BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of an Impasse Between

MONONA GROVE SCHOOL DISTRICT

and

LOCAL 60, AFSCME

Decision No. 28423-A

Appearances:
Jack Bernfeld, Staff Representative, for the Labor Organization.
Barry Forbes, Staff Counsel, Wisconsin Association of School Boards, for the Municipal Employer.

ARBITRATION AWARD

The above-captioned parties selected, and the Wisconsin Employment Relations Commission appointed (Case 66, No. 52037, INT/ARB-7513, Dec. No. 28423-A, 6/27/95) the undersigned Arbitrator to issue a final and binding Award, pursuant to Sec. 111.70(4)(cm)6 and 7 of the Municipal Employment Relations Act, resolving an impasse between said parties by selecting either the total final offer of the Municipal Employer or the total final offer of the labor organization.

A hearing was held in Monona Grove, Wisconsin, on September 20, 1995. No transcript was made. Briefing was completed on December 19, 1995.

The collective bargaining unit covered in this proceeding consists of all regular full-time and regular part-time educational assistants employed by the Municipal Employer. There are approximately 40 employees in this unit.

The parties are seeking a collective bargaining agreement for the period July 1, 1994, through June 30, 1996.

THE FINAL OFFERS:

The Municipal Employer's final offer is to increase the wage rates set forth in the parties' immediately preceding collective bargaining agreement as follows:

1.0% per cell on July 1, 1994
1.0% per cell on January 1, 1995
4.0% per cell on January 1, 1996

This offer would also "change the contract duration in section 13.03 to make the agreement effective on July 1, 1994, through June 30, 1996."

The Labor Organization's final offer would also change the term of the agreement as specified in the Municipal Employer's offer, but also it would revise the preceding agreement's wage provisions as follows:

A. Effective July 1, 1994 eliminate the Supervisory Assistant salary schedule Employees classified as Supervisory Assistant shall be placed at the appropriate step on the Instructional Assistant salary schedule.

B. Effective July 1, 1994 increase all wage rates by three percent (3%).

C. Effective January 1, 1995 increase all wage rates by four percent (4%).

D. Effective July 1, 1995 increase all wage rates by four percent (4%).

E. Effective January 1, 1996 increase all wage rates by four percent (4%).

In addition, the Union's offer would amend section 6.01 of the prior agreement by adding Thanksgiving Day as a paid holiday effective July 1, 1994 and Christmas Day as a paid holiday effective July 1, 1996.

DISCUSSION:

As stated by the Municipal Employer, there are three basic matters in conflict between these final offers: wage rates, the employee classification-wage structure, and holidays.

The Municipal Employer gives very little attention to the holiday issue in its argument, whereas the Union presents data that indicate that this bargaining unit receives fewer holidays than other employees of this Employer or comparable employers. The Arbitrator concludes that this issue alone is not of material importance to the Municipal Employer and that applying the statutory criteria for such determinations clearly favors the Union's offer on this item.

Respecting the restructuring, while the Municipal Employer objects to the Union's offer, it made a substantially similar proposal itself as an element of a larger proposal during the parties' negotiations preceding this arbitration. Clearly the Municipal

Employer was hoping to achieve other settlement terms as well when it made that offer and should not suffer for its efforts to reach a complete voluntary collective bargaining agreement. However, it must be inferred from this history that the structure proposed by the Union in its offer is not, per se, contrary to or incompatible with the Municipal Employer's policies or administrative capacity.

Against this background it is obvious that the only major item in dispute is wage levels. Here the parties engage in familiar argumentation over comparable school districts and employees. The Municipal Employer does not maintain formal job descriptions for these employees so it is somewhat problematical to compare them to counterparts at other districts. They are clearly more comparable in that context than to employees of other categories of municipal or private employers, however. In general, these employees assist in the classroom, including with special education students; and "supervise" students in non-classroom settings such as playgrounds.

Probably the most substantial discrepancy between the parties' positions on wages lies in the school districts proposed as comparable. The Union, contrary to the District, would include the Madison Metropolitan School District. The Municipal Employer contends that the best comparisons are with all the districts in the Badger Athletic Conference and Dane County, except Madison. This is a difference that has been examined by other Arbitrators, as the parties' briefs amply demonstrate, in many contexts. In addition to citing these earlier more or less analogous disputes, both parties offer extensive analyses of the relationships among these districts based upon geographic, economic, financial, political, and sociological factors.

The undersigned finds that this debate obscures rather than illuminates the material realities to which the concept of comparison so strongly adopted by the statute refers. Those are realities that the instant District is more or less of an enclave within the Madison District as are the municipal, economic, and social communities that it serves and which support it. The idea that the wages paid to similar employees of the Madison District are irrelevant or immaterial simply conflicts with all real experience. As the Municipal Employer's brief demonstrates, conventional factors used in such analyses may be examined and offered to question such a comparison. However, in the view of the Arbitrator, what that truly reveals is the susceptibility of data to misapplication.

The community served by the Municipal Employer is as thoroughly integrated as a matter of geography, economics, society, and culture into the community served by the Madison district as a neighborhood or attendance area in the City of Madison. Only political boundaries and their consequences militate to the contrary. The contention of irrelevancy of one district to the other simply conflicts with ordinary reason and experience.

This being the case, the Arbitrator must be more impressed by the comparisons emphasized by the Union. (However, it is noted that the undersigned does not share the

view of the Union and other Arbitrators that unorganized, and even newly organized, bargaining units should not be compared. Neither does the Arbitrator wish to reinforce the Union's revision of its comparability position between the hearing and the briefing in this case.) Moreover, the Arbitrator prefers comparing wage levels to comparing percentage of increase or amounts of wage increase. Wage levels are a better indicator of the critical labor market position of the employer and the employees.

Comparing wage levels among the Union's selected Districts, which include Madison, Middleton, Sun Prairie, Verona, and McFarland (which are adjacent to Madison as is the Municipal Employer) indicates that by adopting the Union's offer the employees in the instant unit will continue to receive the lowest wage rates, as they have in the past. Obviously, were the Municipal Employer's offer adopted that position would not only be continued, but would be a matter of lagging even further behind.

The current labor market position of the Municipal Employer may or may not have caused the high rate of turnover among these employees. There are other plausible explanations. There also may be other reasons why it has hired employees at above the contractual minimum wage levels, although alternative rationales are not nearly so clear. The Municipal Employer contends that the Union has not met the burden of proving that the employees of other Districts to which it compares the pertinent unit members have sufficiently similar tasks and responsibilities to warrant comparison of their wage rates. The Arbitrator finds the concept of "burden of proof" incongruous in this type of proceeding. It does not seem grounded upon statutory terms or policy. Moreover, the likelihood that employees referred to by very similar titles in the same category of enterprise within a very limited geographic area have relatively similar responsibilities seems more likely than otherwise.

On these grounds, as well as due consideration of the many other contentions of the parties, the Arbitrator is compelled to prefer the Union's offer on wage rates.

AWARD

On the basis of the foregoing, the record as a whole, and the "factors" specified by the Municipal Employment Relations Act for such selections, the undersigned Arbitrator selects and adopts the total final offer of the Labor Organization.

Signed at Madison, Wisconsin, this 16th day of February, 1996.

Howard S. Bellman
Arbitrator