STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

WHITEHALL TEACHERS ASSOCIATION, WEA, NEA, Complainant, vs. JOINT SCHOOL DISTRICT NO. 5, CITY OF WHITEHALL, and the BOARD OF EDUCATION OF JOINT SCHOOL DISTRICT NO. 5, CITY OF WHITEHALL, Respondent.	Case V No. 15337 MP-122 Decision No. 10812-A

Appearances:
Mr. John C. Carlson and Mr. Bruce F. Ehlke, Lawton & Cates, Attorneys at Law, appearing on behalf of the Complainant.
Mr. LaVern Kostner, Fugina, Kostner, Ward, Kostner & Galstad, Attorneys at Law, appearing on behalf of the Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Whitehall Teachers Association, WEA, NEA, having on February 17, 1972, filed a complaint with the Wisconsin Employment Relations Commission wherein they alleged that Joint School District No. 5, City of Whitehall and the Board of Education of Joint School District No. 5, City of Whitehall had committed prohibited practices within the meaning of Sec. 111.70 of the Wisconsin Statutes; and the Commission having appointed Herman Torosian, a member of the Commission's staff, to act as Examiner to make and issue Findings of Fact, Conclusions of Law and Order as provided in Sec. 111.07(5) of the Wisconsin Employment Peace Act; and pursuant to notice issued by the Examiner, hearing on said complaint having been held at Whitehall, Wisconsin, on April 12, May 22, 23 and June 15 and 16, 1972 before the Examiner; and the Examiner having considered the evidence and arguments and being fully advised in the premises makes and files the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. That Whitehall Teachers Association, affiliated with the National Education Association and Wisconsin Education Association, hereinafter referred to as the Complainant or the Association, is a labor organization within the meaning of Section 111.70, Wisconsin Statutes, and recognized by the Whitehall Board of Education as the collective bargaining representative for teaching personnel employed by the Board of Education.

2. That Joint School District No. 5, City of Whitehall and Board of Education of Joint School District No. 5, hereinafter referred to as the Respondent, is a Municipal Employer within the meaning of Wisconsin Statutes, 111.70, with offices at 1817 Dewey Street, Whitehall, Wisconsin; and that Respondent is engaged in the provision of public education in a district which includes Whitehall, Wisconsin.

3. That Complainant and Respondent on February 9, 1971, commenced negotiations over the wages, hours and working conditions of teaching personnel in the employ of Respondent School District for the school year 1971-72 to succeed the previous agreement covering the 1970-71 school year.

4. That at all times pertinent hereto, John K. Hoyer has been the Superintendent of schools for Respondent school district.

5. That at all times material herein, Mr. Clark Berg was the President of Complainant labor organization.

6. That at the commencement of negotiations in February, 1971, the Whitehall School Board was comprised of the following School Board members: Mr. Amundson, Mr. Berdan, Mr. Gunderson, Mr. Guse, Mr. Rasmuson, Mrs. Sletteland and Dr. Webster; that the only change of Board members during the time material herein was in June, 1971, when Peter Bieri replaced Mr. Berdan as a board member.

7. That at all times material herein, Complainant's negotiating committee consisted of the following teachers: Mr. Clark Berg, Mrs. Agnes Evanson, Mr. John Marquard, Mrs. Thelma Olson, Mr. Jerry Rice and Mrs. Mary Sosala.

8. That the previous collective bargaining agreement of 1970-71 contained a salary schedule which provided for a dollar amount of $175 between education or horizontal lanes; and that said agreement also contained the following language material herein:

"Article V A

All teachers with more than ten years experience in the system prior to the adoption of the 'salary schedule' are to be given credit for at least ten years of experience."

9. That the WTA on February 9, 1971, submitted to Respondent a complete set of proposals for the 1972-73 collective bargaining agreement; and that subsequent negotiation meetings were held on February 23, March 23, April 6 and 21, May 11, June 1 and 29, July 20, August 15, September 15, October 12 and 19 and November 2, 1971.

10. That contained in the February 9 proposal of the WTA were the following proposals material herein:

"GRIEVANCE PROCEDURE

. . .

D. Initiation and Processing

1. Level One The aggrieved person will first discuss his grievance with his principal either directly or through the Association's designated building representative, with the objective of resolving the matter informally (The conference may be held with the Superintendent, should the grievance be connected directly with that office).

2. Level Two If a settlement (or a definite arrangement for a future settlement satisfactory to the aggrieved) cannot be reached within five teaching days after the discussion set forth in Level One, the concerned employee, together with the Association Grievance Committee (or their designate), shall draft a written statement setting forth the nature of the grievance and shall submit said statements to the superintendent. Unless there be extenuating circumstances,* this is to be done within fifteen (15) calendar days of the informal meeting with the aggrieved's principal at Level One.

D. Initiation and Processing (Cont.)

2. Level Two (Cont.) Within ten (10) school days after receipt of the written statement by the superintendent, the superintendent will meet with the aggrieved person and/or the Association representatives in an effort to resolve it. Any decision shall be put in writing and copies furnished to all interested parties.

3. Level Three If the aggrieved person is not satisfied with the disposition of his grievance at Level Two, or if no decision has been rendered within ten (10) school days after the Level Two meeting with the Superintendent, he may file a written request to the Chairman of the Grievance Committee that the matter be referred to the Board of Education of the Whitehall District. Unless there be extenuating circumstances,* the aggrieved teacher is to file this request within fifteen (15) school days of the meeting at Level Two with the Superintendent.

The Grievance Committee will then request in writing of the Board, either directly or through the Superintendent, that the grievance be heard and the Board will meet with the aggrieved person and the Association representatives within fifteen (15) days of this request for the purpose of resolving the grievance.

4. Level Four If the aggrieved person is not satisfied with the disposition of his grievance at Level Three, or if no written decision is received from the Board within ten (10) school days or the meeting at Level Three, the grievant or the Association may submit the grievance to arbitration. If the issue is to be submitted to arbitration, the grievant or Association must advise the Board of the same within ten (10) days of the written decision at Level Three, or if no written answer is received, within twenty (20) days of the meeting at Level Three. The Wisconsin Employment Relations Commission will be requested to provide a member of the Commission or its staff to serve as the arbitrator. The decision of the arbitrator shall be final and binding, and the transcript cost, if any, shall be borne equally by the Board and the Association.

*A dispute as to the existance (sic) of 'extenuating circumstances' will be subject to arbitration pursuant to Level Four."

"COMPENSATION

A. Salary Schedule

. . .

2. All full-time teachers shall be placed on the step of the salary schedule appropriate to their earned degrees, credits and experience. However, no teacher having taught in the Whitehall District the school year of 1970-71 shall have a reduction in salary to be placed on schedule."

"MAINTENANCE OF STANDARDS"

Except as this agreement shall hereinafter otherwise provide, all terms and conditions of employment applicable on the effective date of this agreement to employees covered by this agreement as established by the rules, regulations and/or policies of the Board in force on said date, shall continue to be so applicable during the term of this agreement. Unless

otherwise provided in this agreement, nothing contained herein shall be interpreted and/or applied so as to eliminate, reduce nor otherwise detract from any teacher benefit existing prior to the effective date of this agreement."

11. That in addition, the WTA, in their salary proposal, proposed a difference of $200 between education lanes.

12. That on February 26, 1971, Respondent presented the WTA with a counter proposal to their proposal of February 9, 1971; that in regard to the four proposals hereinafter referred to as the Standards Clause, the grievance procedure, the education lane increment and the step increase, the Board rejected the entire grievance procedure proposed by the WTA including the WTA's participation in said grievance procedure; proposed no change from the previous agreement in the education lane which provided for $175 between lanes; and proposed the following with respect to the step or experience increase: "teachers with an accumulation of eleven (11) years of experience, five (5) of which were in the local system, are to be given for at least eleven (11) years experience on this salary schedule".

13. That at the April 21, 1971 negotiation meeting, the Respondent presented the WTA with a second counter proposal; that in regard to the four above mentioned items, the Board in said proposal did not change its position regarding the Standards Clause, the grievance procedure or the education lane increment but changed its position concerning the step or experience increase by proposing the following language to replace the language proposed on February 26:

"ARTICLE VII-COMPENSATION

A.

. . .

2. all full-time teachers shall be placed on the step of the schedule as negotiated. All part-time teachers will be paid pro rata portion of the portion that would be on the schedule as a full-time teacher."

14. That the next change of position by either party regarding the four issues was at the July 20, 1971 negotiating meeting; that on that date Respondent presented the WTA with a counter proposal rejecting Complainant's Standards Clause, its' grievance procedure and its' education lane difference of $200, but during the course of said meeting, changedits' maximum step or experience proposal to the following:

"ARTICLE VII-COMPENSATION

A.

. . .

2. all full-time teachers may be placed on a step of the schedule as negotiated. . ."

15. That the next change concerning said four issues occurred at the September 15, 1971, negotiation meeting at which time Respondent changed its maximum step or experience increase language back to its original proposal of April 21 by changing the word "may" back to "shall"; that Respondent changed its education lane increment proposal from $175 between lanes as was originally proposed to $150 between lanes; but that in regard to the Standards Clause and grievance procedure, the Respondent did not change its position.

16. That the parties subsequently met on October 12, 19 and November 2, 1971 and reached an impasse in negotiations on the latter date; that on November 14, 1971, the parties, pursuant to Section 111.70, Wisconsin Statutes, jointly filed a petition for fact finding alleging that the parties had reached deadlock in their negotiations after reasonable period of negotiations.

17. That pursuant to said fact finding petition, Commissioner Zel S. Rice II of the Wisconsin Employment Relations Commission conducted an informal investigation on December 2 and December 7, 1971, to determine if the parties were in fact deadlocked; that present on December 2, and December 7 on behalf of WTA were committee members John Marquard, Mary Sosala, Clark Berg and Jerry Rice and WEA representatives Tom Bina and Bob West; and that present on behalf of the Respondent were board members: Amundson, Gunderson, Guse, Rasmuson, Webster, Superintendent John Hoyer, and Attorney LaVern Koster.

18. That Commissioner Rice on December 2 first met with both parties jointly; that in said joint session both the Complainant and Respondent agreed to have Commissioner Rice mediate their labor dispute as a last effort to settle their differences and to arrive at a collective bargaining agreement short of fact finding; that while in joint session Commissioner Rice discussed with the parties all of the unresolved issues; that Commissioner Rice then separated the parties and met with each in separate caucus; that Commissioner Rice continued to meet with the parties in separate caucus for the duration of the December 2 meeting and throughout the December 7 mediation meeting until an agreement was reached at approximately 1:30 A.M.; that at that time Commissioner Rice brought the parties together and reviewed all issues resolved during the course of mediation.

19. That during the mediation sessions, and while the parties were in separate caucuses, there was a discussion concerning the involvement of the WTA in the grievance process and that an agreement was reached between the parties allowing the Association to become a party to the grievance at the end of the second step of the grievance procedure.

20. That in regard to the issue concerning the maximum step placement on the salary schedule, there was no specific discussion of the maximum being the eleventh or twelfth step; that there was however, discussion of Respondent's following Step proposal, Article VIII, A. 2., proposed on December 2;

"COMPENSATION

A. Salary Schedule

. . .

"ARTICLE VIII - COMPENSATION

A.

. . .

2. Full-time teachers shall be placed on a step of the schedule as negotiated, except as otherwise provided in Article VII, paragraph C. & D. All part-time teachers will be paid a pro-rata portion of the position they would be on the schedule as a full-time teacher."

That during the mediation session, the WTA, through Mediator Rice, proposed that the Board delete "except as otherwise provided in Article VIII, paragraph C. and B." from the Board's proposal; that the WTA was, by Mediator Rice, informed that the Board would not delete said language as proposed at which time the WTA indicated its acceptance of the Board's language in its entirety; and that at no time, however, was specific reference made whether or not the teachers' maximum step placement would be at the eleventh or twelfth step.

21. That as of December 2, 1971, it was the WTA's position that they wanted the following maintenance of standards clause included in the collective bargaining agreement:

"MAINTENANCE OF STANDARDS

Except as this agreement shall hereinafter otherwise provide, all terms and conditions of employment applicable on the effective date of this agreement to employees covered by this agreement as established by the rules, regulations and/or policies of the Board in force on said date, shall continue to be so applicable during the term of this agreement. Unless otherwise provided in this agreement, nothing contained herein shall be interpreted and/or applied so as to eliminate, reduce nor otherwise detract from any teacher benefit existing prior to the effective date of this agreement."

that during the mediation session, the WTA proposed said language to the Board; that Mediator Rice informed the WTA that the Board would not accept said standard clause; that Mediator Rice then inquired if the WTA could simplify their standard clause proposal; that the WTA, based on the Board's refusal of their original language and the Mediator's inquiry concerning same, proposed language which in the essence stated that all conditions of employment in effect on the date of the signing of the agreement would remain unchanged during the term of the agreement; that Mediator Rice communicated said proposal to Respondent Board and reported to the WTA that the Board would not accept their standards clause proposal; that WTA after discussing the issue with Mediator Rice asked him to return to the Board's caucus and convey to the Board the same proposal a second time; that when Mediator Rice returned from caucusing with the Board, he stated that the Board would accept the WTA's modified language only if the WTA would further modify its proposal by adding the language

". . .except as modified by this agreement";

and that the WTA at this time settled the standards clause issue by accepting and agreeing to the Board's modification of the standards clause.

22. That in regard to the amount of the increment between education lanes, the parties were still $50.00 apart as of December

2; that the WTA's proposal called for a difference of $200 between education lanes while the Board's proposal called for a difference of $150.00; that during the mediation session, there was some discussion concerning the education lane issue; that the WTA, once all other issues had been settled and the only remaining issue outstanding was the salary and related monetary items, informed Mediator Rice that they would drop their $200 differential between lanes and live with $175 as provided in the previous agreement; that Mediator Rice then caucused with the Board and informed them that the WTA dropped its proposal requiring a $200 differential between lanes; that Respondent Board accepted said drop and made no reference to its proposal of $150 in this regard and that said matter was not discussed again during mediation; that Mediator Rice then returned to the WTA caucus and informed them that the salary offer proposed by the Respondent Board would be based on the same structure as the previous year; and that there was no further discussion with WTA concerning the education lanes

23. That the parties finally reached an agreement on monetary items at approximately 1:30 A.M., December 8, at which time Mediator Rice met with the parties jointly and announced that an agreement had been reached; Commissioner Rice then reviewed the parties' tentative agreement and, using the Board's December 1 proposal as reference, specifically reviewed all issues which were in issue and resolved by the parties during mediation; that in regard to the step increment Commissioner Rice read the following as agreed to by the parties:

> "Full time teachers shall be placed on a step of the schedule as negotiated except as otherwise provided in Article VII, paragraph C. and D. All part time teachers will be paid pro rata portion of the position they would be on the schedule if they were full time teachers."

24. That he specifically read the language agreed to by the parties concerning the grievance procedure wherein the WTA becomes a party at the end of the second step of the grievance procedure; that Rice read the standards clause agreed to by the parties which in effect provided that all conditions of employment at the time of the signing of the agreement would remain in effect during its term, except if notified by the agreement; that when Commissioner Rice finished reading the agreement reached on the standards clause, one of the board members indicated that he wanted to speak to Mediator Rice at which time Mediator Rice immediately met, privately, with the Board representatives out in the hall; that Mediator Rice and the Board representatives returned shortly and Mediator Rice stated, in regard to the standards clause, that it was "O.K., we've cleared that up and there's no problem"; that at the conclusion of the December 7 meeting there was a meeting of the minds between the parties, and a total agreement reached, over the wages, hours and working conditions for school year 1971-1972; and that the parties then shook hands and arranged to have said agreement typed and presented to the parties by Superintendent Hoyer.

25. That on approximately December 22 or 23, Mr. Berg was called into Mr. Hoyer's office and was given three copies of the proposed collective bargaining agreement; that Hoyer then proceeded to show Berg some typographical errors of words, etc. appearing in the copy; that Berg then took said copies to the teachers' lounge and briefly scanned said copy and later distributed said copies to the negotiating committee; and that the committee, at a later date, after Christmas vacation, met and reviewed said copy.

26. That later, at a meeting attended by Mr. Bina, Marquard, Rice and Berg informed Bina for the first time that there was a problem

with the proposed collective bargaining agreement submitted by Hoyer in that Hoyer had included language which the parties had not agreed to and also had excluded some language agreed to on December 7; that specifically, Hoyer's draft of the collective bargaining agreement added the following sentence to Article VIII, A. 2:

> "the usual (1)1 where increase in the experience level places the top level at the eleventh step".

that in the salary schedule the Board changed the education lane increment from the $175 which was in the previous salary schedule to $150; that the Board did not include any language in regard to maintenance of standards and that the Board deleted language in the grievance procedure which entitled the WTA to become a part of the grievance procedure at the end of the second step.

27. That thereafter, on January 11, 1972, the parties met in an attempt to resolve their disagreement over the outcome of the December 7 meeting; that present for the WTA was Mr. Marquard, Mr. Rice, Mr. Berg, Mrs. Sosala and the President elect, Ron Rumple and that for the Respondent Board, Dr. Webster and three or four other Board members were present.

28. That in regard to the issue concerning the WTA participation in the grievance procedure, the Respondent Board at the January 11 meeting did not dispute that WTA could participate at the end of the second step of the grievance procedure as alleged by Complainant but deleted said language from its draft because they believed the WTA had that right and that anyone specifying same would be redundant.

29. That in regard to the standards clause, Respondent Board at the January 11 meeting first denied agreeing to a standards clause as contended by the WTA but that after some discussion of the issue, Respondent claimed they had been pressured into agreeing to something they would not have agreed to.

30. That in regard to Article VIII, A. 2., the Respondent Board at the January 11 meeting claimed they unilaterally added the last sentence to said provision in order to clarify their intent of Article VII, A. 2.; that Complainant objected to the inclusion of said language claiming that the only language agreed to was the language as it appeared in Respondent Board's draft which did not include the added sentence.

31. That in regard to the education lane increment, the WTA stated that the parties agreed to a $7300 base with the same structure which in effect maintained the $175 increment between lanes from the previous collective bargaining agreement; and that the Board claimed its' position was always $150 between lanes and that they at no time agreed to $175.

32. That after all attempts to settle said matter on January 11 and after discussing all of the items in issue, the parties were unable to resolve the matter; that Respondent refused to execute the collective bargaining agreement without the changes made by the Board in its proposed agreement and that the Complainant would not consider executing the collective bargaining agreement as presented by Respondent Board; and that at no time did the five Board members, Amundson, Gunderson, Guse, Rasmuson and Webster, who reached a tentative agreement with the WTA on December 7, recommend to the Respondent School Board that said agreement be approved or adopted or were any other steps taken to have said agreement adopted.

Upon the basis of the above and foregoing Findings of Fact, the Examiner makes and issues the following Conclusions of Law.

CONCLUSIONS OF LAW

1. That at the conclusion of the mediation meeting held on December 7, 1971 the bargaining committee of Complainant, Whitehall Teachers Association, WEA, NEA, and five of the members, Amundson, Gunderson, Guse, Rasmuson and Webster, of Respondent, Joint School District No. 5, City of Whitehall, and the Board of Education of Joint School District No. 5, City of Whitehall, reached a tentative collective bargaining agreement covering the wages, hours and conditions of employment for teaching personnel employed by the Respondent for school year 1971-1972 which included a maintenance of standards clause, provided for an amount of $175 between education lanes, and placed all full time teachers on the salary scheduled based on their degrees, credits and experience.

2. That Respondent, Joint School District No. 5, City of Whitehall, and the Board of Education of Joint School District No. 5, City of Whitehall, by refusing to conduct an open meeting pursuant to Section 66.77, Wisconsin Statutes, for the purpose of considering, approving and adopting the tentative collective bargaining agreement reached between Complainant, Whitehall Teachers Association, WEA, NEA, and five of its board members, Amundson, Gunderson, Guse, Rasmuson and Webster, and by refusing to take any other necessary steps to have said agreement approved and adopted has acted and continues to act in bad faith towards and has refused and continues to refuse to bargain collectively with the Complainant within the meaning of Section 111.70(1)(d) and has committed and is committing a prohibited practice in violation of Sections 111.70 (3)(a)(4) and (1) of the Municipal Employment Relations Act.

Upon the basis of the above and foregoing Findings of Fact and Conclusions of Law, the Examiner makes and issue the following Order.

ORDER

IT IS ORDERED that Joint School District No. 5, City of Whitehall, and the Board of Education of Joint School District No. 5, City of Whitehall, ifs officers and agents, shall immediately:

1. Cease and desist from refusing to bargain collectively within the meaning of Section 111.70(1)(d) and Section 111.70(3) (a)4 and (1) with Whitehall Teachers Association, WEA, NEA, by refusing to conduct an open meeting for the purpose of presenting, approving and adopting the tentative agreement reached between Complainant and five members of its Board and by refusing to take all necessary steps to have said tentative agreement approved and adopted.

2. Take the following affirmative action of which the Examiner finds will effectuate the policies of the Municipal Employment Relations Act:

   a. Pursuant to Section 66.77, Wisconsin Statutes, hold an open board meeting at its next board meeting and place the subject of the tentative collective bargaining agreement on its agenda.

   b. That at said open meeting, Board member Amundson, Gunderson, Guse, Rasmuson and Webster who reached a tentative collective bargaining agreement with Complainant, Whitehall Teachers Association, WEA,

NEA, recommend to Respondent, Joint School District No. 5, City of Whitehall, and the Board of Education of Joint School District No. 5, City of Whitehall that said agreement be approved and adopted and that thereafter Respondent take action on said recommendation acting in conformance with its obligations under Section 111.70 of the Wisconsin Statutes.

c. Notify the Commission within twenty (20) days of the date of this Order as to the action taken to comply herewith.

Dated at Madison, Wisconsin, this 6th day of September, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Herman Torosian, Examiner

MEMORANDUM ACCOMPANYING
FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

On February 17, 1972, Whitehall Teachers Association filed a complaint with the Wisconsin Employment Relations Commission alleging that the Respondent Board by refusing to reduce to writing the terms of the oral agreement reached by the parties, on December 7, 1971, as required by Wisconsin Statutes, 111.70(3)(a)4, has committed a prohibited practice within the meaning of Section 111.70(1)(d). As a remedy for such violation, Complainant demands that Respondent be enjoined from refusing to bargain and that they be further ordered to reduce to writing the agreement obtained on December 7, 1971. The matter was initially set for hearing for March 22, 1972, but, by subsequent postponements, was rescheduled for April 12, 1972, with April 7, 1972, set as the answer date. In its answer, filed on April 10, 1972, Respondent specifically answered as follows:

> "6. That at all times the Respondents have been ready and willing to modify their writing of the oral agreement of the parties which was made on December 7, 1971, so long as such modification did not include items which were not agreed upon, namely:
>
> (a) Salary schedule and yearly increments.
>
> (b) A clause which provides that after step two of the grievance procedure, the Whitehall Education Association becomes a party to the grievance.
>
> 7. Allege that on January 11, 1972, the members of the Board of Education were of the opinion that they had not agreed on December 7, 1971, to a clause providing 'all conditions of employment in effect at the signing of this agreement shall remain in effect during its term, except as modified by this agreement'; that the members of the Board of Education have different recollections as to whether or not there was agreement reached as to said clause; that subsequent to January 11, 1972, and specifically on March 7, 1972, it was discovered that it was probable that said Board agreed to such clause; that by reason of such discovery the Respondents now stands ready to modify their writing of the oral agreement to include said clause; that due to the lateness of the hour of the negotiations and the circumstances surrounding said negotiations the lack of understanding as to agreement concerning said clause does not evidence bad faith or a failure to bargain collectively."

Hearing was held in Whitehall, Wisconsin, on April 12, May 22, 23 and June 15 and 16, 1972. The parties filed briefs in the matter, the final brief having been filed on January 18, 1973.

In its complaint, Complainant specifically alleges the following:

> "5. In the course of the said meeting on December 7, 1971, the aforesaid parties reached a mutual understanding and agreement on all of the previously existing subjects of difference between them, including:
>
> a. A clause which provided, 'All conditions of employment in effect at the signing of this agreement shall remain in effect during its term, except as modified by this agreement.'

b. A clause which provided that after step two of the grievance procedure, the Whitehall Education Association became a party to the grievance.

c. An agreement that the horizontal lanes on the salary schedule expressing increments for professional improvement would be $175.00 apart.

6. Following the reaching of the aforesaid oral agreement, the Respondent undertook to reduce it to writing and in the course of doing so, made the following unilateral changes from the oral agreement:

a. Deleted the clause providing, 'All conditions of employment in effect at the signing of this agreement shall remain in effect during its term, except as modified by this agreement.'

b. Deleted the clause which provided that after step two of the grievance procedure, the W.E.A. would become a party to the grievance.

c. Drafted the salary schedule to specify a $150.00 step between the brackets on the horizontal lanes instead of the agreed-upon $175.00.

d. Added the following language which had not been agreed upon, 'The usual one year increase in the experience level places the top level at the 11th step.'"

At the outset of the hearing held in the instant matter, the parties disposed of Allegation 6 b. above. In this regard Respondent in its Answer and again at the hearing 1/ conceded an agreement was reached at the December 7 meeting which entitled the WTA to become a party to a grievance at the third step, or after the second step, of the grievance procedure. That issue, therefore, having been satisfactorily resolved, need not be considered further by the Examiner.

Both parties also agree that except for the remaining three issues alleged above by Complainant, all other issues in regard to the 1971-72 collective bargaining agreement have been resolved by the parties and are not in dispute.

The real issue then concerns the maintenance of standards clause, hereinafter referred to as standards clause; the maximum step placement of teachers on the salary schedule, hereinafter referred to as the step issue; and the amount of increment between education lanes, hereinafter referred to as the lane issue. It is Complainant's contention that as a result of the December 7 mediation meeting, Respondent agreed to an increment of $175 between education lanes and the following standards clause language and maximum step placement language:

"Standards clause

All conditions of employment in effect at the signing of this agreement shall remain in effect during its term, except as modified by this agreement."

"ARTICLE VIII - COMPENSATION

A.

. . .

1/ TR, page 2.

2. Full-time teachers shall be placed on a Step of the schedule as negotiated, except as otherwise provided in Article VII, paragraph C. & D. All part-time teachers will be paid a pro-rata portion of the position they would be on the schedule as a full-time teacher."

Contrariwise, Respondent claims that at the conclusion of said meeting, the above mentioned three items remained unresolved. Hence there was no total agreement and could be no total agreement until all matters were resolved. In this regard it is Respondent's position that it at no time agreed to any maintenence of standards language; to the maximum step language as interpreted by the Complainant; or to $175 between education lanes.

FACTS

Briefly, by way of background, the parties began negotiations for the 1971-72 collective bargaining agreement on February 9, 1971. On that date, the WTA presented the Board with a complete proposal which contained in pertinent part the following proposals:

1. "MAINTENANCE OF STANDARDS

Except as this agreement shall hereinafter otherwise provide, all terms and conditions of employment applicable on the effective date of this agreement to employees covered by this agreement as established by the rules, regulations and/or policies of the Board in force on said date, shall continue to be so applicable during the term of this agreement. Unless otherwise provided in this agreement, nothing contained herein shall be interpreted and/or applied so as to eliminate, reduce nor otherwise detract from any teacher benefit existing prior to the effective date of this agreement."

2. "A difference of $200 between educational lanes."

3. "ARTICLE VIII - COMPENSATION

A. Salary Schedule

. . .

2. All full-time teachers shall be placed on the step of the salary schedule appropriate to their earned degrees, credits and experience. However, no teacher having taught in the Whitehall District the school year of 1970-1971 shall have a reduction in salary to be placed on schedule."

The latter issue, the step issue, is really an outgrowth of the 1966 negotiations when the parties first negotiated a twelve-step salary schedule with each step representing one year of experience. Although the parties adopted, on paper, a twelve-step salary schedule, they found it financially burdensome to place all teachers on the salary schedule based on their actual experience. For said reason, the parties agreed that the maximum step placement, regardless of the number of years of experience a teacher had, would be the sixth step. The parties felt they could gradually, in future years, work the teachers into their proper placement on the twelve step schedule.

To this end, the parties in 1967-68 increased the maximum step to Step 7; in 1968-69 to Step 8; in 1969-70 to Step 10; and in 1970-71 retained the tenth step as the maximum step. WTA's proposal above

for 1971-72 would further increase the maximum step by putting all teachers on the negotiated schedule based on their actual experience with no maximum other than the number of steps finally agreed to be included in the salary schedule.

Respondent responded to Complainant's step proposal and all other proposals with a counter proposal on February 23, 1971. In said counter proposal the Board rejected the inclusion of a standards clause; proposed to keep the lane differential at $175, as in the previous agreement, and proposed the following language concerning the maximum step level:

> "Teachers with an accumulation of eleven (11) years of experience, five (5) of which were in the local system, are to be given credit for at least eleven (11) years experience on this salary schedule. Outside experience will be granted up to six (6) years." ,

The parties met on March 23, and on April 6, 1971 but there was no change in position by either party concerning the three issues until the meeting of April 21. At that meeting, Respondent changed its original maximum step placement proposal by proposing, in pertinent part, that "all full time teachers shall be placed on the step of the schedule as negotiated." No other changes were proposed by either party.

Although the parties met again on May 11, June 1, and June 29, no changes concerning the three issues occurred until the July 20 meeting at which time Respondent changed the word "shall" from their April 21 proposal to the word "may". There was no change of position by either party in regard to the standards clause or the increment between education lanes.

The parties next met on August 18 and September 15. At the meeting held on the latter date, Respondent changed its step proposal back to the way it was proposed on April 21 by changing the word "may" back to the word "shall". Once again, neither party changed its position in regard to the two other issues, i.e., the standards clause and the amount of increment between education lanes.

The parties subsequently met on October 12, 19 and November 2, 1971. At the conclusion of the November 2 negotiation meeting, the parties agreed they were at an impasse in negotiations and, therefore, jointly filed a fact finding petition with the Wisconsin Employment Relations Commission on November 14, 1971, alleging they had reached a deadlock after a reasonable period of negotiations. Commissioner Zel S. Rice, on behalf of the Commission and pursuant to said petition informally investigated the petition on December 2, 1971.

Rice opened the December 2 meeting by meeting jointly with the parties. After a brief discussion, the parties agreed to have Rice mediate their dispute as a last effort to settle their differences and arrive at a collective bargaining agreement short of fact finding. Rice then proceeded for the remainder of the December 2 meeting and the entire December 7 meeting to mediate their dispute by meeting with each party in separate caucus until an agreement was finally reached at approximately 1:30 A.M. Present at both the December 2 and December 7 meeting on behalf of the WTA were Tom Bina, Clark Berg, John Marquard, Jerry Rice, Mary Sosala and Bob West; and that on behalf of the School Board were Board Members Amundson, Gunderson, Guse, Rasmuson, Webster, Superintendent John Hoyer and Attorney LaVern Koster.

The record is clear that during the course of said mediation there was a discussion over the maintenance of standards clause. In this regard, the WTA initially, through Rice, proposed their original standards

clause of February 9, 1971. Said proposal was rejected by the Board. Rice then suggested the WTA counter by simplifying their original proposal. Following Rice's suggestion, WTA proposed language which in essence stated that all conditions of employment in effect on the date of the signing of the agreement would remain unchanged during the term of the agreement. Rice communicated said proposal to the Board and upon returning to the WTA caucus reported that the Board would not accept their modified standards clause proposal.

The WTA, after some discussion, asked Rice to convey the same proposal to the Board a second time. When Rice returned, he stated that the Board would accept the WTA's modified language only if WTA would further modify their proposal by adding the language ". . . except as modified by this agreement" to the end of their proposed language. The WTA agreed to make the language change requested by the Board and informed them of same.

During mediation, there was also a discussion over the step issue. At the outset, the Board proposed the following language in regard thereto:

"ARTICLE VIII - COMPENSATION

A.

2. Full-time teachers shall be placed on a step of the schedule as negotiated, except as otherwise provided in Article VIII, paragraph C. & B. All part-time teachers will be paid a pro-rata portion of the position they would be on the schedule as a full-time teacher."

At no time, however, on December 2 or 7 was there a specific discussion of whether the maximum step would be the eleventh or twelfth step of the salary schedule. Instead, the discussion of Article VII A. 2. was limited to the language stating "except as otherwise provided in Article VIII C. & D." In regard thereto, the WTA, through Rice, proposed that the Board delete said exclusionary clause from its proposal. The Board refused. The WTA, then, accepted the Board's language in its entirety as originally proposed on December 2.

The education lane issue was considered a monetary item and, as such, was considered last along with all other monetary items. The extent of discussion over the issue, however, was very limited. The WTA, through Mediator Rice, in making other monetary proposals, dropped their proposal calling for a $200 differential between lanes and agreed to live with the $175 between lanes as provided in the old agreement. Rice caucused with the Board and informed them of same. Respondent accepted said drop and in making a monetary counter proposal did not include a proposal calling for $150.00 between education lanes. Rice returned to the WTA caucus and in conveying the salary proposal stated that said salary proposal was based on the same structure as the previous year. The matter of the amount of increment between education lanes was never again discussed or included in any monetary proposals.

At approximately 1:30 A.M., the mediation session which began on December 7 was concluded. Rice then called both parties into a joint meeting and announced an agreement had been reached. He proceeded to review those issues which were in issue and resolved by the parties during mediation using Respondent's December 1 proposal as reference. Specifically, in regard to the step increment issue, Rice read the following language as agreed to by the parties:

"ARTICLE VII - COMPENSATION

A.

2. Full-time teachers shall be placed on a Step of the schedule as negotiated, except as otherwise provided in Article VII, paragraph C. & D. All part-time teachers will be on the schedule as a full-time teacher."

Commissioner Rice stated that an agreement had been reached on the salary which called for a $7300 base. There is a dispute of whether or not Rice at this time stated "$7300 with the same structure".

Rice also reviewed the maintenance of standards language agreed to by the parties. He specifically stated to the parties that they had agreed to language providing that all conditions of employment in effect at the time of the signing of the agreement would remain in effect during its term, except as modified by the agreement. When Rice finished reading said language, one of the Board members indicated that he wanted to speak to Rice. Rice immediately met with the Board representatives separately, out in the hall. Shortly thereafter, Rice and the Board representatives returned and Rice, referring to the standards clause, stated that "it was O.K., we've cleared that up and there's no problem." Shortly thereafter, the parties acknowledged having reached a total agreement for the school year 1971-72. The parties shook hands and agreed, as in the past, that Superintendent Hoyer would make arrangements for having said agreement typed and presented to both sides.

DISCUSSION

It is Respondent's contention that the parties at no time reached a total agreement over the terms of the 1971-72 collective bargaining agreement. In support of its contention, Respondent relies entirely on Superintendent Hoyer's testimony.

Standards Clause

With regard to the standards clause, Hoyer testified that he was under the impression that the standards clause proposal had been dropped by the WTA some time in August. Hoyer could not recall any of the specifics surrounding the alleged drop but only that it was dropped by WTA. Said testimony is the only testimony offered by Respondent to rebut the testimony of Marquard, West and Bina who all participated in negotiations and who all testified that the standards clause was in fact discussed in mediation and that in fact a compromise settlement was reached in regard thereto with the Board. Both Bina and West testified that when the WTA modified its standards clause proposal, the Board countered by indicating they would accept said proposal if they (WTA) would further modify their proposal by adding the words ". . . except as modified by this agreement". The WTA accepted said modification and therefore, they argue, an agreement was reached resolving said issue.

Bina, Marquard and West further testified that during the joint meeting at 1:30 in the morning, Rice not only announced that a total agreement had been reached but he also specifically read the standards clause language agreed to by both parties. In fact, there is testimony that one of the Board members questioned the language but that after a brief caucus with the Mediator the Mediator stated, in the presence of both parties, that the matter was "O.K., we've cleared that up and there's no problem". The Examiner finds it significant that there were five Board members, Amundson, Gunderson,

Guse, Rasmuson and Webster, present at both the December 2 and 7 mediation meetings, yet not one of the five testified to either deny or explain Bina and West's account of what happened at said mediation meeting or to corroborate Hoyer's testimony that the standards clause had been dropped by the WTA in August.

What's more, Hoyer's testimony is not even consistent with Respondent's own admission in its Answer filed on April 10, 1972. Paragraph 7 of Respondent's Answer states the following:

> "7. Allege that on January 11, 1972, the members of the Board of Education were of the opinion that they had not agreed on December 7, 1971, to a clause providing 'all conditions of employment in effect at the signing of this agreement shall remain in effect during its term, except as modified by this agreement'; that the members of the Board of Education have different recollections as to whether or not there was agreement reached as to said clause; that subsequent to January 11, 1972, and specifically on March 7, 1972, it was discovered that it was probable that said Board agreed to such clause; that by reason of such discovery the Respondents now stand ready to modify their writing of the oral agreement to include said clause; that due to the lateness of the hour of the negotiations and the circumstances surrounding said negotiations the lack of understanding as to agreement concerning said clause does not evidence bad faith or a failure to bargain collectively."

Instead, said answer is more consistent with Bina's version of the Board's position at the January 11, 1972 meeting held to try and resolve the dispute over the issues involved herein. Bina testified that the Board first took the position that they had not agreed to a standards clause but later admitted making such an agreement but claimed they had been pushed into said agreement by Mediator Rice.

Given all of the above including the clear and precise testimony of Bina, West and Marquard concerning the standards clause, and Hoyer's hazy recollection of the WTA's alleged drop of the clause, the Examiner concludes that Hoyer's testimony falls substantially short of providing an adequate explanation of how the standards clause issue was resolved and, therefore, cannot be credited over the testimony of Complainant's witnesses.

The only reasonable conclusion is that the parties in fact agreed to the standards clause as contended by Complainant and that Respondent for one reason or another, after having made such an agreement, attempted to have Complainant sign an agreement without said clause.

Maximum Step Placement

The evidence is equally convincing, in the opinion of the Examiner, that the parties agreed to the maximum step placement language of Article VIII as contended by the Complainant.

Respondent again relies on Hoyer who testified that the Board never intended to raise the maximum step level from the eleventh step to the twelfth step and, further, that the matter of steps was not discussed on December 2 or 7.

Although there was no specific discussion of the actual number of steps during mediation, the parties nevertheless discussed the issue and settled the issue by agreeing to the following language:

"ARTICLE VIII - COMPENSATION

A.

2. Full-time teachers shall be placed on a step of the schedule as negotiated, except as otherwise provided in Article VIII, paragraph C. & D. All part-time teachers will be paid a pro-rata portion of the position they would be on the schedule as a full-time teacher."

This language was actually proposed by Respondent on December 2. The only discussion concerning said language before acceptance by the WTA, occurred when the WTA requested the Board to delete the words "except as otherwise provided in Article VII, paragraph C. and D." from its proposal. When the Board refused, the WTA accepted the Board's proposal in its entirety without any changes.

Respondent in drafting the agreement of December 7 added the following words claiming this was the real intent of the language agreed to: "the usual one (1) year increase in the experienced level places the top level at the eleventh step."

Given the bargaining history of said issue, the Examiner cannot concur with the Respondent. It is noted that the Board in its original proposal of February 23, specifically proposed that the maximum step placement of teachers on the salary schedule would be on the eleventh step. In its next proposal on April 21, 1971, the Board changed said proposal and proposed essentially the same language agreed to by the parties on December 7, which makes no reference to the eleventh step but instead states that teachers will be placed on the step of the schedule "as negotiated". There was some discussion of the words 'may' and "shall" at the April 21 meeting and subsequent meetings, but there was never again any mention of step 11 or 12.

Certainly, the Examiner must assume the Board was aware of the significance of their change in language since they had been negotiating the same issue every year since 1966. Under the circumstances, for the School Board to drop specific reference to the eleventh step, as they did on April 21, and not have any significance attributed to same is incredulous to the Examiner. Each year the parties negotiated a maximum step and stated the maximum step specifically by number. Therefore, this year when the Board dropped specific reference to the eleventh step and proposed to place teachers on the step of the salary schedule as negotiated, the Examiner must conclude they meant exactly that, i.e. the twelfth step since a twelve step schedule was negotiated.

In short, Complainant accepted the Board's own proposed language and Respondent cannot now insist that the Complainant agree to a sentence unilaterally added by Respondent which allegedly clarifies the provisions. The language speaks for itself and neither party can now refuse to accept said language as tentatively agreed on December 7.

Increment Between Education Lanes

Finally, the Examiner also finds that Complainant and Respondent did, in fact, reach an agreement providing for a difference of $175 between education lanes which was the same amount contained in the previous agreement. Admittedly, there was very little discussion concerning the increment between lanes. Whatever discussion there was, however, was through Mediator Rice and was an integral part of the discussion covering all monetary items inasmuch as the parties were making total monetary proposals rather than separate proposals

on each monetary item. It was during the discussion of one of these total monetary packages that the WTA advised Respondent that they were dropping their proposal calling for a $200 increment between lanes and willing to live with the $175 differential provided in the previous agreement. Respondent admits receiving said proposal from Mediator Rice. Respondent countered with a monetary proposal but made no reference to the increment between education lanes and at no time thereafter did it propose to decrease the amount of increment from $175 to $150 as now alleged. The parties eventually reached an agreement on a monetary package and said monetary package was reviewed in joint session at the conclusion of the December 7 meeting by Mediator Rice. Mediator Rice in reviewing said agreement did not state that the parties agreed to a differential of $150 between education lanes. Rice, in fact, did not specifically mention the lane differential at all.

In this regard, it should be noted that typically in collective bargaining negotiations the parties propose additions to, subtractions from, and modifications to their existing or expired agreement. It is usually understood, as was in the instant case, that the provisions of old agreement remain the same except for changes proposed by the parties. In the instant case when the WTA dropped its proposal of $200 between education lanes, they in effect no longer desired to change the old agreement, and, therefore, found no further need to refer to said issue. The Respondent on the other hand allegedly was still seeking a change from the old agreement, which provided for $175 between education lanes. However, said claim by Respondent is not consistent with its actions. In this regard it is significant that the Respondent, once it accepted the WTA's "drop" of its $200 proposal, ceased to include its own $150 proposal in its total monetary proposals thereafter. In fact the education lane issue was never discussed again. This the Examiner finds important. Surely, if the Respondent intended to reduce the amount of increment between education lanes, they would have included same in their total monetary package.

The Examiner concludes, as did the WTA, that Respondent by making counterproposals without its $150 proposal, made said monetary proposals based on the previous year's schedule which provided for $175 between education lanes.

Conclusion

In conclusion then, in regard to all three issues discussed above, the Examiner is convinced that there was a meeting of the minds between the parties and a tentative collective bargaining agreement reached for the school year 1971-1972 on December 7, 1971.

In addition to the above discussion concerning said three issues, the Examiner is of the opinion that the School Board representatives themselves, by their actions, understood that they had reached a total agreement with the WTA. If this were not the case, Respondent would not have participated in the joint session called by Rice at the conclusion of the December 7 meeting to announce that an agreement had been reached without protesting same. Rice not only made said announcement but specifically reviewed agreements reached during mediation and obviously both parties concurred with Rice's understanding. It was agreed by the parties that Superintendent Hoyer would draft the new collective bargaining agreement reflecting changes agreed to by the parties and submit same to the WTA for inspection and signature. Again, it is obvious that there was a total agreement in that the draft proposed by Superintendent Hoyer was entitled "Professional Agreement Between Whitehall Public Schools and the Whitehall Education Association for the School Year 1971-72".

None of the above is consistent with Respondent's contention now that the parties had only a partial agreement and had not arrived at a total agreement.

REMEDY

In fashioning a remedy in the instant case, the Examiner must consider Section 66.77 and Section 111.70 of the Wisconsin Statutes.

Section 111.70(3)(a)(4) makes it a prohibited practice for an employer to refuse to bargain collectively with a representative of a majority of its employes in an appropriate collective bargaining unit. Said section also makes the refusal to execute a collective bargaining agreement previously agreed upon a prohibited practice.

Section 66.77 of the Wisconsin Statutes, which governs open meetings of governmental bodies, requires that "no formal action of any kind, except as provided in sub. (3) shall be introduced, deliberated upon or adopted at any closed session or closed meeting of any such body, or at any reconvened open session during the same calendar day following a closed session." The exceptions referred to in sub. (3) do not exempt negotiations or the terms of a collective bargaining agreement.

In the Milwaukee School Directors case, the Wisconsin Supreme Court interpreted Section 66.77, formerly number 14.90, as it applies to the negotiations of a collective bargaining agreement. In that case the following Attorney General's opinion was cited and relied upon by the Examiner in its decision:

> "Whether the teacher salary proposals submitted by the teachers' committee and the counter proposals made by the school board are preliminary in nature and for bargaining reasons need to be discussed in a closed session is basically a question of fact to be decided by the school board. If the board finds that the bargaining process can best be carried on in private, the meeting may be closed. If the board finds no necessity for bargaining in private, the meeting should be open to the public. In any event, when the bargaining period is past, no final action should be taken on the teachers' salary schedule until they are made public and discussed in an open public meeting."

The Supreme Court then stated that an open meeting is a necessary and final step in the negotiations process and that recommendations by the School Board's bargaining committee cannot be automatically approved by the School Board because, then, the anti-secrecy law has been violated and the open meeting is nothing but a sham.

Respondent, relying on the above, argues that the public has interest in collective bargaining agreements; it has a right to be heard in a public hearing of the School Board to express its opinion and that any interpretation of existing law which vitiates and dissolves such rights would distort and defeat the purpose of the anti-secrecy law.

But, in fashioning a remedy, the Examiner must also take into consideration and harmonize Section 111.70 which makes the refusal to bargain collectively and the refusal to execute a collective bargaining agreement previously agreed upon a prohibited practice and authorizes the Commission to remedy such a violation, with Section 66.77 which prohibits a municipal employer from taking formal action in a closed meeting. In the opinion of the Examiner, the undersigned's remedy in the instant case harmonizes said statutes.

First, to fulfill the requirements of Section 66.77, the Examiner has ordered the School Board at its next board meeting, to hold an open board meeting and place the subject of the tentative collective bargaining agreement on its agenda.

Secondly, to effectuate the policies of Section 111.70 and more specifically Section 111.70(3)(a)(4), the Exxaminer has ordered all five Board members, Amundson, Gunderson, Guse, Rasmuson and Webster who reached tentative agreement with the WTA to recommend said tentative agreement be approved and adopted. In view of Supreme Court's decision in the Milwaukee School Directors case referred to above, the Board cannot be ordered to automatically accept the recommendations of the five Board members. Yet, in order to effectuate the policies of Section 111.70 compatibly with Section 66.77, any disapproval of the tentative agreement by the School Board must be consistent with Section 111.70 which obligates Respondent to bargain in good faith. To hold otherwise would make a sham of Section 111.70.

In this regard, the Examiner does not find it necessary to adopt a "good cause" test to determine whether any Board disapproval of the tentative agreement is in good faith. Whether or not a municipal employer has acted in good faith is a determination which can best be made by considering each case on its own particular facts.

Dated at Madison, Wisconsin, this 6th day of September, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Herman Torosian
Herman Torosian, Examiner