the small adjustment, although it may be appropriate to do so. There has been no evidence as to whether or not increases in vacation time of this nature have been costed against packages in the past in the manner proposed by the Association. In the absence of evidence of a history to the contrary, I find nothing wrong with the Employer including the costing of movement towards increments. On this basis, the following is my computation of the packages of the parties.

Wage (Total Package)

	84-85	85-86	86-87	
Employer	6.18 (5.19)	7.15 (6.53)	7.02 (7.5)	
Association	9.50 (7.37)	9.29 (8.59)		

1. cost of living

For the following listed periods the CPI-U Consumer Price Index had the following listed changes as compared to the total package of the parties:

CPI	Percent	Contract Year	Employer	Association
1983-84	4.2%	1984-85	5.9 %	7.37%
1984-85	3.7%	1985-86	6.53%	8.59%
End 1985	3.6%	1986-87	7.5 %	-

The offer of the Employer is clearly adequate to adjust for inflation.

2. comparisons

A. Internal

There are two other collective bargaining units with this Employer; the teacher unit and the custodial unit. Neither of these units performs duties similar to those of the employees herein. Apparently sometime before 1981-82 secretaries and custodians shared the same pay schedule. Since 1981-82 the differential between the secretaries has increased from \$80 less at Class II to \$97 less at Class II in 1983-84. The Association's position essentially is an attempt to maintain and slightly regain against that dollar difference, whereas the Employer has disregarded entirely the relationship between this unit and the custodial unit. The Employer's position results in slightly less than the percentage increase received by the custodial unit.

Evidence of the size of the custodial increase is not available. The sole comparison is between the per cell increase of the two schedules. The following is that comparison:

Per Cell Comparison

	1984-85	1985-86
Costodian Ranges	6.06-6.23%	6.98-7.07%
Employer II " III " IV " V	5.84% 5.84% 5.78% 5.82%	5.14% 7.18% 7.17% 2.97%
Association II III IV IX	8.46% 8.38% 8.31% 8.34%	8.17% 8.27% 8.01% 7.12%

It should be noted that there are fifty employees in the unit. Twenty-seven are in Range II, fourteen in Range III, three in Range IV, and six in Range V. On a weighted basis, the offer of the Employer is closer to the settlement with the custodians overall.

With respect to the teacher unit, the parties did not settle for 1984-85, but instead had the matter resolved by final offer arbitration. The Employer offered 7% wage increase, 5.75% total package and the Association offered 8% and 7.06% total package. The offer of the Association was accepted. For 1985-86 the parties did voluntarily settle at 8.4% salary and 9.2% total package.

The settlements of the other two units are evidence of what the results of collective bargaining would be under similar circumstances. In my experience, teacher settlements have varied greatly from settlements of other public employees in the State. There has been no showing of a history of relationship of any of the collective bargaining units to the teacher settlements. Under these circumstances the settlement of the teachers is not given weight in this case.

As to the custodial unit, I find it inappropriate to reestablish the fixed relationship with its salary schedule. The offer of the Employer is clearly closer to the percentage increase of the custoridal unit and, therefore, by this standard closer to the appropriate general increase. While it is not uncommon to give fixed across-the-board increases, the circumstances of this case do not warrant that treatment.

B. External Comparisons

There were no private sector comparisons offered by the parties. Both parties took the position that clerical employees in this unit should be compared to clerical employees in other units of public employers. Both parties agreed that the City of Fond du Lac, Moraine Park Technical Institute, and Fond du Lac County are appropriate comparables. In view of the fact that there are so few valid public sector comparisons and the fact that Fond du Lac County appears to pay wages close to that of the other public employers, I find that Fond du Lac County is a valid comparison even though it is non-union. The Employer also offered a non-union comparison to the North Fond du Lac School District. North Fond du Lac is considerably smaller and does not share the same urban problems as the Employer. I would note that comparison to similar units in other school districts of the same size would be appropriate, particularly with respect to contract language.

The external comparisons exemplify the fundamental issue in this case. The Employer is proposing an increase comparable to the general increase granted by the comparable communities while the Association is proposing a larger "catch up" increase.

The following is the available information:

Wage Increase

	Calendar 1984	84-85	Calendar 1985	85-86	86-87
Moraine Park Tech. Inst. City of Fond du Lac Fond du Lac Co.	5.0 3.06%	5.03 (5.702)	5.0	4.08 (5.73)	
Fond du Lac Sch. Employer " Association		6.18 (5.19) 9.50 (7.37)		7.15 (6.53) 9.29 (8.54)	7.02 (7.5)

(Parenthesis indicates total package)

The Association offered wage schedules from comparable employers and argued that its wages were low when compared to similarly titled jobs. I have prepared the following tables along the lines of the rationales of the Association. I have used wage classes II and III, because class II represents 27 of the 50 people in the unit and class III represents 14 of the 50.

1983-85

	Start	3d year	Journeymen [length of time]	Maximum Add. long. [time] w/2yrs. exp.
Fond du Lac II	406 (5.14)	457 (5.78)	496 (6.28) [54mo]	496 6.28 [54mo]
Moraine Park range 5	5.21	6.01	6.10 [54mo]	6.28 [20vr]
Fond du Lac III	419 (5.30)	472 (5.97)	513 (6.49) [54mo]	
Moraine Park Tech. Inst. range 8	6.03	6.83	6.92 [54mo]	

1984-85

	Start	3d year	Journeymen [length of ti	
MPTI r. 7	440 (5.57) 5.50 5.50 5.50	538 (6.81) 6.34 516 (6.66)	525 (6.65) [54mo] 538 (6.81) [18mo] 6.44 [54mo] 528 (6.82) [18mo] 6.80 [24mo]	538 (6.81) [18mo] 6.63 [20yr] 528 (6.82) [18mo]
An. r.III MPTI r.8 City c-tII Coun secII	[440 (5.57) 6.36 [*549 (7.09)	538 (6.81) 6.93 561 (7.25)	543 (6.87) [54mo] 538 (6.81) [18mo] 7.30 [54mo] 574 (7.41) [18mo] 7.30 [24mo]	538 (6.81) [18mo] 7.49 [20yr] 574 (7.41) [18mo]
			1985-86	
	Start	3d year	Journeymen Ma [length of ti	
Er. r.II An. r.II MPTI r.4 City c-tI* Coun sec.*	472 (5.97)	582 (7.36)	525 (6.98) [30mo] 582 (7.36) [18mo] 6.79 [54mo] [18mo] 7.10 [24mo]	582 (7.36) [18mo]
An. MPTI r.8* City c-tI		602 (7.62) 7.61 602 (7.77)	602 (7.77) [18mo]	602 (7.62) [18mo] 7.90 [20yr] 602 7.77

^{*}average over 1985-86

[Longevity is included only when included in the salaray schedule. The Employer provides 3% of the employee's schedule position after 6 years, 6% after 10, 9% after 15. There is no evidence indicating that the City of Fond du Lac or Moraine Park Technical Institute have additional longevity programs. Fond du Lac County provides longevity at the rate of 3%/hr after 2 years, 7% after 4 years, 10% after 6 years, 13% after 8 years.]

By these comparisons the Employer's offer appears to maintain a third ranked position with espect to those in class II, while it maintains a last ranked positions with respect to those in class III. On the otherhand the Association increases wages to the point that with respect to both classes, its employees are first or close to first.

Although these comparisons tend to favor the Association's catch up concept, there are numerous clerical job titles at both the county and city. Substitution of the other titles would change the result. The Association presented evidence with respect to only one position, one which is outside these classes. This position was unique and not representive. Although there was no evidence as to the duties of positions at comparable employers, there is evidence that, at this time, class II and III comprise a wide range of skill levels. Both parties are proposing a study committee to review the classification system. The tenor of the testimony Director of Personnel Elwood Bilse at pass 36 of the transcript indicates there are a wide variety of skills involved in these class sessions.

Thus, the position of the Employer provides a generally comparable wage increase, while the position of the Association is designed to catch up to comparable employers. The available evidence does not suffice intly justify the Association's catch up position.

3. Public Interest

There is no dispute in this cage that the Employer has the ability to meet the offer of the Association. The evidence indicates that Fond du Lac remains a depressed area. This factor favors restraint in budget growth. However, comparable employers share basically the same tax base. They, too, have balanced this factor with the need to provide adequate salaries. Accordingly, this factor is even less weight than comparisons.

Based upon the foregoing, I conclude that the wage offer of the Employer is to be preferred.

Vacation

Historically, the Christmas and Spring vacation combined were 10, 11, or 12 school days. It is undisputed the Employer has been attempting to negotiate calendar changes with the Association as the teachers' representatives. If the trend continues, the employer could reduce the number of paid days of vacation for 10 years of experience, $10\frac{1}{2}$ month employees to less than 10 by reducing the number of days at spring and Christmas break the less than 10 total.

The Association takes the position its proposal is necessary to retain the benefit intended by the parties. The Employer takes the position that the current language protects employees, but that it opposes the proposal because it needs to have school secretaries present when students are present.

By granting 10½ month employees with 2 to 10 years service 10 days and granting employees with 10 or over years of service, the full length of Christmas and spring break combined, the current contract assumes 10 year secretaries will get at least 10 days and probably more. It is inconsistent to assume 10 year secretaries will get less than 10 days, while secretaries with less service would get 10 days. The issue of when the days are to be taken should vacation periods be insufficient is handled under Article XI, Section G, 4. It is clear that the Association's position is well taken as a clarification of the existing language.

Grievance

The Association seeks the right to grieve in its own name in order to insure the integrity of the collective bargaining agreement is maintained. It relies on comparison to the teacher unit, Moraine Park Technical Institute and the City of Fond du Lac.

The Employer opposes this because it is afraid the Association will coordinate grievances between this unit and the teachers' unit. It relies on the custodial contract. This is a first contract between these parties in this unit. The Association position is based upon preserving its right to police the collective bargaining agreement. The language is comparable to that of the teachers, City of Fond du Lac and Moraine Park Technical Institute. I am satisfied that this issue favors the Association.

Lay Off

The Association takes the position that these changes are necessary because the Employer has reduced a 12 month employee to a $10\,1/2$ month job. It also states that the 30 notice is necessary to enable employees to train for a new position or plan for lay off.

The Employer takes the position that the new language would produce

horrible consequences; it would apply strict seniority within broad classifications without regard to minimum qualifications for specific jobs. It also argues there is no comparability for the Association's position.

Although the Association has a legitimate problem with reduction of the employees from 12 month to $10\,1/2$ month employees, the language involved is exceedingly over broad. Further, it has not demonstrated any comparability locally or among other similar size school districts. This issue heavily favors the Employer.

Term

The Association takes the position that the reason the collective bargaining agreement is a 2 year contract and is nearing its expiration is because the Employer has delayed bargaining substantially. It also takes the position that there are many aspects of the collective bargaining agreement which need renegotiation and, therefore, the shorter term is necessary.

The Employer takes the position the longer term is necessary in order to provide some stability in the unit and an opportunity to administer the collective bargaining agreement.

I am satisfied that giving the existing evidence of wage disparity, the $\mbox{\sc Association's position}$ with respect to term is more appropriate.

Weight

In this case, the wage issue is by far the most important, while the term and layoff issues are significant. For the reasons discussed with respect to those issues, I conclude that the final offer of the Employer is to be preferred.

AWARD

That the parties collective bargaining agreement incorporate the final offer of the Employer.

Dated at Milwaukee, Wisconsin this 27^{f6} day of June, 1986.

Stanley H! Michelstetter II

Mediator-Arbitrator

APPENDIX A

SECRETARIAL/CLERICAL SALARY SCHEDULE

Bi-Weekly

July 1, 1983 - June 30, 1984

	0	6 Mo.	12 Mo.	18 Mo.	24 Mo.	30 Mo.	36 Mo.	42 Mo.	48 Mo.	54 Mo.
ssification	1	2	3	4	5	6	7	8	9	10
II	406	415	423	431	440	448	457	468	482	496
iii	419	427	436	445	454	463	472	484	498	513
IA	444	453	461	474	484	495	505	519	536	553
V	511	522	534	546	557	569	581	596	616	635

INPEX (drop former laner)

		Q Mu	6 mo	12140	18mo
/	I	1.00	1.061	1.125	1.223
	TI	1.035	1.095	1.163	1.263
		1	1.168	(•
	V	1.259	1.345	1.431	1.563

\$34. ailded to base

		1984-	fis-	
r	0	6	12	18
I	440	467	495	538
TII		48))
I	481	5-14	547	599
T	554	592	630	688

\$32 added To bose

 	1985	-86	18
472	508	543	582
ļ :	520		
576	552	590	647
594	644	675	737



NOV 01 1985

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

SECRETARIAL/CLERICAL SALARY SCHEDULE B1-weekly July 1, 1984 - June 30, 1985

produkter.	Hired	6 Mo.	12 Mo.	18 Mo.	24 Mo.	30 Ma.	36 Mo.	42 Mo.	48 Mo.	54 Mo.
CLASSIFICATION	1	2	3	4	5	6	7	8	9	10
II	430	439	448	456	466	474	484	495	510	525
111	443	452	461	471	480	490	499	512	527	543
ĭV	470	479	488	501	512	524	534	549	567	585
v	541	552	565	578	589	602	615	631	652	672

SECRETARIAL/CLERICAL SALARY SCHEDULE B1-weekly July 1, 1985 - June 30, 1986

	Hired	6 Mo.	12 Mo.	18 Mo.	24 Mo.	30 Mo.
CLASSIFICATION	1	2	3	4	5	6
11	441	463	485	507	529	552
111	472	494	\$16	538	560	582
IV	516	538	560	582	605	627
V	560	587	613	639	665	692

SECRETARIAL/CLITRICAL SALARY SCHEDULE B1-weekly July 1, 1986 - June 30, 1987

	Hired	6 No.	12 No.	18 Mo.	24 Mo.	30 No.
CLASSIFICATION	1	2	3	4	5	6
11	470	493	517	540	564	588
111	503	526	550	573	596	620
1V	550	573	596	620	644	668
٧	596	625	653	6B2	709	7 18