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BEFORE THE ARBITRATOR

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

In the Matter of the Stipulation of
MIDDLETON-CROSS PLAINS AREA
SCHOOL DISTRICT

Case 62 No. 51528
INT/ARB-7403
Decision No. 28489-A

and

Sherwood Malamud
Arbitrator

LOCAL 60, AFSCME, AFL-CIO

Heard: 12/05/95
Record Closed: 2/02/96
Award Issued: 4/02/96

To Initiate Arbitration Between Said
Parties

APPEARANCES:

Jack Bernfeld, Staff Representative, 8033 Excelsior Drive, Suite B,
Madison, Wisconsin 53717-1903, appearing on behalf of the
Union.

Godfrey & Kahn, S.C., Attorneys at Law, by Jon Anderson, Suite 202,
131 W. Wilson St., P.O. Box 1110, Madison, Wisconsin 53701-
1110, appearing on behalf of the Municipal Employer.

ARBITRATION AWARD

Jurisdiction of Arbitrator

On September 5, 1995, the Wisconsin Employment Relations Commission appointed Sherwood Malamud to issue a final and binding Award pursuant to Sec. 111.70(4)(cm)6.c., Wis. Stats., with regard to an interest dispute between Middleton-Cross Plains Area School District, hereinafter the District, Middleton or the Employer, and Dane County, Wisconsin Municipal Employees Local 60, AFSCME, AFL-CIO, hereinafter the Union. Hearing in the matter was held on December 5, 1995, at the administrative offices of the District in Middleton, Wisconsin. Initial briefs were exchanged through the Arbitrator on January 22, 1996. On February 2, 1996, the parties advised the Arbitrator that reply briefs would not be filed. The record in the matter was closed on February 2, 1996. Based upon a review of the evidence and arguments submitted, and upon the application of the criteria set forth in Sec. 111.70(4)(cm)7 a.-j., Wis. Stats., to the issue in dispute herein, the Arbitrator renders the following Award.

STATEMENT OF THE ISSUE

With the exception of one item, the parties reached agreement on the terms and conditions to be included in the successor to the 1992-94 Agreement covering the 1994-95 and 1995-96 school years.

The Union Offer

The Union proposes that Section 26.00 Salary (d) in the expired agreement be amended to create a 4th longevity pay step at 12% of the base maximum starting with the 181st month of employment. The Union proposes that the new longevity step become effective January 1, 1996 and remain in effect for the last six months of this two year agreement.

The Employer Offer

The Employer proposes to maintain the status quo. It proposes to retain the three-step longevity schedule at: 3% of base maximum starting with the 61st month of employment; 6% of base maximum starting with the 97th month of employment; and 9% of base maximum starting with the 145th month of employment.

STATUTORY CRITERIA

The criteria to be used to resolve this dispute are contained in Sec. 111.70(4)(cm)7, Wis. Stats. Those criteria are:

7. Factors considered. In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator shall give weight to the following factors:

- a. The lawful authority of the municipal 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 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 other employees performing similar services.

e. Comparison of the wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes 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 employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes 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 employes, 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, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

BACKGROUND

Middleton is a fast growing suburb in the Madison metropolitan area that abuts the west side of the City of Madison. This is the second interest arbitration case between this Employer and Union. In 1987, Arbitrator Robert Mueller issued an award in which he discusses the comparability grouping of school districts to which the Middleton custodial employees are to be compared. Nonetheless, the parties disagree over the appropriate comparability grouping in this case. The Employer argues that the comparability grouping identified by Arbitrator Mueller should be used. The Union argues that the Madison Metropolitan School District should be included in the group of comparables.

There are two other non-professional units and one professional unit of employees in the Middleton-Cross Plains Area School District. The clerical employees and the educational assistants of this District are non-professional employees organized in two separate units. Food service and transportation employees are not organized.

The total package cost difference between the two final offers amounts to \$9,022. However, 15 of the 38 employees in this bargaining unit would be eligible to receive the proposed fourth step, the 12% longevity proposed by the Union for the last six months of the agreement.

The Group of Comparables

The District asserts that Arbitrator Mueller established the comparables as: DeForest, McFarland, Monona Grove, Oregon, Sun Prairie, Verona, and Waunakee. The Union would include Madison Metropolitan School District (MMSD) in this comparability pool. The Union would also include the municipal employers in the greater Madison labor market of Dane County, the City of Madison, and Madison Area Technical College (MATC).

The Union notes that since Arbitrator Mueller issued his interest arbitration award, Middleton has grown. Middleton is part of the labor market in the Madison urban area. The District's custodians live in Middleton and in Madison, as well as, other comparable communities. The WIAA recognizes Middleton's growth. At the time Arbitrator Mueller issued his award, the District was part of the Badger Conference along with DeForest, Monona Grove, and Waunakee. Now Middleton is part of the Southern Wisconsin Conference which includes Madison's four high schools, Beloit, Janesville Craig and Parker and Sun Prairie.

The Union notes that Middleton is similar to the Monona Grove School District. Arbitrator Kessler, in a recent award in Monona Grove, describes the similarity between the two communities:

The Monona Grove District serves several Madison suburban communities. Although the District is substantially suburban, it contains two very different

areas. The area surrounding Cottage Grove consists of newly developed subdivisions and some agricultural land. The balance of the District, the area in the City of Monona, is an older, completely developed suburban community. The Cottage Grove area is similar to the area in the school districts serving DeForest, McFarland, Middleton-Cross Plains, Oregon, Sun Prairie, Verona, and Waunakee. A high percentage of the residents of those communities work in the City of Madison (Monona Grove School District, INT/ARB-7391, 10/95, at p. 14).

Arbitrator Petrie found Madison comparable to Monona Grove in the teacher arbitration dispute that he decided in Monona Grove School District, Dec. No. 25034-A, 7/88. The Union notes that Arbitrator Zeidler identified Middleton as a primary comparable to Madison in his decision concerning the educational assistants in the Madison Metropolitan School District, Dec. No. 27610-B, 10/93.

The Union omits the data concerning the wages and working conditions of custodians in DeForest. That unit was recently organized. At the time of the hearing in this matter, the parties in DeForest were in the process of negotiating an initial agreement. The Union cites the decision of the late Joseph Kerkman in Washburn School District, Dec. No. 24278-A, 9/87, that the data concerning non-represented employees should be given little weight. In this particular bargain, the Union argues that the wage rates and salary schedules established for DeForest custodians were unilaterally set by the Employer. Otherwise, the Union recognizes that DeForest should serve as a comparable to Middleton.

The Union argues that the cities of Madison and Middleton, Dane County, Madison Metropolitan Sewerage District, and MATC should be used as primary comparables. The Union cites Arbitrator Weisberger in Milwaukee Board of School Directors, Dec. No. 27841-A, 6/94, in which she accords substantial weight and comparability status to other municipal employers in the Milwaukee area in her analysis in that case.

The Employer strenuously objects to the use of Madison as a comparable in this proceeding. It notes that Madison is between seven to

eight times larger than Middleton in almost all measures: in equalized property value, student enrollment, teacher FTE. The District emphasizes that the Mueller comparability grouping should be used. The use of comparables previously established should be followed by succeeding arbitrators, unless there is evidence of substantial change or a significant basis for using or adding to the comparability pool. Otherwise, the parties will engage in comparability shopping to justify their positions.

The District directs the Arbitrator to the award of Arbitrator Oestreicher in Ashwaubenon School District, Dec. No. 27189-A, 9/92. Ashwaubenon is a suburban school district to Green Bay, much as Middleton is a suburban school district to Madison. Arbitrator Oestreicher observes that:

There are so many similarities between these two school districts [Green Bay and Ashwaubenon] that it doesn't seem satisfactory to simply make the finding that they are not comparable. The fact is that Green Bay is one of the larger metropolitan school districts in Wisconsin. Decision makers are aware that in many instances there are environmental and logistical characteristics present in large urban school districts which do not exist in proximately located suburban districts. It is for that reason that when larger metropolitan districts select comparables, they look for other school districts, often geographically distant, with similar urban characteristics. It is significant to note, that while members of the Bay Conference including these parties have from time to time asserted that Green Bay was comparable to Bay Conference districts including Ashwaubenon, the converse has not happened.

The Employer concludes that due to its size, Madison is in a "league" of its own. In this regard, the Employer cites decisions of other arbitrators who have rejected Madison as a comparable: Middleton-Cross Plains Area School District (Teacher Unit), Dec. No. 19133-A, 6/82 (Fleischli); Custodial Unit (Mueller award, supra); Teacher Unit, Dec. No. 24092-A, 7/87 (Imes); Education Assistants, Dec. No. 27599-A, 12/93 (Baron). The Employer notes that Arbitrator Baron recognized that sheer size outweighed

geographic proximity in the determination of comparability. She noted that Madison's affect was indirect. She rejected a direct comparison between Middleton and Madison.

The Arbitrator agrees with the Union's assertion that Arbitrator Mueller does not reject Madison schools as a comparable to Middleton. Both the Union and the Employer make persuasive arguments relative to the inclusion/exclusion of Madison from the comparability pool. Certainly, in the years since the issuance of the Mueller award in 1987, development on Madison's west side and Middleton's east side has only strengthened the argument that Middleton and Madison have become more integrated communities.

On the other hand, Madison is significantly larger by any measure than Middleton schools. It is compared to the largest school districts of the state such as Milwaukee, Green Bay, Racine, and Kenosha.

Frequently, this Arbitrator attempts to identify a range of comparables. Both larger smaller districts are included in a comparability pool that serves as the basis for the application of the comparability criteria in a particular interest arbitration dispute. This range of comparables is afforded in the comparability grouping comprised of: DeForest, McFarland, Monona Grove, Oregon, Sun Prairie, Verona, and Waunakee. Student enrollment ranges from 1,945 in McFarland to 4,508 in Middleton, the largest of the comparability grouping excluding Madison. Sun Prairie is second to Middleton in student enrollment at 4,364 in 1994-95 and a teacher FTE of 280.82. The equalized value of property in Middleton is \$1.5 billion; the largest in the comparability group excluding Madison. Sun Prairie has economic resources in property totaling a little over \$1 billion. The other districts range in property value from \$370 million in McFarland to \$816 million in Verona. In contrast, Madison's equalized value in 1994-95 approximates \$8.5 billion. It raises taxes totalling \$164 million to Middleton's \$25 million.

The Arbitrator finds that including Madison as one of six or seven comparables to Middleton understates Madison's influence. The Arbitrator does not include Madison in the computation of wage rates with and without longevity. The relative size of Madison and its generally higher wage rates

provides an upward push on wages and working conditions in the area. This is particularly so for the duration of this Agreement, when the unemployment rate in the Madison metropolitan area is one of the lowest in the nation.

The District argues that the influence of the Madison School District is already reflected in the wage rates and benefits paid by the suburban school districts surrounding Madison. The Arbitrator finds that it is necessary to articulate this influence. The Arbitrator recognizes this upward push and economic influence of Madison by noting an upward trend in the analysis of the applicable statutory criteria that generally supports wage and benefit increases.

Although DeForest School District is comparable to Middleton, since the custodial employees were only recently organized, the Arbitrator has not given full weight to the custodial wage levels of the De Forest district in the analysis that follows.

The Criteria

The Arbitrator has considered the statutory criteria: the lawful authority of the municipal employer, the stipulations of the parties, the interests and welfare of the public, comparability to private employment, overall compensation and changes in any of the foregoing circumstances. These criteria do not serve to differentiate between the final offers of these parties. Therefore, these criteria are not discussed below.

Comparability - Custodial Employees to Custodial Employees

The Arbitrator contrasts the lowest custodial classification by wage rate and longevity among the comparables to the wage and longevity of the District's Custodial Worker I. Similarly, the highest classified employee, by wage rate, of the comparables is contrasted to the wage rates generated in the District by the base maximum and longevity plan at the Maintenance Worker classification.

There is no dispute between the parties for the first year and a half of the successor agreement. For the 1994-95 school year, the average base

maximum for the Custodial Worker I classification is \$10.91, and at the Maintenance Worker classification it is \$12.62. In Middleton, it is 11.86 and 12.88, respectively.

The average wage rate with longevity for the lowest classified custodial employee among the comparables is \$11.72 (excluding De Forest). In Middleton, the top step plus longevity for the Custodial Worker I is \$12.93. The Maintenance Worker, the highest classified custodial employee of this Employer, is \$14.04 at the top step with longevity at 9%. It is \$13.74 for the comparables.¹

For the 1995-96 school year, the hourly rate with longevity for the Custodial Worker I classification after the fourth, the 12% longevity step goes into effect under the Union proposal, is \$13.65. Under the District offer it is \$13.29. The average among the comparables inclusive of longevity is \$11.21 at the lowest custodial rate.

At the Maintenance Worker classification, the highest custodial classification among the comparables, for the 1995-96 school year, the average with longevity is \$13.81. In Middleton under the Union offer it is \$14.80, and under the District's offer it is \$14.40.² This data suggests that in Middleton, the wage levels are near the top. Only Monona Grove and (Madison) pay higher rates than Middleton.

Longevity provides a basis for increasing the wage rates for employees who have worked over an extended period of time for an employer. The comparison of 15 or 20 year employees working in comparable school districts to the wage rates with longevity paid by this Employer, demonstrates that the wage levels in Middleton range toward the top regardless of whether the longevity step of the comparable employer is at 9, 10, 11 or 12%.

The Arbitrator concludes that the Middleton wage levels are consistent with the average among the comparables at the base maximum at

¹These computations are based on Union Exhibit #24.

²This data was compiled based on Union Exhibit #24.

the lowest classification and the highest classification. When longevity is included at the maximum longevity step for each of the comparable school districts, the wage levels at the lowest and highest classifications exceed the average among the comparables.

The Union case is premised on a comparison of the longevity schedules found in comparable school districts as contrasted to the Middleton longevity schedule. In McFarland, after 14 years with the district, the fourth step of the longevity plan provides an additional 91 cents per hour at the base maximum. At the lowest custodial classification, the 91 cent per hour longevity translates into 8.2% and 7.1% at the highest classification for the 1994-95 school year. Inasmuch as longevity is stated in McFarland in a fixed cents per hour, the percentage decreases with the increase in wages in 1995-96.

Monona Grove has a 7-step longevity program beginning at 3% after 53 months. The district pays 9% longevity after 156 months. Middleton pays 9% starting with the 145th month. Monona Grove's longevity schedule increases to 10% after 180 months and to 11% after 204 months. The Union proposes that in Middleton longevity increase to 12% starting with the 181st month. Even in Madison, longevity does not reach 12% until after 22 years.

Sun Prairie maintains a 4-step longevity program with 3% after 38 months, 9% (the third step) after 126 months, and 12% after 169 months. However, the Building and Grounds Working Supervisor in Sun Prairie with 12% longevity is paid \$13.98 for the 1994-95 school year. In Middleton the Maintenance Worker is paid \$14.04 in the same school year with 9% longevity.

In the 1995-96 school year, the relationship between Sun Prairie and Middleton wages inclusive of longevity narrows. The Building and Grounds Working Supervisor is paid \$14.37 with 12% longevity. The Maintenance Worker in Middleton with 9% longevity is paid \$14.40. The Arbitrator finds that the wage levels generated by the combination of base maximum and longevity schedules should be accorded greater weight than the comparison of longevity schedules, in the abstract.

In Verona, longevity is stated in cents per hour. It tops out at 35 cents after 28 years. It is far lower than the 9% top longevity step found in Middleton. The Waunakee wage schedule for custodial employees extends over a 14 year period of time. Among the seven school districts, inclusive of Madison, the longevity plans in effect top out to 11 or 12% in Madison, Monona Grove, and Sun Prairie. The longevity schedules in McFarland, Oregon (which has no longevity at least for the 1994-95 school year), Verona, and Waunakee have schedules far less attractive than the 3-step schedule in effect in Middleton for the duration of the 1994-96 Agreement. Both in terms of longevity schedules and more importantly in terms of the rates generated through the combination of longevity and base maximum, the Arbitrator concludes that the comparability criterion supports the selection of the District final offer.

Comparability - Other Municipal Employees

The Union provides data concerning the wage and longevity schedules in effect in the cities of Middleton and Madison, as well as, Dane County, Madison Metropolitan Sewerage District and MATC. The Arbitrator considers this data under the separate comparability criterion 111.70(4)(cm)7.g. In Middleton, an employee receives 9% longevity after 12 years of employment. In Dane County and the City of Madison, that 9% step is paid after 15 years. After 13 years, 9% longevity is paid at MATC. In the Madison Metro Sewerage District, 9% is paid after 16 years. In the City of Middleton, 3% is paid after 20 years. In terms of when 9% longevity is paid, the District's longevity schedule is more attractive than those of the five other large municipal employers that employ custodians in the Madison labor market.

The 11% longevity step is paid after 19 years in Dane County and the City of Madison. The longevity schedule at MATC tops out at 12% after 19 years. It tops out at 15% after 22 years in the paraprofessional unit of the Madison Metropolitan Sewerage District.

The wage rates generated in Dane County, the City of Madison (Custodial Worker II classification) and in the City of Middleton for the lowest classification of custodial employee at base maximum for the **1994-95** school year averages among these comparables without longevity to be

\$12.74.³ The average rate among these other municipal employers inclusive of longevity at the custodial classification with the lowest wage rate is \$13.93. Generally, the rates paid by these municipal employers, except for the City of Middleton, exceeds the rates paid by school districts to their custodial employees. This data supports the adoption of the Union proposal for establishing a 12% longevity step. This criterion supports the adoption of the Union's final offer and its inclusion in the successor Agreement.

Such Other Factors - Internal Comparability

In its analysis, the Union refers to the confidential clerical employees. They are not organized. There is no arbitral basis for including this group of employees in the analysis of this dispute.

Some of the other non-professional employees of the District have a 4th longevity step at 12 %. Food service employees are not represented. The Union emphasizes that these employees do have a longevity plan. It provides for 3% longevity after 54 months; 6% after 90 months; 9% after 127 months; and 12% after 154 months.

The application of longevity to custodial employees establishes wage rates that are consistent with the rates paid by other school district employers to their custodial employees. As noted above, the base maximum wage rate in Middleton is lower than Monona Grove and Madison school districts. The rates generated in Middleton with a 9% longevity plan exceed the rates afforded under the higher longevity schedules in effect in other comparable school districts.

The clerical, education assistant, and food service employees are paid a 12% longevity step after various and different lengths of employment with the District. The clerical employees receive 10% after 132 months and 12% after 168 months in their 4-step longevity plan. The Educational Assistants receive 7% after 10 years, 10% after 13 years, and 12% after 192 months or 16 years. This internal comparability data among non-professional employees of this District provides strong support for adoption

³The Arbitrator has calculated this data on the basis of Union Exhibits 37 and 42.

of the Union proposal for a 4-step longevity plan that provides 12% starting with the 181st month. This proposal contrasts with the clerical 12% step kicking in after 168 months. The Union proposal is more advantageous than the Educational Assistant plan in which 12% longevity is achieved after 192 months.

Such Other Factors - Status Quo

This Arbitrator employs the status quo analytical framework under the Such Other Factors criterion that he set out in D.C. Everest Area School District, Dec. No. 24678-A (2/88), as follows:

Where arbitrators are presented with proposals for a significant change to the status quo, they apply the following mode of analysis to determine if the proposed change should be adopted: (1) Has the party proposing the change demonstrated a need for the change? (2) If there has been a demonstration of need, has the party proposing the change provided a quid pro quo for the proposed change? (3) Arbitrators require clear and convincing evidence to establish that 1 and 2 have been met.

In City of Verona (Police Department), Dec. No. 28066-A (12/94), this Arbitrator revisited this issue and provided a lengthy explanation of his reasoning for the adoption of this analytical framework. In the context of this dispute, the status quo-quid pro quo analysis requires that the proponent of change first demonstrate a need for the change, and then offer something in exchange for the change proposed.

In this case, the flat 33 cents per hour across-the-board wage increase in each of the two years of the agreement generates a total package increase of 4.71% in the first year and 5.09% in the second year under the District's final offer. In comparison, the Union final offer generates a first year increase of 4.71%. Again, the parties are in agreement in the first year. In the second year, the Union offer generates a total package increase of 5.94%. The Union does not argue that it offers any quid pro quo for establishing a fourth longevity step at 12%. The Union's proposal would provide a 3% increase for approximately 40% of the unit in the last six months of this two year agreement.

The Arbitrator finds that internal comparability establishes the need for consistency among the various units of employees. The weight accorded to internal consistency is diminished by the data that suggests that the wage rates with longevity for Middleton custodial employees is near the top of the rates paid by comparable employers. Taking into account the upward push provided by the rates and longevity schedule in the Madison Metropolitan School District, the Arbitrator concludes that the need for change has been established by the Union.

However, there is no quid pro quo offered by the Union for this monetary change that will provide additional income to 40% of the employees in this unit. For example, the Union does not propose a lower across-the-board increase for those employees who would obtain this longevity benefit. Rather, the Union proposes a total package offer in the second year of just under 6%. The absence of a quid pro quo for the establishment of a fourth 12% step, an increase in benefit that only increases the total package increase to just under 6%, is not justified by this record. This criterion provides strong support for maintaining the status quo through the inclusion of the Employer's final offer in the successor agreement.

Cost of Living

This Arbitrator compares the total package percentage increase to the percentage increase in the cost of living. The increase in the Consumer Price Index, during the entire period at issue, ranges between 3.7 to 3.2%. The lower total package offer of the District for the 1995-96 school year at approximately 5% is preferred under this criterion to the just under 6% total package increase generated by the Union final offer.

SELECTION OF THE FINAL OFFER

In the above Discussion, the Arbitrator finds that the Comparability criterion, custodial employees to other custodial employees employed by school districts, the Cost of Living, and Such Other Factors - status quo support the adoption of the Employer's final offer. The criterion Comparability - other custodial employees employed by other municipal employers, and Such Other Factors - internal comparability support the

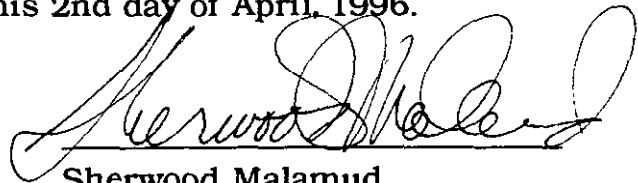
adoption of the Union's final offer for the establishment of a fourth 12% longevity step. The Union proposal to increase the wages of those at the top of the salary schedule without providing a quid pro quo for the proposed change is not supported by the criteria. The District final offer to maintain the status quo is preferred.

Based on the above Discussion, the Arbitrator issues the following:

AWARD

Under the statutory criteria found at Sec. 111.70(4)(cm)7.a.-j., Wis. Stats., and upon consideration of the evidence and arguments presented by the parties and for the reasons discussed above, the Arbitrator selects the final offer of the Middleton-Cross Plains Area School District which, together with the stipulations of the parties, shall be included in the Collective Bargaining Agreement between the Middleton-Cross Plains Area School District and Dane County, Wisconsin Municipal Employees, Local 60, AFSCME, AFL-CIO (Custodial and Maintenance Unit) for the 1994-95 and 1995-96 school years.

Dated at Madison, Wisconsin, this 2nd day of April, 1996.

A handwritten signature in cursive script, appearing to read "Sherwood Malamud", written over a horizontal line.

Sherwood Malamud
Arbitrator