STATE OF WISCONSIN
BEFORE THE ARBITRATOR

In the Matter of the Petition of

FORT ATKINSON EDUCATIONAL
SUPPORT STAFF

To Initiate Arbitration
Between Said Petitioner and

Case 27
No 44591 INT/ARB-5781
DECISION NO 27352-A

FORT ATKINSON SCHOOL DISTRICT

APPEARANCES

A Phillip Borkenhagen on behalf of the Association
Jon E Anderson on behalf of the District

On August 27, 1992 the Wisconsin Employment Relations Commission apointed the undersigned Arbitrator pursuant to Section 111 70(4)(cm) 6 and 7 of the Municipal Employment Relations Act in the dispute existing between the above named parties A hearing in the matter was conducted on September 24, 1992 at Fort Atkinson, WI Briefs were exchanged by the parties and the record was closed by October 29 1992 Based upon a review of the foregoing record, and utilizing the criteria set forth in Section 111 70(4)(cm) Wis Stats the undersigned renders the following arbitration award

ISSUES

This dispute is over the terms of the parties' initial collective bargaining agreement covering the 1990-92 school years. All of the issues in dispute pertain to wages They include the wage schedule and increments (including differences over the amount of the increments and differences about when employees become eligible for such increments) In this regard the Association proposes that increments be paid on July 1st of each year, except for those hired after January 15, who would receive increments on their anniversary date. The District on the other hand, proposes that increments be paid on the employee's anniversary date In addition, the parties disagree about eligibility for an agreed upon longevity allowance. The Association proposes that employees' eligibility for longevity be based on actual years worked, while the District proposes that eligibility be based upon total hours worked, pro-rated based upon a full-time equivalency of 1957 5 hours.

There is essentially no difference between the total costs of the parties' proposals over the two year period covered by the proposed contract

Though the parties agree upon external school district comparables, they disagree as to whether other public employees should be similarly considered

ASSOCIATIONPOSITION.

The District's reliance on the comparability of the AFSCME Cook/Custodian contract is misplaced since the wage schedule in that agreement is in several ways distinguishable from the instant employees' wage schedule

In addition, the City of Fort Atkinson and the County of Jefferson should not be treated as comparables in this proceeding since the parties stipulated to a group of external comparables which did not include these groups

5.5% and 4.8% minimum increases are warranted considering the low level of pay these employees received in 1989-90. The District's proposed 3.5% minimum increase in each year of the proposed contract is simply not sufficient, particularly in view of the fact that other employee groups in the District recived higher minimum increases.

When one looks at starting and maximum wage rates in comparable districts, the Association's offer is more comparable than the District's In addition, the increment values in comparable districts are more in line with the Association's proposal. particularly in the second year of the proposed agreement

In this regard, for the Secretary II classification, the District's proposed rates are 50-60 cents below the comparable average in the first year of the proposed contract, and 15-30 cents below the comparable average in the second year of the contract

For the clerk typist classification, the District's proposal is about 60 cents below the comparable average in each year of the proposed contract

For the General Aide class, the District proposes rates which are 15-20 cents below average

For the Para-professional class, the District's rates are about 20 cents below average

When ranges are compared, the Association's proposed ranges are slightly smaller than comparable averages, however, the District's are between 13 and 62 cents below average

The District's proposed increase, which ranges for most employees between 18 and 26 cents, also fall below the range of increases granted by comparable districts

Regarding longevity, the District's proposal unfairly penalizes part-time employees, many of whom have always been treated as full time school year employees

Relatedly, in the comparable districts which provide for longevity, none pro-rate based upon the number of hours worked

The District's proposal to use employee anniversary dates to determine eligibility for increments will create payroll problems and grievances

More importantly, the District's proposed use of employee anniversary dates is inconsistent with the a uniform wage schedule and a contract in which all other benefits renew or are increased on the contractual renewal date

In this regard, a majority of the comparables support the Association's position Similarly, teachers receive their annual increments at the beginning of each school year

DISTRICT POSITION

Regarding comparability, because of the differing duties, qualifications, and salary schedule of teachers, they should not be treated as comparables for purposes of this proceeding

On the other hand, because of the similarity of the duties of City and County employees in the area with the duties of unit personnel, it is appropriate to treat these groups of employees as comparables. In this regard, the District, by agreeing to external school district comparables, never agreed not to request consideration of other comparable groups of employees

The District's longevity proposal is consistent with the benefit level and proration provisions in the District's Custodian/Cook contract, which have been in effect for years

In this regard arbitral precendent supports the importance of internal comparability in benefit disputes. (Citations omitted)

It is completely reasonable to have different levels of benefits for part-time, school year employees than for their full-time co-workers. Pro-ration of benefits for less than full-time employees has been accepted by arbitrators (Citations omitted), and indeed has been accepted by the Association as applied to vacations, insurance benefits, leaves of absence, and retirement In contrast, the Association's propsal would result in employees working as little as three hours daily during the school year receiving full longevity benefits

In addition, the external comparables do not support the Association's proposal in this regard In fact, the District's longevity proposal for full time employees is more generous than the longevity benefits provided by any other comparable school district. In addition, one-half of the comparable districts have no longevity benefit at all

The Association has also offered nothing in exchange for this proposed benefit, which is not comparable with benefits received by both internally and externally comparable groups

A literal interpretation of the Association's longevity proposal indicates that any paid time not worked is not considered for purposes of determining longevity However, the Association construes its proposal as including sick days for school year employees, since, it argues, they are substitute rather than add on days, a distinction clearly not referred to in its proposal In this regard it is well established that a proponent of contractual language is expected to use language that does not leave a matter in doubt The ambiguity in the Association's proposal will certainly result in future grievances if said proposal is adopted. Arbitrators have frequently refused to adopt such ambiguous language. (Citations omitted)

The District's proposal to use employee anniversary dates to determine eligibility for increments is again entirely consistent with the Custodian/Cook unit.

The Association's proposal in this regard will result in employees receiving increments, in some cases, as soon as six months after they are hired

Why should someone hired January 14 get the benefit of a full step advancement in July, when someone hired January 16 must wait a full year for a step advancement. The Association's arbitrary January 15 cut-off date makes no sense. The District's proposal on the other hand does not discriminate based upon dates of hire. Everyone is eligible for a step advancement upon completion of a full year's service. Once a maximum is reached, wage increases are effective July 1, concurrent with negotiated schedule increases

The external comparables have a mixed practice in this regard, with several using anniversary dates for such purpose.

It is noteworthy that both parties use an employee's anniversary date as the date for determining longevity eligibility. In addition, tracking of anniversary dates is already being done for purposes of vacations, seniority, etc. Thus, anniversary date advancement will not result in any administrative problems

The Association's proposal places many employees on the wage schedule between steps It further propose that these individuals continue moving through the schedule between steps This method of mid-step placement is administratively cumbersome and confusing. The long term goal of the parties should be to bring the salary schedule and the employees into line eventually The Association's offer does just the opposite since in 1991-92 it proposes a schedule increase of 4 3% while guaranteeing minimum individual increases of 4.8%.

The District's approach in this regard is easier to administer The District proposes placing employees on the 1990-91 schedule at a point which gives each individual at least a minimum 3 5 percent increase If an individual's current wage rate exceeds the schedule rate, that individual receives the minimum percentage increase. Each employee is assigned to an actual step on the schedule--no one is between steps

Though the Association criticizes the District for what it claims to be inequitable placements on the schedule, the Association's proposal in this regard results in unnecessarily disproportionate increases In this regard, one of the Association's 1990-91 mid step placements would result in a 39.2% increase, whereas placement of that employee at step 1 would have resulted in a 37 8% increase. Under such circumstances, why is such a mid step placement necessary. There are other similar examples in the Association's proposal.

In addition the Association doesn't even use consistent mid step placements. If the Association's proposal in this regard prevails, the District will be left with inequities which will likely take years to remedy.

Regarding the wage schedule itself, the step increases for the comparables range from $ 17 to $ 47 The Board's offer of $ 25-.30 between steps is completely within the range of the comparables

The District's proposed ranges between minimum and maximum rates ($1 25-$1.50) is also more equitable than the Union's proposal in this regard.

The District's proposed wage rates are also in line with rates paid to employees in comparable positions

DISCUSSION

Though the outcome of proceedings such as this are often, in large part, dependent upon comparability evidence, such is not the case in this matter for a number of reasons .

First, the wage and salary structures of other groups of District employees are sufficiently distinguishable from the wage system at issue herein to negate the persuasiveness of the internal comparability arguments made by both parties.

Secondly, there is sufficient diversity in the pay systems in place in comparable districts to prevent any findings of clear settlement patterns in this regard. Relatedly, it is often difficult and unreliable to compare the wages of positions with similar titles in units such as this because levels of responsibility and duties of allegedly comparable positions are frequently not susceptible to reliable comparisons

Thirdly, though the parties stipulated to a group of external school district comparables, the undersigned does not deem said stipulation to amount to a waiver by the District of its right to argue that other public employees performing similar duties in the area should similarly be treated as legitimate external comparables Thus, though the undersigned deems employees of the City of Fort Atkinson and the County of Jefferson to be legitimate comparables for the purpose of this proceeding, for the same reasons mentioned above, comparisons with said groups of employees are not sufficiently reliable to be of much help to the undersigned in resolving this dispute.

Though the parties are not in agreement regarding the actual wages and the size of increments bargaining unit employees should receive, the undersigned does not deem said issues to be determinative of the outcome of this dispute, in large part because comparability evidence does not clearly support the merit of either party's proposals in this regard, based upon its lack of uniformity and reliability Perhaps more importantly, the record in this proceeding indicates that at the core of this dispute are issues related to the following questions--when employees should become eligible for increments and longevity pay, and perhaps somewhat less importantly, where and how employees should be placed on the parties' newly developed wage schedule Again, these issues cannot be resolved based upon the comparability evidence submitted herein, but must instead by resolved based upon the relative merit of the arguments submitted by the parties justifying their respective positions on these issues

With respect to the placement issue, the undersigned deems the District's proposal to be more meritorious than the Association's in that it comports with the structure of the District's proposed schedule, unlike the Association's proposal. The District's proposal in this regard thus will not result in the continued placement problems which the Association's proposal would continue to generate. Ultimately, the negotiated wage schedule should determine bargaining unit employee wages In that regard the Association's proposed wage schedule is, in significant part, moderately irrelevant to the issue of what employees are to be paid Though the Association argues that a variety of mid-step placements on the schedule are necessary in order to achieve some catch up with comparable employees, the comparability evidence, as indicated above, simply does not support the persuasiveness of this contention. Although the record

evidence indicates that some bargaining unit employees may receive less than comparable average wage rates, the rather broad range of comparable rates and the lack of reliable evidence pertaining to the comparability of positions simply does not support the Association's contention that wage catch up is needed.

Regarding the issue of increment eligibility, although use of a fixed date tied to the school year (as proposed by the Association) might be reasonable and appropriate when applied to teachers who are, by and large, employed on a school year basis, the argument for the use of such an eligibility criterion for bargaining unit employees who may be employed throughout the course of the year is less compelling. Though the Association's arguments in this regard are somewhat persuasive when applied to bargaining unit employees employed on the same basis as teachers, i e., for the regular school year, the District's proposal in this regard appears to be somewhat more reasonable than the Association's in that it achieves uniformity and consistency for all employees, no matter when they are employed, and it doesn't seem to unfairly or adversely affect any employees, vis a vis others in the bargaining unit--as does the Association's proposal

On the longevity pay issue, the Association's proposal to base eligibilty on actual years of service, in the undersigned's opinion, is more reasonable and consistent with the concept of longevity pay entitlement than is the District's position on this issue. Longevity pay, like pay increments, contemplates a reward system for years of service. In that regard such a benefit is distinguishable from other fringe benefits which are often pro-rated based upon an employee's full versus part-time status, such as sick leave and health insurance entitlement

However, the Association's longevity proposal is somewhat flawed in that the record indicates that there is ambiguity and potential disagreement resulting from the proposal's somewhat unclear reference to time not worked, which diminishes the preferability of the Association's proposal in this regard over the District's.

All of the foregoing considerations indicate that both parties' proposals in this dispute contain both meritorious and problematic components In fact, the call the undersigned is required to make in this matter is a rather close one based upon the above identified competing considerations. In effect, the undersigned is forced to choose between two somewhat flawed proposals In that regard, the undersigned deems the District's proposal to be somewhat less flawed than the Association's This conclusion is based upon the undersigned's belief that the District's proposal will result in more uniformity in pay policies affecting bargaining unit personnel, will result in a wage schedule which will be more relevant to the determination of wages of unit personnel than would be the case if the Association's proposal were selected, and will result in contract language which has less potential for being subject to differing interpretations and disagreement

Based upon these considerations, the undersigned hereby renders the following:

ARBITRATION AWARD

The District's final offer shall be incorporated into the parties 1990-92 collective bargaining agreement.

Per the parties' request, the undersigned will retain jurisdiction in this matter for sixty days from the date of this award to resolve any disputes which might arise over dates of hire

Dated this 16th day of December, 1992 at Madison, WI.

Byron Yaffe
Arbitrator