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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

STATE OF WISCONSIN

PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of Mediation/ Arbitration between The Office and Professional Employees International Union, Local 95, -and- Mid-State Area Vocational, Technical and Adult Education District, Wisconsin Rapids	OPINION AND AWARD Interest Arbitration WERC Case No. 35611 MED/ARB - 3472 Decision No. 23301-A Before: J. C. Fogelberg, Mediator/Arbitrator

Appearances -

For the Union:
Steve Hartmann, Business Representative

For the District:
Dean Dietrich, Attorney
Thomas Cunningham, Director of Personnel
Mary Zurawiki, Board Member

Preliminary Statement -

The Mid-State Area Vocational, Technical and Adult Education District (also referred to as the "Board","Employer", or "District", is a municipal employer maintaining its offices in Wisconsin Rapids. The Office and Professional Employees

International Union, Local 95 (also referred to as the "Union" or "Local 95" or "O.P.E.I.U.") is the exclusive bargaining representative for all office clerical employees and library clerk employees of the District at its Wisconsin Rapids, Marshfield and Stevens Point campuses. The District and the Union together have been parties to a collective bargaining agreement covering the wages, hours and working conditions of the employees in the bargaining unit for the past 10 years. Most recently, their contract expired on June 30, 1985. In anticipation of the expiration of their agreement, representatives of the Board and the Union exchanged initial proposals on May 2, 1985. The parties were unsuccessful in their efforts to achieve a voluntary settlement regarding the terms of the new 1985-86 Contract, and consequently on September 5, 1985 the Union filed a petition requesting that the Wisconsin Employment Relations Commission ("Commission") initiate mediation/ arbitration pursuant to section 111.70(4)(cm)6 of the Wisconsin Statutes. Thereafter in the fall of 1985 an investigator appointed by the Commission met with the parties in an effort to ascertain their differences and to resolve them. The results of this investigation however, indicated that both sides were "deadlocked" in their negotiations and accordingly he notified the Commission that the parties remained at impasse. Subsequently the Commission ordered the parties to proceed to

mediation/arbitration on February 14, 1986. Eventually the undersigned was chosen as the mediator/arbitrator and on Monday, April 28, 1986 a meeting was held with the Union and the District whereupon efforts were undertaken to reach a voluntary settlement through mediation. That failing, the parties moved directly to an arbitration hearing on the same date. At the hearing, evidence was received and testimony taken relative to the outstanding issues, at the conclusion of which the parties indicated a preference for filing post-hearing and reply briefs. The final written summaries were received by the Neutral on June 3rd at which time the hearing was deemed officially closed.

The Issues -

The following issues remain at impasse between the parties as certified by the Commission:

1) Salary rates for the contract year 1985-86.
2) The reclassification of two positions: JTPA Clerk and Career Planning Clerk.

Position of the Parties -

The Union's Position: For the 1985-86 school year the Union proposes to increase each position on the wage scale by 6.5%, and to advance each bargaining unit member where applicable,

one step on the schedule within their respective job grade classifications. Further, the Local seeks to retain the percentage rates applied to each grade on the schedule as with the previous contract. Finally, the Union proposes to place the JTPA Clerk at Grade Level III and the Career Planning Clerk at the same Crade Level III for the 1985-86 contract year. Their final position is more fully set forth in Appendix A attached.

District's Position - Similarly, the Employer has proposed a revision of the wage scale to reflect a 6½% wage increase in all rates but with the understanding that employees will not move along the salary schedule for the 1985-86 school year, but rather be "frozen" at their 1984-85 positions on the salary grid. Additionally, the Employer seeks to retain the listing for probationary salaries on the schedule as in the previous contract but to eliminate the percentage figures as reflected in the 1984-85 schedule. Finally, it is the Board's position that the JTPA Clerk and the Career Planning Clerk both be placed on the schedule at Grade Level II. This final position (like the Union's) is also attached to this award and marked as Appendix B.

Analysis of the Evidence -

It is abundantly clear, based upon the evidence placed into the record, that the resolution of this dispute hinges upon relatively few issues. Both sides have proposed identical

6.5% wage adjustments for members of the bargaining unit effective July 1, 1985, and indeed the wage progressions contained in the proposals is identical except for rounding variances at each of the specified steps. At the same time, there is no disagreement over the fact that the wage schedule lies at the very center of the dispute. Though at first glance these statements might appear to be somewhat paradoxical, upon further examination the reviewer quickly discovers that two distinct issues regarding the schedule structure and the costing of the respective positions have essentially prevented the parties from reaching a voluntary settlement.

Distilled to its most basic elements, this impasse concerns the costing of the incremental steps, which the Employer maintains is necessary, and the deletion of the percentages referenced at each of the steps for each of the job classifications, which the Union claims is improper. Both issues have been competently and thoroughly argued by the parties' representatives, making the ultimate decision all the more arduous.

Each side has sought to emphasize the importance of what it perceives as being the most significant of the two issues. The Board offer applies the 6.5% increase to each cell and freezes all employees at their 1984-85 step. While the Union offer also improves each cell on the schedule by 6.5%, it additionally allows employees to move one step for each additional

year of experience which results in additional salary dollars that the Employer maintains should be costed in determining the total wage impact of the Union's offer.

The Local also chooses to emphasize what it perceives as a major change in the wage structure through the District's proposal as it calls for the elimination of the percentage of wages reflected in the present agreement — an item the Union claims was pivotal in achieving the Consent Award in advance of the 1984-85 Contract. According to the Union, it simply seeks to maintain the "status quo wage structure" while the Employer wants to drastically alter that structure.

Examining the arguments and evidence utilized by the parties in support of their respective positions, the reader quickly learns that these two "structural issues" are somewhat interrelated. The District has estimated that the incremental cost translates to approximately 3%. School Board Exhibits 5a-e demonstrate their method of computation. Each staff member on the 1984-85 payroll was advanced one step on the schedule for 1985-86 (per the Union's final position) and then given a 6½% pay increase. Based upon this method of computation, the Local's certified final offer results in a wages only cost, that is $12,285 above the Board's (according to the Employer) or 3.1%. This translates, then, to a final wages only offer by the Board of 6.32% versus the Union's 9.42% (Employer Exhibit 5a).

The Union counters by asserting that "there is no such thing as an incremental cost involved in this contract." Rather there is only "incremental savings," according to the employee bargaining unit, achieved through relatively high staff turnover each year. Moreover the Local contends that the movement through the seven steps on this schedule represent improved productivity as employees in each classification move toward the "full job rate" at the highest level on the schedule. Their response to the Employer's position that the incremental steps should be considered in costing the respective final positions, has been fairly summarized in their written brief as follows:

> "The whole philosophy is that the District pays less than the full rate of the position because the new employee would be less efficient than the more experienced one. As efficiency increases, the employee is compensated at a higher rate. The so-called 'cost' is 'paid' through increased efficiency and productivity, not in the way its packaged."

Essentially, the District claims that the incremental step is virtually "automatic" and consequently must be included in costing each side's final position. With each year of service, according to the Employer, a member of the bargaining unit is entitled to move to the next step on the salary schedule. As this is a routine annual occurrence, any improvement in the per-cell hourly wage scale must necessarily take into consideration the cost of that movement from one step to another, as well. The Union counters by citing the Consent Award arrived

at last year whereby the final agreement reached by the parties included the expression of the schedule in percentages. According to the testimony of the Union's Chief Negotiator, Steve Hartmann, this was the final matter which (once the Employer agreed to its inclusion in the schedule) brought about the settlement last year. The Local maintains that by expressing the schedule in percentages, the parties have acknowledged the fact that the top step on the schedule is in effect the job rate and that all other steps beneath it represent progression to the full rate in each classification. Thus the employee bargaining unit reasons that through experience, employees gain greater knowledge of the position to which they are assigned and ultimately reach complete competency at the seventh step on the schedule. The Local also maintains that progression from one step to the next is not automatic and therefore the incremental steps cannot be fairly considered as a part of the cost of their final position. In this regard, the Union has cited section 1401.4 of the collective bargaining agreement which expressly reserves with management the right to withhold salary schedule advancements for individuals who are performing "substandard work."

Were the advancements by bargaining unit members across the schedule based solely upon qualification, the Arbitrator would be more inclined to agree with the Union's rationale.

However, an examination of the entire contract (Joint Exhibit 1) and more particularly Article XIV would indicate that movement from one step to the next by members of the bargaining unit is based more on years of service than achievement. The newly agreed upon changes in language for the 1985-86 contract (Joint Exhibit 4) indicates that section 1401.3 has been revised to read as follows:

> "Employees shall be granted step advancements on the salary schedule each July 1 until they reach the maximum step in their grade. To be eligible for advancement requires that the employee must receive as least 1,014 hours of compensation during the year...."

A fair interpretation of this newly agreed upon language would indicate, as the Employer has maintained, that movement on this salary schedule is more automatic than subjective. While it is true that the same article reserves with the Board the right to withhold salary schedule advancements, it would appear to be based more upon a matter of discipline than competency. Moreover, Union and Board exhibits alike indicate that the organized clerical employees in the District have advanced routinely after each year of service (unless modified through negotiations by the parties — for example, when the schedule itself has been compressed). Both Union Exhibit 4 and Employer Exhibit 5 support this conclusion.

Additionally, the bargaining history of the parties demonstrates to the Arbitrator's satisfaction, that the Board and

the Local have consistently considered the cost of the increment on the salary schedule whenever determining the value of the settlements arrived at. The summary of settlements as expressed in Employer Exhibit 6-a indicate that the parties have specifically and continuously addressed the increment cost as part of their voluntary settlements. Further, Employer Exhibit 7 shows that the VTAE districts throughout the state, as a matter of routine, include schedule step and/or longevity step increments in their wage costing. Of the 14 Wisconsin VTAE schools, 11 specifically cost the step increment. The Employer's documentation further indicates that only one district utilizing a multiple step salary schedule does not consider the step increment as a cost factor.

The analysis of the foregoing evidence therefore, favors the Employer's position as regards the propriety of including the cost of the increment in any wage proposal. The Arbitrator is cognizant of the fact that an acceptance of this method of costing does not take into account any reductions in staff or staff turnover which may exaggerate the percentage cost of the wage offer. Nevertheless, the documentation has established the fact that this method of costing is the one most consistently utilized in the public sector throughout the state. When paired with the evidence which demonstrates that the parties have routinely advanced bargaining unit members across the schedule on a nearly automatic basis, the District's

method is deemed most acceptable. This having been demonstrated then, the Arbitrator next must examine the comparables referenced by the parties as a means of determining the most appropriate final position to be selected.

Employer Exhibit 36-a indicates that among the VTAE's who have settled throughout the state for 1985-86, the average increase (including the incremental step) amounted to 5.91%. Using the Board's method of computation, their final offer of 6.32% exceeds nine of the fourteen comparable VTAE districts in terms of wage improvements, while the Union's position of 9.42% (including increment) is the highest percentage increase of any of the relevant districts and at a minimum, is nearly 2% higher than the largest (percentage) settlement which was awarded at Southwest VTAE.

By the Union's own admission, internal settlements are the most relevant to this dispute.[1] The uncontroverted evidence indicates that both the custodial and teacher bargaining units within the District settled at 6.5% for 1985-86 (Employer Exhibit 25-a; Union Exhibit 14). The custodial contract does not provide for a step progression similar to the wage schedules in the teachers' agreement or in the contract here in dispute. While the teachers in the District do have step increments, the evidence demonstrates that for the school year 1985-86

[1] Their reply brief, page 7.

association members will be frozen at their experience step with no automatic movement to the next higher step (Employer Exhibit 25-c). Again utilizing the Board's method of costing, an adoption of the Union's final position would result in a disparate wage increase vis-a-vis the other internal bargaining unit settlements. In addition, Board Exhibit 25A demonstrates to the Arbitrator's satisfaction that historically the parties to this collective bargaining agreement have settled at wage adjustments which have been relatively similar to those reached with other unionized employee groups within the District including the teachers and the custodians.

While arguing that the "automatic" step advancement of each bargaining unit must be factored into any wage proposal, the Employer's final offer in this instance has provided for no such movement for the term of the agreement. Again, upon first examination, this might well appear as a contradiction. If the advancement of these clerical employees across the schedule is so automatic as to become an integral part of any costing procedure, then why are they being frozen here through the District's proposal? The answer begins with the premise that actual hourly rates paid at Mid-State have historically been near the bottom among the state's VTAEs (Board Exhibits 31-35). Both sides presented evidence indicating that the parties have been cognizant of this when bargaining over new contracts

each year and thus have made specific adjustments at some of the benchmark rates. By increasing each cell on the schedule by 6½%, both sides have attempted to improve the wages paid on the schedule — particularly at the top of the salary grid. Again, having found the District's costing methods to be the most fair and consistent, one can quickly ascertain that an increase of only 3½% (6½% less the cost of the increment) at the top rate for each classification would only exacerbate, an otherwise unenviable situation. By increasing the per-cell rate by 6½%, Mid-State will improve their hourly rates for the various classifications by a greater amount than they might otherwise have been able to do. While it is true, as the Union points out, that the freezing of the staff at their 1984-85 levels on the schedule will effectively lengthen the time it will take current employees to advance to the top, this is perceived as being temporary — lasting only the term of the agreement itself and done in order to make the wage compensation structure more competitive.[2] There were approximately seven employees at the top of the salary grid in 1984-85 representing over 17½% of the bargaining unit itself. Had the step advancements not been frozen for 1985-86, and again favoring the Employer's method of costing, their salary improvements would have no doubt been diminished considerably.

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[2] As previously indicated, the documentation presented demonstrates that a 6½% per-cell adjustment exceeds 9 of the 14 comparable districts in the state.

With regards to the matter of status quo, the Union asserts that an adoption of the Employer's final position effectively negates the changes obtained last year via the Consent Award issued by Arbitrator Imes. More particularly, the Local objects to the removal of the percentage wages as reflected in the present agreement. According to the Union, the purpose of expressing the wage scale as a percentage with the top rate equalling 100% was to emphasize that the top rate was the rate of the position and that the other rates represented movement toward the rate of the job as an employee's productivity increased over time. This argument must be rejected however, in light of the analysis of the evidence made here concerning the automatic advancement of bargaining unit members over the schedule based upon years of service rather than productivity. The Union further argues that arbitral authority is extensive holding that there must be a demonstration of a "compelling change in circumstance" or an "extremely persuasive case" shown by the party seeking a change in the status quo before a neutral third party will sanction any such alteration. In this regard, Local 95 asserts that the District has presented no reason through bargaining history, evidence, or testimony for the elimination of the percentages from the previous year's agreement. Conversely, the bargaining unit representative contends that an adoption of the Union's position will maintain the percentages as agreed to in the Consent Award issued in conjunction with

the 1984-85 contract settlement. In this regard, the Arbitrator finds that the arguments of the Union might well have been persuasive but for the existence of two additional (and significant) factors. First, there is the final offer of the Local itself which also alters the status quo. Specifically, the Union's final position eliminates the probation step in the schedule — something which was also included in Appendix "A" attached to the previous agreement. Indeed, as the Employer has pointed out in their Exhibits 62-dd, the probationary step has been a part of the salary schedule since 1976-77 when it was computed at 20¢ below the initial step rates and has remained at that ratio until the 1981-82 negotiations at which time it was altered to 22¢ below the initial step rate. It is no surprise consequently, to find that both sides have cited the same rationale in support of their respective positions relative to the matter of status quo. Clearly, an adoption of either position will alter the previous salary schedule structure and therefore the status quo. In response to this argument, the Union asserts that it has not now nor ever has it bargained rates for probationary employees. Moreover they contend that the change as proposed in their final offer is de minius when compared to the abolition of the "percentages" as proposed by the District. Again however, this argument must be rejected in light of the documented evidence demonstrating the longstanding practice of including the probationary step on all salary schedules since

1976, as well as the specific language contained in the Agreement wherein probationary employees receive credit for seniority and fringe benefits back to the initial date of hire when completing the probationary period (section 8.01.2). In addition, section 14.1 of the contract provides that newly hired employees will be placed first on the probationary step on the schedule and then moved to the first step after completion of the probationary period. This evidence when considered as a whole, demonstrates to you the Arbitrator's satisfaction that the alteration proposed by the Union is no less significant than that sought by the Employer.

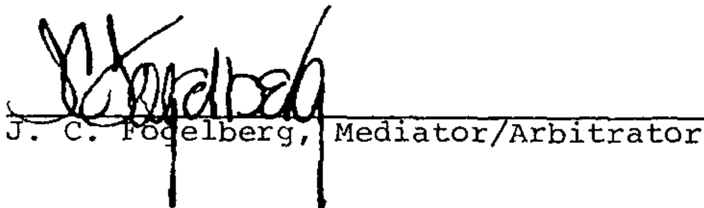
Finally, as regards the matter of the removal of the percentages themselves, the arbitrator would note that while an implementation of the Employer's final position will necessarily delete the percentage figures found in the Consent Award, it nevertheless does not alter the ratios between each of the steps. Indeed, by increasing each step on the cell by 6½% (as both sides have proposed) the actual percentages which differentiate one step from the next will not be altered for the life of the 1985-86 agreement. Further, the Arbitrator has observed that the initial Consent Award as prepared by Ms. Imes (Employer Exhibit 48) includes neither the percentages nor the probationary column. Additionally, the evidence demonstrates that there is no uniform progression from step one to step

seven in any of the job grades reflected in the previous schedule such as is found in the City of Wisconsin Rapids Clerical Labor Agreement which has related steps of 90%, 95% and 100%. The Arbitrator must conclude therefore, as the Board has asserted, that the percentages were merely developed for showing a method of computing the various hourly rates after the parties had determined the base figure using the last step, and that the percentages were placed in the salary schedule to provide a basis for the reduction of salary steps from eleven to seven.

Award -

The evidence and arguments presented have caused this decision to be relatively close and therefore difficult. Nevertheless, based upon a totality of the evidence and the analysis that has been conducted here, the Arbitrator finds that the School Board's final position along with any and all stipulations entered into by the parties, are to be incorporated into the 1985-86 agreement effective July 1, 1985.

Respectfully submitted this 2nd day of August 1986.



J. C. Fogelberg, Mediator/Arbitrator

FINAL OFFER

LOCAL 95, O.P.E.I.U.

Case 35 No. 35611 MED/ARB 3477

1. Revise Appendix "A" by adding the following positions in the listed grade levels in the Appendix:

   JTPA Clerk - Grade Level III
   Career Planning Clerk - Grade Level III

2. Revise Appendix "B" to reflect a six and one-half percent (6.5%) wage increase on the one hundred percent (100%) rate in each grade. The rate for the preceding steps to be based on the percentages reflected in the current Labor Agreement per the attached Appendix:

3. Revise Article XVIII - Duration to read as follows:

   "1803.1 -- The provisions of this Agreement shall be effective as of July 1, 1985 and shall remain binding through June 30, 1986, unless otherwise provided in any of the articles contained herein."

4. All other items per the current Labor Agreement or the Tentative Agreements reached between the parties.

9 H
1/9/86

APPENDIX "B"

CLERICAL WAGE SCHEDULE
1985-86

July 1, 1985-June 30, 1986

	I	II	III	IV	V	VI	VII
Grade I	90.4% (5.42)	92 % (5.52)	93.6% (5.61)	95.2% (5.71)	96.8% 5.80)	98.4% (5.90)	100% (6.00)
Grade II	80.9% (5.68)	84.1% (5.90)	87.3% (6.13)	90.4% (6.34)	93.6% (6.57)	96.8% (6.79)	100% (7.02)
Grade III	80.0% (5.97)	83.3% (6.22)	86.7% (6.47)	90.0% (6.72)	93.3% (6.97)	96.7% (7.22)	100% (7.47)
Grade IV	81.3% (6.37)	84.4% (6.62)	87.5% (6.86)	90.6% (7.10)	93.8% (7.35)	96.9% (7.60)	100% (7.84)

Full-time employees will receive step increases on July 1st of each year.

Part-time employees will receive step increases on July 1st of each year if they have received at least 1040 hours of compensation in the preceding 12 months.

Full-time employees hired prior to December 1 during their first year of employment, shall move to the 2nd year rate.

Full-time employees hired prior to December 1 during their first year of employment shall remain at the 1st year rate until July 1 of the following year.

FINAL OFFER

MID-STATE TECHNICAL INSTITUTE

Case 35 No. 35611 MED/ARB 3477

1. Revise Appendix "A" by adding the following positions in the listed grade levels in the Appendix:

   JTPA Clerk - Grade Level II
   Career Planning Clerk - Grade Level II

2. Revise Appendix "A" to reflect a six and one half percent (6.5%) wage increase in all rates in the Appendix with the understanding that employees will not move along the Salary Schedule for the 1985-86 School Year as per the attached Appendix.

3. Revise Article XVIII - Duration to read as follows:

   "1803.1 -- The provisions of this Agreement shall be effective as of July 1, 1985 and shall remain binding through June 30, 1986, unless otherwise provided in any of the articles contained herein."

4. All other items per the current Labor Agreement or the Tentative Agreements reached between the parties.

12/31/85
DRD

APPENDIX "A"

CLERICAL WAGE SCHEDULE
1985-86*

July 1, 1985-June 30, 1986

	Probation	I	II	III	IV	V	VI	VII
Grade I	5.20	5.42	5.52	5.61	5.71	5.80	5.90	6.00
Grade II	5.46	5.68	5.90	6.12	6.35	6.57	6.79	7.02
Grade III	5.75	5.97	6.22	6.48	6.72	6.97	7.22	7.47
Grade IV	6.15	6.37	6.61	6.86	7.10	7.35	7.59	7.84

Full-time employees will receive step increases on July 1st of each year.

Part-time employees will receive step increases on July 1st of each year if they have received at least 1040 hours of compensation in the preceding 12 months.

Full-time employees hired prior to December 1 during their first year of employment, shall move to the 2nd year rate.

Full-time employees hired prior to December 1 during their first year of employment shall remain at the 1st year rate until July 1 of the following year.

* For the 1985-86 Labor Agreement, all employees shall remain on the same step of the Salary Schedule as existed in the 1984-85 Labor Agreement and no employees shall be eligible for advancement along the schedule during the 1985-86 contract year.

12/9/85

DRD