BEFORE THE MEDIATOR-ARBITRATOR

In the Matter of the Arbitration of an Impasse between PLATTEVILLE SCHOOL DISTRICT and PLATTEVILLE EDUCATION ASSOCIATION (COUNCIL OF AUXILIARY PERSONNEL)	Decision No. 24231-A

Appearances:

Mulcahy & Wherry, Attorneys-at-Law, by Kirk D. Strang, for the Municipal Employer

Paul R. Bierbrauer, Executive Director, South West Teachers United, for the Association.

ARBITRATION AWARD

The undersigned Mediator-Arbitrator was selected by the above-captioned parties and appointed by the Wisconsin Employment Relations Commission pursuant to Sections 111.70(4)(cm)6 and 7 of the Municipal Employment Relations Act to mediate certain issues in dispute between said parties; and, if such mediation failed to resolve the impasse over said issues, to issue a final and binding award to resolve the impasse by selecting the total final offer of one said parties. (Case 9, No. 37501, MED/ARB-4033, Decision No. 24231-A, March 30, 1987.)

Mediation meetings were conducted in Platteville, Wisconsin on May 26 and 27, 1987. The impasse existing between the parties was not resolved.

An arbitration hearing was held on May 29, 1987 in Platteville, Wisconsin. No transcript was made. Final briefs were exchanged on July 22,

1987.

The collective bargaining unit in this case consists of : All regular full-time and regular part-time educational support staff employees, including custodial, maintenance, food service, teacher aides, secretarial and clerical employees; excluding administrators, and managerial, confidential, supervisory and casual employees. This unit includes approximately 63 employees.

The parties' impasse is in their collective bargaining for a new agreement to cover the 1986-1987 and the 1987-1988 school years. There has been one previous agreement covering 1984-1985 and 1985-1986.

THE FINAL OFFERS:

The Municipal Employer's final offer consists of a wage increase proposal.

The parties' agreement provided the following wage rate matrix for 1985-1986.

Class	Starting rate 60 days	I	II	III	IV	V	VI
A	5.80	6.37	6.52	6.67	6.82	6.97	7.12
B	4.60	5.14	5.29	5.44	5.59	5.74	5.89
C	4.20	4.62	4.77	4.92	5.07	5.22	5.37
D	4.05	4.54	4.69	4.82	4.99	5.14	5.29
E	3.70	4.14	4.29	4.44	4.59	4.74	4.89

The classifications denoted by the letters in the first column are as follows:

(14) A. custodians, administrative secretary, account clerk

(8) B. secretary

(20) C. head cook, aides

(8) D. cook, housekeeping, laundry, delivery

(11) E. server, cashier

The parenthetical numbers indicate the approximate number of employees per class in 1985-1986.

The Employer's offer would add $.22 to every cell of this matrix in 1986-1987, and again in 1987-1988.

The previous agreement also provided that "Employees earning a wage greater than the maximum wage for their classification on the date this agreement is ratified will be given a $.10 per hour wage rate increase each year." This language was continued in the new contract, by stipulation. Apparently, (this matter was not clearly presented by the parties.) only one employee has been covered by these terms, an account clerk. The Employer would not extend its matrix increases to that employee, but would increase his wages by $.10 per hour each year. (It would maintain the classification in class A)

According to its own calculations, these Employer offers represent 6.7% and 5.9% average wage increases, and $.38 and $.36 average hourly increase in the two years, respectively. It further calculates that, if this offer is selected, the parties' agreement will provide, including fringe benefits, 6.1% and 6.4% increases, and $.50 and $.56 average increases.

By contrast, again according to Employer calculations, the Association offer represents aggregate increases of 7.6% and 8.2% in wages, $.43 and $.50

average hourly increases, 6.7% and 8.4% overall increases, and $.56 and $.74 average overall increases.

The Association's final offer is comprised of several components. It proposes the following changes in the wage rate matrices.

In 1986-1987, increase class A by $.22, B by $.27, C by $.29, D by $.24, and E by $.24. In 1987-1988, increase class A by $.33, B by $.38, C by $.40, D by $.35, and E by $.35.

The Association also proposes to move the High School Guidance Secretary classification to class B from class C; and to increase the rate of the Account Clerk classification by $.22 in 1986-1987 and by $.33 in 1987-1988.

The 1984-1986 agreement would be amended by the Association's offer by the addition of the following underlined phrase: "If the increase in health insurance or dental insurance premiums is greater than or less than 10%, the value of each cell in this wage rate matrix will be adjusted up or down accordingly." This refers to the agreement's second year.

The Association offer would also add the following: "When an employee retires, the Board will pay the employee a lump sum of $10.00 per day of unused sick leave up to the accumulated total."

The parties' 1984-1986 agreement contained the following provisions for the use of sick leave.

"2. In the case of death of any of the following, the employee may be absent and use up to three (3) days of earned sick leave for each occurrence.

   a. Any member of the immediate household regardless of relationship.

   b. Parents, mother-in-law, father-in-law, grandparents, grandchildren, brothers and sisters of the employee or the

spouse of the brothers and sisters of the employee.

3. The employee may be absent and use up to (3) three days of earned sick leave for care of members of the immediate family who are ill and require hospitalization."

In its offer the Association proposes to modify 2.b. to read, "Immediate family members not covered by (a.) above, including children, grandchildren, parents, grandparents, borther and sister whether by blood or marriage."

It would revise subsection 3 by increasing three days of care to 15 days, and by dropping the phrase "and require hospitalization."

The Association offer would also add the following subsection to the agreement's leaves of absence article.

"F - Child Rearing Leave

A leave of absence for child rearing shall be granted if a qualified substitute can be contracted for the period of the requested leave.

The Association final offer revises the "duration of agreement" article of the parties' previous contract by inserting appropriate effective dates, by dropping a reference to non-retroactivity of language provisions, and by specifying, "Economic provisions, including holidays, shall be retroactive to July 1, 1986."

THE PARTIES' POSITIONS:

The Comparable School Districts

The Association contends that in applying the "factors" at Sec.

111.70(4)(cm)7, Wis. Stats., which require comparisons, the Arbitrator should examine the wages, hours and working conditions at seven school districts which are contiguous to or at least near, the Employer, and where the employees who are the counterparts of the instant unit are unionized. Those districts are: Boscobel, Iowa-Grant, Mineral Point, Potosi, Riverdale, Seneca, and Southwestern.

Regarding "internal" comparison, the Association urges that the teachers employed by the Employer, who are unionized and represented by another affiliate of the same regional association, should be regarded as material.

The Employer contends that districts in its athletic conference as well as contiguous districts should be compared. Those are Belmont, Cuba City, Darlington, Dodgeville, Fennimore, Lancaster, Iowa-Grant, Mineral Point, Potosi and Southwestern. The first six so listed are unorganized respecting the conterpart employees.

The Association, arguing on behalf of its favored pool of comparables, cites the opinions of many authoritative Wisconsin arbitrators. With great respect, the undersigned would express some reservations as to their policy, however. If the arbitrator's objective is to determine where the parties would have settled had they negotiated to a conclusion, only places where bargaining occurs seem relevant. On the other hand, if the arbitrator should be determining the labor market's placement of the employees, that market may include unorganized employment.

In the area of wages, for the 1987-1988 year, in the Association's preferred pool there were only two settlements at the time the record closed herein. There were also only two in the Employers' favored group, and they were not the same ones, but unorganized conference members.

Wages

The Association's Perspective: Regarding class A employees - mainly custodians - both parties propose a $.22 increase in the first year; and the Association proposes $.33 in the second year, whereas the Employer offers another $.22 raise. The Association emphasizes that the two 1987-1988 settlements - in Riverdale and Southwestern - among its pool of comparables were at $.35. The Association's proposal would place these employees' rates well above their counterparts in the other two settled districts; while the Employer's offer also ranks them highest, but by a lesser margin.

In the case of class B, the Association proposes $.27 and $.38, as compared to the Employer's $.22 and $.22. Both offers would maintain these employees among the lowest paid in the Association's pool of comparables, but the Association's offer would apparently bring them nearer to the middle rank in the second year.

Class C employees - mainly aides - are offered $.29 and $.40 by the Association's position; and $.22 each year by the Employer's. Both offers once again maintain below average rates in the first year among the Association's pool; and both would apparently raise this ranking in the second, although the Association's offer is more generous. The Union's data respecting head cooks, who are also in class C, are sparse but not inconsistent with the foregoing.

The Association proposes $.24 and $.35 increases for classes D and E in the two school years, respectively. Again, even the more generous Association position seems to place the employees' rates near the mid-range of its comparable pool.

The Union states its position as proposing that the Account Clerk receive

only the $.22 and $.33 increases proposed for all class A employees.

The Employer's Perspective: The Employer not only favors a different pool of comparables, but also uses another method of comparisons which utilizes so-called benchmark jobs. In some instances, as in the Association's case, this yields rather scanty data. With exceptions, this analysis suggests that the pertinent wage levels are in the pool's middle range.

The following is from the Employee's principal brief:

> "Under the Board's final offer for both 1986-87 and 1987-88, the previous year's ranking is maintained. More critical, however, is the similarity of ranking which results from the Board or Union final offer. For all unit classifications, the ranking would be identical under either final offer. This being the case, where is the justification to spend the additional $3,813 in 1986-87 and $12,414 in 1987-88 that will be required under the Union's final offer?"

Elsewhere in the brief, referring to the overall disparity of costs between the parties' proposals the Employer calculates that the difference is nearly $25,000; and urges that current economic and taxation levels militate against public expenditure.

Regarding the individual Account Clerk who has not been paid under the wage schedule, but under the $.10 per hour provision quoted above, the Employer argues that since "the Union has not proposed to modify the ten cent . . . contract provision . . . the aggregate impact of the current contract and the Union's proposal makes for a still higher increase than the Union claims to seek, and frankly (the Employer) does not see how the contract and the Union's proposal, when read together, can be taken any other way."

Bereavement Leave

The Association argues on behalf of its proposal of expanded bereavement leave that equity and sound policy support providing for the death of grandchildren and of spouses' relatives the same as for grandparents and the employees' own relatives. The agreements of some of the Association's pool of comparable districts are cited as precedent.

The Employer questions whether the terms of the cited agreements do, in fact, cover such relatives.

Family Care Leave

The Association argument on behalf of its proposed expansion of family care leave from three to fifteen days and dropping of the hospitalization requirement emphasizes that the Employer's agreement with its teachers' bargaining representative includes such provisions. It also cites a few agreements between nearby districts and their non-teaching staffs.

The Employer contends that the contracts in the other districts provide far fewer leave days, that there is no evidence of need for this expanded entitlement, and that the Association's proposal is "unworkable" in that it would create staffing difficulties. Because only illness is required and the relationships covered are numerous, the Employer urges, the proposal is "overly-broad" and unwarranted.

Child Rearing Leave

Respecting its proposal of child rearing leave the Association again emphasizes comparison with other employees of this employer, and urges that the members of this unit not be singled out as the only employees without such

a privilege.

The Employer, on the other hand, stresses the absence of such provisions at comparable districts, and contends that comparison to its own administrative and professional staffs is "seductive". It argues that because it is probably easier to find a substitute for a custodian than a certified teacher, the teachers' entitlement has a "built in limitation" which protects against potential fluctuations.

Severance Pay

The Association describes its unused sick-leave payout proposal as severance pay, and finds precedent and support in the nearly identical provision of the labor agreement between the Employer and the representative of its teachers. It also refers to somewhat similar language in the contracts between a few nearby districts and their counterpart bargaining units.

The Employer urges that this proposal should be rejected because, among other things, it does not define retirement. That is, the proposed language does not, for example, specify how long an employee must work for the employer or a minimum retirement age. It also emphasizes that the relatively few cited examples of similar provisions are themselves quite diverse in their entitlements.

Duration

Regarding the Association's proposed duration provision revisions, the Employer acknowledges that it truly represents "precisely what the District will do"; but asserts that it has undesirable prospective implications. Particularly, the Employer is concerned that the Association's terms may foreclose future negotiations on the issue of effective dates. It urges that,

given its present position, there is no real need for such provisions.

The Association states that "the (new) language does not raise an unresolved issue" and should not affect the Arbitrator's ultimate determination.

The Reallocation Issue

The parties have had only one collective bargaining agreement. When that contract was negotiated the matter of the placement on the salary matrix of the position held by Dorothy Klaas was among the items in dispute. Near the end of those negotiations in discussions between the Employer's Business Manager and the Association's UniServ Director it was agreed to place the position in class C, as an aide, rather than in class B, as a secretary. According ot the UniServ Director's assertions at the hearing herein the Business Manager, who is no longer associated with the Employer, stated that Klaas did not type and mainly performed errands for the guidance counselors at the High School.

Substantial testimony was given at the hearing regarding this issue. Klaas has been an employee of the Employer for 19 years, assigned to the guidance office for the last nine years. Her duties include typing letters to parents and colleges for the counselors, as well as letters from teachers to colleges recommending students, and public information materials. She estimates that normally she types approximately 25 letters and 10 news releases per week.

She also sells lunch tickets to students on Mondays, distributes mail received at the High School, and collects attendance records from teachers. She estimates that normally she spends the majority of her work day in the guidance office where she also answers the telephone and is the

receptionist. She contacts students for the counselors and arranges appointments for them. Klaas does not operate word processing equipment, or any computer. She does photocopying for the counselors and creates some bulletin board displays.

By way of comparison, the record also includes evidence respecting the duties of secretaries at the elementary schools. They work directly for the principals and answer phones, serve as receptionists, type faculty bulletins, parent newsletters and other correspondence, and do some typing for teachers as well. They also sell lunch tickets, do photocopying and filing, contact students for the principals, and provide miscellaneous assistance to the principals as required. They type on ordinary typewriters and do not use computers. They are classifed as secretaries.

High School secretaries also perform a substantial amount of typing, but use word processing equipment; and input certain student records and other information into computers. They have transcription skills necessary for dictating equipment.

There is also an Attendance Clerk position, classified in the secretary range, in the High School office. This position includes computer inputting as well as receiving absence excuses, writing return passes and typing reports to teachers.

According to the High School Principal, the position held by Klaas was reduced to the aide level a few years ago when certain less skilled tasks were reassigned from the secretaries in his office to her position to take better advantage of the skills of those secretaries.

Aides in the High School perform a broad spectrum of duties including rather specialized assistance to special education teachers and disabled students, and library responsibilities. Essentially, the scope of their work

corresponds to that of the professional staff whom they assist.

ANALYSIS:

The Municipal Employment Relations Act requires that the Arbitrator select either the Municipal Employer's entire final offer or that of the labor organization. Items may not be selected from both offers and the Arbitrator cannot fashion any result not proposed by a party. In this case, the Arbitrator finds this statutory role especially challenging because neither party's offer seems preferable on every disputed item, or even compelling as a whole.

The severance pay, or sick leave payout, proposed by the Association lacks persuasive support in the comparisons to other employment, or a basis in the particular circumstance of this unit. There is no concern expressed for sick leave abuse to which such a measure might be addressed. As the Employer argues, the concept of retirement seems insufficiently specified to be applicable.

The Association's bereavement leave proposal has some appeal. The categories of relatives which it adds do not seem farfetched as subjects of genuine bereavement. Still, this proposal too seems to exceed the norm, and is apparently not based upon the specific experience of the unit members.

The duration language proposed by the Association may be superfluous, given the parties' mutual intent; but seems, contrary to the Employer's argument, substantially risk-free, and quite conventional.

The leave provisions for family care and child rearing proposed by the Association are not supported by comparison to similar employment elsewhere, and do appear especially liberal. Still, so providing for other employees of the Employer and not this unit very clearly suggests an unjustifiable attitude

toward the families of this unit. The issues of practicability raised by the Employer are not persuasive. Presumably, the negative aspects of teacher absences are also very important. While it may be relatively easy to find a qualified substitute teacher, educational quality is at risk when that occurs. That consideration rises at least to the level of managing the responsibilities of the members of this unit.

Regarding the reallocation within the salary schedule of the position held by Dorothy Klaas, in the judgment of the undersigned, given the choice of classifying the position in issue as an aide or secretarial position, the proper designation is clearly to the secretary class on the record made herein.

As the Employer emphasizes, the present secretaries are in some cases more skilled and spend less time at less skilled work, especially in the High School. However, the mix of work performed by Klaas is far more akin to theirs' than that of the aides who are as specialized as those whom they assist. Klaas does not relate to the guidance counselors in that manner. It is not enough to describe the aides' class as "very broad" to render it essentially miscellaneous.

It is also apparently consistent with the parties' practice to address an issue such as this in collective bargaining, rather than as a grievance, according to the record herein.

Other discrepancies among the parties' offers were not subject to argumentation. All that remains is the major matter of salary schedules.

Neither party has favored a comparable pool that is clearly conventional or beyond reasonable controversy. The matter of limiting to organized units is discussed above. The Employer prefers a pool consisting mainly, but not entirely of its athletic conference; and how far to go beyond the conference

seems a matter of advocacy.

In any event, neither party seems excessively liberal or conservative, and the outcomes of the two offers do not vary extremely in terms of cost, i.e. $25,000 over two years, relative to the other fiscal dimensions of the Employer's budget.

There is evidence, emphasized by the Employer, indicating grounds for fiscal rigour. However, this evidence does not truly suggest that another $25,000 over two years will have any pragmatic consequences, or that these employees should be a focal point of such economies.

Likewise, data provided by the Employer comparing the offers in this case to employment in other segments of local government and the private sector is relevant, but rather sketchy and unpersuasive.

Finally, from a broader perspective there is the matter of the number of items in this case, which is greater than is normal. The Employer argues," It is questionable whether the arbitral process is an appropriate forum in which to seek this many changes on this many subjects." The implication is that the Association is overreaching and excessive in its proposal, not only on an item-by-item basis, but in the aggregate.

The Arbitrator shares the general view that more should be resolved in collective bargaining negotiations and less should be settled by arbitration, and that a great many items in dispute, as in this case, is symptomatic and contrary to public policy. Of course, the failure to resolve issues is not necessarily attributable to either party to negotiations, and an employer that is closed minded and rigid should not escape responsibility just because the proposals at impasse were initiated by the employees' representative.

Indeed, in this case there is evidence that the Employer has been far less than eager to achieve settlement of some of the matters described

above. It's attitude respecting both the Account Clerk item and the duration provision seem hyper-technical in that, in both instances, it finds conflict despite Association assertions that it intends none. The Employer's position on the family care and child rearing proposals -- that these employees should not receive the same benefits as its other employees -- seems too grounded in statistical analysis and inadequately related to the underlying circumstances. What values would support such opportunities based upon professional categories?

On these and other grounds the Arbitrator concludes that it is the Employer's position as a whole that is responsible for the unusually high number of issues in dispute. Therefore, the undersigned would select the Association's final offer with particular reference to the factors at Sec. 111.70(4)(cm)7, Wis. Stats. which specify "the interests and welfare of the public" and "such other factors . . . which are normally or traditionally taken into consideration."

AWARD

On the basis of the foregoing and the record as a whole, it is the decision and award of the undersigned Arbitrator, that final offer of the Association should be, and hereby is, adopted.

Signed at Madison, Wisconsin this 11th day of September, 1987.

Howard S. Bellman
Arbitrator