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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

STATE OF WISCONSIN
BEFORE
THE INTEREST ARBITRATOR

-----X
In the Matter of the Petition :
of :
 :
OAK CREEK-FRANKLIN JOINT SCHOOL :
DISTRICT : Case 44
 : No. 41523 INT/ARB-5123
to Initiate Arbitration Between : Decision No. 26002-A
said Petitioner and :
 :
WEAC UNISERV COUNCIL #10 :
(Clerical Employees) :
-----X

APPEARANCES: Mulcahy & Wherry, S.C., Attorneys at Law, by
MARK L. OLSON, appearing on behalf of the District.

JAMES H. GIBSON, Executive Director, Council No. 10,
appearing on behalf of the Union.

ARBITRATION AWARD

Oak Creek-Franklin Joint School District, hereinafter referred to as the District or Employer, and WEAC UniServ Council #10, hereinafter referred to as the Union, were parties to a collective bargaining agreement covering certain clerical and related employees of the District, which expired on December 31, 1988. The parties were unsuccessful in their efforts to negotiate a successor agreement, to be effective from January 1, 1989 through December 31, 1990, and, on December 30, 1988, the District filed a petition with the Wisconsin Employment Relations Commission (WERC), wherein it sought to initiate arbitration pursuant to Section 111.70(4)(cm)6. of the Municipal Employment Relations Act (MERA). A member of the Commission's staff investigated the petition and, on May 16, 1989, the Commission certified that the conditions

precedent to the initiation of arbitration pursuant to said section of the statutes had been met and ordered that the matter be submitted to arbitration. The parties selected the undersigned, from a panel of arbitrators provided by the WERC, and, on July 6, 1989, the WERC issued an order appointing the undersigned arbitrator, to issue a final and binding award pursuant to Section 111.70(4)(cm)6. and 7. of the MERA. A hearing was held at Oak Creek, Wisconsin on September 11, 1989, at which time the parties presented their evidence. Pursuant to arrangements made at the end of the hearing, the parties thereafter submitted certain corrections and modifications and additions to their exhibits. Initial briefs were filed and received by October 21, 1989 and reply briefs were filed and received by November 10, 1989. Full consideration has been given to the evidence and arguments presented in rendering the award which follows.

ISSUES IN DISPUTE

There are essentially two issues in dispute: wage rates for the two years of the agreement and the District's proposal to "delete" a provision from the expired agreement for employees hired after January 1, 1990.

WAGE RATES

There are approximately 25 employees in the bargaining unit, working in seven position classifications (clerk typist, clerk typist (full time), high school attendance clerk, library clerk, secretary I, secretary II, and secretary III). Most of the employees work as library clerks (seven) or as a secretary I

(eight), secretary II (three), or secretary III (four). There are two clerk typists and one high school attendance clerk. The parties have a negotiated "wage scale" applicable to all seven position classifications, which provides for a starting rate and five step increases after six months, twelve months, twenty-four months, thirty months and thirty-six months' service in the position classification in question. The 1988 wage scale is set out below as Appendix A.

As reflected on Appendix A, part-time and school year employees do not receive the same benefits as full-time, 12-month employees. In particular, they do not receive health or dental insurance benefits. Those employees, who were 17 in number in 1988 and generally worked in the clerk typist, library clerk, and secretary I position classifications, receive 85 cents per hour "in lieu of pay."

District's Final Offer

In its final offer, the District proposes to increase all of the wage rates reflected in the 1988 wage scale by 45 cents per hour for 1989 and by 4.83% for 1990. According to the District, its proposal will generate a weighted average increase of approximately 5% in each year, in wages alone. This is the equivalent of approximately 51 cents per hour and 54 cents per hour in each of the two years. When the cost of fringe benefits is added to the computations, the cost of the Board's proposal is 5.4% and 5.8% for the two years in question. The wage scale for each of the two years under the Board's final offer is set out at

Appendix B.

Union's Final Offer

Under the Union's final offer, employees would receive an across-the-board increase of 55 cents per hour in the first year and 5.7% in the second year. Utilizing the District's cost calculations, which are not disputed by the Union, these increases would generate average weighted increases of approximately 6% in the first year and 5.8% in the second year. Taking into account the cost of fringe benefits, the cost of the Union's offer would be 6.4% in the first year and 6.6% in the second year. The wage scales which would be established under the Union's final offer are set out at Appendix C.

SICK LEAVE

As part of its final offer, the District proposes to "delete," for purposes of its application to employees hired after January 1, 1990, a provision of the agreement which reads as follows:

"ARTICLE X
LEAVES

. . .

"8. Any employee who has accumulated thirty-five (35) days or more of unused sick leave, and a prolonged illness or off-duty injury consumes said accumulated allowance time, then the accumulated allowance, upon employee's return to work shall be equal to, or not less than, one-half of said accumulated total allowance."

This provision has been included in the agreement between the parties, since their bargaining relationship began in 1980. Before that, it was reflected in "Board policy," which was applicable to all employees, including employees in the teacher bargaining unit,

which is represented by the Union, and the blue collar bargaining unit, which is represented by Local 133 of the American Federation of State, County, and Municipal Employees, AFL-CIO, and its District Council No. 48. An understanding of its history is important to an understanding of the position of both parties.

The Board policy was established more than 25 years ago, in the early 1960's. At that time, a teacher returned to work after an extended illness, during which the teacher had exhausted his or her accumulated sick leave. The District's Board of Education, on its own initiative, established a policy which allowed the teacher in question, and other employees who might be faced with similar circumstances, to have one-half of his or her accumulated sick leave restored. It is significant, from the District's point of view, that there was no long term disability insurance program in effect at the time.

Even so, it is undisputed that the District did establish the long term disability insurance program while the policy was still in effect and that the maximum accumulation of sick leave days was subsequently increased to the point where it created an "overlap." Thus, according to Arthur Olson, who retired as the District's business manager in June of 1988 after more than 29 years of service, the long term disability plan has always contained a 120 calendar day waiting period. When the maximum allowable accumulation of sick leave was increased beyond 90 days, it then became possible for an employee to continue to draw sick leave, beyond the point at which he or she qualified for long term

disability benefits. While the initial benefits increased to 90% around 1981, shortly after the first agreement between the parties here, there still exists a slight financial advantage to an employee who is able to continue on sick leave beyond the waiting period for long term disability benefits.

More importantly, from the District's point of view, is the fact that an employee has a theoretical "incentive" to exhaust his or her sick leave account before applying for long term disability benefits or returning to work. Further, according to the District, it is also theoretically possible that the District may be required to pay an employee for the "same sick day" two or more times.

In the simplest example, an employee who returns after exhausting his or her sick leave and qualifies to have one-half of his or her sick leave restored, will be paid for the "same day" a second time, if the employee again takes sick leave. Further, it is possible that the same employee might qualify again to have one-half of his or her accumulated sick leave restored, if he or she is absent again on an extended illness and the District might be required to pay for the "same day" a third time. In addition, the agreement provides for payment (at the beginning base rate) for all unused sick leave days over 60 "upon satisfactory termination of employment or retirement." The District notes that, because of this provision, it can again be required to pay for the "same day."

The Union proposes to maintain the status quo with regard to this existing benefit. In taking that position, it notes that the benefit has never been utilized by any employee in the bargaining

unit of clerical employees and that the District had never proposed, prior to this year, that there be any modification in the provision or that it be eliminated.

Olson testified that he had advised the Board of Education on a number of occasions that there existed a problem with "overlap" and had urged the Board of Education to negotiate an elimination of the benefit. He acknowledged that he only made one such effort in the case of the teachers' bargaining unit and that no such effort was made during the negotiations leading up to the current three-year agreement with that group.

The only example of an "overlap" problem testified to by Olson dealt with a custodial employee who apparently refused to apply for long term disability benefits in the mid 1970's, even though he qualified for them. Olson testified that he did seek to eliminate the provision from the custodial contract on a "couple" of occasions thereafter. Its proposed elimination is an issue in the arbitration proceeding involving that group, which is currently pending before another arbitrator.

DISTRICT'S POSITION

Wages Rates. While the parties are in agreement as to the appropriate public sector comparables, consisting of Cudahy, Franklin, Greendale, Greenfield, St. Francis, South Milwaukee, and Whitnall, the District notes that only the District and Cudahy utilize a calendar year for purposes of negotiations and argues that it is therefore appropriate to use a "weighted average" method for comparing District and Cudahy wage rates with the districts

which utilize school years for such purposes.

Utilizing that method of comparison, the District argues that its wage rates for the clerk typist, secretary I and secretary II position classifications, compare quite favorably to the average wage rates for employees in comparable positions. In both the first and second year of the agreement, the relationship to average minimum wage rates and average maximum wage rates for the three position classifications is advantageous to employees of the District in all but one case, it notes. Only in the case of the secretary I position would the employee be disadvantaged, in the second year. Under either offer, those employees would receive an average maximum wage rate which was only slightly below the average for the group.

Utilizing percentage comparisons (based upon the same weighted average method in the case of the District and Cudahy), the District notes that its equivalent "5% offers" in each year would only be slightly below the 5.18% and 5.10% average, whereas the Union's equivalent offers of "5.67%" and "5.88%" would exceed the average by a greater margin.

Reviewing other settlements within the District itself, the District notes that its first year offer, which is the equivalent of 5%, is equal to or exceeds increases granted for that year to custodial aides or any of the three non-represented groups (lunch program, data center, and administrators). With the exception of the teacher's bargaining unit, none of the employees of the District have received an increase for 1989, which is equal to or

greater than that proposed by the Union.

Turning to other area municipal employee wages and settlements, the District notes that employees in the City of Oak Creek and Milwaukee County both received increases of 4% or less, exclusive of increments. Private sector comparisons for positions of "clerk typist" and "secretary" reflect that, on an hourly wage rate basis alone, District employees are paid superior wages.

Further, the District maintains that clerical employees receive a competitive benefit structure. Full-time, 12-month employees receive highly competitive, health, dental, life, retirement, holiday, sick leave, and vacation benefits and part-time and school year employees receive an additional 85 cents per hour, in lieu of certain of those benefits.

Comparing wage increases for the same three position classifications to increases in the cost-of-living since 1980, the District argues that the cumulative wage increases earned by District employees far exceed the cost-of-living increases during that same period. While the figures vary for the three position classifications in question, the wage increases have been nearly double the increases in the cost-of-living for these employees, according to the District's exhibit.

Sick Leave. In support of its position on this issue, the District first points out that its proposed change would not affect any current employee. It then goes on to argue that its proposal to prospectively eliminate the provision for new employees meets the tests normally applied by interest arbitrators, when reviewing

a proposal to change the "status quo" with regard to an existing provision or benefit. According to the District, it has: demonstrated a need for the change; provided a quid pro quo for the proposed change; and established the existence of the need and the quid pro quo by "clear and convincing evidence."

In support of its contention that there exists a need for the change, the District points out that there was no long term disability insurance in place at the time the policy, reflected in the provision, was first implemented; the District currently pays for a long term disability policy which provides for 90% of salary after a 120 day waiting period, for the first six months; the provision was never bargained for by the Union; the District is being consistent by seeking to eliminate the provision from the agreement in this bargaining unit; the existing provision creates a contractual disincentive for employees to utilize the long term disability benefit or to return to work if able, before sick leave has been exhausted; and the provision creates a potential for multiple payments for the same earned sick days. In sum, the provision has a great potential for incurring avoidable costs, even though the District is already paying for long term disability benefits. There is no need for it to do so, for competitive reasons, because none of the comparable school districts provide a similar benefit.

In support of its contention that it has offered a quid pro quo for the prospective elimination of the benefit, the District points to its existing wage rates and argues that, even though they

are "superior" by most comparisons discussed above, the District has offered an above average percentage increase for the two years of this agreement, which constitutes a sufficient quid pro quo under the circumstances.

In reply to Union arguments, to the contrary, the District points to certain discrepancies in Union exhibits concerning the wage rates offered by the Board and argues that its offer would not only maintain but improve its comparative position, albeit by a smaller amount than under the Union's final offer. It also points to certain other problems with the Union's arguments on wage rates, i.e., that they focus primarily on two school districts; that "comparable worth argument" in relation to the custodial employees is without any factual basis establishing that the positions compared should be compared and utilizes a lesser paying clerical position than would otherwise be justified if such a comparison were appropriate; and the Union ignores the difference between full-time and part-time employment.

In reply to Union arguments for preserving the sick leave provision, the District maintains that the Union has ignored the existence of a superior long term disability benefit; the fact that the current arrangement serves as contractual encouragement to the exhaustion of accumulated sick leave before accepting long term disability benefits or returning to work; and inaccurately argues that new employees will be treated unfairly, since they will be entitled to the long term disability benefit. Finally, according to the District, the Union has not attempted to refute the accuracy

of the District's arguments or examples.

UNION'S POSITION

According to the Union, of the two issues presented, both parties agree that the sick leave issue is more important than the wage rate issue. Even so, it takes the position that its offer should be favored on both issues.

Wage Rates. Contrary to the District, the Union argues that members of the bargaining unit do not receive comparatively superior wages and benefits. Utilizing "central office" secretaries for purposes of comparison, the Union contends that the maximum hourly wage rate that can be earned by employees in the District was only 4 cents per hour higher than the average and that it was only 5 cents per hour more than the average, when the value of health insurance benefits are included. On the other hand, it argues, when the wage rates and health insurance benefits paid to head secretaries in elementary schools in each district is compared, the elementary school secretaries in the District do not fair as well. Thus, their maximum rate is 13 cents per hour less on wages alone and the 85 cents per hour "in lieu of fringe benefits" pay does not compare to the value of health insurance benefits received by the other employees.

Utilizing a comparison of three position classifications (District office, elementary secretary, and part-time clerk typist), the Union argues that the maximum wage rates which will be payable under its final offer are more in line with the wages which will be paid to similar employees in the comparison

districts, while the District's proposed maximums are not. In particular, the Union's offer for District office secretaries is much more in line with the maximum rates payable at Cudahy and Greenfield, according to the Union. Also, the maximum wage rates which will be payable to the head secretary in an elementary school and to a part-time clerk typist in the District, will merely remain competitive with the rates paid similar employees in surrounding districts, the Union argues.

When comparisons are made to the fringe benefits received by employees in comparable districts, District employees enjoy no advantages, according to the Union. In fact, in the case of school year employees, employees in the District are treated less favorably with regard to health insurance, it notes. The "in lieu of" pay simply does not compare, according to the Union.

Further, if a comparison is made between the "all female" group of employees in this unit and the "all male" group of custodial employees, it becomes clear that the employees in this bargaining unit are currently disadvantaged and that disadvantage will be increased under the District's offer, according to the Union. Comparing the hourly wage rate paid to the head secretary in the elementary schools to the wage rate paid the head custodian in those same buildings, the Union notes that the dollar difference had increased between 1979 and 1983, to the point where it reached \$2.80 per hour. While that differential has been reduced to \$2.68 per hour since 1983, it will begin to increase again, in both years of the agreement, under the District's offer. When consideration

is given to the fact that the school secretaries do not receive health insurance benefits, the differential becomes even more "alarming," according to the Union. The Union notes that it is not arguing that the custodial employees are paid more than they are worth, but it does argue that the clerical employees in question are no less valuable, in terms of the important services they provide in the elementary schools.

Sick Leave. The Association notes that this benefit originated as a part of Board policy; it became a part of the first collective bargaining agreement between the parties when the Union gained representation rights in 1980; the benefit has not been a problem for the District to administer in this bargaining unit and there has never before been a proposal to eliminate it in this bargaining unit; teaching employees continue to enjoy this benefit and will continue to do so for the balance of their three-year agreement; administrative employees already enjoy a superior benefit in terms of unlimited sick leave prior to qualification for long term disability pay; and the District is offering no quid pro quo for the reduction of this benefit.

In support of its contention that the District is offering no "quid pro quo," the Union reviews the seven tentative agreements reached between the parties during their negotiations and notes that five of the seven were proposed by the District and to its advantage. The other two, which were proposed by the Union, were of no consequence, it argues. Contrary to the District's position, the Union maintains that the District's final offer on wages does

not represent a "quid pro quo" for its proposed "erosion" of this benefit. Several area settlements have exceeded the District's offer in this case and the average increase for secretarial employees in Cudahy, Franklin, Greendale, and St. Francis for 1989 more closely approximated the Union's final offer than the District's. The same is true for the average wage settlement in the second year, according to the Union.

Reviewing the District's arguments in support of its proposal on this issue, the Union maintains that they all lack merit. The claim that the proposal would not harm any current member of the bargaining unit is not accurate because the proposal will create a "double standard" which will have an adverse affect on employee morale. It would also create a bad precedent for future bargaining in this unit, particularly under the terms of the interest arbitration law.

While the District claims that a "problem" exists with the provision, it was only able to cite one such problem over a period of 25 years, and that problem involved a custodial employee, not an employee in this bargaining unit. Even then, the Employer admits that the employee in question did not abuse the provision, but simply took advantage of the existing negotiated contract benefit. Further, even though that incident occurred in the mid 1970's according to Olson, there has been no attempt to modify the benefit as it applies to the employees in this bargaining unit, until the one "feeble" attempt made this year.

While the District resorted to the use of the emotion charged

term "double dipping" to describe the operation of the benefit at the hearing, that characterization is inappropriate, according to the Union. While the hypothetical situation described by the District could occur, the employee in question would not be double dipping, but would be simply utilizing a contractual right which has existed for over 25 years. Even Olson admitted at the hearing, that he did not agree with the "double dipping" characterization, of the use of this benefit.

While the District argues that the comparables do not support the continuation of this benefit, it should be remembered, according to the Union, that this benefit has been unique to the District for approximately 25 years. Further, it has been included in the agreement since the first agreement was negotiated and has been continued by voluntary agreement since that time. In the absence of a showing that the provision has caused the District problems in this bargaining unit and that the District is offering a sufficient "quid pro quo" for its removal, the provision should be continued, the Union argues.

In summary, the Union reviews each of the statutory criteria and argues that they either support the Union's position; fail to support the District's position; or are neutral and fail to support either position. Both final offers are within the lawful authority of the District; the stipulations of the parties disclose that there is a lack of a "quid pro quo" for the take back of the sick leave provision; the interests and welfare of the public are better served by the avoidance of a "double standard;" comparisons with

other public employees fail to disclose any advantage to the District's employees which would justify the take back of the sick leave provision; other comparisons of the District are not reliable or persuasive; comparisons to private sector employees drawn by the District are inappropriate; increases in the cost-of-living are not relevant to the issues as presented; comparisons of overall compensation establish that employees in the District do not enjoy superior compensation in that regard; the only change in the foregoing criteria consists of the Greendale settlement which has been given appropriate consideration by the Union in its arguments; and "other factors" strongly support the Union's position on the important sick leave issue. A review of the evidence regarding the latter criterion indicates that the Union is appropriately resisting this effort on the District's part to utilize the interest arbitration process in an unjustified effort to take back a benefit without negotiating and offering an acceptable "quid pro quo."

In reply to certain District arguments, the Union maintains:

1. The District's emphasis on the parties' respective wage offers is misplaced and contrary to its admission at the hearing that the wage offers, which are only \$7,820.00 apart, were secondary to the sick leave reinstatement issue.

2. The District has failed to meet the clear and convincing evidence standard, which it acknowledges it must meet in order to prevail on that same issue; and, its reliance upon the lack of comparable agreements cannot be used to substitute for the needed

clear and convincing evidence that the provision has been a burden to the District and that it has offered a sufficient "quid pro quo."

DISCUSSION

In the view of the undersigned, each of the two remaining issues in dispute has considerable significance. However, for reasons discussed below, the merits of the second issue, raised by the Employer's proposal to prospectively eliminate the sick leave restoration provision from the agreement, ultimately tips the balance in favor of the Union's position, particularly in view of the requirement of the law, that the undersigned accept the total package final offer of one of the two parties.

Turning first to the wage rate issue, it would appear that neither party's final offer on that issue is affected by the lawful authority of the Employer; the stipulations of the parties; or the interests and welfare of the public and the financial ability of the District to meet the costs of either proposal. While the interests and welfare of the public do include an expectation that wage increases be held to a reasonable level, neither final offer would propose to increase the wage rates at a rate which is excessive, whether those rate increases are viewed in relation to the other criteria, such as comparisons and increases in the cost-of-living.

While it is helpful that the parties agree on the appropriate school districts to be utilized for comparison purposes, there are some unfortunate problems that arise in attempting to draw those

comparisons. The first problem relates to the prevalence of calendar year contracts, most of which were negotiated in the summer of 1988 or the summer of 1989. The second problem relates to the large percentage of District employees who work part time or during the school year only and, consequently, don't qualify for health insurance or other insurance benefits, but receive 85 cents per hour "in lieu of" pay. Any effort to overcome these two problems is further complicated by the fact that there are a total of seven position classifications in the bargaining unit, all with a wage scale that requires three years to reach the maximum hourly rate.

In attempting to deal with these problems, it is helpful to utilize an "overview" of the parties' proposals and arguments on the wage rates which would be established under their respective offers. Basically, the parties are approximately 10 cents per hour or 1% apart in each of the two years. The total dollar difference between their two final offers, is only \$7,820.00 over the two-year period. There is no claim on the Union's part that the existing wage rates are unreasonably low or out of sync with those enjoyed by similar employees working in comparable school districts.¹ On the other hand, the Employer does contend that it currently maintains "superior" wages and benefits and that its final offer on wages is also "superior" or at least serves as a "quid pro quo"

¹The Union does argue that the wage rates are unreasonably low and out of sync with the wage rates for custodial employees. For the reasons cited by the Employer in its arguments, the undersigned concludes that the record here is insufficient to establish that claim.

for its proposal to change the status quo with regard to the sick leave restoration benefit.

Without attempting to review all of the exhibits in detail, the undersigned is inclined to observe that, even though the District does provide competitive wages and benefits, in relation to this particular group of comparables, it is difficult to say that they are "superior." In most cases the wages and benefits are similar to those enjoyed by counterparts in the other districts. While some District employees such as the secretary II's, who also enjoy health, dental, and LTD insurance benefits seem to fair better, others, such as the secretary I's, do not.

A similar conclusion is reached when one analyzes the District's wage offer. While the difference between the two wage offers is relatively small, the percentage increase generated under the District's offer is slightly below average, even when its somewhat debateable method of drawing comparisons is utilized. Ironically, it is the Union's offer which is arguably "superior," to the extent that it is above average. If one assumes that the existing level of wages and benefits enjoyed by employees of the District represents the parties' consensus as to what is reasonable in relation to the agreed comparables, the two wage offers can probably be best analyzed in terms of the percentage increase in wages they would generate. Without attempting to be precise (because of the difficulties encountered as a result of the calendar year/school year problem), it would appear that the Union's offer finds some support in the settlement involving Cudahy

paraprofessionals and the St. Francis secretarial/clerical/aide unit. The District's final offer draws its greatest support from the Cudahy secretarial/clerical and South Milwaukee paraprofessional aide settlements. The settlements involving the Franklin secretarial/clerical/aide employees and, to a lesser extent, the Greendale (first year) and Whitnall settlements tend to be somewhat neutral in terms of their support for the parties' respective offers.

While there are some additional problems with the comparisons drawn by the District to other public sector employers and private sector employers, those settlements would tend to support the District, to the extent they involve comparable positions. However, particularly in the case of the private sector comparisons, the record is devoid of any evidence concerning fringe benefits and any comparison between a "secretary" in private employment and a school secretary (or library clerk) is of debateable validity.

Contrary to the Union's position, the undersigned does not believe that the Consumer Price Index or cost-of-living criterion should be disregarded in this proceeding. However, if the two final offers are to be judged on the extent to which they keep pace with or exceed changes in the cost-of-living, the Board's final offer does not exceed those changes to a very great extent, whereas the Union's offer would result in some increase in real wages, according to this measure. Ironically, it would again appear that, if either of the two offers is deemed to be somewhat "superior,"

it is the Union's offer, and not the District's offer.

As noted above, the overall compensation enjoyed by employees in the bargaining unit is, on balance, quite competitive, but not necessarily "superior." As the Union points out in its argument, there has been no significant change in the circumstances surrounding the above discussed criteria during the pendency of this proceeding. The "other factors" criterion has more significance in relation to the other issue in this proceeding and to an overall evaluation of the two final offers.

Turning to the sick leave restoration issue, the undersigned does recognize that the District does not propose to eliminate this benefit for current employees, but proposes to phase it out over time. Even so, the benefit has existed for many years and should be viewed as an integral part of the parties' agreed to scheme of wages and benefits, including the related long term disability benefit.

The evidence establishes that the benefit in question has never been utilized by an employee in this bargaining unit. While that fact in itself might arguably serve as a basis for concluding that the benefit is not of great consequence, careful reflection discloses that this is not the case. The District does have a long term disability benefit plan. However, the long term disability plan does not apply to part-time and school year employees and has an unusually long waiting period, in comparison to other districts. Most other districts have a 30-day or 60-day waiting period.

While the benefit is certainly valuable, when it is considered

in relation to the waiting period for the long term disability benefits, it is not easily earned or maintained. Thus, an employee would have to work the equivalent of nearly three years, without taking a day of sick leave, in order to meet the minimum qualification for the benefit. It takes over seven years, under the same circumstances, to accumulate enough sick leave to equal the waiting period and ten years to accumulate the maximum amount of sick leave time.

As the Union points out, most of the Employer's criticism of this benefit relates to its operation, as intended. It is an inherent aspect of the benefit that an employee may end up being compensated in the form of sick leave for the "same day" more than once. However, that cost, has proved to be purely theoretical in this bargaining unit so far.

The District does advance one valid criticism concerning the operation of the benefit, i.e., the potential "overlap" and the economic incentive which exists to exhaust sick leave before applying for long term disability benefits or returning to work. However, as the Union points out, that "problem" has never arisen in this bargaining unit. More importantly, in the view of the undersigned, that potential problem can be dealt with in less drastic and more constructive ways, through future negotiations.

The District makes a valid point, to the effect that the benefit is unique to the District and is therefore not supported by the comparability criterion. However, as noted, other districts have a shorter waiting period for long term disability benefits and

the District itself extends an even more generous benefit to its administrators. After one year, administrators qualify for what amounts to unlimited sick leave, which can be utilized to cover the waiting period for long term disability benefits. If the benefit were to be phased out for this group of employees, it would continue for the largest group of employees, teachers, and may possibly be continued for the custodians, the one group of employees who have allegedly posed a problem for purposes of its administration.

In summary then, the undersigned finds that the parties' final offers on wage rates are both reasonable in relation to the statutory criteria, but that, if the only issue in this proceeding were wages, the undersigned might be slightly more inclined to accept the District's final offer, because it is slightly closer to the average wage increases being granted comparable employees. However, it cannot be said that the District's offer contains a "quid pro quo" for its proposal to phase out the sick leave restoration benefit for new employees. Further, the District has failed to establish that the administration of that benefit has been a problem in this bargaining unit, sufficient to justify its prospective elimination. Based upon the District's experience in another bargaining unit, there exists evidence of a sufficient potential problem which might justify a less drastic proposal or a more constructive proposal, which would eliminate the potential problem, but not necessarily the benefit, or would substitute a different benefit, perhaps in the form of a reduced waiting period

for long term disability benefits.

For the above and foregoing reasons, the undersigned finds that the final offer of the Union should be preferred, overall, over the final offer of the District, and renders the following

AWARD

The final offer of the Union is selected for inclusion in the parties 1989-1990 collective bargaining agreement, along with the changes included in the parties' stipulations and the provisions from the expired agreement which are to remain unchanged.

Dated at Madison, Wisconsin, this 20th day of December, 1989.



George R. Fleischli
Arbitrator

**APPENDIX B
1988 WAGE SCALE**

| | <u>Start</u> | <u>Step I</u> <u>6 mo.</u> | <u>Step II</u> <u>12 mo.</u> | <u>Step III</u> <u>24 mo.</u> | <u>Step IV</u> <u>30 mo.</u> | <u>Step V</u> <u>36 mo.</u> |
|-----------------------------|--------------|-------------------------------|---------------------------------|----------------------------------|---------------------------------|--------------------------------|
| Clerk Typist | \$7.70 | \$7.85 | \$7.96 | \$8.07 | \$8.14 | \$8.33 |
| Clerk Typist (full-time) | 7.80 | 7.86 | 8.05 | 8.14 | 8.21 | 8.43 |
| H.S. Attendance Clerk | 7.89 | 8.07 | 8.15 | 8.32 | 8.38 | 8.60 |
| Library Clerk | 8.01 | 8.19 | 8.34 | 8.44 | 8.52 | 8.71 |
| Secretary I | 8.64 | 8.82 | 8.98 | 9.14 | 9.22 | 9.42 |
| Secretary II | 9.17 | 9.40 | 9.58 | 9.82 | 9.99 | 10.22 |
| Secretary III | 9.29 | 9.60 | 9.76 | 10.18 | 10.58 | 10.83 |

*In addition to the hourly rate listed, part-time and school year employes will receive 85¢ per hour in lieu of fringe benefits afforded full-time, twelve-month employes. Such employes may choose to participate in the group health and/or dental insurance programs at their own expense.

APPENDIX "A"

1989

| POSITION | START | STEP I 6 mos. | STEP II 12 mos. | STEP III 24 mos. | STEP IV 30 mos. | STEP V 36 mos. |
|--------------------------|-------|------------------|--------------------|---------------------|--------------------|-------------------|
| CLERK TYPIST | 8.15 | 8.30 | 8.41 | 8.52 | 8.59 | 8.78 |
| CLERK TYPIST (FULL TIME) | 8.25 | 8.31 | 8.50 | 8.59 | 8.86 | 8.88 |
| M.S. ATTENDANCE | 8.34 | 8.52 | 8.60 | 8.77 | 8.83 | 9.05 |
| LIBRARY CLERK | 8.46 | 8.64 | 8.79 | 8.89 | 8.97 | 9.16 |
| SECRETARY I | 9.09 | 9.27 | 9.43 | 9.59 | 9.67 | 9.87 |
| SECRETARY II | 9.62 | 9.85 | 10.03 | 10.27 | 10.44 | 10.67 |
| SECRETARY III | 9.74 | 10.05 | 10.21 | 10.63 | 11.03 | 11.28 |

1990

| POSITION | START | STEP I 6 mos. | STEP II 12 mos. | STEP III 24 mos. | STEP IV 30 mos. | STEP V 36 mos. |
|--------------------------|-------|------------------|--------------------|---------------------|--------------------|-------------------|
| CLERK TYPIST | 8.54 | 8.70 | 8.82 | 8.93 | 9.00 | 9.20 |
| CLERK TYPIST (FULL TIME) | 8.65 | 8.71 | 8.91 | 9.00 | 9.08 | 9.31 |
| M.S. ATTENDANCE | 8.74 | 8.93 | 9.02 | 9.19 | 9.26 | 9.48 |
| LIBRARY CLERK | 8.87 | 9.06 | 9.21 | 9.32 | 9.40 | 9.60 |
| SECRETARY I | 9.53 | 9.72 | 9.89 | 10.05 | 10.14 | 10.35 |
| SECRETARY II | 10.08 | 10.33 | 10.51 | 10.77 | 10.94 | 11.19 |
| SECRETARY III | 10.21 | 10.54 | 10.70 | 11.14 | 11.56 | 11.82 |

APPENDIX "B"

| 1989 Wage Scale | | | | | | |
|-----------------------------|-------|-----------------|-------------------|--------------------|-------------------|------------------|
| Position | Start | Step I 6 mo. | Step II 12 mo. | Step III 24 mo. | Step IV 30 mo. | Step V 36 mo. |
| Clerk Typist | 8.25 | 8.40 | 8.51 | 8.62 | 2312 8.69 | 8.88 |
| Clerk Typist (full time) | 8.35 | 8.41 | 8.60 | 8.69 | 8.76 | 8.98 |
| H.S. Attend. Clerk | 8.44 | 8.62 | 8.70 | 8.87 | 8.93 | 9.15 |
| Library Clerk | 8.56 | 8.74 | 8.89 | 8.99 | 9.07 | 9.26 |
| Secretary I | 9.19 | 9.37 | 9.53 | 9.69 | 9.77 | 9.97 |
| Secretary II | 9.72 | 9.95 | 10.13 | 10.37 | 10.54 | 10.77 |
| Secretary III | 9.84 | 10.15 | 10.31 | 10.73 | 11.13 | 11.38 |

| 1990 Wage Scale | | | | | | |
|-----------------------------|-------|-----------------|-------------------|--------------------|-------------------|------------------|
| Position | Start | Step I 6 mo. | Step II 12 mo. | Step III 24 mo. | Step IV 30 mo. | Step V 36 mo. |
| Clerk Typist | 8.72 | 8.88 | 9.00 | 9.11 | 9.19 | 9.39 |
| Clerk Typist (full time) | 8.83 | 8.89 | 9.09 | 9.19 | 9.26 | 9.49 |
| H.S. Attend. Clerk | 8.92 | 9.11 | 9.20 | 9.38 | 9.44 | 9.67 |
| Library Clerk | 9.05 | 9.24 | 9.40 | 9.50 | 9.59 | 9.79 |
| Secretary I | 9.71 | 9.90 | 10.07 | 10.24 | 10.33 | 10.54 |
| Secretary II | 10.27 | 10.52 | 10.71 | 10.96 | 11.14 | 11.38 |
| Secretary III | 10.40 | 10.73 | 10.90 | 11.34 | 11.76 | 12.03 |

APPENDIX "C"