



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 1.

The parties agree that the wages paid to the employees covered by this Agreement shall be in accordance with Appendix A (attached). . .

Section 2.

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

. . ."

"APPENDIX A

<u>Classification:</u>		Effective Jan. 1, 1970	Effective Jan. 1, 1971
Fireman-Custodian	1st year	\$ 3.84	\$ 4.08
	2nd year	3.91	4.15
	3rd year	3.97	4.21
Senior High School Fireman-Custodian	1st year	3.94	4.18
	2nd year	4.01	4.25
	3rd year	4.07	4.31
Custodian	1st year	3.68	3.92
	2nd year	3.73	3.97
	3rd year	3.81	4.05
Head Senior High School-Custodian		4.22	4.46
Senior High School Custodian	1st year	3.78	4.02
	2nd year	3.83	4.07
	3rd year	3.91	4.15
Maintenance/Fireman Custodian		4.47	4.71
Pool Operator		4.17	4.41"

4. That prior to June 9, 1971, Robert Knoll was employed by the Employer as a Pool Operator, and was receiving a pay rate of \$4.41 per hour; that prior to June 9, 1971 the Employer assigned the duties previously assigned to Knoll as the Pool Operator to an individual occupying the position of the Head Custodian at each of the school buildings involved, and between the date of such reassignment, which date was not disclosed, and June 9, 1971, Knoll continued to receive \$4.41 per hour; that on June 9, 1971, after the Employer had posted a job opening in accordance with the collective bargaining agreement for the classification of "Fireman-Custodian", Knoll on June 9, 1971, bid for said position and was assigned thereto on the latter date, and upon such assignment was paid \$4.08 per hour.

5. That prior to November 10, 1971, Erv Janik was employed by the Employer as a "Senior High School Custodian" and was receiving \$4.15 per hour; that prior to November 10, 1971, the Employer posted a job opening for the position of "Fireman-Custodian"; that Janik bid for said position and was awarded same on November 10, 1971, and in said position, Janik commenced receiving a pay rate of \$4.15 per hour.

6. That prior to November 10, 1971, Irk Potts was employed by the Employer as a "Custodian" at the rate of \$4.05 per hour and Potts was also receiving a 15¢ an hour premium as a result of working on his particular shift; that prior to November 10, 1971, the Employer posted a job opening for the position of "Fireman-Custodian" and on November 10, 1971, Potts bid for said position, and commenced receiving the rate of \$4.08 per hour plus an additional 25¢ per hour for work performed on weekends.

7. That, prior to their transfers above noted, Knoll, Janik and Potts had at least three years seniority with the Employer.

8. That following negotiations in the Fall of 1971, the Employer and the Union entered into a collective bargaining agreement for the year 1972, covering the wages and conditions of employment of the employees in its employ; and that said agreement included among its provisions, certain provisions identical to those provisions in the 1970-1971 agreement with the following changes:

"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.

. . ."

"APPENDIX A

<u>Classification:</u>		<u>Effective January 1, 1972</u>
Fireman-Custodian	1st Year	\$ 4.31
	2nd Year	\$ 4.38
	3rd Year	\$ 4.44
Senior High School Fireman-Custodian	1st Year	\$ 4.41
	2nd Year	\$ 4.48
	3rd Year	\$ 4.54
Custodian	1st Year	\$ 4.15
	2nd Year	\$ 4.20
	3rd Year	\$ 4.28
Head Senior High School Custodian		\$ 4.79
Senior High School Custodian	1st Year	\$ 4.25
	2nd Year	\$ 4.30
	3rd Year	\$ 4.38
Head Junior High School Custodian		\$ 4.64
Maintenance/Fireman Custodian		\$ 5.04
Pool Operator		\$ 4.64"

9. That on or about April 17, 1972, a dispute arose between the Union and the Employer under Article IX, Section 2, of the 1972 collective bargaining agreement, wherein the Union alleged that the Employer violated said Article by not placing Knoll, Janik, and Potts in the pay steps in their particular job classification reflecting their total years of seniority with the Employer; that said dispute was processed through the grievance procedure existing in the collective bargaining agreement without the parties reaching a resolution with regard to said grievances.

Based upon the above and foregoing Amended Findings of Fact, the Commission issues the following

AMENDED CONCLUSION OF LAW

That the failure of the Board of Education of the City of Cudahy to place employes Robert Knoll, Erv Janik, and Irk Potts at the time that they transferred to the positions of "Fireman-Custodian" in the

pay range of said classification, determined by their years of seniority, did not violate the terms of either the collective bargaining agreement existing between the Board of Education of the City of Cudahy and Local 742, affiliated with Milwaukee District Council 48, AFSCME, AFL-CIO, for the period January 1, 1970 through December 31, 1971, or the provisions of the agreement existing between said parties for the year 1972, and that therefore the Board of Education of the City of Cudahy has not committed any prohibited practice within the meaning of Section 111.70(3)(a)5, or any other provision of the Municipal Employment Relations Act.

On the basis of the above and foregoing Amended Findings of Fact and Amended Conclusion of Law, the Commission issues the following

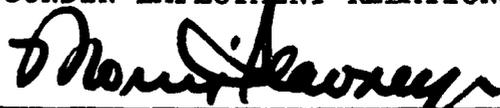
ORDER

That the complaint filed in the instant matter be, and the same hereby is, dismissed.

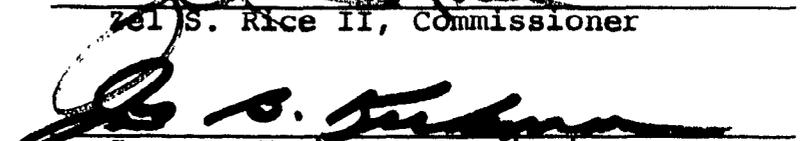
Given under our hands and seal at the City of Madison, Wisconsin, this 12<sup>th</sup> day of October, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
\_\_\_\_\_  
Morris Slawney, Chairman

  
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Zel S. Rice II, Commissioner

  
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Jos. B. Kerkman, Commissioner

The Union filed a complaint alleging that the Board of Education committed a prohibited practice in that it violated the provisions of an existing collective bargaining agreement by failing to pay three custodial employes wage rates in accordance with the collective bargaining agreement. In its answer the Board denied that it committed any prohibited practice, contending that at the time the three employes involved were transferred to the positions which they held at the time of filing complaint, there was no obligation upon the Board to place the employes in the pay range of the classifications to which they were transferred.

The employes involved were transferred to new classifications under the 1971 agreement and were placed in the range in their new classifications other than at the range they enjoyed in their previous classifications. At the time of the transfers, which were made after the employes bid on job openings, the collective bargaining agreement did not require the employes to be transferred into the pay range of the classification reflecting total years of seniority with the Employer, but rather that the collective bargaining agreement provided step increases in particular classifications for years of service in the particular classification rather than years of total employment with the Board of Education. The parties negotiated changes in their 1972 agreement which provided that an employe's total years of service should be included when he is transferred to another classification in order to determine his proper rate.

In April, 1972, the three employes filed grievances alleging that they were not in the proper pay range in their classification, contending they had more than three years of employment with the Employer and therefore should be paid at the top range of the classification which they occupied. The Board of Education denied the grievances, 1/ and thereupon the Union filed the complaint initiating the instant proceeding.

It is clear that the 1972 agreement provides that, when an employe transfers from one classification to another, he is placed in a pay range reflecting his total years of employment with the Board of Education rather than starting at the first step of the range of the classification involved. The 1970-1971 agreement contained no such provision. The three transfers involved occurred during the term of the 1970-1971 agreement and under that agreement there could be no violation of said agreement by the action of the Employer with regard to the rates paid upon the transfer of the three employes involved. During the course of the hearing the Union attempted to establish that during the negotiations leading up to the 1972 agreement representatives of the Union and the Board of Education, after they had agreed to incorporate, in the 1972 agreement, the changes with respect to transfers, the Employer agreed to "retroactively" apply such contractual change to the transfers of the three employes and therefore to place them in the top range of their particular classification. The witness for the Board of Education denied that such an understanding had been reached in the negotiations. Therefore, we are not satisfied that the Union has established by any preponderance of the evidence that there was an understanding that the 1972

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1/ The collective bargaining agreement does not provide for final and binding arbitration.

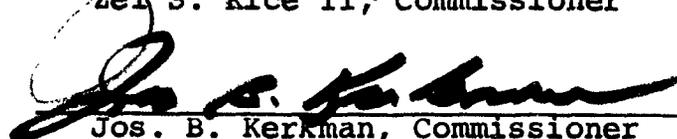
provision with respect to pay upon transfers would be applied retroactively to the three employees involved, and it is quite clear that the pertinent provisions in the 1972 agreement do not provide for any retroactive application, and therefore the record does not establish that the Board of Education violated either an oral understanding or any written collective bargaining agreement with respect to the matter, and therefore we have dismissed the complaint.

Dated at Madison, Wisconsin, this 12<sup>th</sup> day of October, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By   
\_\_\_\_\_  
Morris Slavney, Chairman

  
\_\_\_\_\_  
Zel S. Rice II, Commissioner

  
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Jos. B. Kerkman, Commissioner