

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MARIAN OLSON and the NORTHWEST UNITED
EDUCATORS,

Complainants,

vs.

JOINT SCHOOL DISTRICT NO. 1,
WINTER ET. AL.,

Respondent.

Case VI
No. 18143 MP-385
Decision No. 12889-A

Appearances:

Mr. James T. Guckenberger, Executive Director, Northwest United Educators,
appearing on behalf of the Complainants.

Mr. Charles Ackerman, Labor Consultant, appearing on behalf of the
Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The above-named Complainants having on July 17, 1974, filed a complaint with the Wisconsin Employment Relations Commission, alleging that the above-named Respondent has committed a prohibited practice within the meaning of Section 111.70(3)(a)5 of the Municipal Employment Relations Act; and the Commission having appointed Dennis P. McGilligan, a member of its staff, to act as Examiner and make and issue Findings of Fact, Conclusions of Law and Order as provided in Section 111.07(5) of the Wisconsin Employment Peace Act; and hearing on said complaint having been held at Hayward, Wisconsin, on August 30, 1974, before the Examiner; and the Examiner having considered the evidence and arguments of the parties, 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 Marian Olson, hereinafter referred to as Complainant Olson, is an individual residing at Winter, Wisconsin; and that, at all times material hereto, Complainant Olson has been employed by Joint School District No. 1, Winter, et. al., as a public school teacher.

2. That Northwest United Educators, hereinafter referred to as Complainant NUE, is a labor organization representing employes for the purpose of collective bargaining, and has its offices at Rice Lake, Wisconsin.

3. That Joint School District No. 1, Towns of Winter, Draper, Ojibwa, Meadowbrook, Radisson, Courderay and Villages of Radisson and Courderay, Sawyer County, and Town of Hubbard, Rusk County, State of Wisconsin, hereinafter referred to as the Respondent, is a School District, organized under the laws of the State of Wisconsin, with principal offices at Winter, Wisconsin.

4. That at all times material hereto, Respondent has recognized Complainant NUE as the exclusive bargaining representative for all full-time employes of the Winter School District engaged in teaching, and including classroom teachers, guidance counselors and librarians, but excluding the following: administrators and principals; non-instructional

personnel; office, clerical, maintenance and operation employes; substitute teachers, student and/or intern teachers.

5. That Complainant NUE and the Respondent were signators to a collective bargaining agreement effective from July 1, 1971 through June 30, 1972 covering wages, hours and conditions of employment of the employes in the aforesaid unit; and that said agreement contained the following provisions:

"SECTION I Salary and Salary Increments

- A. The attached salary schedule pertaining to academic and other pay is hereby made part of this agreement.
- B. A non-degree teacher shall be classified as two-year or three-year, based on the amount of college training he has during the contract year. Upon conferral [sic] of the Bachelor's degree, he shall be placed on Step 6 of the Bachelor's schedule according to the limitations of subsection G below.
- C. A teacher obtaining a Bachelor's or Master's degree prior to the beginning of a semester shall have his contract rewritten showing the effect of the degree.
- D. A teacher who has earned horizontal steps beyond the Bachelor's degree shall cross over directly from column presently on to appropriate column.
- E. Raises in academic salary shall be limited to \$1500.
- F. A teacher below schedule will receive the maximum increase until on schedule.
- G. A teacher above schedule may be brought on schedule but at not more than a 50 per cent annual reduction in increment.
- H. Increments may be withheld from any teacher who has not fulfilled the educational requirements of Section III and are not regainable. This subsection is effective retroactive of September 1, 1964.
- I. The Board of Education may (when in the interest of the District) pay above or below the schedule.

. . .

SECTION IV Experience

- A. Local experience shall be understood to mean the number of years in the employ of the Winter Public School System or a combination of the years in the employ of the Winter System and any district consolidated with it.
- B. Outside experience shall be understood to mean any teaching experience or to other activity which may enrich the individual's knowledge or subject matter. Outside experience not to exceed five years may be granted to an incoming teacher upon evaluation by the Board of Education.
- C. A maximum of two years [sic] experience shall be allowed for time spent in the Armed Forces of the United States which occurred [sic] during the time of employment in the Winter System. The 'six-month training program' is not considered military service [sic] as understood in this subsection.

D. A year of experience shall be considered to be one step on the Salary Schedule.

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APPENDIX ONE

SALARY SCHEDULE [SIC]

	2 yr.	3 yr.	INDEX	BA	BA+10	BA+20	MA	MA+10
1.	5800	5900	1.00	7100	7200	7400	7600	7700
2.	5925	6025	1.05	7455	7560	7700	7980	8085
3.	6050	6150	1.10	7810	7920	8140	8360	8470
4.	6175	6275	1.16	8236	8352	8584	8816	8932
5.	6300	6400	1.22	8662	8784	9028	9272	9394
6.	6425	6525	1.26	8946	9072	9324	9576	9702
7.	6550	6650	1.30	9230	9360	9620	9880	10010
8.	6675	6775	1.34	9514	9648	9916	10184	10318
9.	6800	6900	1.37	9727	9864	10138	10412	10549
10.			1.40	9940	10080	10360	10640	10780"

6. That, at the outset of the period covered by the aforesaid 1971-1972 collective bargaining agreement, Complainant Olson was assigned to Step 9 of the "3-year" lane of the salary schedule contained in said agreement, and was compensated at the rate of \$6,900 per year; that, during or about the month of December, 1971, Complainant Olson received a BA degree; that Complainant Olson was then reassigned to Step 6 of the BA lane of the salary schedule contained in said agreement; that Complainant Olson received a \$750 increase in compensation for the remainder of the school year; and that said increase was based upon 50 percent of the maximum increase then permitted under the collective bargaining agreement between the Complainant NUE and Respondent.

7. That Complainant NUE and the Respondent were also signators to a collective bargaining Agreement effective from July 1, 1972, through June 30, 1973, which contained the following provisions:

"SECTION I - Salary and Increments

- A. The attached salary schedule pertaining to academic and other pay is hereby made part of this agreement.
- B. A non-degree teacher shall be classified as two-year or three-year, based on the amount of college training he has during the contract year. Upon conferral of the Bachelor's degree, he shall be placed on Step 6 of the Bachelor's schedule according to the limitations of subsection G, below.
- C. A teacher obtaining a Bachelor's or Master's degree prior to the beginning of a semester shall have his contract rewritten showing the effect of the degree.

- D. A teacher who has earned horizontal steps beyond the Bachelor's degree shall cross over directly from column presently on to appropriate [sic] column.
- E. Raises in academic salary shall be limited to \$1000.
- F. A teacher below schedule will receive the maximum increase until on schedule.
- G. A teacher above schedule may be brought on schedule but at not more than a 50 per cent annual reduction in increment.
- H. Increments may be withheld from any teacher who has not fulfilled the educational requirements of Section III and are not regainable. This subsection is effective retroactive of September 1, 1964.
- I. The Board of Education may (when in the interest of the District) pay above or below the schedule.

. . .

SECTION IV - Experience

- A. Local experience shall be understood to mean the number of years in the employ of the Winter Public School System or a combination of the years in the employ of the Winter System and any district consolidated with it.
- B. Outside experience shall be understood to mean any teaching experience or to other activity which may enrich the individual's knowledge or subject matter. Outside experience not to exceed five years may be granted to an incoming teacher upon evaluation by the Board of Education.
- C. A maximum of two years [sic] experience shall be allowed for time spent in the Armed Forces of the United States which occurred [sic] during the time of employment in the Winter System. The six-month training program is not considered military service as understood in this subsection.
- D. A year of experience shall be considered to be one step on the Salary Schedule.

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APPENDIX ONE

1972-1973 SALARY SCHEDULE

<u>INDEX</u>	<u>STEP</u>	<u>BA</u>	<u>BA+10</u>	<u>BA+20</u>	<u>MA</u>	<u>MA+10</u>
1.00	1	7300	7400	7600	7800	7900
1.05	2	7665	7770	7980	8190	8295
1.10	3	8030	8140	8360	8580	8690
1.16	4	8468	8584	8816	9048	9164
1.22	5	8906	9028	9272	9516	9638

1.26	6	9198	9324	9576	9828	9954
1.30	7	9490	9620	9880	10140	10270
1.34	8	9782	9916	10184	10452	10586
1.37	9	10001	10138	10412	10686	10823
1.40	10	10220	10360	10640	10920	11060"

8. That, during the period covered by the aforesaid 1972-1973 collective bargaining agreement, Complainant Olson was given credit for one additional year of experience and was assigned to Step 7 of the BA lane of the salary schedule contained in said agreement; that such assignment was proper under the condition of Complainant Olson's previous assignment to Step 6 of the BA lane and under the terms of Section IV, D of said agreement which provides for accumulation of steps on the salary schedule at the rate of one step for a year of experience; that, under the terms of Section I, F of said agreement, Complainant Olson was entitled to receive the maximum increase permitted by Section I, E of said agreement; and that Respondent compensated Complainant Olson during the 1972-1973 school year in the amount of \$9,150, an amount in excess of that which it was obligated to pay under the collective bargaining agreement between Complainant NUE and Respondent, but less than the scheduled annual salary for employees assigned to Step 7 of the BA lane.

9. That Complainant NUE and Respondent were also signators to a collective bargaining agreement, effective from July 1, 1973 to June 30, 1974, which contained the following provisions:

"SECTION I - Salary and Increments

- A. The Attached salary schedule pertaining to academic and other pay is hereby made part of this agreement.
- B. A non-degreed teacher shall be classified as two-year or three-year, based on the amount of college training he has during the contract year. Upon conferral of the Bachelor's degree, he shall be placed on Step 6 of the Bachelor's schedule according to the limitations of subsection G below. All teachers that have been effected by this clause shall remain under the conditions contained HEREIN.
- C. A teacher obtaining a Bachelor's or Master's degree prior to the beginning of a semester shall have his contract rewritten showing the effect of the degree.
- D. A teacher who has earned horizontal steps beyond the Bachelor's degree shall cross over directly from column presently on to appropriate column.
- E. Raises in academic salary shall be limited to \$1000.
- G. [sic] A teacher above schedule may be brought on schedule but at not more than a 50 per cent annual reduction in increment.
- H. Increments may be withheld [sic] from any teacher who has not fulfilled the educational requirements of Section III and are not regainable. This subsection is effective retroactive of September 1, 1964.
- I. The Board of Education may (when in the interest of the District) pay above or below the schedule.

. . .

SECTION IV - Experience.

- A. Local experience shall be understood to mean the number of years in the employ of the Winter Public School System or a combination of the years in the employ of the Winter System and any district consolidated with it.

- B. Outside experience shall be understood to mean any teaching experience or to other activity which may enrich the individual's knowledge or subject matter. Outside experience not to exceed five years may be granted to any incoming teacher upon evaluation by the Board of Education.
- C. A maximum of two years [sic] experience shall be allowed for time spent in the Armed Forces of the United States which occurred [sic] during the time of employment in the Winter System.
- D. A year of experience shall be considered to be one step on the salary schedule.

. . .

APPENDIX ONE

1973-1974 SALARY SCHEDULE

<u>INDEX</u>	<u>STEP</u>	<u>BA</u>	<u>BA+10</u>	<u>BA+20</u>	<u>MA</u>	<u>MA+10</u>
1.00	1	7300	7400	7600	7800	7900
1.05	2	7665	7770	7980	8190	8295
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1.37	9	10001	10138	10412	10686	10823
1.40	10	10220	10360	10640	10920	11060"

and that said agreement makes no provision for the final and binding resolution of disputes concerning its interpretation or application.

10. That, during the period covered by the aforesaid 1973-1974 collective bargaining agreement, Complainant Olson was given credit for one additional year of experience and was assigned to Step 8 of the BA lane of the salary schedule contained in said agreement; that such assignment was proper under the condition of Complainant Olson's previous assignment to Step 7 of the BA lane and under the terms of Section IV, D of said agreement which provides for accumulation of steps on the salary schedule at the rate of one step for a year of experience; that Respondent compensated Complainant Olson during the 1973-1974 school year in the amount of \$9,782 in accordance with the amount specified in the salary schedule contained in the collective bargaining agreement between the Complainant NUE and Respondent for employees assigned to Step 8 of the BA lane.

11. That a grievance was filed and processed under the terms of the collective bargaining agreement; that the Complainants herein took the position that Complainant Olson had been underpaid, in violation of the collective bargaining agreement between the Complainant NUE and the Respondent; that said grievance was denied by the Respondent; and that the grievance procedures contained in the collective bargaining agreement have been exhausted.

On the basis of the above and foregoing Findings of Fact, the Examiner makes the following

CONCLUSIONS OF LAW

1. That the Complainants exhausted the grievance procedure established by the collective bargaining agreement between Complainant NUE and the Respondent and, therefore, the Examiner will assert the jurisdiction of the Wisconsin Employment Relations Commission to determine the merits of said grievance.

2. That the Respondent has not paid Complainant Olson less than the amount to which she was entitled under the terms of the collective bargaining agreement existing between said Respondent and Complainant NUE and has not violated Section 111.70(3)(a)5 of the Municipal Employment Relations Act.

NOW, THEREFORE, it is

ORDERED

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

Dated at Madison, Wisconsin this 4th day of December, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Dennis P. McGilligan
Dennis P. McGilligan Examiner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

The complaint alleges that the Respondent violated the 1973-1974 collective bargaining agreement between the Respondent and the Complainant NUE, by paying Complainant Olson a base salary amount less than that required by the contract. 1/ The Examiner held a hearing on September 6, 1974. The Respondent filed a brief on October 3, 1974 and the Complainant NUE filed a brief on October 22, 1974. Complainant NUE filed its reply brief on October 25, 1974 and Respondent filed a reply brief on October 31, 1974.

POSITION OF THE COMPLAINANTS:

On July 17, 1974, Complainants filed a complaint with the Commission alleging:

"7. That the Respondent Winter Board of Education violated Wisconsin Statutes Section 111.70 (3) (a) 5 by not complying with the collective bargaining agreement in refusing to compensate Mrs. Olson in the amount set forth in the collective bargaining agreement."

Complainants maintain that in 1973-74, Complainant Olson should have received a \$1,000 increase over her 1972-1973 salary, or a salary of \$10,150. Complainant Olson received a \$9,782 salary.

Complainants argue that Complainant Olson's advancement toward appropriate placement on the salary schedule has been governed by application of Section IV, D and Section I, B of the agreement. Complainants maintain that Olson was never placed on Step 6 of the salary schedule upon conferral of her Bachelor's degree, and that her advancement on the schedule should not be affected by the addition of the sentence "All teachers affected by this clause shall remain under the conditions contained herein" in Section I, B of the 1973-1974 collective bargaining agreement.

Complainants argue that the deletion of Section I, F from the collective bargaining agreement has no impact upon Olson's advancement on the salary schedule, alleging that the deletion of Section I, F only raises the question of whether there is any maximum on the amount of money a person below schedule can be paid to be brought on schedule.

Complainants point out that the 1973-1974 collective bargaining agreement defines a year of experience as one step on the salary schedule. Therefore, Complainants argue that Ms. Olson should be paid according to twelve years of experience.

Complainants note that Section I provides that the Board may pay above or below the schedule if such a practice is in the interest of the District. Complainant NUE maintains, however, that Respondent

1/ By Notice of Hearing dated July 22, 1974, the Examiner gave the Respondent an opportunity to file an answer to the complaint on or before August 30, 1974. The Respondent never formally answered the complaint. At the hearing, the Respondent waived both the opening and closing statement. Despite these omissions, the Examiner will liberally construe Respondent's appearance at the hearing and its briefs on the matter as a denial of the allegations of the complaint.

did not produce evidence that it was "in the interest of the District" to pay Complainant Olson below the schedule.

Complainants would have the Examiner find the Respondent guilty of violating the collective bargaining agreement and Section 111.70(3)(a)5; and ask that the Respondent be ordered to cease such actions, compensate Complainant Olson at a base salary of \$10,150 retroactively for the 1973-1974 school year, and pay damages of \$1,000 to each of the Complainants.

POSITION OF THE RESPONDENT:

Respondent argues that the Section I, I of the contract clearly gives the Board the right to pay above or below the salary schedule in the interest of the District. Respondent maintains that nowhere in the contract does it say that the Board must pay the maximum salary increase. In sum, the Respondent feels the contract language is clear and supports its position. Although not explicitly stated, the Respondent would have the Examiner deny and dismiss the complaint.

EXHAUSTION OF GRIEVANCE PROCEDURE:

The question of whether the Complainants herein exhausted all steps of the grievance procedure must first be determined, for, if it is decided that Complainants failed to exhaust all steps of the grievance procedure, the Examiner would refuse to assert the jurisdiction of the Commission. 2/ The matter was not contested at the hearing and, as noted in the Findings of Fact, the contract did not contain procedures for final and binding arbitration. The Complainants did, in fact, exhaust all steps of the grievance procedure. Therefore, the Examiner has asserted the jurisdiction of the Commission to determine the merits of said grievance.

SUBSTANTIVE ISSUE:

As noted above, the primary issue herein is whether Respondent breached its collective bargaining agreement with Complainant NUE, when it paid Complainant Olson a \$9,782 salary for the 1973-1974 school year.

During the course of the hearing, Respondent attempted to show through hypotheticals and various theories that the Complainant Olson was paid correctly under the terms of the agreement. To the extent that such hypothetical situations fail to reflect the clear language of the agreement they have no probative value and are disregarded by the Examiner.

During Complainant Olson's tenth year of employment (1971-1972) she was in Lane III, Step 9 of the salary schedule and received a \$6,900 salary. In December of that school year, Complainant Olson received her Bachelor's degree. Complainant Olson was then placed on the BA lane of the salary schedule at Step 6 according to Section I, B. However, she was not eligible to receive the \$8,946 salary applicable to BA, Step 6 because that would have amounted to a \$2,046 increase, an amount clearly in excess of the \$1,500 raise limit of Section I, E. Complainant Olson received a salary adjustment equal to 50 percent of the maximum increase allowable under Section I, E of the 1971-1972 contract (or \$750), which brought her salary to \$7,650.

During Complainant Olson's 11th year of employment (1972-1973) she moved to Step 7 of the BA lane of the salary schedule. At Step 7

2/ Lake Mills Joint School District No. 1 (11529-A), 7/73; Oostburg Joint School District No. 1 (11196-A) 11/72.

she was theoretically eligible for a \$9,490 salary. The catch-up provision, Section I, F, required a maximum raise (\$1,000 under Section I, E) which meant that Complainant Olson should have received a \$8,650 salary. 3/ Respondent mistakenly gave Complainant Olson a \$1,500 raise, to a \$9,150 salary, or \$500 more than it was required to pay under the terms of the contract. Complainants argue that Complainant Olson, once she was placed on Step 6 of the schedule, should have progressed quickly through the steps until her years of employment matched her step on the schedule. The Examiner finds otherwise. Sections IV, A and IV, D do not permit a teacher to get more than a year's advancement on a salary schedule for a year's work. During the 1971-1972 contract year, Section I, B put Olson at Step 6 of the BA schedule, and the Examiner interprets the agreement as requiring that she work her way up from there one year at a time, not all at once as Complainant NUE argues.

During Complainant Olson's 12th year of employment (1973-1974) she moved to Step 8 of the BA lane of the salary schedule, where she was theoretically eligible for a \$9,782 salary. If Complainant Olson had been paid the \$8,650 salary during the 1972-1973 school year, the raise necessary to put her "on schedule" would have been \$1,132, and that amount would have exceeded the \$1,000 raise limit under Section I, E. The catch-up provision, Section I, F was eliminated from the contract, but, compounding its previous error, the Respondent gave Complainant Olson a \$632 raise which brought her salary to the \$9,782 amount applicable to her placement at Step 8 of the BA lane of the salary schedule.

Complainant Olson was not underpaid by the Respondent when it paid her a salary of \$9,782 for the 1973-1974 school year in conformance with the terms of the contract, and therefore, the Respondent did not violate the collective bargaining agreement or commit a prohibited practice. Therefore, the complaint is dismissed in its entirety.

Dated at Madison, Wisconsin this 4th day of December, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Dennis P. McGilligan
Dennis P. McGilligan, Examiner

3/ Both the Complainant NUE and the Respondent took the position at the hearing that Respondent paid Complainant Olson the maximum raise under Section I, E or \$1,500. The 1972-1973 contract entered as joint Exhibit No. 2 provides for a maximum raise of only \$1,000. The Examiner deems it appropriate to rely on the clear language of the stipulated Exhibit and to ignore the mutual mistake of the parties as to the terms of their 1972-1973 agreement.