

SEP 02 1993

BEFORE THE ARBITRATOR

WISCONSIN EMPLOYMENT  
RELATIONS COMMISSION

In the Matter of the Arbitration of the  
Dispute Between the

Madison Teachers, Incorporated  
(Supportive Educational Employees)  
and the

Madison Metropolitan School District

WERC Case 214  
No. 48249 INT/ARB 6653  
Decision No. 27611-A

Appearances:

Mr. John A. Matthews and Mr. Douglas P. Keillor, Executive Director and Assistant Executive Director, respectively, Madison Teachers, Inc. for the Union.  
Ms. Susan Hawley, Labor Contract Manager, Madison Metropolitan School District, for the Employer.

Sworn Testimony was received from:

- Mr. Douglas P. Keillor, Assistant Executive Director, Madison Teachers, Inc.
- Ms. Judith Togstad, Substitute Placement Clerk, MMSD
- Ms. Debra Spaith, Lead Media Technician, MMSD
- Ms. Sandra Adams, Sr. Administrative Clerk, MMSD
- Ms. Lynne Rodefeld, Administrative Clerk Intermediate, MMSD
- Ms. Kathy Chrisler, Administrative Clerk Intermediate, MMSD
- Ms. Mary Ann Bingham, Sr. Administrative Clerk, MMSD
- Ms. Marilyn Irvine, Payroll Clerk, Intermediate, MMSD
- Ms. Janet Leamy, Accounting Clerk II, MMSD
- Ms. Joanne Bradley, Microcomputer Specialist, MMSD
- Ms. Marion Schlick, Sr. Purchasing Clerk, MMSD
- Mr. Tom Larson, Sr. Programmer, MMSD
- Mr. David Dubinski, (Computer) User Services Specialist, MMSD
- Mr. Chris Hanson, Comptroller, MMSD
- Ms. Debbie Cushman, Clerk, Labor Relations, MMSD
- Ms. Susan Hawley, Labor Contract Manager, Madison Metropolitan School District  
all of Madison, WI.

## **Background:**

On August 14, 1992, representatives of the Madison Metropolitan School District (hereinafter referred to as the "District," the "Board," or the "Employer") and the Madison Teachers, Inc. (hereinafter referred to as the "Union," "MTI," or the "Employees") exchanged proposals on issues to be included in a successor agreement (for the two years 1992-93 and 1993-94) to their agreement which expired August 29, 1992. The Union represents full-time and regular part-time employees in secretarial, clerical, technical and related office employment, and excluding craft, professional, confidential, supervisory, and managerial employees of the District. The Parties met on six other occasions, by their account, and on six occasions with a mediator from the WERC, and failed to reach an agreement. On November 2, 1992 the Union filed a petition with the Wisconsin Employment Relations Commission for final and binding interest arbitration pursuant to Section 111.70(4)(cm)6 Wis. Stats. Investigator Herman Terosian, Commissioner, WERC, conducted an investigation on December 18, 1992, and then advised the Commission that an impasse existed. The parties submitted final offers to the Commission by March 26, 1993. On April 11, 1993 the Commission certified the parties' final offers and directed them to select an impartial arbitrator. The Undersigned, Richard Tyson, was selected and appointed on April 27, 1993. He conducted a hearing on the matter on June 2, 1993 at the Union's offices in Madison, Wisconsin. A transcript of the hearing was taken by Ms. Susan Gordon Hubanks and was received on June 9, 1993. Both parties had an opportunity to present exhibits and testimony and to outline their arguments in this dispute. They agreed to a schedule for exchanging briefs and replies.

## **The Issue(s)**

The parties are agreed on all items for inclusion in the successor agreement for 1992-94 except wages. The District offers a base wage increase of 4% for 1992-93 and 3% for 1993-94. The Union's offer includes increases of 4.35% and 4% respectively. The parties differ as to which set of comparables constitutes the appropriate external yardstick against which to measure their respective offers; the Employer argues that the relevant comparison is to be made between the unit employees and educational support employees in the 8 school districts adjacent to MMSD while the Union argues that the most appropriate comparable group is the clerical/technical employees employed in the 10 largest school districts of Wisconsin. Another difference between the parties concerns the nature of the comparison to be made; the District focuses on comparisons of wage levels while the Unions focuses on percentage increases offered by the parties in comparison to percentage increases in wages incorporated into settlements among the "big 10."

Cost

Wages for the SEE-MTI unit were \$ 5,233,485 in 1991-92. The Total package costs were \$ 6,194,064. The Board has cost the proposals of the Union and the Employer to be as follows:

**Table 1: Salary and Benefits Costs Under the Board and Union Offers<sup>1</sup>**

	1992-93 increases		1993-94 increases	
	wages	package	wages	package
Un offer \$	\$ 279,991	\$ 368,094	\$ 275,674	\$ 376,225
% increase	5.35%	5.94%	5.0%	5.73%
MMSD offer \$	261,674	348,569	219,806	316,676
% increase	5.0%	5.63%	4.0%	4.84%
difference \$	18,317	19,525	55,868	79,074
difference %	.35%	.31%	1.0%	.89%

Source: EX 4,4a as calculated by the Arbitrator. Wage increases include an estimated 1% experience/longevity increase.

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<sup>1</sup>Employer's Exhibit 4, Union Exhibit 4a, and Transcript p. 159.

The Statutory Criteria

The parties have directed their evidence and arguments to the statutory criteria of Sec. 111.70 (7) Wis. Stats. which directs the Arbitrator to consider and give weight to certain factors when making his decision. Those factors are:

- a. The lawful authority of the employer.
- b. Stipulations of the parties.
- c. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any settlement.
- d. Comparison of 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 performing similar services.
- e. Comparison of 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.
- f. Comparison of 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 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 employees, including direct wage compensation, vacation, holidays and excused time, 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, factfinding, arbitration or otherwise between the parties, in the public service or in private employment.

## Arguments of the Parties

### The Employer

The Employer contends that the Union's focus on the percentage wage increase offered by the parties in comparison to the settlements in the nine (9) other large Wisconsin school districts is too narrow, misleading, and/or otherwise is wrong. First of all, the total compensation offer of the District is substantial, as indicated on page 2 herein. Health insurance premium increases are between 3% and 14.9%, and longevity and step increases will add 1% to wages. Second, numerous criteria must also be considered, including: the Cost of Living; the Interests and Welfare of the Public, which are to provide quality educational services in the face of a potential budget freeze; and the ample supply of employees which is indicative of the high relative wage and benefit level of SEE unit employees with respect to other public and private employment in the area.

The District asserts that "the only appropriate comparable school districts" are the adjacent ones (Employer Brief, p. 6). Citing Arbitrators Bilder, Fleischli, Imes, Rice, Baron, Weisberger, Johnson, Haferbacker, Michelstetter, and again Imes, the District submits that more proximate districts are more appropriately compared, particularly in the case of non-professional employees.<sup>2</sup> Additionally, the District submits that arbitrators reject the notion that non-union units are to be excluded solely because of non-union status.<sup>3</sup>

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<sup>2</sup>Blackhawk Educational Support Team, Dec. No. 27247-A (Nov., 1992), Neilsville School District, Dec. No. 18998-A (Feb. 1992), New Lisbon Non-Teaching Personnel, Dec. No. 26733-A (July, 1991), Benton School District, Dec. No. 24812-A (Feb., 1988), Clintonville Educational Support Personnel, Dec. No. 23061 (May, 1986), LaCrosse School District, Dec. No. 16327, Vernon County, Dec. No. 17716, Janesville School District (Custodial, Maintenance, Food Service Employees), Dec. No. 25853-A (October, 1989), and New Lisbon School District, Dec. No. 26733-A.

<sup>3</sup>Bilder, cited above, and Arbitrator Petrie in Elkhorn Area School District (Custodial, Maintenance, Food Service), Dec. No. 19093-A (June, 1982), Yaffee in Thorpe School District (Educational Support Personnel), Dec. No. 23082-A (June, 1986), and Vernon in Owens-Withee (Support Staff), Dec. No. 22395 (Dec. 1985). The Arbitrator's reading of these decisions supplied by the Union is that the exclusion on non-union comparables was not at issue in Elkhorn, Vernon was not at all keen on including them, Bilder's preference for the Employer's comparables was based their characteristics which "fit" better, while Arbitrator Yaffee included all of the conference based on the similarity of the employers.

### Contiguous district comparisons

The District's Clerk Typist, Elementary Secretary, and Payroll Clerk wages were compared to the wages paid in the contiguous districts because these benchmark positions are common in all districts, and job descriptions were readily available for making comparisons. Wage rates were easily tracked for four years. The data shows that the MMSD Clerk Typist has had and will continue to have the highest minimum and maximum wages under the Board's offer for 1992-93 and undoubtedly will continue to have the highest minimum and maximum wages in 1993-94.<sup>4</sup> Moreover, the percentage increase in these wages under the District's proposal is exceeded by only 2 districts, and then by only .1 to .2%. The absolute (cents) increases under the Board's proposal also is above average.

The data for the Elementary Secretary position show a similar result in comparison to the same position among the contiguous districts. At both the entry and maximum wage levels, the MMSD wages were ranked the highest for all four years -- by a considerable margin -- and will continue to be the highest under the District's offer for 1992-93 and undoubtedly for 1993-94.<sup>5</sup> The percent increases and cents per hour increases at MMSD also have consistently exceeded the "8." Similarly, the data show that the Payroll Clerk position in the District has ranked first and will continue to rank first under the District's offer. Its percent increase is also above average, as are its absolute wage increases (Brief, pp. 12-13). It will remain above average in 1993-94 unless Middleton and Monona Grove Payroll Clerks receive 20% wage increases (Brief, Appendix A, p. 30).

### "Big 10" comparisons

The District contends that unit employees are unlikely to seek employment outside the area, so comparisons with contiguous districts' employees is most appropriate. The Union may also contend that the contiguous 8 districts do not have the technical and diverse nature of jobs comparable to the SEE-MTI unit, but it shows no evidence to that fact. Similarly, the Employer

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<sup>4</sup>Board Brief, pp. 9-10 and p. 30. Only if Middleton and Monona Grove Clerk Typist wages increase 14(19)% at the minimum (maximum) will MMSD decline from first rank.

<sup>5</sup>District Brief, pp. 11-12 and Appendix A, p. 30. Middleton and Monona Grove Secretaries would have to receive 40% + increases to displace MMSD.

is skeptical of the claimed cultural diversity of the "big 10" viz the "8" which would make the former more comparable. Nonetheless, the District went ahead and compared the three benchmark wages with the ten largest metropolitan school districts in the State. The result was similar; the MMSD offer is to be preferred as it is the most reasonable. The Clerk Typist entry level wage has consistently ranked third over the past four years while the maximum wage is first by a considerable margin "illustrat(ing) the effect of the District's excellent longevity package" (p. 15 and District Exhibit 37). Under the District's proposal, it will retain these ranks in 1992-93 and will likely retain them in 1993-94.<sup>6</sup> The percentage increase in salaries of the Clerk Typist at MMSD has consistently been above average, and when it was below, it was by only .1% or .2%. Absolute wage increases also indicate that MMSD has increased wages at an above average rate. The Elementary Secretary position at MMSD also compares favorably to the "10." Its wages have ranked first at both the entry level and maximum level and will continue to do so in 1992-93 and will likely remain in first place under the District's offer.<sup>7</sup> The percentage increases have usually been higher than average and when lower, by no more than .3%. Cents per hour increases have also tended to exceed the average. The entry-level Payroll Clerk wage at MMSD ranked second for the past four years while the maximum wage has been first; the rankings are also not disturbed by the District's 1992-93 offer, nor will they likely fall under its 1993-94 offer.<sup>8</sup>

The Union may contend that in some cases, the District's offer is percentagewise less than increases in what it calls comparables; however, the real issue is how salary levels compare. The District is in a wage leadership position. Arbitral precedent indicates that where an employer is in such a lead position, the percentage wage offer need not match other employers' percentage wage offers if salaries remain in a lead position.<sup>9</sup>

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<sup>6</sup>Employer Brief p. 15. Addendum B, p. 31 indicates that the 4 unsettled districts would have to pay Clerk Typists average increases of 16-17% to displace MMSD in its rankings.

<sup>7</sup>District Brief, pp. 15-16 and Addendum B, p. 31. The unsettled districts' average entry wages would need to rise 16.7% in order to displace MMSD, while the maximum wage average would need to rise 35.1% by the District's calculation.

<sup>8</sup>District Brief, pp. 16-17 and Addendum B, p. 31. The unsettled districts' average entry wages would need to rise 12.1% in order to displace MMSD, while the maximum wage average would need to rise 18.6% by the District's calculation.

<sup>9</sup>Arbitrator Bellman in Madison Metropolitan School District, Dec. No. 19819-A (April, 1983), and Zeidler in Washington County, Dec. No. 26252-A.

Other comparisons

The District pays well with respect to other public employers, according to DILHR survey data.<sup>10</sup> In 1990, Clerk Typists and Elementary/Executive Secretary positions in the state and in Dane County government offices tended to have average wages less than those MMSD paid during the 1989-90 year at both the minimum and maximum wage levels. The District also pays well with respect to local private employers. Based on a survey by the Society for Human Resources Management, 1992 private sector Clerk Typist wages tended to be between \$1.12 and \$1.97 below MMSD wages in 1991-92. Secretaries tended to be paid \$2.51 to \$3.48 less than the District's Elementary Secretaries. Private sector Payroll Clerks earned \$1.18-\$1.84 less than paid by the District. The Union did consider other local public sector comparisons, but focused on the percentage increases in pay. Wage level comparisons were conspicuously absent because under the Board's offer, District Secretaries (the Union's benchmark) will remain significantly higher. The same analysis applies to the Union's comparison between MMSD Secretaries and three local, unionized private sector employers.

As a result of these comparisons, the District contends that it has a large number of applicants for available positions in the SEE unit, while turnover is low. In 1990-91, the applicant:position ratio was 49:1; in 1991-92 it was 37:1. Retirees and resignees numbered only 9 in 1992. Besides the high wages which contribute to these ratios, unit employees receive the highest number of paid holidays (13) whether one compares the "8" or the "10" districts. It is first or second in providing vacation days, and the parties have stipulated to a long list of other benefit improvements as well.<sup>11</sup>

The District's offer is consistent with its offer to other MMSD District employees. These three (Educational Assistants, Substitute Teachers, and Custodial employees) are now in arbitration. The SEE unit's offer for 1992-93 (4.35%) is the same as the Teachers' settlement. These units' settlements, however, have historically been different. Moreover, the District's offer to the Teachers for 1993-94 is a schedule freeze.

The District's offer is more consistent with the public's interest in two respects: first, to accommodate a levy rate freeze as proposed by the Governor, the District would need to cut \$4

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<sup>10</sup>EX 67-70, 73, 73b.

<sup>11</sup>Final Offers, stipulations, and District Brief, p.21.



million; holding down wages and benefit levels is a necessary component of the effort. The MTI argues that the governor's levy freeze was dropped subsequent to the hearing; nevertheless, per student cost increases are still a real possibility. Second, the taxpayers in general are concerned with rising school costs and salaries. The District is not arguing an inability to pay, but it should not be expected to increase the gap which already exists between its SEE employees' wages and wages paid elsewhere. And while the Equalized Value of the MMSD is the second largest in the state, MMSD pupil enrollment is also the second highest. Furthermore, to the degree that the Union may be arguing that its valuation per student is high, justifying higher pay for SEE unit employees, the state aid formula will result in local taxpayers paying more of the burden of higher costs out of their own pockets. While the Union's witnesses testified to the changed nature of job duties of unit employees in order to justify the increased spread, it gave no evidence that such changes have not occurred elsewhere. Lastly, the Union's income and wealth data indicate that Milwaukee, Racine, Kenosha, and Waukesha are wealthier than Madison; by the Union's logic, these districts should pay their educational support employees more than does the MMSD -- but they do not.

#### The Union

The Union maintains that the MMSD is a relatively wealthy school district which desires to maintain the high level of educational services. This is evidenced by the recent defeat of two conservative challengers for school board membership who proposed a reduction in services.<sup>12</sup> Income and property values are high when compared to the 9 other large school districts in Wisconsin, while its unemployment rate is the lowest. Yet when it comes to its 1992-94 offer, the District is out of line with these other 9 districts, as seen below in the comparison between the benchmark Elementary Secretary salaries:

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<sup>12</sup>Union Brief, p. 4, Transcript, p. 267, and UX 99-101.

Table 2: Percent Increases

1992-93

1993-94

ELEMENTARY SECRETARY	min	max	min	max
Largest 10 Districts	4.10%	4.34%	3.94%	3.63%
MTI offer	4.35	4.35	4.00	4.00
MMSD offer	4.00	4.00	3.00	3.00

The difference is particularly important in the second year when the District's offer is nearly a percent less than the average of the settled districts while the Union's offer is right on the average. The District's focus on only three benchmark positions shows even more pointedly that the District is out of line whether one looks at the minimum or maximum pay grades for these three benchmarks:

Table 3: Percentage Increases in Benchmark Salaries, 1992-93

	minimum	range	maximum
Large 10- Clerk Typist	4.5% (4.2)*		4.5% (4.1)*
Large 10- Elem. Secretary	4.5% (4.2)		4.7% (4.3)*
Large 10- Payroll Clerk	4.5% (4.2)		4.7% (4.3)*
MTI offer	4.35%		4.35%
MMSD offer	4.0%		4.0%

Source: Union Brief, p. 22 and EX 39, 42, 49

\*adjusted for split increases in Sheboygan

The Board is also out of line with respect to the settled internal comparables. Wage increases for the 1992-93 year have been at the level of the Union's offer, while the Board is .3% under. That these contracts were settled under different economic circumstances from the instant dispute is not supported by the evidence. The District's position regarding the second year of the contract that its final offer proposals for these three internal comparables are consistent with its offer herein is obviously not based on real evidence of settlements.

The Union contends that under criteria (d.), the appropriate comparison to make is with similar

employees in the 10 largest districts in Wisconsin. The Employer wants to make comparisons with the 8 school districts contiguous to MMSD. Of these, only 4 are unionized. Arbitral precedent has established that similarity of size (pupil enrollments, valuation) is an important determining factor for comparability. Similarity of services, indicated by bargaining unit composition is another. Madison ranks second of the "big 10" in pupil enrollment and in equalized valuation. The SEE bargaining unit contains more classes of employees than the three "benchmarked" by the Employer; it has seventy (70) others including Programmers and Programmer Analysts, Bilingual Resource Specialists, etc. (Brief, pp. 8-9). The Union has given evidence as to the breadth and extensiveness of the variety of jobs done by the SEE unit employees.<sup>13</sup> In this regard, the Union maintains:

"Technical positions such as these are generally found in larger, urban school districts due to their size and ability to fund such positions. In fact, collective bargaining agreements entered into by school districts in Milwaukee, Racine, Eau Claire and, to a lesser extent, Kenosha all contain similar technical positions (MTI Ex. 14a, 16a, 18, 19).<sup>14</sup>

Implicit in the Union's argument is that most of these jobs do not exist in the 8 contiguous districts. In addition to the great diversity of jobs performed by unit members, SEE employees work with a diverse, changing clientele "found only in large urban school districts." (Brief, p. 11). By contrast, the 8 contiguous districts are not similar to MMSD. The Madison Metropolitan School District is 5-13 times their size in terms of pupil enrollment (averaging 2743 pupils verses 23,080 pupils in the MMSD). The equalized valuation of the MMSD is 8 times the average of the eight contiguous districts. These districts have an average of nine (9) position classifications while the 10 largest districts have an average of 43 classifications. Madison has 73 classifications. Thus MMSD-SEE is dissimilar to the "8" in both size and services delivered.

There are additional reasons to reject the "8." The Union notes that only four of the eight contiguous districts are unionized, and one of these (Verona) has yet to bargain its first contract. The Union cites arbitral opinion as to the inappropriateness of comparing union and non-union

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<sup>13</sup>Union Brief, pp. 9-11, and Transcript, pp. 25-155.

<sup>14</sup>Union Brief, p. 10.

employee units.<sup>15</sup> That the "8" are appropriate comparables because they represent the "local labor market" is also challenged by the Union. Under cross-examination by the Union, the District's witnesses could not identify any instances of mobility between MMSD-SEE unit employees and employees in the 8 districts, or, for that matter, between the districts' residents. Fundamentally, the District is not comparing apples with apples, but rather "watermelons with strawberries" (Union Brief, p. 14).

Because of the real differences between jobs, employees of the MMSD and the "8"—and to a lesser degree between the "big 10"—the appropriate wage comparison to make is the percentage increases rather than between wages at benchmarks. Some districts report wages while others report annual salaries. Conversion to hourly rates is not accurate if weekly or annual hours vary. The Union cites employer errors, notably in the case of Appleton, where inappropriate comparisons result. Benchmark comparisons are only appropriate when comparing like positions. The District only compared three positions (of 73) employing less than 17% of the SEE.<sup>16</sup> Within even these three categories, there are different grades (eg. Elementary Secretary Grade 4 vs. Grade 8). By focussing on comparisons of percent increases, these technical problems are minimized if not eliminated.

Focusing on comparisons of percentage increases is more appropriate for another reason; it maintains the historical wage relationships between comparables which have been established "through the give and take of the bargaining process" (Brief, p. 15). Citing Elkouri, these ought not to be disturbed except for compelling reasons.<sup>17</sup>

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<sup>15</sup>R.U. Miller in Crawford County (Highway Department), Dec. NO. 26529-A (1991), Vernon in Lake Geneva Jt. School District No. 1, Dec. No. 26826 (1992), Johnson in Potosi School District, Dec. No. 19997-A (1983), and Zeidler in Seneca School District, Dec. No. 22377-A (1985). These arbitrators expressed the view that labor market comparisons between unionized employers and those who unilaterally set wages are either inappropriate or inequitable.

<sup>16</sup>the Arbitrator notes, however, that the Union does not contend that these three positions' wages are unusually high viz the remaining 70 as compared to these three positions in other districts viz other support staff wages. Additionally, the District has supplied sufficient rebuttal evidence that its data for Appleton is accurate, while (three) of the other inaccuracies are self-evidently minuscule.

<sup>17</sup>Elkouri and Elkouri, How Arbitration Works, BNA Books, ed. p. 760. The undersigned notes that Elkouri is ambiguous as to whether leadership is maintained by rank, cents-per-hour, or percent increases, as well as to how "minor" is the standard compared to the "prevailing

The Union also considered the respective offers of the parties with respect to the other criteria, mainly in preemptive rebuttal. The District's reliance on benchmark wage comparisons with other municipal employees is fraught with possible errors or is otherwise inappropriate in its application to the instant case. Percentage wage increases for employees covered under 111.70 were around 4.3%. Comparison of wage levels of private sector employees is also fraught with difficulties (eg. union status of employees, similarity of positions, making inferences for 73 positions based on comparison of only one or three). Again, the percent increase in wages of unionized private sector workers (3 employers) were much closer to the Union's offer. The Union brushes aside the CPI comparison (g.), noting that historically, settlements don't track CPI changes. Overall compensation (h.) is not an issue herein. The other factors (j.) consideration raised by the District is that the high number of applicants per open position and low turnover rates indicate the District's high wages. This inference is inappropriate since the Employer does not demonstrate the number of qualified applicants per position.

## Discussion and Opinion

The Statute requires the Arbitrator to consider the aforementioned criteria in making an award. The criteria cited by the Parties as pertinent to this decision are internal (e.), external (d.), and private sector employees (f.), comparisons as well as interests of the public (c.), other factors (j), and overall compensation (h.). Each of these is considered below as the outstanding issues of this dispute have been considered by the Arbitrator. First, the Arbitrator is compelled to comment on the question of external comparability (d.), as outlined above, and all that this entails. The basis of comparison is then addressed, followed with a discussion of other factors and of other issues.

### Public sector comparables

In applying the statutory criteria (d.), Arbitrators (including the Undersigned) have been guided by considerations of geographic proximity, similarity of size of employer, and similarity of jobs. Similarity of jobs is further based on level of responsibility, the nature of the services provided, and the extensiveness of training and/or education required. The question posed to the

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practice" standard (\_\_\_ 4th ed. pp. 807-17).

Arbitrator is whether in his opinion, the Madison Metropolitan School District's Supportive Educational Employees are more similar to other supportive employees in the contiguous 8 districts or to such employees in the 10 largest districts in Wisconsin. This a particularly difficult question. The Employer's comparables are by definition more proximate. The Union's comparables are more similarly sized in terms of enrollments and valuations (UX 41-42). The Arbitrator is persuaded by the Union's evidence and argument that the support staffs in the "big 10" are more comparable in terms of the similarity of jobs. Evidence was not directly supplied indicating relative differences in training or education. Evidence and testimony regarding the diversity of clientele, and especially the nature and diversity of jobs and degree of specialization of services provided at the MMSD indicate more similarity to the "10" than to the "8."

The Employer argues that "proximity" is of primary importance in the case of this unit, citing arbitrators' awards to show that geographic proximity of a 30-35 mile radius constitutes an appropriate labor market for purposes of establishing primary comparables. While athletic conferences are customarily used for establishing teachers' comparison groups, the Employer cites arbitrators' awards which rely on more proximate comparisons for non-professionals on the theory that non-professionals do not compete on a state-wide basis and are less mobile than are professionals.<sup>18</sup> When pressed, however, there is no evidence that such inter-district mobility exists. Logically one might expect such mobility for employees possessing general, transferable skills, but the SEE unit has numerous technical positions which may not exist in the adjacent districts. Wages in peripheral communities must exert some influence on urban communities, not only in Madison but also in other large cities. To what extent is the influence? In Sheboygan School District (Dec. No. 27175), the Undersigned stated:

The Arbitrator notes the size of the employer and comparison employer in these cited cases, and finds them to be generally "small," similarly sized, and otherwise comparable in contrast to this case. The argument is accepted that the labor markets in the smaller communities surrounding larger cities will be "influenced" by those cities--whether they surround Sheboygan, Manitowoc, or Green Bay--or elsewhere. But contending that those communities' labor markets will exert the same influence pari passu on the larger cities is questionable. And would this influence, if any, be greater for Sheboygan than for Manitowoc and Green Bay? There is no evidence presented to suggest such is the case. Finally, the Undersigned takes particular note of the lack of arbitral precedent

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<sup>18</sup> Imes, New Lisbon (Dec. No. 26733-A); Weisberger, Clintonville School District (Dec. No. 23061); Johnson, in LaCrosse School District (Dec. No. 16327); and Haferbacker, in Vernon County (Dec. No. 17716).

establishing symmetry of labor market "influence" between large cities and smaller peripheral communities. Arbitrators indeed have found in many of the cases cited by the Employer and others that "dogs wag tails." But the Undersigned is reluctant to find that "tails wag dogs." The Arbitrator notes that employers of smaller school district support staff typically object to comparisons with their larger, proximate counterparts.<sup>19</sup> Not surprisingly, the unions prefer to emphasize proximity in such cases. He especially notes that while a set of comparables for Sheboygan School District Custodial-Maintenance Employees has not been established, a set of comparables for the Employer's comparables has been established which excludes Sheboygan.<sup>20</sup> Can Plymouth employees be a "comparable" of Sheboygan without Sheboygan employees being a comparable of Plymouth?

In the instant case, there is a relatively complete set of data on the 10 largest districts to use for comparisons. While not as proximate, these districts are more similarly sized and the services appear to be more similar, so they will be given a primary role for comparison purposes under criteria (d.). The contiguous 8 districts have a number of employees providing undoubtedly similar services and will be given secondary consideration.

### Basis for Comparisons

The parties raise classic issues in wage comparisons for purposes of interest arbitration. Is the appropriate comparison between wage and benefit levels or between changes in those levels? Are the changes best measured as percentages or absolute amounts? Both employers and unions come down on all sides of the issue when helpful to their respective causes. Similarly, both sides conveniently vacillate on the size vs proximity debate in determining comparability.

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<sup>19</sup> see, for example, Johnson in Kewaskum Auxiliary Personnel, (Dec. No. 26484-A), Krinsky in Tomah Area School District Non-Teaching Employees, (Dec. No. 26799-A), and Rice in Nekoosa Educational Support Personnel, (Dec. No. 26636-A). To illustrate, the employer in Kewaskum (a district adjacent to one of the Employer's proposed comparables in the instant case) also argued that Kewaskum school district auxiliary personnel should be compared to the athletic conference based on similarity of the number of students, teachers, etc. The union argued that nearby districts (3-4 times as large) were the more appropriate comparables.

<sup>20</sup> Plymouth School District. Representatives for the Plymouth District and support staff union who are also the representative in this case argued that Sheboygan was not in the comparable group.

Interest arbitrators vary in emphasizing one over another basis of comparison, although typically they will examine both differences in wage levels at "benchmarks" as well as dollar and percent increases to determine the reasonableness of offers. The Undersigned follows this approach and is not committed to the relative importance of any one measure.

The Union asks the arbitrator to base his award on consideration of percent increases in wages among the comparables for two reasons. First, it is difficult to match positions between employers based on job differences, pay periods, and other factors. Second, doing so maintains the relative wage relations bargained. The first reason for this request places the Arbitrator in a difficult position. The Union has already convinced the Arbitrator that Clerical/Technical employees in its list of comparables are more similar to MMSD than are those in Districts on the Employer's list. Having won that argument, it is now suggesting that significant differences exist between MMSD and the other "9" such that direct comparisons are not possible; it is therefore most appropriate to simply compare percent changes in wages. It seems logical to this Arbitrator that the very reason for establishing comparability is to be able to make such benchmark comparisons whenever possible. Were this not to be the case, the Union should seemingly be content to compare the percent increases of DeForest or Monona Grove (or Owen-Withee, for that matter) with the offers for MMSD.

Is it appropriate to compare only three (3) benchmarks (or the one used by the Union) when the District has 73 categories of employees? Clearly this is not an ideal course to take, but it is not necessarily inappropriate. Classically in the arbitration of teachers' interest disputes, only 5 or 7 benchmarks (out of 90+ cells) are used for comparisons, but relatively few teachers occupy those cells on the salary schedule. In the case of teachers, this internal wage structure is presumptively reasonable and rational, or at least mutually agreeable (most of the time) if the teachers are represented employees. If a district's BA 7th, MA, and MA 10th benchmarks are paid reasonably, then presumably the BA+8 5th step is as well. Here, the MTI represents the SEE unit employees, and according to hearsay evidence, represents them very well. Employees in the comparable districts urged by the Union are also represented employees. The Union's point here is very well taken, since the wage structure of non-union employers may be arbitrarily, as well as unilaterally determined. The analogy made here is not perfect, since teachers are probably more homogeneous than are units like the SEE. But the practice of comparing (benchmark) "samples" is a well established technique in interest arbitration.

Is the "sample" a bad sample? Are the Clerk Typists, Elementary Secretaries, and Payroll Clerk



at the minimum and maximum pay levels "overpaid" compared to Programmer Analysts, Bilingual Resource Specialists, or Cataloging Clerks in the MMSD? If so, how does this "overpayment" compare to how benchmark and other positions are related among the Union's comparables? No such evidence of "overpayment" within the MMSD or within other districts has been presented. Would evidence exist? Again, these are well represented employees. Moreover, both parties have testified to the expensive (\$170,000+) and extensive study recently conducted by the District with the cooperation of the MTI. Wage adjustments have been implemented which presumably improve the internal wage structure by making it even more rational.

Based on the foregoing, the Arbitrator is not willing to discard comparisons of salary levels at benchmarks. He understands that there are recognized differences in general salary levels between employers which are deemed "comparable" based on bargaining history, costs-of-living, and other factors and understands that these are not to be significantly disturbed except for very compelling reasons. This is the second reason for urging percent increase comparisons. Employers make the same argument when they pay below average. Arbitrators tend to be conservative, espousing a view that their award would best mimic a voluntary settlement, and thereby cause the least disturbance. They are not of one voice in preferring similar dollar increases over percent increases or vice versa, and tend to look at both (in addition to wage levels). Wage increases, whether absolute or percent, will also be compared in order to determine which of the two very reasonable offers is "more reasonable" in this case.

#### Wage comparisons

The Employer argues that the wage levels of the SEE unit significantly exceed the averages of the contiguous 8 districts. Table 4 below shows that wage levels in the MMSD at the benchmarks selected by the Employer are around \$ 2/hr. higher. It also shows that MMSD position viz these districts will not erode.

Table 4: MMSD-SEE wages vs the "Contiguous 8" districts (dollar difference)

benchmark	range	1989-90	1991-92	1992-93Bd	1992-93U	1993-4B*
Clerk Typist	minimum	\$ 1.45	\$ 1.54	\$ 1.60	\$ 1.63	\$ 1.55
	maximum	1.65	1.97	2.04	2.07	1.98
Elementary Secretary	minimum	3.29	3.61	3.69	3.73	3.71
	maximum	3.83	4.46	4.86	4.92	4.91
Payroll Clerk	minimum	1.31	1.55	1.78	1.82	1.74
	maximum	1.45	1.87	2.10	2.14	2.04

Source: Calculated by the Arbitrator from EX 16, 17, 20, 21, 22, 25, 26, 27.

\* The District's wage is included in its computation of the average. The District increased salaries in unsettled districts by 4.35% (MTI-SEE's offer) for 1993-94.

As indicated above, the Arbitrator would give secondary consideration to such a comparison. The Union's comparable pool, the 10 largest districts in Wisconsin can be used for a similar comparison. It also shows that wages in the MMSD tend to be higher, although by somewhat smaller amounts. Moreover, it shows that an award in favor of the District in this case does not fundamentally change the established wage relations of the pool of "10."

Table 5: MMSD-SEE wages vs the "Largest 10" districts (dollar difference)

benchmark	range	1989-90	1991-92	1992-93Bd	1992-93U	1993-4B*
Clerk Typist	minimum	\$ 1.02	\$ 1.12	\$ 1.01	\$ 1.04	\$ .96
	maximum	1.75	2.13	2.11	2.15	2.09
Elementary Secretary	minimum	2.32	2.51	2.77	2.81	2.76
	maximum	3.38	3.92	4.27	4.32	4.31
Payroll Clerk	minimum	1.02	1.18	1.27	1.31	1.23
	maximum	1.82	2.17	2.34	2.37	2.31

Source: Calculated by the Arbitrator from EX 37, 38, 41, 42, 43, 46, 47, 48, 51. The District's wage is included in its computation of the average.

\* The District increased salaries in unsettled districts by 4.35% (MTI-SEE's offer) for 1993-94. The Union questions this methodology, though it seems reasonable to the Arbitrator. The "gap" will widen if a) the Union prevails in this dispute or b) other districts settle for less than the 4.35% sought by MTI-SEE, which appears likely (see p. 9 under the Union's Arguments, as well as UX 49 which shows the Big 10 districts receiving average increases of 3.94% at the min. and 3.63% at the max.).

The Union's argument that the District's offer for 1992-93 is low in comparison to the 10 largest districts' percentage increases appears correct, although the dollar difference between the MMSD and the "10" remains. The Union further argues that the relative wage relation between the MTI-SEE and the other districts ought not to be disturbed through arbitration. This will occur if it receives a similar percentage increase. Because of the differences in wage levels, however, this is not necessarily the case. As seen below, the wage gap between the MMSD grew in 1991-92 in cents per hour and percent. The Board's offer for 1992-93 is lower in percent, but somewhat higher in cents per hour. The data appear inconsistent with Table 5 above, but the average increases below exclude the MMSD while the Board included the MMSD in the data on which the above two tables are based.

Table 6: MMSD-SEE wage increases vs the "Largest 10" districts  
(cents per hour and percent differences)

benchmark	range	1990-91 to 1991-92		1991-92 to 1992-93	
		cents/hr.	percent	cents/hr.B	percent B
Clerk Typist	minimum	\$ .09	.6%	\$ .0	- .5
	maximum	.15	.7	.04	- .5
Elementary Secretary	minimum	.17	.8	.07	- .5
	maximum	.23	.7	.10	- .7
Payroll Clerk	minimum	.11	.7	-.01	- .5
	maximum	.16	.7	.02	- .7

Source: Calculated by the Arbitrator from EX 39, 40, 44, 45, 49, 50. The District's wage increase is excluded in its computation of the average. The District adjusted for the split increase in Sheboygan, resulting in an average wage increase in 1992-93 of \$.02 less than Madison under the Board's offer but .2% more (vs an unadjusted \$.0 and .5%) at the entry level. At the maximum level, the wage at MMSD will rise \$.07 more than the "9" average or .1% less than the "9" average. The entry level Elementary Secretary wage at the MMSD will rise \$.09 more or .3% less than the adjusted "9" average while at the maximum wage level, it will rise \$.12 more or .3% less. The MMSD Payroll Clerk would get \$.01 more or .2% less at the entry level, while the maximum wage would increase \$.05 more or .3% less than the average "9."

What conclusion can be drawn regarding the reasonableness of the offers under criteria (d.)? The evidence is mixed regarding wage increases. The Union's offer is closer in a relative sense, although the District's offer is closer in an absolute sense. Given the differences which exist in wage levels between the MMSD and the other 9 large districts, it appears to the Arbitrator that the District's offer is to be preferred. Were the District to have made an offer which included wage increases which were on both accounts significantly less than in the "9" based on wage level comparisons, such a conclusion would be difficult to find.

#### Other factors and issues

The nature of the disputed comparisons of MTI-SEE unit employees and other local public employees follows somewhat along the lines of the above discussion. Citing possible inaccuracies in making comparisons and the need to maintain historical wage relationships, the Union examines the respective percentage offers in light of other internal units' 1992-93 increases as well as for other Dane County and Wisconsin public employers and finds the District's offer wanting. The MMSD Custodial, Food Service, and Teacher's units received 4.3% increases during 1992-93, the last year of their 2-year agreements. The Union's offer for 1992-93 would be preferred based on this criteria, but there is no additional, real basis for the evaluating the subsequent year offers. Other local public employees are receiving percent wage increases which average 4.13%-4.17%, equidistant from the parties' offers for 1992-93 (UX 47). The one settlement for 1993-94 (Dane County) is also between the parties' offers. The State of Wisconsin Secretary I, however, will be receiving a percent increase which is closer to the Employer's offer. The Union's evidence also shows that secretaries employed by other local public employers may be paid at levels somewhat less than at MMSD (UX 46). The Arbitrator would consider these comparisons to only suggest that the Employer's offer is preferred under criteria (e.) for all of the reasons cited by the Union.

Comparisons under criteria (f.) would favor the Union's offer were comparisons limited to percent increases of unionized secretaries employed in the three large private firms cited by the Union. These wage levels tend to be somewhat lower than in the MMSD. The Employer's evidence, a survey encompassing a larger sample of private employers, suggests to, but does not convince the Undersigned that the MMSD wage levels are higher. The Union's objections discussed above are noted. Cost-of-living and overall compensation criteria are less determinative in this award. The offers are both reasonable and vary little from CPI changes. Since this is a wages-only dispute, the parties' evidence and arguments have for the most part

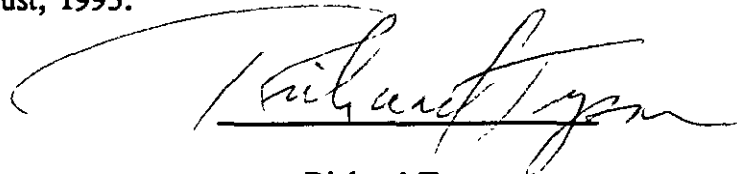
focused on wage comparisons. Lastly, the interests and welfare of the public may be better served by an award in favor of the District if it serves as a precedent for pending settlements and/or arbitration awards, given the legislation recently passed. However, these and other employees should not shoulder the burden of meeting the District's budget without reduction in services, particularly if, in the Arbitrator's opinion, unit employees are under the new challenges to which they have testified.

### Award

Having carefully considered all of the evidence and argument of the Parties set forth above as well as the arbitral criteria provided under Section 111.70 Wisc. Stats., it is the decision of the Undersigned that:

The final offer of the Madison Metropolitan School District is to be incorporated into the 1993-94 Collective Bargaining Agreement with the Madison Teachers, Inc.

Dated this 31st day of August, 1993.

A handwritten signature in cursive script, reading "Richard Tyson", written over a horizontal line.

Richard Tyson,  
Arbitrator

# Madison Metropolitan School District

SEP 02 1993

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teryl H. Wilhoyte, Ph D.  
superintendent

Doyle Administration Building  
545 West Dayton Street  
Madison, Wisconsin 53703-1967

March 17, 1993

Mr. Herman Torosian, Commissioner  
Wisconsin Employment Relations Commission  
P. O. Box 7870  
Madison, WI 53707

RECEIVED  
MAR 19 1993

WISCONSIN EMPLOYMENT  
RELATIONS COMMISSION

RE: District Final Offer  
Supportive Educational Employees Bargaining Agreement

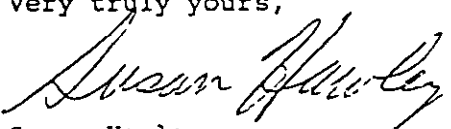
Dear Mr. Torosian:

MTI and the District met last week and tentatively agreed to several proposals regarding the above referenced. Enclosed please find the District's final offer for the Supportive Educational Employees Bargaining Agreement. This final offer includes all other Collective Bargaining Agreement language contained in the previous contract and the tentative agreements. Following is a brief summary of the positions of the parties:

	BOE	MTI
Salary	4% the first year 3% the second year	4.35% the first year 4% the second year

If you have any questions, please call me. The District does not wish to make any other changes. Could you please certify to this offer.

Very truly yours,



Susan Hawley  
Labor Contract Manager

654SH/nd  
Enclosure

BOE  
SEE UNIT  
1/15/93  
FINAL OFFER

MAR 19 1993

VISCONSIN EMPLOYMENT  
RELATIONSHIP COMMISSION

III - Salary - A

A. SALARY

1. The salaries and classifications as shown in Addendum A and Addendum B shall be the minimum salaries for the classifications shown and shall be attached hereto and made a part hereof for the life of this Agreement. This section shall not be construed to prevent the employer from creating new classified positions within the salary structure shown. The Union shall receive notice of the creation of each new position and thereby be advised of any new classification and shall have the right to grieve the placement of the position in the pay structure within thirty (30) days after receipt of notice.
2. Employees who were reclassified downward on the salary schedule as a result of the Mercer Meidinger Hansen Study shall maintain their former classification pay range on the salary schedule which they held prior to implementation of said study.
3. Employees who were reclassified upward on the salary schedule as a result of the Mercer Meidinger Hansen Study shall be paid according to their new classification pay range and be compensated in accordance with the range rate.
4. Employees hired after the implementation date of the Mercer Meidinger Hansen Study shall be placed at the classification pay level established by the aforementioned study.
5.
  - a. In the event the content of an existing job classification changes sufficiently to merit consideration for reclassification, an employee may initiate a written request to the District for reclassification.
  - b. The reclassification request shall be submitted in writing with supportive rationale to the office of Human Resources. Said requests will then be forwarded to the representatives designated by MTI and the District with a copy sent to MTI. Said representatives shall be known as the Joint Job Evaluation Committee. The Job Evaluation Committee shall consist of two (2) representatives designated by the District and two (2) representatives designated by MTI. The Committee shall have 30 days from the date they receive the request to agree on the placement of the job classification in a salary range which is, in the opinion of the majority of the Committee, in proper relation to and commensurate with other job classifications covered by this Agreement.

- c. If no agreement is reached among a majority of the Committee's members, the Committee shall request through the principal parties, MTI and the District, that the WERC supply an individual to mediate the dispute and, if necessary, to cast the deciding vote relative to the reclassification request and placement of the job classification in a salary range. Any adjustment will be paid retroactively commencing with the beginning of the first pay period following the reclassification request. The Committee and the WERC designee will not have the authority to establish a new or revised salary schedule.

6. IMPLEMENTATION OF THE BIWEEKLY SALARY SCHEDULE\*  
Addendum A

- a. It is agreed that the attached salary schedule as shown in Addendum A is an increase in base wages of 4.0% over the salary schedule shown in Addendum B (~~1988-90~~ 1990-92 Collective Bargaining Agreement) and shall be in effect for the period commencing ~~8/2/90~~ 8/30/92 and continuing through ~~8/31/91~~ 8/28/93. These schedules shall be attached to this agreement and shall be known as Addendum A.

Addendum B

- b. It is agreed that the salary schedule as shown on the attached Addendum B is an increase in base wages of ~~4.33%~~ 3.0% over the salary schedule shown in the attached Addendum A and shall be in effect for the period commencing ~~8/1/91~~ 8/29/93 and continuing through ~~8/28/92~~ 8/27/94. The schedule shall be attached to this agreement and shall be known as Addendum B.

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- \* The position classifications on the schedule will be as set forth in the Arthur Young Study. Positions downgraded will appear twice, once as they previously existed. The latter will be designated on the schedule with an asterisk and will remain on the schedule so long as the employee is in said classification.