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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

In the Matter of the Arbitration of a Dispute Between:

MADISON TEACHERS INC.

and

MADISON METROPOTITAN SCHOOL DISTRICT

Appearances: Robert C. Kelly, Attorney at Law for Madison Teachers, Inc.

Anne L. Weiland and Susan Hawley, Attorneys at Law, for Madison
Metropolitan School District

The Madison Metropolitan School District, hereinafter referred to as the Employer, and Madison Teachers Inc., hereinafter referred to as MTI, were unable to resolve a dispute arising between them. The parties agreed upon an exchange of final offers setting forth their positions on the issue and to submit the issue of the impact of the Advisor/Advisee Program to interest arbitration before Zel S. Rice II. The parties stipulated that the arbitrator would be required to select either the final offer of MTI or the final offer of the Employer and he would be required to follow the statutory criteria set forth in Section 111.70 of the Wisconsin statutes. A hearing was conducted at Madison, Wisconsin on April 24, 1990 and both parties were given an opportunity to present evidence. The testimony, exhibits, arguments and briefs of the parties have been considered.

BACKGROUND

The Employer operates eight separate middle schools in Madison, Wisconsin. During the 1987-88 school year the Employer implemented a type of Advisor/Advisee Program at Orchard Ridge Middle School. That program involves the sixth grade meeting one day per week for forty five minutes during the first semester of the school year. During the 1989-90 school year the Employer implemented Advisor/Advisee Programs in Jefferson, Schenk and Cherokee Middle Schools.

The Advisor/Advisee Program is called the "Homeroom Program" at Jefferson Middle School. The Homeroom Program meets for twenty minutes from 8:00 a.m. to 8:20 a.m. five days a week and involves all the certified staff employed at that school. Each staff member's homeroom consists of twelve to fourteen students. On Monday and Friday each homeroom has silent reading. On Tuesday and Wednesday the homeroom has various activities as planned by individual staff. On Thursday each homeroom has study hall with individual help and finishing up activities. The twenty minute homeroom program was obtained by reducing passing time as well as the time allocated to blocks of academic teaching time by a combined total of twenty minutes. In reducing the time allocated to a block of academic teaching time the Employer reduced by a similar amount of time the planning time of the teachers whose planning time was scheduled during this same block of time. Teacher volunteers, not to exceed three per building, are employed by the district as coordinators to prepare all materials to be used in the program. Coordinators do not otherwise meet with students in the Advisor/Advisee Program and are, upon their request, released from their regular teaching duties one half day a month or one full day every other month to allow them time to prepare the materials used in the program. Teacher Advisors meet with the coordinators in team meetings on an after school basis and decide on a particular topic for a certain period of time. These after school meetings last from thirty to forty five minutes. The coordinator prepares the packet of materials that are distributed to the teacher advisors and the teachers can, in their discretion, use, revise, add to or reject the furnished materials.

The Advisor/Advisee Program is called "Faculty and Students Together," or FAST, at Schenk Middle School. The program meets five days a week for twenty five minutes and it is very similar to the structure of the Homeroom Program at Jefferson. All full time teachers are required to participate and each class consists of twelve to fourteen students. On Monday and Wednesday they have silent reading and Tuesday and Friday they have various activities planned by the individual classroom teacher and on Thursdays they have assistance day. The time necessary for scheduling the program at Schenk was obtained by reducing the first academic class by eight minutes, the second academic class period by three minutes and the third academic class period by four minutes. The planning time for those teachers whose planning time was scheduled during those same blocks of time was also reduced by a similar amount. Seventh grade teachers at Schenk lost fifty five minutes of planning time each week and eighth grade teachers lost twenty minutes of planning time each week.

The Advisor/Advisee Program at Cherokee Middle School is known as the "HomebaseProgram". It meets for thirteen minutes five days a week. Not all teachers at Cherokee are involved in the program. It is not a formalized program with given days set aside for silent reading, activities and/or individualized help as they are at Schenk and Jefferson. The time necessary for the scheduling of the Homebase Program was obtained by reducing previously scheduled fifty five minute blocks of teaching time to fifty minute blocks of teaching time. By reducing those class periods by five minutes each, the planning time of those teachers whose planning time was scheduled during these same class periods was reduced. No coordinators are employed at Cherokee and teacher advisors must do all their own planning for the Homebase Program. No packet of organized activities is provided to them. Suggested activities do turn up from time to time in the teacher's mail boxes but with no regularity. Some of the suggested activities come from the Cherokee Parent/Teacher Organization in the form of an assignment and teacher advisors at Cherokee individually create their own activities for Homebase.

The Advisor/Advisee Program implemented by the Employer is an additional assignment for teachers who are required to participate in it. Implementation of the program requires the involved teachers to perform work that they had not previously been required to perform and the program impacted on the involved teachers wages, hours and conditions of employment. MTI made a demand on the Employer that it enter into collective bargaining with it as concerns that impact. The Employer did as MTI asked and the parties met on several occasions during the summer of 1989 to bargain concerning the issues. The parties agreed in the bargaining that the teachers would participate in the program and serve as advisors and as coordinators for the program. They agreed that not more than three teachers at each middle school would prepare all materials to be used in the program and those teachers would not be assigned students during the Advisor/Advisee time period. They would be provided a substitute for one half day per month or one full day every other month to allow them time to prepare materials for use in the program. The parties agreed that there was an impact on the work load and that in exchange for participating in the program the teacher advisor would have fifty minutes of release time per week. They agreed that teachers that are required by their administrator to serve as advisors in the program would be permitted to leave work twenty five minutes prior to the contractual quitting time on the two days per week that activities are scheduled in the programs or, at their option, accumulate the time and take the compensatory time off. The parties were unable to come to an agreement as to when during the school day such compensatory could be used.

The MTI position attached hereto and marked Exhibit A is that the teachers would be allowed to use this compensatory time not only during individual planning time but during their scheduled work time as well, excluding contractually

established days for in service and those set aside for parent/teacher conferences. The Employer's position attached hereto and marked Exhibit B is that the teachers would only be allowed to use this compensatory time during their individual planning time but not during in service conferences and team meeting times.

MTI POSITION

The MTI argues that neither party provided any evidence that would serve as a basis for distinguishing between the final offers on the basis of the lawful authority of the municipal employer. It points out that the parties have stipulated that the arbitrator's award be applicable back to commencement of the 1989-90 school year but that fact does not distinguish between the parties final offers. MTI contends that there is nothing in the record that indicates that the Employer will have any difficulty in funding the fully implemented program. It points out that the Employer's estimate of the cost assumes a worst case scenario contemplating full utilization of the time and in a manner that requires a maximum employment of substitutes. MTI asserts that the comparable programs cited by the Employer are dissimilar and make meaningful comparison impossible. It contends that only three of the reporting school districts other than the Employer have structured programs and that makes a meaningful comparison impossible. MTI argues that each of the reported programs cited by the Employer were in place in the school districts at the time the most recent collective bargaining agreements between the districts and the representatives of their employees were negotiated. It takes the position that all assignments were considered by the school districts and the employee's representatives in establishing the compensation to teacher employees in the districts. MTI asserts that the Employer's Advisor/Advisee Program was not in place at the time the 1989-90 collective bargaining agreement was negotiated and the involved work was not considered when teacher compensation was being determined. It argues that the Employer and MTI bargained for and agreed upon compensation for middle school teachers without regard to the Advisor/Advisee Program because it was not then in existence. MTI contends that the time necessary for scheduling the Advisor/Advisee Program was obtained by reducing the time of the scheduled class periods and as a necessary result the planning time of those teachers whose planning time was scheduled during those same class periods. It takes the position that the Advisor/Advisee Program requires teacher preparation and teachers must spend a portion of their weekly preparation time in preparing the assignment which further reduces the preparation time that had been available for their regular assignments prior to the implementation of the program. MTI argues that the Employer, by assigning the additional work of the Advisor/Advisee Program to a portion of its middle school teaching staff, altered the collective bargaining agreement that had been previously agreed upon and substantially reduced the planning time of the middle school teachers. MTI contends that there is no evidence that would distinguish the final offers of the parties by

comparison of the wages, hours and conditions of employment of the Employer's teachers with the wages, hours and conditions of employment of other employees in public employment in the same community or in comparable communities and a comparison of the wages, hours and conditions of employment of its teachers with the wages, hours and conditions of employment of other employees in private employment in the same community and in comparable communities is not relevant to this dispute. It contends that the cost of living is not relevant to this dispute. MTI argues that neither party offered any evidence relating to the overall compensation being received by municipal employees, including fringe benefits. It takes the position that neither party has introduced evidence of other factors and nothing has occurred from the day of the hearing that would provide a basis for distinguishing between the final offers of the parties. It argues that there is a twenty two year bargaining history between the Employer and MTI during which they entered into a continuous series of sophisticated agreements setting forth the wages, hours and conditions of employment of the teachers. MTI asserts that the agreement covering the period commencing October 16, 1989 and ending on October 15, 1991 was agreed upon by the parties in late January of 1990 and that bargaining history and the scope and substance of the agreement reached by the parties are factors normally and traditionally taken into consideration in determining the wages, hours and conditions of employment in public service. It points out that the parties have agreed that in exchange for participating in the program the involved middle school teachers would be accorded fifty minutes of release time per week and be permitted to leave work twenty five minutes prior to the contractual time on the two days per week that activities are scheduled in the Advisor/Advisee Program or, at their option, accumulate the time. MTI asserts that the only real issue between the parties is when the accumulated compensatory time can be utilized. It takes the position that the Advisor/Advisee Program was not brought to the bargaining table by the Employer when the parties agreed upon wages, hours and conditions of employment to be in effect during the period commencing October 16, 1989 and ending on October 15, 1991. MTI argues that the implementation of the Advisor/Advisee Program required middle school teachers to perform work that they had not had to perform previously and is an additional work assignment over and above those agreed upon in the current collective bargaining agreement. It points out that planning time is a matter of great concern to bargaining teachers and was a major issue during negotiations leading to the 1989-91 agreement that was reached only when elementary teachers were guaranteed an additional hour of planning time each week. MTI asserts that middle school teachers never have enough planning time and are required to do work outside of the school day either at home or in school and implementation of the Advisor/Advisee Program exasperated this situation. It takes the position that the program is a preparation and the involved teachers are required to spend time preparing for the activity at the same time that the amount of planning time available to them is being reduced. MTI argues that the Employer's proposal would require individual teachers to use earned compensatory time during their planning time. It takes the position that the Employer's proposal would result in a reduction of the

planning time and render the right to compensatory time a nullity. MTI asserts that its proposal would allow middle school teachers to trade up to twenty hours of academic class time for approximately twenty hours of participating in the program. It takes the position that its proposal would allow the involved teachers to offset the increase in teaching load attendant with the implementation of the Advisor/Advisee program with a decrease in the academic teaching load. MTI argues that the Employer's proposal would result in an increased work load and decreased planning time for the teachers and they would bear the cost of the Advisor/Advisee Program while the benefit would go to the school district and its constituents.

EMPLOYERS POSITION

The Employer argues that the MTI proposal would allow a teacher to be absent up to four days per year during regular student scheduled school days and would be an unreasonable disruption in the student's educational program and counterproductive to the Advisor/Advisee Program goals. It contends that if a teacher is absent on a given day the class is covered by a substitute teacher or extemporaneously planned supervision such as a study hall and results in a less than satisfactory learning environment for that day. The Employer points out that substitute teachers are not always certified to teach the subject matter they are called upon to teach and often the regular teacher must reteach the same subject matter. It contends that each student has seven to eight teachers and each of those teachers could potentially be gone for four days, which would make a potential of thirty two occurrences of teacher absence resulting from the Advisor/Advisee Program only if the MTI proposal is implemented. The Employer argues that when this is added to the absences for teacher illness, family illness, personal absences, leaves of absence, committee meetings and staff training and development absences, the loss of professional leadership and resulting discontinuity would have a tremendous adverse impact on student achievement. It asserts the MTI proposal contains no safeguards such as advance notice to minimize the disruption that would result from teacher absences. The Employer argues that it is unreasonable to allow teachers to use their compensatory time in a way that is counterproductive to the very goals of the program bargained as a quid quo pro for the time off and the public interest is not served by teacher absences that frustrate the goals of the Advisor/Advisee Program. It asserts that its method of utilizing the compensatory time is a valuable and reasonable exchange for teacher participation in the program. The Employer argues that the amount of work involved in serving as a teacher advisor is not excessive and requires less work than teaching a regular academic class. It takes the position that even with a full Advisor/Advisee Program the total academic work load of a middle school teacher is less than the typical work load of the elementary and high school teachers. It asserts that its final offer allows teachers to use the fifty minutes of compensatory time per week in a variety of ways that give them great flexibility in scheduling their professional and personal responsibilities. The Employer argues that the addition of the Advisor/Advisee Program does not make the number of teaching minutes for

its teachers surpass those of teachers in comparable districts and their preparation time remains above average. It points out that not one of the school districts in the comparable group enjoyed a middle school teaching day that involved less than five academic class periods while the Employer's middle school teachers teach only four academic periods and have one study hall per day. The Employer takes the position that in only one instance have the parties agreed to time off in whole day increments in exchange for additional service by teachers and that was when high school teachers were given time off in exchange for giving up forty five whole periods of preparation time to do hall supervising. It contends that agreement can be distinguished from the middle school Advisor/Advisee Program because high school teachers teach five full academic classes per day and hall duty represents a greater intrusion into their more limited amount of preparation time. The Employer asserts that in the programs most similar to its Advisor/Advisee Program where the parties have successfully agreed to memoranda of understanding teachers have not been permitted to take compensatory time in such a way that resulted in the use of substitute teachers and intrusion into the student educational program. It argues that it is not possible to fill with substitute teachers all of the potential teacher vacancies created by the manner in which the MTI offer allows teachers to take compensatory time off.

DISCUSSION

The Employer proposes for consideration by the arbitrator a comparable group consisting of the school districts of Appleton, Eau Claire, Green Bay, Janesville, Kenosha, Madison, Milwaukee, Oshkosh, Racine, Sheboygan and Waukesha. Those school districts are the largest in the state and have programs similar to the Employer's Advisor/Advisee Program that go by different names but have the same concept. The activities in the programs in the comparable group schools may not be exactly the same and may not involve the same amount of time for each participating teacher. However, the school districts in the comparable group have programs with the same purposes and goals as the Employer's Advisor/Advisee Program. Accordingly, the arbitrator finds the comparable group proposed by the Employer for consideration to be appropriate. MTI offered no comparable group for consideration by the arbitrator because it took the position that the evidence did not indicate there was any similarity between the programs offered by other schools and the Employer's Advisor/Advisee Program.

This proceeding is not a statutory interest arbitration but a voluntary impasse resolution proceeding. In this type of proceeding the arbitrator must give consideration to the factors set forth in Section 111.70 (cm) 7, Wis. Stats.:

- a. The lawful authority of the municipal employer
- b. Stipulation of the parties

c. The interest and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement

d. Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of others performing similar services

e. Comparison of the wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees generally in public employment in the same community and in comparable communities

f. Comparison of the wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees in private employment in the same community and in comparable communities

g. The average consumer prices for goods and services commonly known as the cost of living

h. The overall compensation presently received by the municipal employees including direct wage compensation, vacation, holidays and excused time and insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment and all other benefits received

i. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings

j. Such other factors not confined to the foregoing which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining mediation, fact finding, arbitration or otherwise between the parties in the public service or in private employment

LAWFUL AUTHORITY OF MUNICIPAL EMPLOYER AND STIPULATIONS OF THE PARTIES

Both parties concur that the lawful authority of the municipal employer and the stipulations of the parties are of no significance in this dispute and would not serve as a basis for distinguishing between the final offers of the parties.

INTERESTS AND WELFARE OF THE PUBLIC AND THE FINANCIAL ABILITY OF THE EMPLOYER TO MEET THE COSTS OF THE PROPOSED SETTLEMENT.

The Employer estimates that the maximum 1989/90 school year cost of the

Advisor/Advisee Program under the MTI proposal would be \$ 37,900.00 and that its proposal would cost \$945.00. The difference in cost between the proposals for the 1989/90 school year would be \$36,150.00. The Employer estimates the maximum 1990/91 school year cost of the MTI proposal to be \$99,680.00 and the maximum cost of it's proposal would be \$7,560.00. The difference in cost between the two proposals would be \$92,120.00. In making its estimates of the cost of the MTI proposal the Employer assumes the worst case scenario with full utilization of the time by the teachers involved and in a manner that requires the maximum employment of substitutes. MTI takes the position that such assumptions are incorrect and the program will probably cost considerably less. The arbitrator agrees that there is no evidence to support the Employer's assumption of the worst case scenario but he is satisfied that the MTI proposal will have a cost far in excess of the Employer's proposal, although it will probably fall short of the Employer's estimate of the cost. MTI asserts that there is no evidence in the record indicating that the Employer will have any difficulty in funding that sum and that the program is worth whatever it costs.

The Employer takes the position that the MTI proposal is contrary to the public interest because it would permit the accumulated compensatory time to be taken at the expense of the students educational program by allowing a teacher to absent up to four days per year during regular student scheduled school days. It asserts that the MTI proposal would provide teachers with the opportunity to take four additional holidays per year for participation in the program and would constitute an unreasonable disruption of the student's educational program and be counterproductive to the goals of the Advisor/Advisee Program goals. It points out that each student has seven or eight teachers and if they were allowed as many as four days off there would be thirty two occurrences of teacher absence affecting the educational year of each student resulting from the Advisor/Advisee Program. The additional absences along with those that are permitted due to illness, personal business, leaves of absence, committee meetings, staff training and development would be too great an intrusion into the educational program of the students. The arbitrator questions that the MTI proposal would result in four additional holidays for each teacher and thirty two occurrences of teacher absence for each student during a school year, but he is satisfied that there would be a substantial increase in the number of teacher absences with replacement by a paid substitute teacher or extemporaneously planned supervision such as a study hall in addition to those already permitted for illness, personal business, leaves of absence, committee meetings, staff training and development. The increase in the number of teacher absences creates a less than satisfactory learning environment. How well a student assimilates and retains material is in large part dependent on the continuity of the process and the absence of a teacher is clearly a disruption of that process. Even if the class is covered by a substitute teacher there is still a disruption in the educational plan that was supposed to take place that day and in the continuity

of the educational process. On many occasions a substitute is not certified to teach the subject matter he or she is called upon to teach and that aggravates the disruption of the educational process. If no substitute teacher is available, a situation that occurs quite frequently because of the difficulty in obtaining one, the students are generally warehoused in a study hall, which has a less than desirable impact on the educational process. These parties have customarily negotiated certain administrative safeguards to assure an adequate supply of substitute teachers and sufficient notice for the administration to prepare for a teacher's absence before a teacher takes a discretionary leave. For example personal leave requires three days advance notice and there are certain periods during which an absence is too disruptive to the academic program to allow it. The MTI final offer in this dispute contains no such protection, which not only increases the possibility of disruption but exacerbates the Employer's difficulties in staffing certified substitutes in the vacancies. It is not in public interest to allow teachers to use their compensatory time in a way that is counterproductive to the goals of the program bargained as a quid pro quo for the time off. The public interest in the beneficial outcome of the Advisor/Advisee Program is not served by increased teacher absences that frustrate greater student success and the adjustment to middle school and adolescence.

COMPARISON OF WAGES, HOURS AND CONDITIONS OF EMPLOYMENT OF MUNICIPAL EMPLOYEES INVOLVED IN THE ARBITRATION PROCEEDINGS WITH THE WAGES, HOURS AND CONDITIONS OF EMPLOYMENT OF OTHERS PERFORMING SIMILAR SERVICES.

A comparison of the wages, hours and conditions of employment of teachers involved in the dispute with the wages, hours and conditions of employment of teachers employed in comparable schools supports the Employer's proposal. Nine of the eleven largest school districts in the state have or are instituting programs similar to the Employer's Advisor/Advisee Program. Not one of those comparable school districts awards additional compensation in the form of money, compensatory time or other privileges in exchange for teacher participation in the program. The Employer has agreed to fifty minutes of time off per week for each teacher and no other school district has agreed to such a quid pro quo. The addition of the Advisor/Advisee Program does not make the number of teaching minutes in Madison Middle School surpass those of teachers in comparable districts. The daily teaching minutes for the Employer's middle school teachers, including advisory time, is at or below the average of the comparable group. The preparation time for the Employer's middle school teachers remains above average even with the addition of the program. The total work day of four hundred and eighty minutes negotiated by the Employer and MTI in the most recent collective bargaining agreement was not disrupted by the initiation of the Advisor/Advisee Program. Not one of the school districts in the comparable group has a middle school teaching day that involved less than five academic class periods while

the Employer's middle school teachers teach only four academic periods and one study hall per day. It would be totally inconsistent with the comparable districts to allow teachers to not only take the additional benefit of compensatory time offered by the Employer but to take it in such a way as to result in a weakened academic program caused by additional teacher absences from the classroom.

MTI argues that the programs of the comparable group are dissimilar from that of the Employer, making meaningful comparison impossible. The arbitrator concedes that the programs of the schools in the comparable group are probably not exactly the same as those of the Employer. Even the Employer's programs are not exactly the same in each of the middle schools in which it has been implemented. The evidence indicates that in some of the comparable school districts the program is almost exactly like the Employer's program. In some districts it is an activity period, but it is still an additional assignment beyond the basic five academic assignments. The Employer's middle school teachers teach only four academic periods and one study hall plus the Advisor/Advisee Program. The evidence is uncontroverted that the Employer's middle school teacher workload is less demanding than any other large school districts middle school workload even after the addition of the Advisor/Advisee Program.

MTI points out that the work performed by the teachers involved in the advisor programs in the comparable districts was a part of the workload for which compensation was established during bargaining. It contends the increment of compensation payable for such work was not considered separately but was considered as part of the total compensation for performing the entire workload and was not additional compensation. It takes the position that the Employer's Advisor/Advisee Programs was not in place at the time the 1989/91 contract was negotiated and the involved work was not considered when teacher compensation was being determined through the collective bargaining process. MTI contends that it bargained with the Employer and agreed upon the compensation payable to middle school teachers without regard to the Advisor/Advisee Program. It contends that the compensation agreed upon through bargaining for the additional work assignment resulting from the implementation of the Advisor/Advisee Program would be compensation in addition to the amount of compensation previously agreed upon. The MTI position is only partially supported by the facts. The Employer started a pilot Advisor/Advisee Program at the Orchard Ridge Middle School in the 1987/88 school year and expanded the pilot to three other schools in the 1988/89 school year. The implementation of the pilot programs did not exceed the contractual workload limits contained in the collective bargaining agreement then in place. In the summer of 1989 MTI demanded to bargain the impact of the program and those talks culminated in the submission of final offers on October 18, 1989. At the same time the Employer and MTI were bargaining the renewal of the collective bargaining agreement that expired on

October 15, 1989. The parties reached a settlement of that contract in January of 1990. Accordingly, MTI did know about the Advisor/Advisee Program while it was bargaining the renewal of the collective bargaining agreement that expired on October 15, 1989.

MTI argues that it struck a bargain with the Employer on a new collective bargaining agreement when it reached agreement in January 1990. It contends that teacher workloads and teacher planning time had been fixed as had the compensation payable for performing those workloads. MTI takes the position that the Employer thereafter assigned additional work to a portion of the middle school teaching staff and altered the bargain that had been agreed upon in January 1990 by reducing the planning time of these middle school teachers. That is not quite an accurate portrayal of what actually happened. The Employer and MTI had actually agreed on the compensation that would be given to the middle school teachers for their participation in the Advisor/Advisee Program. The final offers of the parties that were submitted on October 18, 1989, before the collective bargaining agreement was reached in January of 1990 reflected agreement on the compensation that middle school teachers would receive for participating in the Advisor/Advisee Program. Each of the final offers provided that the compensation that teachers would receive for participating in the Advisor/Advisee Program would be fifty minutes per week of compensatory time. The only thing that remained to be determined was when the employees would be permitted to use that compensatory time. As a result the actual compensation that the teachers would receive for participation in the Advisor/Advisee Program was agreed upon before the collective bargaining agreement was reached in January of 1990. It is true that the Employer's final offer did have an impact on the amount of planning time that would be available to teachers but it was not inconsistent with the collective bargaining agreement reached in January of 1990. It fell within the scope of the hours of employment and provided more than enough planning time to meet the requirements of the collective bargaining agreement. Even with the addition of the Advisor/Advisee Program the Employer's middle school teachers will spend less time with students for academic purposes than the high school or elementary teachers.

COMPARISON OF THE WAGES, HOURS AND CONDITIONS OF EMPLOYMENT OF THE MUNICIPAL EMPLOYEES INVOLVED IN THE ARBITRATION PROCEEDING WITH THE WAGES, HOURS AND CONDITIONS OF EMPLOYMENT OF OTHER EMPLOYEES GENERALLY IN PUBLIC EMPLOYMENT IN THE SAME COMMUNITY AND IN COMPARABLE COMMUNITIES.

Neither party provided any evidence or made any argument that would serve as a basis for distinguishing between the final offers of the parties based on this

criterion.

COMPARISON OF THE WAGES, HOURS AND CONDITIONS OF EMPLOYMENT OF THE MUNICIPAL EMPLOYEES INVOLVED IN THE ARBITRATION PROCEEDING WITH THE WAGES, HOURS AND CONDITIONS OF EMPLOYMENT OF OTHER EMPLOYEES IN PRIVATE EMPLOYMENT IN THE SAME COMMUNITY AND IN COMPARABLE COMMUNITIES.

The dispute herein involves a very narrow issue and this criterion is not relevant to this dispute.

THE AVERAGE CONSUMER PRICE FOR GOODS AND SERVICES COMMONLY KNOWN AS THE COST OF LIVING.

This criterion is not relevant to this dispute.

THE OVERALL COMPENSATION PRESENTLY RECEIVED BY THE MUNICIPAL EMPLOYEES INCLUDING DIRECT WAGE COMPENSATION, VACATION, HOLIDAYS AND EXCUSED TIMES, INSURANCE AND PENSIONS, MEDICAL AND HOSPITALIZATION BENEFITS AND CONTINUITY AND STABILITY OF EMPLOYMENT AND ALL OTHER BENEFITS RECEIVED.

Neither party offered any evidence relating to this criteria. The Employer did argue in its brief that the Employer's teachers are among the most highly compensated in salary and benefits in the state but there was no direct evidence on this point. There was evidence that the addition of the Advisor/Advisee Program does not make the Employer's number of teaching minutes surpass those of teachers in comparable districts.

SUCH OTHER FACTORS NOT CONFINED TO THE FOREGOING WHICH ARE NORMALLY OR TRADITIONALLY TAKEN INTO CONSIDERATION IN THE DETERMINATION OF WAGES, HOURS AND CONDITIONS OF EMPLOYMENT THROUGH VOLUNTARY COLLECTIVE BARGAINING, MEDIATION AND FACT FINDING ARBITRATION OR OTHERWISE BETWEEN THE PARTIES IN THE PUBLIC SERVICE OR IN PRIVATE EMPLOYMENT.

The Employer takes a position that the bargaining history and collective agreements arrived as a result of bargaining between the parties provides the basis for distinguishing between the parties final offers. It asserts the Advisor/Advisee Program was not brought to the bargaining table by the Employer during the course of the parties bargaining for the successor agreement to the

agreement that had been in effect. As has been pointed out earlier, that is not exactly the case. During the summer of 1989 negotiations for the collective bargaining agreement were going on at the same time that the parties were bargaining the impact of the Advisor/Advisee Program. An agreement on what the compensation would be for participation in the Advisor/Advisee Program was reached by MTI and the Employer in October of 1989 and the collective bargaining agreement was not agreed upon until sometime in January of 1990. Thus the parties were aware of what the compensation would be when the collective bargaining agreement was reached. The only thing that remained undecided was the time when the agreed upon compensatory time off would be taken. Therefore, the Advisor/Advisee Program and the middle school teachers involvement in it was established when the wages and fringe benefits for unit employees were agreed upon. MTI and the Employer have negotiated bilateral agreements involving elements similar to the Advisor/Advisee Program in the past. In the case of the La Follette Free Reading Program the parties agreed to extend the teacher/student contact time by fifteen minutes per day and in exchange the teachers were allowed to leave fifteen minutes early each day. That agreement in 1980, which is still in effect, represented an increase in the teacher workload where compensatory time was agreed upon as the value exchanged. The La Follette program involved a full fifteen minute increase in teacher/student contact whereas in the Instant case it was a primarily a swap of one type of duty for another with little net increase in teaching time. The significant feature of the La Follette memorandum of understanding was that it provided that compensatory time would be taken only during "non-teaching" time and it avoided interference with the student academic program. The Memorial High School Advisory Program memorandum of understanding gave the participating teachers one hundred and five minutes release time from classes for the one hundred and five minutes that they participated in the program. This understanding did represent an intrusion into the academic program but there was no accumulation of time off to be taken in the form of whole day holidays involving the use of substitute teachers. In any event, the whole program was dropped because the Employer found it was unable to manage students during the time that the teachers were released from their classrooms duties. The Employer did agree as part of the settlement of the current contract to give high school teachers time off in exchange for giving up whole periods of preparation time to do hall supervision. But that agreement can be distinguished from the instant case in a number of aspects. High school teachers teach five full classes per day and the hall duty represents a greater intrusion into a more limited amount of preparation time than results from the Advisor/Advisee Program.

In the programs most similar to the middle school advisory program where the parties have successfully reached voluntary agreement on compensation teachers have not been permitted to take compensatory time off in a way that resulted in the use of substitute teachers and intrusion into the student educational program. It would not be consistent with the parties pattern of voluntary settlements to permit four days of discretionary time off that would have a negative impact on the students' academic program.

CONCLUSION

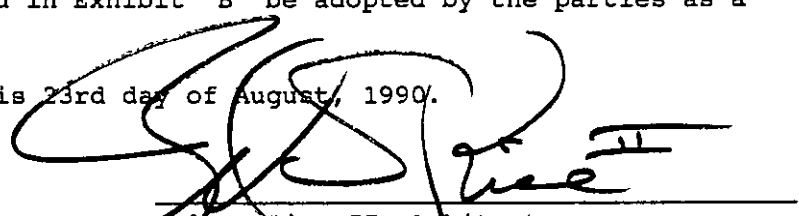
The Employer's final offer represents a reasonable quid pro quo for teacher participation in the Advisor/Advisee Program. The amount of work involved in serving as a teacher/advisor is not excessive. The teacher work schedule has been restructured to eliminate time from other teacher activities so that the impact upon instructional time is minimal. The daily teaching minutes of the Employer is at or below the average of the comparable groups and the preparation time for the Employer's teachers remains above average even with the addition of the program. The total work day of four hundred and eighty minutes remains within the limitations established by the collective bargaining agreement. The middle school teachers involved in the Advisor/Advisee Program still have less instructional time than the Employer's high school teachers and more planning time too. The Employer's proposal permits the teachers to use their accumulated compensatory time off in ways that reduce their total work time and still preserves the quality and continuity of the students' educational program. It is consistent with the parties voluntary agreements in similar situations in the past and with working conditions in comparable school districts with advisory programs. It avoids the possibility of aggravating the already difficult problem of obtaining substitute teachers. Admittedly the Advisor/Advisee Program is an additional assignment for the middle school teachers who are required to participate in it and it reduces somewhat the amount of planning time that they have during the school day. However, even with the addition of the Advisor/Advisee Program middle school teachers still have fewer minutes of instructional assignments per day and more minutes of planning time than the Employer's high school teachers or the middle school teachers in the comparable districts. The Employer's proposal for utilizing the fifty minutes of compensatory time is a valuable and reasonable exchange for the middle school teachers participation in the program.

It therefore follows from the above facts and discussion thereon, that the undersigned renders the following:

AWARD

After full consideration of the criteria set forth in the statutes and after careful and extensive evaluation of the testimony, exhibits and briefs of the parties the arbitrator finds that the Employer's final offer more closely adheres to the statutory criteria than that of MTI and directs that the the Employer's proposal contained in Exhibit "B" be adopted by the parties as a resolution of this dispute.

Dated at Sparta, Wisconsin this 23rd day of August, 1990.



Zel S. Rice II, Arbitrator

EXHIBIT A

MTI fund offer
10/18/89
1:13 pm

Advisor/Advisee Middle School Program

1. Teachers who are required by their administrator to serve as an "advisor" in the advisor/advisee program, also known as "home room", "home base", and/or "faculty and students together" shall be permitted to leave work 25 minutes prior to the contractual quitting time on the two days per week that activities are scheduled in said programs, or, at their option, accumulate the time and take compensatory time off at their option on school days excluding contractually established days for Inservice, and those set for Parent-Teacher Conferences, in accordance with the Collective Bargaining Agreement.
2. Teachers, not to exceed three per middle school shall, on a voluntary basis, prepare all materials to be used in the program. These teachers shall:
 - a. not be assigned students during the advisor/advisee time period, and
 - b. if requested by the teacher be provided a substitute for one-half day per month or one full day every other month to allow time to prepare materials for use in the program.

[Handwritten signature]
MTI
10/18/89

Final offer

Advisor/Advisee Middle School Program

1. Teachers who are required by their administrator to serve as an "advisor" in the advisor/advisee program, also known as "home room", "home base", and/or "faculty and students together" shall be permitted to leave work 25 minutes prior to the contractual quitting time on the two days per week that activities are scheduled in said programs, or, at their option, accumulate the time and take compensatory time off at their option during non-scheduled times excluding Inservice, Conferences and Team Meeting times.
2. Teachers, not to exceed three per middle school shall, on a voluntary basis, prepare all materials to be used in the program. These teachers shall:
 - a. not be assigned students during the advisor/advisee time period, and
 - b. if requested by the teacher be provided a substitute for one-half day per month or one full day every other month to allow time to prepare materials for use in the program.

Allyson H. [unclear]
on behalf of the
Madison Middle School
District
10/18/99