

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MENASHA TEACHERS UNION, LOCAL 1166,  
WFT, AFT, AFL-CIO and WISCONSIN  
FEDERATION OF TEACHERS, AFT, AFL-CIO,

Complainants,

vs.

MENASHA JOINT SCHOOL DISTRICT,

Respondent.

Case XXV  
No. 23554 MP-896  
Decision No. 16589-B

ORDER AFFIRMING EXAMINER'S  
FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

Examiner Amedeo Greco having, on April 28, 1980, issued his Findings of Fact, Conclusion of Law and Order, together with Accompanying Memorandum, in the above-entitled matter, wherein he concluded that the Respondent, Menasha Joint School District, had not committed prohibited practices within the meaning of Sections 111.70(3)(a)1, 3 or 4 of the Municipal Employment Relations Act, by failing to advance teachers represented by the Complainants, Menasha Teachers Union, Local 1166, WFT, AFT, AFL-CIO and Wisconsin Federation of Teachers, AFT, AFL-CIO, pursuant to the terms of a salary grid contained in an expired collective bargaining agreement which had existed between the parties; and the Complainants, having on May 12, 1980, timely filed a petition requesting the Commission to review the Examiner's decision, pursuant to Section 111.07(5), Wis. Stats.; and the parties having filed briefs in support of and in opposition to the petition for review, the last of which was received on February 13, 1981, including a brief amicus filed by the Wisconsin Education Association; and the Commission, having reviewed the record, the Examiner's decision, the petition for review, as well as the briefs filed thereafter, being satisfied that the Examiner decision should be affirmed;

NOW, THEREFORE, it is

ORDERED

That the Examiner's Findings of Fact, Conclusion of Law and Order issued in the instant matter be, and the same are, hereby affirmed.

Given under our hands and seal at the City of Madison, Wisconsin, this 4th day of September, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

BY

Gary L. Covelli  
Gary L. Covelli, Chairman

Morris Slavney  
Morris Slavney, Commissioner

I dissent

Herman Torosian  
Herman Torosian, Commissioner

MEMORANDUM ACCOMPANYING ORDER AFFIRMING EXAMINER'S  
FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

Background

In their complaint the Complainants asserted that the District's unilateral refusal to grant experience increments in the Fall of 1978 to all eligible teachers pursuant to the terms of the salary schedule contained in the parties' expired 1977-1978 contract was violative of Sections 111.70(3)(a)1, 3 and 4 of MERA. Complainants basically argued that the District's withholding of the experience increments constituted a change in the status quo which the District was legally obligated to maintain upon the expiration of the 1977-1979 agreement. The District, on the other hand, contended that its duty to grant increments ended when the 1977-1978 contract expired and that it thus maintained the status quo when it did not grant increments to all teachers under the salary schedule of the expired agreement.

The Examiner's Decision

In his decision, the Examiner concluded that the District's obligation to maintain the status quo during a contract hiatus did not encompass a requirement that it grant experience increments to teachers pursuant to the salary schedule contained in an expired contract. Said conclusion was derived from the Examiner's following analysis of "the realities of the collective bargaining process":

Collective bargaining in the State of Wisconsin guarantees that teachers, along with other municipal employes, can ask for higher wages, fewer hours, and/or better working conditions. For, as noted by Samuel Gompers nearly a century ago, unions want "more". Here, by asking for higher salaries for the 1978-1979 school year, it is clear that the Federation likewise sought "more".

But, having said that, an important caveat must be added: although collective bargaining enables teachers (and others) to seek "more", the system does not guarantee that teachers (and others) will necessarily receive "more". For, by the same token that unions can bargain over changes in an expired salary grid, school districts can similarly bargain over what they are to pay teachers. Thus, districts can insist that a grid should be contracted by decreasing the number of lanes and/or steps. Similarly, while they may be willing to increase base salaries, school districts are free to reject proposals dealing with either the creation of additional lanes and steps or longevity increases. Moreover, districts can insist that they will not grant any salary increases of any kind. Furthermore, school districts can even insist that teachers may have to suffer salary cuts. While it is extremely rare for municipal employers in Wisconsin to refuse to grant any wage increases or to cut salaries, the fact remains that there is no requirement which guarantees wage increases to employes. Thus, for example, if a school district (or other municipal employer) finds itself in a financial bind, the district may be able to claim that it simply cannot afford any wage increases. Indeed, Section 111.70(4)(cm)(7)(c) of MERA states that in considering the respective positions of the parties, a mediator/arbitrator shall pay attention to "the financial ability of the unit of government to meet the costs of any proposed settlement."

As a result, while the Federation here sought to increase teacher salaries for the 1978-1979 school year, the central fact remains that the District was not required to grant any such increases. To the contrary,

the District had the legal right to either offer a smaller salary increase than was requested, to offer absolutely no increase whatsoever, or to even offer to decrease salaries. The question of what teachers would be paid for the 1978-1979 school year, then, was one which was entirely open. There was, therefore, no agreement at the outset of the 1978-1979 school year between the parties as to what salaries should be for that year, since that was a matter which could only be resolved in the collective bargaining process. [Footnote omitted.]

What the Federation is seeking then, in the instant case, is an interim agreement under which the District at the outset of the 1978-1979 school year would pay teachers more than they paid them in the 1977-1978 school year, pending resolution of their collective bargaining negotiations for a successor contract, after which point, according to the Federation's final offer, the District would then have to pay the teachers even more than that interim increase. For example, a teacher in the "BA" lane with five year's experience received a yearly salary of \$11,700 under the terms of the expired January 1, 1978 to August 31, 1978 grid. If that teacher were to receive an automatic increment at the outset of the 1978-1979 school year, that teacher would receive a salary of \$12,050. Thereafter, if the Federation's offer were accepted, that same teacher would receive a salary of \$12,926 for the remainder of the year. The September increment, then, would clearly be an interim increase.

The School District, however, was not required to enter into such an interim agreement for several reasons. First, and as just noted, collective bargaining does not guarantee that teachers in fact will receive larger salaries for the 1978-1979 school year than they received for the 1977-1978 school year, as that is an issue which can only be resolved through the collective bargaining process.

Secondly, while it is argued that advancement on the expired grid constitutes the status quo, such an advancement in fact would constitute a substantial change in the status quo in that teachers would receive several hundred dollars more than they received in the previous year.

. . .

Since, as noted above, such negotiations may result in either higher, the same, or lower wages, it would be unreasonable to require the District to enter into an interim agreement under which it would be required to advance teachers pursuant to the grid in the expired 1977-1978 contract.

. . .

As the Federation did not choose to allege that the District acted illegally by (1) granting experience increments to newly hired teachers and teachers who were initially non-renewed but later rehired or (2) advancing teachers who had earned additional educational credits to a new salary lane, the Examiner did not conclusively pass on propriety of said actions.

#### Petition for Review

The Complainants argue that fairness, the realities of collective bargaining, and reason require the rejection of the Examiner's static view of the status quo during a contract hiatus. They allege that

where, as here, the parties have agreed to a salary schedule which ties salary increases to years of teaching experience, an additional year of teaching experience must automatically yield additional salary during a contract hiatus. The Federation contends that the Examiner's decision ignores the realities of bargaining, as it encourages employers (1) to unjustly enrich themselves by benefiting from the teachers additional experience without paying for same, and (2) to lengthen the bargaining process with the goal of reaping financial savings or exacting bargaining concessions from the teachers in exchange for the salary increments which are rightfully theirs. The Federation further argues that as public employes have been legislatively denied the opportunity to utilize their economic power to prevent the municipal employer from worsening their employment conditions during bargaining, employes must in fairness be protected from the economic pressures which the Examiner's static view of the status quo allows the municipal employer to apply to said employes to exact bargaining concessions. In sum the Complainants allege that the Examiner failed to show why municipal employes are entitled to less protection than the status quo doctrine provides private sector employes. It therefore urges the Commission to find the District's action to be violative of MERA.

The Wisconsin Education Association Council's amicus brief largely echoes the Complainants' dissatisfaction with the Examiner's static view of the status quo. WEAC argues that the Examiner's decision improperly departs from the Commission's City of Greenfield decision and other persuasive precedent from both the private and public sectors. It alleges that since experience increments are normally given at the beginning of the new school year, the District actually cut teachers' wages by withholding said increments and thus clearly failed to maintain the status quo. WEAC contends that the Examiner's reasoning was flawed in many respects, including his attempt to draw a non-existent distinction between the status quo during bargaining over an initial contract and the status quo during bargaining over a successor pact. In either situation WEAC argues that the purposes for requiring maintenance of the status quo are the same - defining the employer's bargaining obligation, protecting the union's credibility, and preventing impermissible leverage upon employes who, because they choose to bargain, should not suffer reductions in routine benefits - and thus the status quo should in either situation be defined in the same dynamic way. WEAC asserts that the salary schedule is the status quo which must be maintained, and thus seeks reversal of the Examiner's decision.

#### Discussion

Although the Commission has affirmed the Examiner's Findings, Conclusion and Order, we feel compelled to clarify the basis for said action to the extent that it differs from the Examiner's rationale.

As pointed out by all parties, the Commission did make the following holding in City of Greenfield: 1/

. . . we begin with the general rule that an employer must, pending discharge of its duty to bargain, maintain the status quo of all terms of the expired agreement which concern mandatory subjects of bargaining. Thus, even though the amount of wages owing originally was established by the expired agreement an employer may not change the established wage rates without first discharging its duty to bargain over that item.

The issue raised by the instant dispute involves the parties' differing view regarding the application of the foregoing doctrine to a salary

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1/ (14026-B), 11/77.

schedule which contains experience increments and educational achievement lanes. The basis for resolving said dispute can be derived from an examination of the underpinning of the status quo doctrine - the concept that the absence of change in wages, hours and working conditions is the best and most neutral atmosphere in which the realities of the collective bargaining process may take their course after a contract has expired.

The maintenance of the status quo during the contract hiatus is not dependent upon the continuation of a contractual obligation in a pre-existing contract, but in the continuation of the wages, hours and conditions of employment which existed at the time when said agreement was in effect. Here, the District, during the contract hiatus, maintained the same salary payments which it has paid to the employes during the term of the agreement, thus maintaining the status quo.

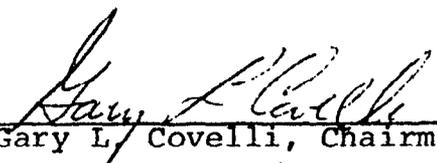
Acceptance of the Complainants' position would constitute a rejection of the doctrine of maintaining the status quo, as it would require change in the form of a salary increase. It is simply this change, not its cost, not the expectations of the employes, not the absence of past practice, not whether the salary schedule is at issue during bargaining, which requires rejection of the position of the Complainants in this proceeding. Therefore we agree with the Examiner's conclusion that the District was not statutorily obligated to grant experience increments to employes in fulfilling its duty to maintain the status quo during the contract hiatus.

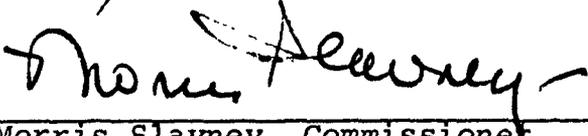
We deem it appropriate to comment on certain conclusions set forth by our dissenting colleague. He concludes that the District extended the contractual salary schedule beyond the expiration date of the collective bargaining agreement, and he reaches this conclusion by the fact that the District "applied same to teachers who had accumulated sufficient educational credits to move a step horizontally and to new hires including teachers who had been non-renewed and then rehired." In our opinion such action by the District does not, standing alone, establish an intent by the District to continue the contractual salary schedule beyond the termination date of the agreement. Further, as pointed out by the Examiner ". . . the District in essence is saying that it can engage in individual bargaining by unilaterally setting the salaries of a handful of teachers. The Federation's brief rightfully notes that such a result 'interjects unfairness, absurdity, and, ultimately divisiveness into the bargaining unit'. Nonetheless, the Federation's complaint does not allege that the District acted unlawfully when it granted increments to a few of its teachers." We agree with the Examiner that the resolution of the issue herein should not hinge on the fact "that the District may have improperly granted increments to some of its teachers". Apparently our dissenting colleague concludes otherwise.

Dated at Madison, Wisconsin, this 4th day of September, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
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Gary L. Covelli, Chairman

  
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Morris Slavney, Commissioner

Dissenting Opinion of Commissioner Torosian

I disagree with the majority that the status quo herein does not include the salary schedule contained in the 1977-1978 collective bargaining agreement. Even assuming without deciding that normally the status quo does not include a salary schedule as concluded by the majority, it is nevertheless patently clear to the undersigned that the status quo in the instant case includes the salary schedule.

In the Greenfield decision we stated in pertinent part that ". . . we begin with the general rule that an employer must, pending discharge of its duty to bargain, maintain the status quo of all terms of the expired agreement which concern mandatory subjects of bargaining". Further, we stated that ". . . most mandatory subjects of bargaining must remain intact per the terms of the expired contract, not because the Commission sua sponte extends contractual terms, but as a result of the employer's duty to maintain the status quo at least to the point of impasse . . .".

Here the salary schedule in dispute was a term of the expired contract. The majority without regard to the District's application of the salary schedule to other employes upon expiration of the agreement concludes that status quo in regard to salary is the salary the teachers were receiving at the time of the agreement's expiration.

The majority states that the maintenance of the status quo during the contract hiatus is dependent upon ". . . the continuation of wages, hours, and/or conditions of employment which existed at the time when said agreement was in effect. Here, the District, during the contract hiatus, maintained the same salary payments which it has paid to the employes during the term of the agreement, thus maintaining the status quo."

The last sentence quoted above, however, is not entirely correct. In this regard the facts clearly establish that the District extended the salary schedule beyond the expiration date of the agreement, and applied same to teachers who had accumulated sufficient educational credits to move a step horizontally and to new hires including teachers who had been non-renewed and then rehired. All such employes were advanced a step in salary schedule even though the contract had expired.

Thus by so doing it is clear to the undersigned that the District maintained intact the salary schedule per the expired agreement and as such the schedule became part of the status quo. Further, since the District maintained the schedule as status quo, all teachers, and not just certain teachers, were entitled to advancement on the schedule.

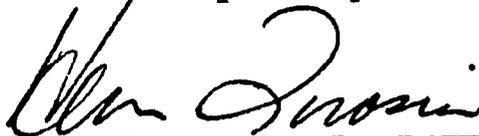
The District by granting a step advancement to only certain employes is in essence saying that the status quo for some unit employes includes movement on the schedule while the status quo of others does not. The District argues that teachers who are non-renewed and new teachers did not have a continuing contract but were reemployed under a new contract. While this is true it does not support the District's position of treating employes in the same unit differently, since the District could have easily put non-renewed and renewed teachers at the same step as continuing teachers with the same condition that their salary would be subject to and adjusted by the master agreement. They chose not to do so. Further, the District argues that teachers who earned education credits sufficient to change lanes were moved to the new lane because the contract was still in effect when the credits were earned. This rationale, however,

would also support the vertical movement of teachers since they completed their additional year of service credit while the contract was still in effect.

Having concluded that the salary schedule is part of the status quo it follows that all teachers covered by the schedule and who qualified were entitled to a step advancement on the schedule.

Dated at Madison, Wisconsin, this 4th day of September, 1981.

By



Herman Torosian, Commissioner

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