STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MADISON TEACHERS INCORPORATED, Complainant, vs. JOINT SCHOOL DISTRICT NO. 8, CITY OF MADISON, VILLAGES OF MAPLE BLUFF AND SHOREWOOD HILLS, TOWNS OF MADISON, BLOOMING GROVE, FITCHBURG and BURKE, and the BOARD OF EDUCATION OF JOINT SCHOOL DISTRICT NO. 8, ET AL, Respondents.	Case XIX No. 17389 MP-298 Decision No. 12610

Appearances:

Mr. Robert C. Kelly, Attorney at Law, appearing on behalf of the Complainant.

Mr. Gerald C. Kops, Assistant City Attorney, appearing on behalf of the Respondents.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Complaint of prohibited practices having been filed with the Wisconsin Employment Relations Commission in the above entitled matter, and the Commission having conducted hearing in the matter on December 18, 1973, Chairman Morris Slavney being present; and the Commission, having considered the evidence, arguments and briefs of Counsel, and being fully advised in the premises, makes and issues the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. That Madison Teachers Incorporated, hereinafter referred to as the Complainant, is a labor organization having its principal office at 121 South Hancock Street, Madison, Wisconsin 53703.

2. That Joint School District No. 8, City of Madison, Villages of Maple Bluff and Shorewood Hills, Towns of Madison, Blooming Grove, Fitchburg and Burke, and its Board of Education, which is charged with the possession, care, control and management of the property and the affairs of the District, are a Municipal Employer and have their offices at 545 West Dayton Street, Madison, Wisconsin 53703; and that said District and said Board are hereinafter jointly referred to as the Respondent.

3. That at all times material herein, the Complainant has been, and is the exclusive collective bargaining representative of all regular full-time and regular part-time certificated teaching personnel employed by the Respondent, including psychologists, psychometrists, social workers, attendants and visitation workers, work experience coordinator, remedial reading, University Hospital teacher, trainable group, librarians, guidance counselors, teaching assistant principals (except at Sunnyside School), and teachers on leave.

4. That as the result of collective bargaining between the Complainant and the Respondent as concerns the wages, hours and conditions of employment of bargaining unit personnel, a series of written collective bargaining agreements have been entered into by and between the parties; and that the collective bargaining agreement in existence between the parties at all times material herein contained the following provisions with regard to its modification and the term thereof:

"VIII - Other Board and MTI Agreements

. . .

B. ADOPTION OF BOARD POLICIES

1. All policies of the Board of Education affecting teachers' wages, hours and conditions of employment shall remain in effect unless changed by mutual agreement by the Board of Education and Madison Teachers. This agreement shall be binding on each of the parties for the period January 1, 1973 to December 31, 1974."

5. That said collective bargaining agreement, in Article III (M) relating to "Extra Duty Compensation Schedule" provides that coaches of male or female athletics are to be paid for performing such activity a specified percent of one of three bases, depending on the years of service in the involved athletic activity; and that the percentages of indices to be applied to the proper base in determining the salary to be paid to coaches of a particular male or female athletic activity, relevant to the issues herein, are set forth in Section 12 of Paragraph B of Article III to reflect the following:

MALE ATHLETIC ACTIVITY	% of Base	FEMALE ATHLETIC ACTIVITY	% of Base
Basketball		Basketball	4
Senior High Head Coach	12		
Senior High Asst. Coach	8		
Junior Varsity Coach	8		
Four Lakes Head Coach	7		
9th Grade Head Coach	7		
Swimming		Swimming	5
Head Coach	10		
Assistant Coach	7		
Track		Track	5
Head Coach	10		
Assistant Coach	7		
9th Grade	4		
Gymnastics		Gymnastics	5
Head Coach	10		
9th Grade and assist with Varsity	7		
Volleyball		Volleyball	4
Senior High Coach	6		
9th Grade Coach	5		
Tennis		Tennis	4
Head Coach	5		
9th Grade & Varisty	4		
Golf		Golf	4
Head Coach	5		
9th Grade & Varsity	4		
		Softball	4

6. That prior to September 18, 1973 the Complainant filed a grievance with the Respondent alleging that the Respondent had violated the collective bargaining agreement with reference to pay of female coaches; that about the same time the Complainant advised the Respondent that the extra duty pay schedules for coaches of female sports, which schedules had been mutually agreed upon by the parties in their collective bargaining agreement, were improperly low when compared to compensation paid to coaches of male sports, and in that regard were violative of state and federal laws pertaining to sex discrimination; and that the above noted grievance, as of the date of the hearing herein, had proceeded to final and binding arbitration, pursuant to the collective bargaining agreement existing between the parties.

7. That on September 18, 1973 the Respondent directed the following letter over the signature of its Labor Consultant to the Complainant:

> "The Board requests that the current collective bargaining agreement between Madison Teachers, Inc. and the Madison Board of Education be reopened for the sole and expressed purpose of modifying III -Salary-M-12 of the collective bargaining agreement to provide as follows:
>
> | | Head Coach | Assist. Coach |
> |---|---|---|
> | Gymnastics (girls) | 9% level | 6% level |
> | Track (girls) | 9% | 6% |
> | Basketball (girls) | 7% | 5% and 4% fresh. |
> | Volleyball (girls) | 6% | 5% |
> | Swimming (girls) | 6% | 4% |
> | Tennis (girls) | 5% | 4% |
> | Golf (girls) | 5% | 4% |
> | Softball (girls) | 5% | 4% |
>
> Would you please advise as to whether MTI concurs in this request."

8. That in response to the above letter, the Complainant, on October 10, 1973 sent two letters to the Respondent, one identifying six individuals who would constitute the "agents" of the Complainant "for the special negotiations session", and the other stating as follows:

> "In response to your letter of September 18, we wish to advise you that Madison Teachers hereby agrees/accepts your offer to reopen the Master Contract.
>
> We, however, would like to negotiate with you relative to the following topics:
>
> 1. Group Hospital and Surgical Insurance, Health Maintenance Program, Article VII-D
>
> 2. Clarifications of the provisions governing short term leave due to recent unilateral revisions by the Board of Education or administration
>
> 3. Criteria governing salary continuance for and around holidays due to recent unilateral revisions by the Board of Education or Administration
>
> 4. Compensation for teachers having overloads of pupil responsibility Article III-G
>
> 5. Compensation for teachers serving in class covering situations, Article V-K
>
> 6. Compensation for those coaching female sports and other inequities in Article III-M

We look forward to your response in this regard so we may establish times mutually acceptable to begin negotiations."

9. That thereafter there followed an exchange of letters between the Complainant and the Respondent relative to the scope of the proposed collective bargaining session; that on October 25, 1973 the Respondent's Labor Consultant, in a letter to the Complainant, attempted to clarify the Complainant's position by asking "Is my understanding correct that Madison Teachers, Inc. will not reopen the contract for the purpose of adjusting certain salary schedules of coaches unless the Board agrees to open other areas of the contract?"; that the Complainant's Executive Director, in a letter dated October 30, 1973, denied this intention by stating: "I fail to see how you construed my letter of October 10 to say that Madison Teachers refuses to bargain for the purpose of 'adjusting certain salary schedules' unless the Board agrees to open other areas of the Contract. Madison Teachers simply sees some other areas of concern to both parties which are also in need of attention for clarification."; and that in the same letter the Complainant again requested that negotiations be expanded to cover certain other specified areas.

10. That on November 10, 1973, the Respondent sent a letter to the Complainant which contained in part the following:

"Since September 18 you have sought to expand upon the Board's request by introducing additional subjects and indicating an intent to negotiate the schedule proposed by the Board.

The Board is still awaiting your decision as to whether the Board may implement the salary schedule contained in the September 18 letter. As stated in that letter, the only purpose in requesting the agreement be reopened is to implement the salary schedule contained in that letter."

11. The Complainant, by letter to the Respondent dated November 12, 1973, again repeated its acceptance of Respondent's offer to reopen the collective bargaining agreement for the purpose of negotiating the salaries of coaches of female sports, and therein the Complainant again proposed that there be negotiations with respect to the other specified matters, and specifically stated:

"Further, Madison Teachers proposes, as we did in our letter of October 10, 1973, the reopening of our Master Contract for the purposes of negotiating, either together with the above, together with each other and separate from the above; or each on a separate and individual basis."

12. That on November 13, 1973, over the signature of its Executive Director, the Complainant sent a letter to the Respondent's Labor Consultant, Neil Gundermann, with reference to the latter's letter of September 18, 1973; and that in said regard said Executive Director stated as follows:

"So that there is no misunderstanding, it is the position of MTI that the extra duty compensation index used to calculate the compensation paid the coaches of female sports is improperly low when compared to the index used to calculate the compensation paid male coaches involved in the same or similar activity and in the sense such index is violative of the state and federal statutory provisions prohibiting discrimination in the terms of employment because of sex.

We are of the opinion that that portion of the Extra Duty Compensation Schedule establishing these indexes is therefore unlawful and would be declared void by a court under the Severability Clause (Article

VIII (G)) of the current Collective Bargaining Agreement in a proper proceeding. This fact gives the Employer no right under Wis. Stat. 111.70 and/or our contract to unilaterally establish what it considers to be a more appropriate index. The MTI is the collective bargaining representative for these employees and as such has the right to collectively bargain with the Board in establishing proper indexes. We are willing to do so at your earliest convenience or as stated in our recent letter, beginning November 28, 1973.

In summary, we are of the opinion that the female coaches index as it exists is unlawful in part; i.e. is discriminatory based on sex. We do not feel bound by the existing schedule for the aforementioned reason and will assist our members in filing charges with the proper state and federal agencies if need be.

If you wish to establish new indexes which properly consider the time and effort involved, we request it be done through the collective bargaining process. We are available to participate in that process as above stated. Surely you are aware that if it is the Board's intent to unilaterally establish such a negotiable provision that the implementation of that intent may well result in the Board being charged with failure to bargain, a prohibited practice.

Be further advised that by refusing to allow the Board to unilaterally establish such index we are not in any way accepting the indexes now established as proper or lawful."

13. That on November 21, 1973, Complainant's Executive Director sent the following letter to the Respondent's Labor Consultant:

"Relative to our pending negotiations, please furnish us with the following information as soon as possible:

A) Regarding the positions outlined in your letter of September 18, 1973 please advise:

1. Length of the season; number of people on the teams; number of assistants and their responsibilities; number of games, meets, and approximate playing time, travel time, number and length of practices, grade level of participants

2. Kindly also furnish the same information for coaches of male sports

3. Availability of facilities for the sports outlined in your letter compared to similar boy's activities

4. The amount budget by the Madison Board of Education for those sports outlined in your letter for both boys and girls in 1973 and 1974"

14. That the Respondent, over the signature of its Assistant Superintendent, on November 27, 1973, sent the following letter to the Complainant:

"This is to advise you that in an effort to pay women coaches in a manner that we believe to be equitable with the salaries paid to men coaches we are instituting the salary amounts originally proposed to you by Mr. Gundermann on September 18, 1973. We are taking this action at this point in order that the checks to be received on December 3, 1973 will reflect this increase.

Your letter indicated your belief that the proposed amounts were not equitable. Our studies lead us to believe that given the number of variables between men and women that equitability will have been achieved if we institute this salary procedure. If you can provide documentation to your belief that equity has not been achieved by the institution of our salary figures please provide us with such information and we would be willing to analyze it in comparison with our own studies.

If your data leads us to believe that we indeed have not created an equitable situation we would be willing to sit down and discuss it with you. Starting with correspondence of September 18 up until your recent letter to Mr. Gundermann of November 13, 1973 you have given no indication that our proposed figures are not equitable. It is only in that letter that you raised the issue.

In indicating to you that we are instituting this procedure we are not closing the door to further discussion, but we feel that that discussion should center on the question of equitability and that you should provide us with some data or information of inequitability in our figures."

15. That on November 29, 1973 the Executive Director of the Complainant directed a letter to the Assistant Superintendent of the Respondent, wherein the Respondent was charged with, among other things, "unilaterally, arbitrarily and capriciously" establishing extra duty compensation for coaches of female sports, and in said letter the Complainant requested data and information used by the Respondent in establishing such extra duty compensation; that such data was furnished to the Complainant prior to December 5, 1973, and contained information comparing athletic activities for boys and girls, specifically the lengths of seasons, the number of games and meets, as well as whether certain athletic activities were involved in tournament play; and that on December 5, 1973 Complainant's Executive Director, in writing, advised the Respondent of the person designated by the Complainant to analyze such data.

16. That on December 17, 1973 the Respondent, in a letter over the signature of its Superintendent of Schools, directed the following letter to the Area Director of the Federal Wage and Hour Division of the U. S. Department of Labor:

"Pursuant to our telephone conversation this afternoon, please be advised that the City of Madison Board of Education wishes the Department of Labor to initiate a review of the extra-duty compensation paid coaches of female athletics. The Board is seeking the assistance of your office in order to determine whether the extra-duty compensation presently being paid coaches of female athletics is in compliance with the Board's obligations under Section 6d of the Fair Labor Standards Act.

I look forward to hearing from your office."

Upon the basis of the above and foregoing Findings of Fact, the Commission makes the following

CONCLUSIONS OF LAW

1. That, neither the fact that Madison Teachers, Inc. and Joint School District No. 8, City of Madison, et al, and its Board of Education, previously negotiated salaries for coaches of female sports, which were not in compliance with Section 6(d) of the Fair Labor Standards Act, nor the fact that said School District, and its Board of Education, implemented changes in the salaries for coaches of female sports in an intended effort to comply with said section of the Fair Labor Standards Act, relieved said

School District and the Board of Education of their duty to bargain collectively on wages, hours and working conditions with Madison Teachers, Inc., as the representative of the certified teaching personnel in the employ of said School District, as contemplated in Section 111.70(2) of the Municipal Employment Relations Act.

2. That Joint School District No. 8, City of Madison, et al, and its Board of Education by unilaterally implementing changes in salaries for coaches of female sports, in the manner and under the circumstances set forth in the Findings of Fact, has refused, and continues to refuse, to bargain collectively with Madison Teachers, Inc., as the representative of the certified teaching personnel in the employ of said School District, and therefore, in said regard, Joint School District No. 8, City of Madison, et al, and its Board of Directors have committed, and are committing prohibited practices within the meaning of Section 111.70(3)(a)4 and 1.

Upon the basis of the above and foregoing Findings of Fact and Conclusions of Law, the Commission makes the following

ORDER

1. IT IS ORDERED that Joint School District No. 8, City of Madison, et al, its Board of Education and it agents shall immediately

(a) Cease and desist from:

(1) Refusing to bargain collectively with Madison Teachers, Inc., with respect to changes in salaries for coaches of female sports in efforts to comply with Section 6(d) of the Fair Labor Standards Act, or for any other reason.

(2) Unilaterally instituting changes in salaries, hours, and any other conditions of employment of certified teachers represented by Madison Teachers, Inc.

(3) In any other manner interfering with the efforts of Madison Teachers, Inc. to bargain collectively on behalf of such certified teachers represented by said organization.

(b) Take the following affirmative action which the Commission finds will effectuate the policies of the Municipal Employment Relations Act:

(1) Upon due dispatch collectively bargain with Madison Teachers, Inc. on the matter of salaries for coaches of female sports, and if an agreement is reached thereon to incorporate same in the collective bargaining existing between the parties.

(2) Notify all certified teaching personnel represented by Madison Teachers, Inc., posting in conspicuous places, where notices to all such employes are usually posted, copies of the notice attached hereto and marked "Appendix A". Such copies shall be signed by the Superintendent of Schools and shall be posted immediately upon receipt hereof and remain posted for thirty (30) consecutive days thereafter. Reasonable steps shall be taken to insure that said notices are not covered, removed or defaced in any manner.

(3) Notify the Commission, in writing, within ten (10) days of the date of this Order what steps have been taken to comply herewith.

Given under our hands and seal at the City of Madison, Wisconsin this 8th day of April, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney
Morris Slavney, Chairman

Zel S. Rice II, Commissioner

Howard S. Bellman
Howard S. Bellman, Commissioner

APPENDIX A

Notice To All Teaching Personnel Represented By
Madison Teachers, Inc.

Pursuant to the Order of the Wisconsin Employment Relations Commission, and in order to effectuate the policies of the Municipal Employment Relations Act, we hereby notify the above employes that:

1. WE WILL NOT refuse to bargain collectively with Madison Teachers, Inc. with respect to changes in salaries for coaches of female sports in efforts to comply with Section 6(d) of the Fair Labor Standards Act, or for any other reason.

2. WE WILL NOT unilaterally institute changes in salaries, hours, and any other conditions of employment of certified teachers represented by Madison Teachers, Inc.

3. WE WILL NOT in any other manner interfere with the efforts of Madison Teachers, Inc. to bargain collectively on behalf of such certified teachers represented by said organization.

4. WE WILL, upon due dispatch, collectively bargain with Madison Teachers, Inc. on the matter of salaries for coaches of female sports, and if an agreement is reached thereon to incorporate same in the collective bargaining existing between the parties.

Dated this _____ day of _____, 197__.

By_____

THIS NOTICE MUST BE POSTED FOR A PERIOD OF THIRTY (30) DAYS AND MUST NOT BE ALTERED, DEFACED OR COVERED BY ANY OTHER MATERIAL.

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

In its complaint, the Complainant alleges that the Respondent, by unilaterally establishing and implementing a change in the salaries of coaches of female athletics, (1) interfered with the rights of its employes to bargain collectively through Complainant in violation of Section 111.70(3)(a)(1) of the Municipal Employment Relations Act, (MERA), and (2) failed and refused to collectively bargain with Complainant as concerns a mandatory subject of bargaining in violation of Section 111.70(3)(a)4 of MERA. In its prayer for relief, the Complainant requests that the Respondent be ordered to bargain collectively with the Complainant as concerns the modification of those salary indices which pertain to the salaries of coaches of female athletics, and to cease and desist from engaging from such conduct in the future.

In its answer, the Respondent admits that it unilaterally established and implemented a change in the salaries of coaches of female athletics but denies that in doing so, it violated any provisions of MERA. The Respondent maintains it is charged with the duty of eliminating differentials in pay based solely on sex by the Fair Labor Standards Act, Section 6(d), which provides that it is unlawful for an employer to pay wages at a rate less than the rate at which it pays wages to employes of the opposite sex for work, where the duties involved require equal skill, effort and responsibility and which are performed under similar working conditions.

Section 6(d) 1 and 2 of the Fair Labor Standards Act as amended June 23, 1972, provides as follows:

> "(d)(1) No employer having employees subject to any provisions of this section shall discriminate, within any establishment in which such employees are employed between employees on the basis of sex by paying wages to employees in such establishment at a rate less than the rate at which he pays wages to employees of the opposite sex in such establishment for equal work on jobs the performance of which requires equal skill, effort and responsibility, and which are performed under similar working conditions, except where such payment is made pursuant to (i) a seniority system; (ii) a merit system; (iii) a system which measures earnings by quantity or quality of production; or (iv) a differential based on any other factor other than sex: Provided, That an employer who is paying a wage rate differential in violation of this subsection shall not, in order to comply with the provisions of this subsection, reduce the wage rate of any employee.
>
> (2) No labor organization, or its agents, representing employees of an employer having employees subject to any provisions of this section shall cause or attempt to cause such an employer to discriminate against an employee in violation of paragraph (1) of this subsection."

In addition, the Respondent contends (1) because Complainant advised the Respondent that the Complainant did not consider itself bound by the existing salary schedule, since the Complainant had concluded the schedule was violative of state and federal statutory provisions prohibiting discrimination in terms of employment because of sex (2) because the Complainant demanded that the Respondent discontinue such "discrimination", and indicated that it would assist its members in filing charges with the proper federal and state authorities, (3) and also because the Complainant had filed a grievance concerning the pay of coaches of female athletics, that the Respondent was justified and excused in taking the unilateral action of adjusting the salary schedule of coaches of female athletics.

There is no dispute as concerns the fact that the Respondent unilaterally modified and established, during the term of a collective bargaining agreement, the salaries payable to coaches of female athletics, a mandatory subject of collective bargaining. As a defense to this action, the Respondent alleges a duty of eliminating differentials in pay based solely on sex under the Fair Labor Standards Act, Section 6(d). The parties to this proceeding concede that the Respondent is obligated by the Fair Labor Standards Act to eliminate compensation differentials based on sex. The Complainant also concedes that the extra duty compensation schedule as set forth in the collective bargaining agreement violates applicable federal and state statutes based on sex. However, Complainant does not agree with the Respondent's position that Respondent' compliance with Section 111.70(3)(a)1 and 111.70(3)(a)4 of MERA is thereby excused.

The Complainant refused to agree to, or accept, the Respondent's unilaterally modified and established indices, but rather demanded that such matters be submitted to the collective bargaining process. The Respondent rejected the Complainant's demand and unilaterally implemented increases to the coaches of female sports.

An employer is bound to deal exclusively with the majority representative of its employes. An employer violates its duty to bargain when it unilaterally changes wages or other bargainable employment conditions during negotiations, or while a collective bargaining agreement is in full force and effect. 1/ The Respondent fully admits this to be the law.

The Fair Labor Standards Act is devoid of any language which even hints that it suspends or waives the collective bargaining rights or duties established pursuant to state or federal law. On the contrary, the courts have found that the Fair Labor Standards Act requires no such result. After terminating negotiations, the Employer in NLRB v. Union Mfgr. Co. 200 F. (2d) 656 [CA5(1953)] 31 LRRM 2232, without notifying or consulting the Union, granted a general wage increase to certain of its employes, as required by amendments to the Fair Labor Standards Act, and then increased its piece work rates so as to maintain a production incentive over such rates. In faulting such conduct, the Fifth Circuit Court of Appeals said:

> "Respondent's contention that its granting of the wage increases was justified to prevent loss of its experienced employees to competitors, as well as required by law under the Fair Labor Standards Act amendments, is without merit as a defense to the violations. The Act permits no immunity because the employer may think that the exigencies of the moment require infraction of the statute (Wilson & Co. Inc. v. N.L.R.B., 123 F.2d 411, 417-18 [9 LRR Man. 599]) and although the wage increase may have been required by law, the evidence as to respondent's refusal to present or even discuss it with the Union after the unfair labor practice charges were filed on February 14, 1950, is sufficient to justify the Board's finding of respondent's refusal to bargain in good faith. The good faith bargaining requirement of the Act includes matters covered by law where, as here, they relate to terms and conditions of employment. See N.L.R.B. v. Corsicana Cotton Mills, 178 F.2d 344, 347 [25 LRRM 2122]; N.L.R.B. v. Boss Mfg. Co., 118 F.2d 187, 189 [8 LRR Man. 729]; Singer Mfg. Co. v. N.L.R.B., 119 F.2d 131, 138 [8 LRR Man. 740]."

In addition, an inference is created from Respondent's actions that would indicate Respondent recognized its duty to bargain on the salary

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1/ NLRB v. Katz, 369 U.S. 736, 82 Sup. Ct. 1107, 50 LRRM 2177 (1962).

changes. On September 18, Respondent sent a letter to the Complainant requesting reopening of the collective bargaining agreement for the "purpose of modifying" the salary schedule. Although the Complainant continued to refuse to accept the Respondent's unilaterally modified and established indices, it continued to express a willingness, in fact a demand, that the matter be submitted to the collective bargaining process.

The Complainant maintains that, if the Respondent had any right to act unilaterally under Section 6(d) of the Fair Labor Standards Act, such right was limited to raising the salaries of the involved female coaches to a level equal to the salary paid coaches of male athletic events where the work performed was substantially equal. But such is not the case here. The Respondent unilaterally raised or established 17 indices. In only six cases were the modified or established indices equal to those previously contractually established for coaches of the same athletic activity involved. In 11 instances the change made by the Respondent placed the index at a level higher than previously established, but from one to five points lower than the previously established index for coaches of male sports.

The Respondent makes much of the argument that it had an absolute duty to comply with the provisions of the latter statute as an excuse for taking unilateral action on the salary indices without participation of the Complainant. Yet apparently the Complainant desired also to comply with requirements of Section 6(d) of the Fair Labor Standards Act.

The Commission concludes that the remaining defenses of the Respondent are without merit. The allegation that even if the Complainant and the Respondent bargained over the matter and reached an agreement that the Respondent could not be assured that the Complainant would not again file grievances or seek other relief through further legal proceedings, or that an agreement once reached still might not comply with the Respondent's federal and state statutory obligations is mere conjecture.

In order to carry out its obligation to represent employes in the bargaining unit the Complainant has the right to have a voice in determining the salaries which will meet the minimum requirements of the Fair Labor Standards Act, and any state statutes relating to sex discrimination, and, therefore, the Complainant has a statutory right, under MERA, to negotiate salaries for coaches of female sports through the collective bargaining process. Since the Respondent unilaterally implemented salaries for the coaches of female athletics, the Respondent has failed to bargain collectively with the Complainant in violation of Section 111.70(3)(a)4 and 1 of MERA.

In its prayer for relief the Complainant has requested the Commission in its Order, among other things, to require the Respondent to cease and desist from further payment of the extra-duty compensation based upon the indices unilaterally established by the Respondent. We believe that such an order would be inequitable to those teachers whose coaching responsibilities have not ceased, as compared to those coaches whose coaching duties have ceased, and who have received the increases unilaterally implemented by the Respondent. The fact that the Commission has not ordered the Respondent to cease and desist from the continuation of such payment is in no way to be construed as con-

doning the prohibited practice committed by the Respondent, nor from adjusting salaries should agreement be reached.

Dated at Madison, Wisconsin this 8th day of April, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Morris Slavney, Chairman

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Zel S. Rice II, Commissioner

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Howard S. Bellman, Commissioner