STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

LOCAL 742, AFFILIATED WITH MILWAUKEE DISTRICT COUNCIL 48, AFSCME, AFL-CIO, Complainant, vs. CITY OF CUDAHY BOARD OF EDUCATION, Respondent.	Case IX No. 15807 MP-146 Decision No. 11118-A

Appearances:
Goldberg, Previant & Uelmen, Attorneys at Law, by Mr. John S. Williamson, Jr., for the Complainant.
Spacek, Miller & Rinzel, Attorneys at Law, by Mr. Frederick A. Miller, for the Respondent.

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

The above-entitled matter having come on for hearing before the Wisconsin Employment Relations Commission on August 21, 1972, at Milwaukee, Wisconsin, Stanley H. Michelstetter II, Hearing Examiner, being present; having considered the evidence and arguments of Counsel, and being fully advised in the premises makes and files the following Findings of Fact, Conclusion of Law and Order.

FINDINGS OF FACT

1. That Local 742, affiliated with Milwaukee District Council 48, AFSCME, AFL-CIO, herein referred to as the Union, is a labor organization with offices at 3427 West St. Paul Avenue, Milwaukee, Wisconsin.

2. That the Board of Education, City of Cudahy, hereinafter referred to as the Employer, is a municipal employer having offices at 3744 East Ramsey Avenue, Cudahy, Wisconsin.

3. That Complainant and Respondent were signators to a collective bargaining agreement in effect from January 1, 1970 to December 31, 1971 which provided:

ARTICLE VI

Seniority

. . .

Section 5.

New job vacancies or transfers shall be posted. All of the duties, rate of pay, and working hours shall be included in the posting. All bids shall be opened and acted upon by the Board in accordance with the provisions of this contract.

. . .

ARTICLE IX

Rates of Pay

. . .

Section 2.

Unless otherwise specified, employees shall move from the minimum step in the pay range to the maximum step in annual increments.

. . .

4. That Complainant and Respondent executed a new collective bargaining agreement March 28, 1972 covering the period of January 1, 1972 to December 31, 1972 which provided:

ARTICLE IX

Rates of Pay

. . .

Section 2.

Unless otherwise specified, employees shall move from the minimum step in the pay range to the maximum step in annual increments. All employees upon promotion or transfer will be placed on that pay step reflecting total years of service.

. . .

5. In the early part of 1971, Grievant Robert Knoll was employed as a "pool operator" by Employer. Subsequently Employer assigned the duties of that position to another position already filled. Grievant's compensation at all times remained $4.41 per hour. Effective June 9,

1971, Grievant bid for and received a job as "Fireman-Custodian", for which job he was paid $4.08 per hour (first step of three in pay range for that position).

6. In the early part of 1971, Grievant Erv Janik was employed by Employer as a "Senior High School Custodian", and received $4.15 per hour (third step of three). At that time he was transferred to another school as a "Fireman-Custodian" and paid $4.15 per hour (second step of three).

7. Grievant Irk Potz was employed in 1971 by Employer as a "Custodian" and received $4.05 (third step of three) plus 15¢ per hour shift premium. On November 9, 1971 Grievant Potz was transferred as a "Fireman-Custodian" at $4.08 per hour (first step of three) plus 25¢ per hour for work done on weekends.

8. That each of the Grievants has at least three years seniority with the Employer.

9. The present collective bargaining agreement between the parties does not provide for final and binding, neutral arbitration of grievances involving the violation of that agreement.

10. That during negotiations for the January 1, 1972 to December 31, 1972 collective bargaining agreement the Union stated its position to the Employer that the language which now appears as the second sentence in Article IX Section 2 would rectify the underlying grievances. It was the Employer's understanding during those same negotiations that the underlying grievances would not be remedied and that only future similar occurrences would be remedied.

Based upon the above and foregoing Findings of Fact, the Examiner makes the following

CONCLUSION OF LAW

That the Respondent's 1971 placement of Robert Knoll, Erv Janik and Irk Potz, upon their transfers in position, at salary steps reflecting less than their total years of experience with the Employer did not violate any collective bargaining agreement existing between the parties.

Based upon the above and foregoing Findings of Fact and Conclusion of Law, the Examiner makes the following

ORDER

The complaint in the above-entitled matter be, and the same hereby is, dismissed.

Dated at Milwaukee, Wisconsin, this 4th day of October, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stanley H. Michelstetter II
Stanley H. Michelstetter II, Examiner

STATE OF WISCONSIN

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MEMORANDUM ACCOMPANYING
FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

The Union argues that denial of the grievances would result in the possibility of serious inequities for the Grievants. The Union argues that there is a latent ambiguity in the newly added second sentence of Article IX, Section 2 of the 1972 collective bargaining agreement as to whether the language is retroactive to cover the Grievants' cases. The Union concedes that that sentence is not, in general, retroactive. In the alternative, the Union argues that even if such language does not cover the instant cases, the discussion during negotiations and the policy of the newly added language imply that these situations should be remedied in accordance with that language.

The Employer argues that the addition to Article IX, Section 2 in the 1972 agreement is not retroactive. The language of said Article should be construed against the Union in resolving any ambiguity. Therefore the grievance should be dismissed.

It is clear that neither the Union nor the Employer intended the new language to be retroactive in general. The Union stated during negotiations that it intended this language to be retroactive only for the three grievances involved; however, that intention is not directly manifested in the language itself. The Union and Employer did not reach agreement that the language should stand for the Union's position. The language could possibly be fairly interpreted to have a logical latent ambiguity as to whether the language applies to all promotions

and transfers made before January 1, 1972 or not, but for obvious reasons neither party intended it to be so. The language, however, cannot fairly be read to have any other logical latent ambiguity relevant to these issues in this case.* While the possibility of serious inequities clearly exists in the case of Grievants, it is not the statutory responsibility of the Commission to remedy such possibilities, but rather its duty to render fair and impartial interpretation of the contract language. (Wis. Rev. Stat. Section 111.70 (3)(a)(5); Section 111.70 (4); Section 111.07, Wis. Adm. Code ERB 12.04 (1)). To render a decision in opposition to the contract language to eliminate inequities exceeds the power of the Commission.

Dated at Milwaukee, Wisconsin, this 4th day of October, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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* Specifically, whether the language includes the three Grievants alone retroactively or not.