

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

PRAIRIE DU CHIEN EDUCATION ASSOCIATION, :

Complainant, :

vs. :

PRAIRIE DU CHIEN SCHOOL DISTRICT, :

Respondent. :

Case II

No. 24497 MP-973

Decision No. 17015-A

Appearances:

Mr. Paul Bierbrauer, Executive Director, South West Teachers
United, for the Complainant.

Peterson, Antoine & Peterson, Attorneys at Law, by

Mr. Thomas F. Peterson, for the Respondent.

FINDINGS OF FACT, CONCLUSION
OF LAW AND ORDER

The above-named Complainant having filed a complaint with the Wisconsin Employment Relations Commission on May 3, 1979, alleging that the above-named Respondent had committed a prohibited practice under the Municipal Employment Relations Act (MERA); and the Commission having appointed Peter G. Davis, a member of its 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), Stats.; and hearing on said complaint having been held before the Examiner in Prairie du Chien, Wisconsin on September 11, 1979; and a transcript of said hearing having been received by the Examiner on November 12, 1979; and the parties having elected not to file briefs; the Examiner having considered the evidence and arguments of the parties, makes and files the following Findings of Fact, Conclusion of Law and Order.

FINDINGS OF FACT

1. Prairie du Chien Education Association, herein Complainant, is a labor organization which functions as the exclusive collective bargaining representative of certain individuals employed by the Prairie du Chien School District.

2. Prairie du Chien School District, herein Respondent, is a municipal employer.

3. During bargaining over the terms of their 1975-76 contract, Complainant made the following proposal to Respondent:

4. Add Longevity pay for those teachers who are off the top of the schedule and will not receive an increment.

(a) Longevity pay shall be 2% of the lane base. Each years longevity is calculated on each years new lane base and added to the previous longevity accumulation.

Said proposal was rejected by the Respondent and no longevity provision was included in the parties' 1975-76 contract.

4. During bargaining over the terms of their 1976-77 contract, Complainant made the following initial proposal to Respondent:

Longevity pay will be paid to those teachers off the top of the schedule, not receiving increments. It shall be 2% of the lane base.

Respondent rejected said proposal, but ultimately agreed to the following counter-proposal from Complainant which was placed in the parties' 1976-77 contract:

Longevity pay will be paid to those teachers off the top of the schedule, not receiving increments.

The parties also added a "Longevity" lane to the contractual salary schedule (see Appendix A). However, no longevity payments were made during the term of the 1976-77 contract, inasmuch as no employees were "off the top of the schedule, not receiving increments."

5. The parties' 1977-78 contract retained the aforementioned longevity language and salary schedule structure with higher longevity payment amounts being inserted therein. Certain employees received longevity payments during the term of said contract. At the conclusion of bargaining for their 1978-79 contract, the parties had tentatively agreed to again leave the longevity language and salary schedule structure unchanged, while increasing the longevity benefit level. However, when Respondent's Superintendent of Schools attempted to add the phrase "according to the salary schedule" to the longevity language as an additional tentative agreement, the parties discovered that they had a disagreement as to whether longevity benefits were cumulative in nature or limited to the amount specified in the salary schedule's longevity lane. They ultimately agreed to leave the longevity language unchanged and unsuccessfully attempted to resolve their dispute through a contractual grievance procedure which did not provide for final and binding arbitration of unresolved grievances. Pursuant to Respondent's interpretation of the disputed 1978-79 contract language, employees who had received longevity payments of \$220, \$225, \$230 or \$235 under the 1977-78 contract received payments of \$250, \$255, \$260 or \$265 instead of the cumulative \$470, \$480, \$490 or \$500 payments sought by Complainant.

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

CONCLUSION OF LAW

Respondent Prairie du Chien School District did not violate its 1978-79 bargaining agreement with Complainant Prairie du Chien Education Association by failing to make cumulative longevity payments, and thus did not commit a prohibited practice within the meaning of Section 111.70(3)(a)5, Stats.

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

ORDER

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

Dated at Madison, Wisconsin this 10th day of December, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Peter G. Davis, Examiner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSION OF LAW AND ORDER

Inasmuch as the Complainant exhausted the grievance procedure contained in the parties' 1978-79 contract and said procedure did not provide for final and binding arbitration of unresolved grievances, the Examiner will assert the Commission's jurisdiction under Section 111.70(3)(a)5, Stats., to determine whether Respondent's mode of calculating longevity payments violated the 1978-79 agreement. When resolving said issue, the Examiner must ascertain the meaning which should be given to the longevity clause and accompanying salary schedule contained in said agreement.

Article XX of the parties' 1978-79 agreement states "Longevity pay will be paid to those teachers off the top of the schedule, not receiving increments." Said language makes no reference to the amount of longevity pay which such teachers are to receive. To make such a determination one must, of necessity, look at the salary schedule itself. Said schedule has a single "Longevity" lane containing certain dollar amounts which correspond to the four educational achievement lanes. The undersigned can only conclude that said schedule clearly and unambiguously expresses the parties' intent that teachers off the salary schedule are to receive longevity payments in the expressed dollar amounts. The parties' contract provides no basis for concluding that a teacher is to receive a combination of the expressed dollar amount and any longevity benefits received under previous bargaining agreements. If that had been the parties' intent, they could easily have expressed same in a variety of ways including language similar to that which the Complainant proposed and dropped during the 1975-76 contract negotiations.

Given the lack of ambiguity in the disputed contractual provisions, the Examiner has not had to avail himself of interpretative aids such as bargaining history. Thus, there was no need to consider the contradictory testimony regarding statements made during bargaining or the question of whether Respondent was merely following a bookkeeping technique or implicitly admitting the cumulative nature of longevity when it issued individual 1978-79 teaching contracts to teachers off the schedule which made reference to nonexistent 14th and 15th steps of the salary schedule.

Dated at Madison, Wisconsin this 10th day of December, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 

Peter G. Davis, Examiner

XV.

Appendix A
SALARY and ECONOMIC

Teacher's Salary Schedule

	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>6</u>	<u>7</u>
BS	8500	8820	9140	9460	9780	10100	10420
BS + 12	8758	9078	9398	9718	10038	10358	10678
BS + 24	9016	9336	9656	9976	10296	10616	10936
MS	9274	9594	9914	10234	10554	10874	11194
STRS	350	365	380	395	410	425	440