STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMEN RELATIONS COMMISSION

NORTHWEST UNITED EDUCATORS, Complainant, vs. JOINT SCHOOL DISTRICT NO. 1, WINTER, ET AL., Respondent.	Case IX No. 19112 MP-463 Decision No. 13634-A

Appearances:
Mr. Robert E. West, Executive Director, on behalf of Complainant.
Mr. Charles Ackerman, on behalf of Respondent.

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

Northwest United Educators having filed a complaint on May 1, 1974, with the Wisconsin Employment Relations Commission, herein Commission, alleging that Joint School District No. 1, Winter, et al., has committed a prohibited practice within the meaning of Section 111.70(3)(a)4 of the Municipal Employment Relations Act, herein MERA; and the Commission having appointed Amedeo Greco, a member of the Commission's staff, to act as Examiner and to make and issue Findings of Fact, Conclusion of Law and Order as provided in Section 111.07(5) of the Wisconsin Statutes; and hearing on said complaint having been held at Ladysmith, Wisconsin, on July 16, 1975, before the Examiner; and Northwest United Educators thereafter having filed a brief which was received by September 24, 1975; and the Examiner having considered the evidence and arguments of counsel, makes and files the following Findings of Fact, Conclusion of Law and Order.

FINDINGS OF FACT

1. That Northwest United Educators, herein Complainant, is a labor organization which represents certain teachers employed by Joint School District No. 1, Winter, et al, and has its offices at Rice Lake, Wisconsin.

2. That Joint School District No. 1, Winter, et al, herein Respondent, is a Municipal Employer within the meaning of Section 111.70(1)(2) of MERA; and that Respondent is engaged in providing educational services in the Winter, Wisconsin area.

3. That prior to 1973, certain of Respondent's teachers were represented for collective bargaining purposes by the Southern Sawyer County Education Association, herein Association; that the Association and Respondent were privy to a collective bargaining agreement which covered the 1972-73 school year; and that said agreement provided in Section I, F, that:

> "A teacher below schedule will receive the maximum increase until on schedule."

4. That in 1973, the Association merged with the Complainant; that Complainant thereafter represented Respondent's teachers; that Complainant and Respondent subsequently engaged in collective bargaining negotiations for a new contract covering the 1973-74 school year; that the parties

were unable to agree to a contract by the time that the 1973-74 school year commenced, that Complainant subsequently engaged in a strike against Respondent in the Fall of 1973; that the parties orally agreed on certain "concepts" for a new contract in October, 1973; that Complainant's membership then ratified the contract; and that the strike ended upon the reaching of that oral agreement.

5. That the parties, through James Guckenberg for Complainant and Charles Ackerman for Respondent, subsequently engaged in numerous conversations regarding the reduction of the aforementioned oral agreement to writing; that in March, 1974, Ackerman forwarded to Guckenberg a tentative, written contract proposal for the 1973-74 school year; that said proposal provided in Section I, F, that :

> "A teacher below schedule will receive the maximum increase until on schedule";

and that throughout the negotiations for the 1973-74 contract, the Employer never proposed the deletion of the aforementioned language contained in Section I, F.

6. That upon receipt of Ackerman's proposal, Guckenberg made a number of minor changes therein; that Guckenberg and Ackerman subsequently discussed those changes in a March 15, 1974 telephonic conversation, at which time Ackerman agreed to said changes; and that in a subsequent telephonic conversation in late March or early April, 1974, Guckenberg and Ackerman discussed executing the finalized contract; that Ackerman then told Guckenberg that he had prepared a written contract which reflected the agreement of the parties and that Guckenberg replied that Ackerman should take the contract to Chell Anderson, a member of Complainant's bargaining team for signing; and that Anderson subsequently signed the contract on behalf of Complainant.

7. That Guckenberg testified that the contract was signed in March or early April, 1974; that Anderson testified that she signed the contract in "late March or early April."; that Anderson distributed to teachers copies of the contract shortly after she had signed it; and that Respondent's Board ratified the contract on April 17, 1974.

8. That the signed 1973-74 contract omitted any reference to the aforementioned language contained in Section I, F; that Respondent thereafter failed to give effect to such language, and that the contract provided in Section XVII that it was to be effective from July 1, 1973 to June 30, 1974.

9. That Anderson did not read the contract she signed because, in her words, she was "just really sick of it."; that Guckenberg made no effort to secure a copy of the signed contract; that Guckenberg was unaware that Section I, F, was not contained in the finalized 1973-74 contract until August 30, 1974, when it was brought to his attention in another matter; and that Guckenberg thereafter waited eight months before he filed the instant complaint on May 1, 1975.

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

CONCLUSION OF LAW

That Respondent has not violated Section 111.70(3)(a)4, nor any other section, of MERA.

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

ORDER

IT IS ORDERED that the complaint be, and the same hereby is, dismissed in its entirety.

Dated at Madison, Wisconsin this 30th day of October, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Amedeo Greco
Amedeo Greco, Examiner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT
CONCLUSION OF LAW AND ORDER

Complainant primarily contends that the parties agreed that the finalized 1973-74 contract was to provide at Section I, F, therein language which stated that "A teacher below schedule will receive the maximum increase until on schedule"; that Respondent subsequently deleted Section I, F, from the printed contract and thereafter refused to abide by its terms; and that such conduct was violative of Section 111.70(3)(a)4 of MERA.

Respondent, on the other hand, denys that it has committed a prohibited practice. In support of its position, Respondent relies on a prior case involving the same parties wherein the Commission dismissed a prohibited practice complaint which alleged in substance Respondent had failed to pay a teacher the correct contractual rate. 1/ Furthermore, Respondent objects to Complainant's delay in filing the instant complaint. Thus, Ackerman stated at the hearing that Complainant "for a period from 1973 to this date . . . had had the opportunity to have this in front of the WERC, and it has failed to do so." 2/

With respect to Complainant's delay in filing the complaint, the record shows, as noted in paragraph nine of the Findings of Fact, that Anderson had an opportunity to read the finalized contract before she signed it, but that she failed to do so because she was, in her words, "just really sick of it"; that the finalized contract was immediately distributed to teachers who at that point raised no questions as to its contents; that Guckenberg failed to then ask for a copy of the finalized contract, even though he was Complainant's chief negotiator; and that Guckenberg waited eight months to file the instant complaint after he first learned that the 1973-74 contract did not contain Section I, F. As to the latter point, Guckenberg asserted that he delayed filing the complaint because he was awaiting the Commission's decision in Joint School District No. 1, Winter, et al, supra. The Examiner's decision in that case, however, was dated December 4, 1974, about five months before the instant complaint was filed. Accordingly, it is obvious that Guckenberg's delay in filing the complaint cannot be attributed solely to his alleged awaiting of the issuance of that decision.

Based upon the foregoing factors, the record therefore establishes that Complainant had the opportunity to immediately examine the finalized contract for any omissions at the time of its execution, but that it failed to do so, and, further, that although Guckenberg learned of the purported omission of Section I, F, in the 1973-74 contract on August 30, 1974, Guckenberg delayed filing the instant complaint until eight months later. In such circumstances, it can hardly be said that Complainant has acted with due diligence. To the contrary, the exact opposite is true since Complainant's representatives were negligent in failing to even read the finalized contract and in thereafter deliberately delaying filing the instant complaint. Accordingly, this is not a case where a signatory to a contract can claim that it has acted as responsible and as

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1/ Joint School District No. 1, Winter, et al., 12889-A, B, 1/75.

2/ Since the contract does not provide for Arbitration, and because neither party asserts that the issues herein must be deferred to any contractual grievance-arbitration procedure, it is proper to consider the dispute in the instant forum.

expeditious as possible to correct a purported contractual oversight which was not brought to its attention until a late date.

The foregoing delay in filing the complaint is significant because of the statutorily imposed-one-year statute of limitations provided for in Section 111.07(14) which states:

> "The right of any person to proceed under this section shall not extend beyond one year from the date of the specific act or unfair labor practice alleged."

Since the instant complaint was received by the Commission 3/ on May 1, 1975, the one-year statute of limitations precludes the consideration of any pre-May 1, 1974, conduct as the basis for a prohibited practice. 4/ As a result, pre-May 1, 1974 activity can be used only for limited background purposes and cannot be given independent and controlling weight in determining whether a prohibited practice occurred after May 1, 1974. Thus, if Complainant's case rests entirely on an event which is time barred, and if, absent that event, Respondent did not otherwise act unlawfully within the statute of limitations, the complaint must be dismissed since conduct outside the statute of limitations cannot be used "to cloak with illegality that which was otherwise lawful." 5/

Here, turning to events which occurred on and after May 1, 1974, the record indicates that the 1973-74 contract was then already signed 6/ and in effect and that Respondent thereafter refused to honor what had been Section I, F, of the prior 1972-73 contract which stated that "A teacher below schedule will receive the maximum increase until on schedule". However, since the executed 1973-74 contract on its face did not contain the above quoted language, and since the parties after May 1, 1974 never orally agreed to such a provision, Respondent's refusal to grant maximum increases to teachers below the salary schedule was not violative either of the express contractual provisions or of any oral agreement. Therefore, looking only at the written contractual provisions then in effect and Respondent's conduct after May 1, 1974 - as is required under the statute of limitations - the record fails to establish that Respondent during that time committed any prohibited practice. Furthermore, since Complainant's case rests on the theory that Respondent reneged on a pre-May 1, 1974, agreement to include Section I, F, in the 1973-74 contract, and because Respondent's failure to include such language in the finalized contract existed only when

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3/ The statute of limitations commences from the date that the complaint is received by the Commission. See Cirkl Sheet Metal (7852-A) 3/69.

4/ See, for example, City of Milwaukee (13093) 10/74 and City of Sheboygan (12134-A, B) 11/74.

5/ Local Lodge 1424 V. NLRB (Bryan Mfg. Co.), 45 LRRM 3213, 3215. Although, of course, the decision by the United States Supreme Court in Bryan, supra, is not binding on the Commission, the Court's analysis therein is nonetheless interesting as it relates to issues arising under a statue of limitations.

6/ Even though the record is unclear as to the exact date that the contract was signed, Guckenberg testified that it was signed in March or early April, 1974. Anderson corroborated Guckenberg's testimony by testifying that she signed the contract "in late March or early April. I know it wasn't really spring yet; it was cold."

the agreement was executed and was not thereafter repeated, there is no basis for finding that Respondent's post May 1, 1974, conduct constituted a continuing violation covered by the statute of limitations.

Based upon the foregoing considerations, the Examiner therefore concludes that Respondent did not violate Section 111.70(3)(a)4 nor any other section of MERA and that, as a result, the complaint must be dismissed in its entirety.

Dated at Madison, Wisconsin this 30th day of October, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Amedeo Greco
Amedeo Greco, Examiner