

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

BERLIN EDUCATION ASSOCIATION;	:	
	:	
Complainant,	:	
	:	Case VIII
vs.	:	No. 19044 MP-455
	:	Decision No. 13549-A
JOINT SCHOOL DISTRICT NO. 1, CITY	:	
OF BERLIN; BOARD OF EDUCATION,	:	
BERLIN, WISCONSIN,	:	
	:	
Respondent.	:	
	:	

Appearances:

Mr. Charles Robinson, Legal Intern, appearing on behalf of the Complainant.
Mr. W. M. McMonigal, Attorney at Law, appearing on behalf of the Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Berlin Education Association, hereinafter the Complainant, having filed a complaint on April 14, 1975, with the Wisconsin Employment Relations Commission hereinafter the Commission, alleging that Joint School District No. 1, City of Berlin, Board of Education, Berlin, Wisconsin has committed prohibited practices within the meaning of Section 111.70(3)(a)5 and 1 of the Municipal Employment Relations Act (MERA); and the Commission having appointed Sherwood Malamud, a member of its staff, to act as Examiner to make and issue Findings of Fact, Conclusions of Law and Order pursuant to Section 111.07(5) of the Wisconsin Employment Peace Act as made applicable to municipal employment by Section 111.70(4)(a) of MERA; and hearing on said complaint having been held at Green Lake, Wisconsin on July 16, 1975, and the parties having exchanged briefs through the Examiner on November 12, 1975; 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 Complainant Berlin Education Association is a labor organization and it is the recognized exclusive collective bargaining representative of teaching personnel employed by Respondent.
2. That Joint School District No. 1, City of Berlin is a public school district organized under the laws of the State of Wisconsin; that the Board of Education of Joint School District No. 1, City of Berlin, hereinafter Respondent, is charged with the management supervision and control of said District and is engaged in the provision of public education in its District.
3. That during the Spring and Fall of 1974 ^{1/} Complainant and Respondent were engaged in negotiations for a successor collective bargaining agreement; that on October 9, Complainant and Respondent reached tentative agreement on a three year agreement; that prior

^{1/} Unless otherwise indicated, all dates refer to 1974.

to November 14, Mr. McMonigal Respondent's counsel prepared a draft of the agreement which incorporated the proposals and terms agreed to at all bargaining sessions up through October 9; that after receiving said draft, Complainant requested a meeting with Respondent for the purpose of clarifying and modifying certain language included in Respondent's draft; that the President of Complainant, Pearson, and Tollaksen, its chief negotiator appeared on behalf of Complainant and its six member negotiating committee at a meeting with five members of Respondent and its counsel on November 14; that the purpose of said meeting was to clarify any disagreement over McMonigal's draft; that at said meeting held at the behest of Complainant, Article 3 of the agreement was modified by inserting the words "per teacher" in the paragraph describing the amount of increase for teachers of Respondent; and that immediately after the November 14 meeting Complainant met with its members and ratified the agreement reached on October 9 and the draft of same as amended on November 14; and Respondent ratified said agreement sometime after November 14 and prior to November 26; and that agents of both Complainant and Respondent executed said agreement on November 26; that said agreement contains the following provisions material hereto:

"ARTICLE 3 SALARY AND OTHER COMPENSATION

1. Salary Schedule. The Salary Schedule appearing as Appendix A to the 1973-1974 Master Contract and incorporated herein by such reference shall be deemed, for purposes of the 1974-1975, 1975-1976 and 1976-1977 school years, as a base for reference purposes only in the calculation of compensation in the school years indicated. Said Salary Schedule shall be used by the administration in determining placement of new teachers in the system during the term of this contract and for calculating changes in compensation for teachers within [sic] the system who have been approved for change in classification.

The starting salary for a new teacher entering Berlin School System during the 1974-1975 school year and not qualifying for any advanced placement shall be an amount \$300.00 per year less than the similarly credentialed teacher who has one year teaching experience.

The salary for a teacher entering the Berlin School System during the 1974-1975 school year who has previous teaching experience or other qualifications for advanced placement shall be an amount equal to the salary received by a teacher similarly credentialed and teaching in the Berlin School System.

For the 1974-1975 school year, the total compensation increase shall be 8.6% per teacher. Total compensation increase, as used in this contract, shall be deemed to include all increases in salary and STRS contributions but shall not be deemed to include extra duty pay or health insurance contributions. The 8.6% total compensation increase per teacher shall be allocated between that amount representing increased contributions to STRS and that amount representing actual dollar increases in salary. The total salary increase together with the increased contributions to STRS shall equal 8.6% per teacher.

. . ."

That Appendix A of the 1973-1974 salary schedule is attached hereto and incorporated herein as Appendix A.

- "4. State Teachers Retirement System. The Board will make an annual contribution to the State Teachers Retirement System Fund equal to 5% of the teacher's gross salary. For purposes of this paragraph, gross salary shall include the teaching salary, as calculated under this contract and activity pay. Gross salary, for purposes of this contract shall not include incremental pay or longevity pay in that this contract provides for suspension of incremental increases and longevity increases."

. . .

ARTICLE 8 GRIEVANCE PROCEDURE

. . .

DEFINITION OF GRIEVANCE

Those matters involving the interpretation, application and the enforcement of the terms and provisions of the negotiated agreement existing between the parties shall constitute a grievance under the provisions of said agreement.

STEPS OF PROCEDURE

1. A teacher shall discuss his grievance promptly with his principal, either by himself or together with a representative of the Association or together with anyone else of the teacher's own choosing. Grievances shall be taken up within 15 days from the date of the occurrence giving rise to the grievance.
2. If the teacher is not satisfied with the disposition made at Step 1, he may, no sooner than 2 days and no later than 5 days after the Step 1 discussion submit the grievance to the principal in writing, with a copy to the chairman of the Association's Professional Rights and Responsibilities Committee. Within 5 days after receiving such written grievance, the principal shall deliver his written answer to the teacher, with a copy to the chairman of the Professional Rights and Responsibilities Committee.
3. (a) If not satisfied with the Step 2 answer, the Professional Rights and Responsibilities Committee may in writing refer the grievance to the Superintendent or his designated representative. Any grievance not so referred by the committee within 5 days after its receipt of the Step 2 answer shall be considered withdrawn.
(b) Within 5 days after receipt of a timely written referral to Step 3, the Superintendent or his representative shall meet with the Professional Rights and Responsibilities Committee concerning the grievance. The teacher involved may be present at such a meeting and shall be present if requested either by the Superintendent or his designated representative or by the committee.
(c) Within 5 days after Step 3 meeting, the Superintendent or his designated representative shall deliver his written answer to the teacher, with a copy to the chairman of the Professional Rights and Responsibilities Committee.

4. (a) If not satisfied with the Step 3 answer, the Professional Rights and Responsibilities Committee may in writing refer the grievance to the Board. Any grievance not so referred by the Committee within 5 days after its receipt of Step 3 answer shall be considered withdrawn.
 - (b) Within 15 days after its receipt of the timely written referral to the Step 4, a Committee of the Board shall meet with the designated representatives of the Association concerning the grievance. The teacher involved may be present at such meeting and shall be present if requested by either the committee of the Board or the representatives of the Association.
 - (c) Within 5 days after the Step 4 meeting, the committee of the Board shall forward its recommendation to the Board in writing. As soon as convenient, the Board shall by official action make its disposition of the grievance.
5. If, in the judgment of the Professional Rights and Responsibilities Committee, a grievance affects a group or class of teachers, the committee may submit such grievance in writing to the Superintendent directly and the processing of such grievance will be commenced at Step 3. The Professional Rights and Responsibilities Committee may process such a grievance through all levels of the grievance procedure even though the grievant does not [sic] wish to do so.

. . .

ARTICLE 13 DURATION OF AGREEMENT

This agreement, when properly executed, shall become operative July 1, 1974, and shall continue in force and effect from year to year thereafter until changed or terminated. Either party desiring to amend, change or terminate this agreement may give written notice to the other on or before December 31, 1976, or any year thereafter provided, however, that no such changes, amendments or termination shall become operative until July 1, 1977. . . ."

4. That on the first pay period following the signing of the agreement which date fell during the month of December, Respondent paid all teaching personnel, in one check separate from their regular periodic paycheck, an amount equal to the amount of increase in salary for the 1974-1975 school year for the months of September, October, and November; that said retroactive check included reimbursement of a portion of the health insurance premiums for September, October and November which under the prior agreement were payable by the teacher employe and which under the above agreement were payable by Respondent; that the pay stub for this "retroactive" check contained the following material information;

"December 10, 1974

The salary increase, in accordance with Agreement between Berlin Board of Education and Berlin Education Association, has been computed as follows:

1973-74 Salary Increased 6%

1974-75 Activity Pay Schedule added as applicable

To arrive at the amount of the supplemental check for back pay for September, October, and November, subtract the monthly gross formerly received from the current monthly salary, multiply this amount by the three months, and add the amount due for insurance adjustment.

There is no longer a deduction for retirement fund benefits.

Total 5% of gross salary is paid to S.T.R.S. by employer effective with December '74 payrolls.";

that a complete copy of said pay stub is attached hereto and incorporated herein as Appendix B; that teachers' salaries for the months of June, July and August were paid in June, 1974 in accordance with the salary schedule in the 1973-1974 collective bargaining agreement.

5. That Respondent contributed on behalf of each teacher in the collective bargaining unit an amount equal to 4% of the employe's share payable to the State Teacher's Retirement System and deducted 1% from each teacher's periodic paycheck and paid said amount to the State Teachers Retirement System for the months of September, October and November; that Respondent did not reimburse teachers in the collective bargaining unit for the 1% deductions made from their salary and paid to the Bureau of the State Teachers Retirement System of the Department of Employee Trust Funds of the State of Wisconsin for this three month period and which totalled approximately \$25 per teacher.

6. That following Respondent's failure to reimburse teachers for STRS payments deducted from their September through November paychecks, Complainant filed a grievance on the matter; said grievance was processed through all the steps of the grievance procedure denoted above, and in the course of processing said grievance Respondent maintained that the rules and regulations of the Bureau of the State Teachers Retirement System of the Department of Employee Trust Funds of the State of Wisconsin prevented Respondent from making the increase in the employe's share of the State Teachers Retirement System retroactive in any respect; that the rules and regulations of said Bureau and Department permit the employe and employer accounts maintained by said Bureau to be adjusted to reflect the retroactive effect of any State Teachers Retirement payments.

7. That although Respondent refused and continues to refuse to reimburse teachers for STRS payments deducted from their September, October and November paychecks, Complainant failed to prove by a clear and satisfactory preponderance of the evidence that by its refusal to reimburse teachers for the September, October and November STRS deductions taken from their paychecks that Respondent thereby failed to pay the negotiated 8.6% increase.

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

CONCLUSIONS OF LAW

1. That the grievance procedure established in the 1974-1977 agreement does not provide for a final and binding method for the resolution of disputes; that Complainant and Respondent exhausted all contractual steps for the settlement of grievances, therefore the Examiner exercises the jurisdiction of the Commission to determine if Respondent has violated the terms of the collective bargaining agreement and Section 111.70(3)(a)5 of the Municipal Employment Relations Act.

2. That since the parties' 1974-1977 collective bargaining agreement provides for an increase of 8.6% per teacher inclusive

of payments by Respondent of the employe's share of State Teachers Retirement for the 1974-1975 school year; and since Complainant failed to prove by a clear and satisfactory preponderance of the evidence that Respondent's failure to reimburse its teachers for STRS payments deducted from their paychecks for the period from September through November, 1974 resulted in an increase less than the negotiated 8.6%, therefore the Examiner concludes Respondent by its refusal to so reimburse employes represented by Complainant for the State Teachers Retirement payments deducted from their checks from September through November, 1974, has not violated nor is it violating the 1974-1977 collective bargaining agreement and it follows therefore that Respondent has not violated nor is it violating Section 111.70(3)(a)5 or 111.70(3)(a)1 or any other provision of the Municipal Employment Relations Act.

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

ORDER

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

Dated at Madison, Wisconsin this *21st* day of October, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 

Sherwood Malamud, Examiner

APPENDIX A
BERLIN PUBLIC SCHOOLS

SALARY SCHEDULE 1973-74

Plus 4% of gross salary for STRF paid by Board from Jan. 1, 1974

\$7,500. - \$300. INCREMENTS

STEP	Non-degree 1	BA degree 2	BA+15 3	BA+30 4	Earned Masters 5	MA+15 6
1st	6700	7500	7800	8100	8400	8700
2nd	7000	7800	8100	8400	8700	9000
3rd	7300	8100	8400	8700	9000	9300
4th	7600	8400	8700	9000	9300	9600
5th	7900	8700	9000	9300	9600	9900
6th	8200	9000	9300	9600	9900	10200
7th		9300	9600	9900	10200	10500
8th		9600	9900	10200	10500	10800
9th		9900	10200	10500	10800	11100
10th		10200	10500	10800	11100	11400
11th		10500	10800	11100	11400	11700
12th			11100	11400	11700	12000
13th				11700	12000	12300
14th					12300	12600
15th						12900

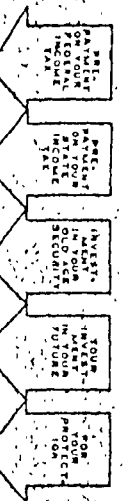
APPENDIX "B"

Office School System

BERLIN, WISCONSIN



WE PAY YOU THIS AMOUNT



TOTAL

DATE PERIOD ENDING	TIME WORKED	YOU EARNED			TAX SHELTERED ANNUITY	WE PAID OUT THESE AMOUNTS FOR YOU							BALANCE OF EARNINGS
		REGULAR	5 HOURS PERIODS	EXTRA PAY AMOUNT		FEDERAL W.H. TAX	STATE W.H. TAX	O.A.S.I.	RETIREMENT	BASIC INS	ANNUITY AMOUNT	MISC. AMOUNT	
1231		13332				13332.80	4.90	9.33					10
								800					

- EXTRA PAY CODE:
1. CLASSIFICATION CHANGE
 2. DEPENDENT'S CHANGE
 3. SALARY ADJUSTMENT
 4. ADD'L EDUCATION
 5. O-T-EP

- ANNUITY CODE:
- A NEW YORK LIFE
 - B STATE OF WIS
- MISC. CODE:
- A DUES
 - B CONT'D EMP DMS

THIS IS YOUR STATEMENT OF EARNINGS - PLEASE RETAIN FOR YOUR TAX STATEMENT

IMPORTANT!

December 10, 1977

The salary increases in accordance with Agreement between Berlin Board of Education and Berlin Education Association, has been computed as follows:

1973-74 Salary increased 6%

1974-75 Activity Pay Schedule added as applicable

To arrive at the amount of the supplemental check for back pay for September, October, and November, subtract the monthly gross formerly received from the current monthly salary, multiply this amount by the three months, and add the amount due for insurance adjustment.

There is no longer a deduction for retirement fund benefits.

Total of gross salary is paid to S.T.R.S. by employer effective

with December 7th payroll.

Done at City of Berlin

Robert G
12/16/77

MEMORANDUM ACCOMPANYING FINDINGS
OF FACT, CONCLUSIONS OF LAW AND ORDER

Complainant alleges that under the 1974-1977 agreement, which was executed in November, 1974, wages, contributions towards health insurance premiums and the employe's share of payments to the State Teachers Retirement System (STRS) were all made retroactive to September, 1974; that Respondent complied with that agreement insofar as wages and health insurance premiums are concerned, but that they violated the agreement when they refused to reimburse bargaining unit employes for deductions made from their paychecks for STRS payments for the months of September, October and November.

Respondent admitted that it had not reimbursed employes for deductions totaling approximately \$25 per teacher for STRS payments for this three month period. However, Respondent contends that the agreement reached did not make "STRS" retroactive to September, 1974.

Before discussing the merits of this case, the Examiner will discuss the Commission's jurisdiction over this matter. Respondent did not object to the Commission's asserting its jurisdiction. Respondent admitted that the parties had exhausted the contractual procedures established for the settlement of disputes. Those procedures do not provide a method for the final disposition of disputes. Therefore, it is appropriate that the Commission assert its jurisdiction to determine if Respondent violated the parties' agreement and thereby violated Section 111.70(3)(a)5 of the Municipal Employment Relations Act.

Now turning to the merits of this case, the parties presented conflicting testimony concerning the "STRS" issue. On behalf of the Complainant, the teacher negotiator who was designated by Complainant to take minutes of the negotiation session Cheryl Hobson, testified that the retroactivity of the STRS payments was never discussed. Respondent presented its chief negotiator, Ray Spirra, who testified that the Employer consistently excluded the STRS increase from the proposal to make the three-year agreement retroactive to July 1, 1974. The Examiner is of the opinion that a credibility finding relative to this line of testimony is not necessary in order to resolve the issues presented herein since the terms of the collective bargaining agreement and the parties' conduct thereunder are sufficient to resolve the dispute.

Two clauses in the agreement must be construed together to ascertain Respondent's obligation relative to the issue of STRS retroactivity. First, the duration clause states that the terms of the agreement "shall become operative July 1, 1974." Normally, when parties make a collective bargaining agreement retroactive to a date certain they do so with the intent of giving effect to the agreement as if it were executed on or prior to its date of execution. Implicit in such an exercise is a desire by both parties to effectuate the terms of the agreement for a period of time which has already passed. The provisions of the agreement which are most adaptable to such efforts are those provisions which set forth various forms of employe compensation.

In this case, the parties agreed to retroactivity in order to accomplish this end and thus the employer paid its teachers the amount of the increase they would have received during the September through November period in one lump sum.

There is nothing in the duration clause which would indicate that STRS payments were not also subject to retroactive application. In addition, the record demonstrates that the Bureau of State Teachers

Retirement System has no rule prohibiting the practice of giving retroactive effect to increases in an employer's share of STRS payments. It would appear then, that the duration clause of the agreement, if construed alone, would call for retroactivity for STRS payments.

However, the agreement also contains a provision which specified the exact amount of increase in compensation (i.e., salary and STRS contributions) teachers were to receive for the 1974-1975 school year.

Article III provides: 2/

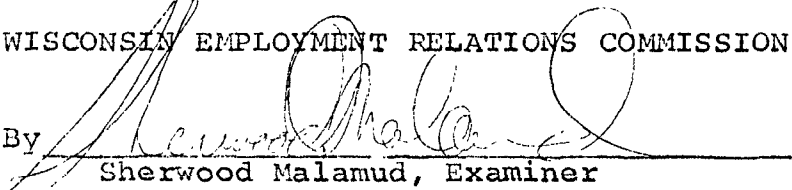
"For the 1974-1975 school year, the total compensation increase shall be 8.6 percent per teacher. Total compensation increase as used in this contract, shall be deemed to include all increases in salary and STRS contributions but shall not be deemed to include extra duty pay or health insurance contributions."

The clear language in Article III thus establishes the fact that all salary and STRS payments (retroactive or otherwise) for the 1974-1975 school year must total 8.6 percent per teacher. In view of this language, in order to prevail in this proceeding the Complainant must demonstrate by a clear and satisfactory preponderance of the evidence that Respondent's failure to reimburse teachers for STRS deductions made during September through November resulted in less than the agreed upon 8.6 percent increase. Although Complainant introduced the 1973-1974 salary schedule into the record, it failed to produce evidence demonstrating that wage improvements and STRS contributions amounted to an increase of less than 8.6 percent per teacher.^{3/} Thus, absent such evidence, it cannot be said that Respondent's failure to give STRS payments retroactive effect violated the parties' agreement to assure each teacher an 8.6 percent increase. Accordingly, because of the Complainant's failure to introduce such evidence, the Examiner finds that the Complainant failed to meet its burden of proof in this proceeding and therefore, the Examiner has dismissed the complaint.

Dated at Madison, Wisconsin this 21st day of October, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Sherwood Malamud, Examiner

- 2/ The parties did not present argument with respect to Article III. However, the collective bargaining agreement was received in evidence and it is proper for the Examiner to give effect to the entire agreement in applying its terms.
- 3/ Complainant introduced Krebsback's pay stub, for the retroactive salary payments made by Respondent in December, 1974. [See Finding of Fact No. 4 above.] However, based on the evidence in the record it is impossible to ascertain the percentage increase he would have received for 1974-1975. The record does not indicate his salary for 1973-1974. Without that knowledge it cannot be ascertained whether the fractional increase reflected in the pay stub when annualized and taken together with the increase in STRS payments equals, is less than or more than 8.6%. The Examiner attempted to extrapolate Krebsback's 1973-1974 salary from the pay stub (App. B). He used the 133.32 figure which represents the amount paid to Krebsback, and he used \$125.32 which represents 133.32 less the amount of Health Insurance premiums. He took each figure together with the 6% figure appearing in App. B and he attempted to compute Krebsback's 1973-1974 salary. The Product of such calculations did not equal or approximate any salary level appearing in App. A.