STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

WATERFORD HIGH SCHOOL TEACHERS' ASSOCIATION, LOCAL 3287, WFT, AFT, AFL-CIO and WISCONSIN FEDERATION OF TEACHERS, AFT, AFL-CIO, Complainants, vs. WATERFORD UNION HIGH SCHOOL DISTRICT, Respondent.	Case IV No. 24319 MP-964 Decision No. 16938-A

Appearances:
Mr. Steve Kowalsky, Representative, Wisconsin Federation of Teachers, AFT, AFL-CIO appearing on behalf of the Complainants.
Mulcahy & Wherry, S.C., Attorneys at Law, by Mr. Mark L. Olson, appearing on behalf of the Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Local 3278, Waterford High School Teachers' Association, WFT, AFT, AFL-CIO and Wisconsin Federation of Teachers, AFT, AFL-CIO having on March 22, 1979 filed a complaint with the Wisconsin Employment Relations Commission wherein it alleged that the Waterford Union High School District had committed prohibited practices in violation of Sections 111.70(3)(a)1 and 5 of the Municipal Employment Relations Act; and the Commission having appointed Duane McCrary, a member of the Commission's staff, to act as Examiner and to make and issue Findings of Fact, Conclusions of Law and Order as provided in Section 111.07(5) of the Wisconsin Statutes; and pursuant to notice, hearing on said complaint having been held on May 16, 1979 before the Examiner; and the parties having submitted post-hearing briefs by June 1, 1979; and the Examiner having considered the evidence and arguments and being fully advised in the premises, makes and files the following Findings of Fact, Conslusions of Law and Order.

FINDINGS OF FACT

1. That Complainants are labor organizations having their offices at 6525 West Bluemound Road, Milwaukee, Wisconsin; that the Complainant, Waterford High School Teachers' Association is the voluntarily recognized exclusive bargaining representative of all certified full-time and part-time teachers employed by the Waterford Union High School District.

2. That Respondent, Waterford Union High School District, is a municipal employer having its principal office at 110 South Center Street, Waterford, Wisconsin.

3. That the Respondent and Complainant Association have been parties to collective agreements since at least 1970; that since the 1970-1971 agreement to the present the following provision has been included in each agreement:

SECTION III

. . .

8. . . . Teachers will be paid on the basis of twenty-four (24) equal monthly payments. Checks shall be issued to all employees on approximately the 15th and 30th of each month.

that from the summer of 1971 to the summer of 1973 teachers had the option of receiving their last six salary payments in a lump sum on checkout day or receiving these payments on the 15th and 30th of June, July and August; that from the summer of 1974 until the summer of 1978 all teachers received the last six salary payments in a lump sum on checkout day thus removing the option; that on April 25, 1978 Mr. W. K. Carter, Superintendent, notified the Complainants that teachers' pay during the summer would be paid on approximately the 15th and 30th of each month during the summer; that on May 9, 1978 Mr. James Edwards, President, Waterford High School Teachers' Association, by letter to Mr. James Smith, President, Board of Education, Waterford Union High School, requested that the Board reconsider its decision and pay the teachers the remainder of their salaries upon completion of their teaching duties in June; this request was denied on May 10, 1978; that subsequently teachers received their last six salary payments on the 15th and 30th of June, July and August, 1978; that at all times material herein the 1976-1977 collective bargaining agreement was in effect; that said agreement contained a procedure for the resolution of grievances which arose thereunder and which did not provide for final and binding arbitration; that on June 1, 1978 the Complainant Association filed a grievance which alleged that Respondent's proposed method of summer payment under which the teachers would be paid on the 15th and 30th of each month during the summer months violated the collective bargaining agreement; that all steps of the grievance procedure were exhausted with respect to the aforementioned grievance.

3. That at all times material herein the parties were engaged in negotiations which culminated in the 1977-1980 collective bargaining agreement; that summer payment to teachers was not a subject of those negotiations.

4. That Section III, paragraph 8 of the 1976-1977 collective bargaining agreement is a clear and unambiguous provision.

Based upon the above and foregoing Findings of Fact, the Examiner makes and issues the following

CONCLUSIONS OF LAW

1. That the Respondent did not violate the 1976-1977 collective bargaining agreement and hence Section 111.70(3)(a)5 of the Municipal Employment Relations Act (MERA) when it unilaterally changed the method of salary payment to teachers from the lump sum method to payment of the last six (6) payments in six (6) equal installments in June, July and August, 1978.

2. That the Complainants have not demonstrated by a clear and satisfactory preponderance of the evidence that Respondent's unilateral change in the method of salary payment from the lump sum method to payment in six (6) equal installments in June, July and August constituted an independent violation of Section 111.70(3)(a)1 of MERA.

Based upon the above and foregoing Findings of Fact and Conclusions of Law, the Examiner makes and issues the following

ORDER

That the instant complaint is hereby dismissed.

Dated at Madison, Wisconsin this 2nd day of October, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Duane McCrary, Examiner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

From the summer of 1971 up to and including the summer of 1973, teachers had the option of receiving the last six salary installments in a lump sum on checkout day or in six equal salary installments over the summer months. From the summer of 1973 until the summer of 1978 all teachers received the last six salary payments in a lump sum on checkout day. The instant dispute arose during the spring of 1978 when the Respondent proposed that extra-curricular stipends be paid to teachers at the conclusion of the particular extra-curricular activity. Historically, extra-curricular stipends had been made a part of the individual teacher's contract and had been incorporated into the individual teacher's overall compensation which was payable in twenty-four equal installments. The Complainant Association through talks with the administration indicated that it wanted Respondent to continue to include extra-curricular stipends as part of the teachers' total payment. Respondent then determined that the last six salary installments would be paid to the teachers on approximately the 15th and 30th of each month as specified in Section III, paragraph 8 of the 1976-1977 agreement rather than giving the teachers the option of receiving those installments in a lump sum. The association grieved the change and the grievance was processed through the final stages of the existing grievance procedure which did not contain a provision for final and binding arbitration of unresolved grievances.

The Examiner will assert the Commission's jurisdiction to determine whether the Respondent's action of changing the method of salary payment to teachers during the summer months of 1978 violated the collective bargaining agreement, inasmuch as the grievance procedure contained in the 1976-1977 collective bargaining agreement has been exhausted and did not provide for final and binding arbitration. 1/ Although the 1976-1977 collective bargaining agreement had apparently expired, the parties stipulated that said agreement remained in effect at all pertinent times. Thus, pursuant to the stipulation of the parties I will examine the provisions of the 1976-1977 collective bargaining agreement to determine whether a violation of MERA occurred, notwithstanding the fact that the alleged violation took place in 1978.

Complainant asserts that although the agreement provides that teachers will be paid in twenty-four installments on approximately the 15th and 30th of each month, the lump sum payment to teachers has been the parties' practice for eight (8) years. Inasmuch as the pay provision is ambiguous, the parties' practice should govern. Accordingly, Complainants pray that the Respondent be directed to continue the practice of paying teachers the remaining six salary installments in a lump sum on checkout day (approximately June 9) or in the alternative, if a decision is issued after checkout day, the Respondent be directed to issue any remaining salary owed to teachers for the 1978-1979 school year upon the issuance of the Examiner's decision. The Respondent asserts that no violation of the contract occurred when the method of summer payment to teachers was changed. Further, Respondent avers that as Section III, paragraph 8 is clear and unambiguous on its face, it must be enforced as stated and the Examiner may not look to any alleged past practice to resolve the instant matter.

1/ Winter School District, (12889-A, -B) 1/75; (13275-A, -B) 8/75.

A contractual provision is said to be "ambiguous" when that provision is "susceptible of more than one meaning." John Deere Plow Works, 69-1 ARB para. 8121 (Sembower, 1968). Moreover, it is a generally accepted principle of contract construction that when the language of a disputed clause to be interpreted is clear and not ambiguous, said language best reveals the intendment of the parties who (and when they) wrote it; and no amount of practice, however previously acceptable to both parties, may be used to alter the plain meaning of the unambiguous language when one of the parties elects to stand on such meaning. AMF, Western Tool Division, 70-2 ARB para. 8646 (Daugherty, 1970).

The Examiner does not find Section III, paragraph 8 to be an ambiguous statement. The provision clearly provides that teachers are to be paid on the basis of twenty-four (24) equal monthly payments which are to be issued to all employes on approximately the 15th and 30th of each month. It constitutes a clear statement of the circumstances by which teachers are to compensated throughout the year and is not susceptible of more than one meaning. The provision does not provide that the last six salary installments are to be paid to teachers on checkout day. It does not provide for any method of payment other than that which is stated in the provision itself. Moreover, the Examiner may not look to past practice to ascertain the intent of the parties when the language which they, themselves, employed to express their intent is clear and explicit. Assuming arguendo, that a valid practice existed between the parties whereby the June, July and August salary installments were paid to teachers on checkout day, the undersigned may not determine the practice to be binding inasmuch as it alters the plain meaning of Section III, paragraph 8.

Accordingly, I have determined that the Respondent's change in its method of paying the last six salary installments during the summer of 1978 was consistent with the 1976-1977 collective bargaining agreement. Thus when Respondent implemented the change in its method of payment it did not commit a violation of Section 111.70(3)(a)5 of the Municipal Employment Relations Act.

Lastly, the Complainants have presented no evidence which demonstrates that Respondent's action interfered with the exercise of Complainant's rights under the Municipal Employment Relations Act and the instant complaint is hereby dismissed.

Dated at Madison, Wisconsin this 2nd day of October, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Duane McCrary, Examiner