STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

NORTHWEST UNITED EDUCATORS, Complainant, vs. RICE LAKE AREA SCHOOL DISTRICT, Respondent.	Case XX No. 25958 MP-1093 Decision No. 17763-A

Appearances:

Mr. Robert E. West and Mr. Alan D. Manson, Executive Directors, Northwest United Educators, 16 W. John Street, Rice Lake, Wisconsin, appearing on behalf of the Complainant.

Losby, Riley, Farr & Ward, S.C., Attorneys at Law, 204 E. Central Avenue, Eau Claire, Wisconsin, by Mr. Stevens L. Riley, appearing for the Respondent.

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

Northwest United Educators having, on April 1, 1980, filed a complaint with the Wisconsin Employment Relations Commission alleging that the Rice Lake Area School District had committed a prohibited practice within the meaning of Section 111.70(3)(a)(4) and (5) of the Municipal Employment Relations Act; and the Commission having appointed Christopher Honeyman, a member of its staff, to act as Examiner in this matter 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 Rice Lake, Wisconsin on September 24, 1980; and briefs having been filed by both parties with the Examiner by November 5, 1980; the Examiner, having considered the evidence and arguments and being fully advised in the premises, makes and files the following Findings of Fact, Conclusion of Law and Order.

FINDINGS OF FACT

1. That Northwest United Educators, hereinafter referred to as the Complainant or the Union, is a labor organization within the meaning of Section 111.70, Wisconsin Statutes; and that Robert E. West and Alan D. Manson are Executive Directors of the Complainant.

2. That the Complainant is recognized by the Rice Lake Area School District as the exclusive bargaining representative of all full-time and regular part-time employes of the Rice Lake Area School District engaged in teaching, but excluding administrators, coordinators, principals, supervisors, non-instructional personnel, head guidance counselor, substitute teachers, interns, student teachers and all other employes.

3. That the Rice Lake Area School District, hereinafter referred to as the Respondent or District, is a public school district organized under the laws of the State of Wisconsin and is a municipal employer within the meaning of Section 111.70, Wis. Stats.

4. That the Complainant and Respondent are parties to a collective bargaining agreement (herein the Agreement) commencing on July 1, 1979 and terminating on June 30, 1981, which among its provisions contains the following:

ARTICLE III

Negotiation Procedure

A. If any party desires to modify or amend this Agreement, it shall give written notice to this effect during the month of January prior to the anniversary date of this agreement. Failing such notice, the Agreement shall automatically be renewed on a yearly basis until such notice is given within any January period.

ARTICLE XVII

Terms of Agreement

A. This Agreement shall be in effect July 1, 1979 and shall remain in effect through June 30, 1981.

B. This Agreement, reached as a result of collective bargaining, represents the full and complete agreement between the parties and supersedes all previous agreements between the parties. It is agreed that any matters relating to the current contract term, whether or not referred to in this Agreement, shall not be open for negotiations except as the parties may specifically agree thereto. All terms and conditions of employment not covered by this Agreement shall continue to be subject to the Board's direction and control; provided, however, that Northwest United Educators shall be notified in advance of any changes having a substantial impact on the bargaining unit, given the reason for such change, and provided an opportunity to discuss the matter. Northwest United Educators shall be given the opportunity to negotiate the impact of any Board of Education decision which has an impact on the wages, hours, or working conditions of bargaining unit members.

This Agreement shall be binding on the parties who are signatories thereto.

5. That in addition to the provisions quoted above, the Agreement contains salary schedules for 1979-80 and 1980-81.

6. That on January 23, 1980 Robert West, by letter to the Respondent, requested to reopen negotiations to modify the salary schedule appearing in the Agreement for 1980-81.

7. That on February 14, 1980 the District's Superintendent, Eugene Balts, by letter to the Complainant, refused to reopen negotiations for 1980-81.

8. That the Complainant subsequently filed and processed a grievance alleging that Respondent was violating Article III(A) by its refusal to renegotiate salaries for 1980-81; that Respondent denied said grievance at all steps of the parties' grievance procedure; and that said procedure does not provide for arbitration of unresolved grievances.

9. That the Agreement does not allow for reopening of negotiations as to any of its provisions, absent agreement to do so by both parties, so as to modify those provisions for the 1980-81 contract year; and that Respondent, by its agent Balts, did not violate the Agreement by its refusal to reopen negotiations for salaries for 1980-81.

Upon the basis of the foregoing Findings of Fact, the Examiner makes and files the following

CONCLUSION OF LAW

That Respondent, by refusing to reopen negotiations for 1980-81, has not committed and is not committing a prohibited practice within the meaning of Section 111.70(3)(a)(4) or (5), Wis. Stats.

Upon the basis of the foregoing Findings of Fact and Conclusion of Law, the Examiner makes and renders the following

ORDER

That the Complaint filed in this matter be, and the same hereby is, dismissed.

Dated at Madison, Wisconsin this 21st day of November, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Christopher Honeyman, Examiner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

The complaint in this matter essentially concerns an issue of interpretation of the parties' collective bargaining agreement: although the District is charged under Section 111.70(3)(a)(4) as well as (5), Wis. Stats., it is self-evident that if the Agreement is a fully "locked-up" agreement for two years, the District has already fulfilled its obligation to bargain in good faith for 1980-81; similarly, it is obvious that if the Agreement allows for reopening of negotiations with respect to some of its terms for the second year, the statute as well as the Agreement itself imposes on the Respondent a duty to bargain in good faith.

The facts of this matter are essentially undisputed. Section III(A) of the Agreement has existed substantially in its present form since the 1974-75 contract year, at which time a one-year labor agreement was in force. Two-year agreements were reached between the parties in 1975-77, 1977-79 and 1979-81, but in the first two instances the agreements were not executed till the second year was already under way. In 1979, however, agreement was reached with more alacrity: after one meeting to exchange proposals and one more joint meeting which both parties characterized as insubstantial, the Union requested mediation and then, prior to an actual meeting with a mediator, filed a petition for mediation-arbitration pursuant to Section 111.70(4)cm)(6), Wis. Stats. In the subsequent meeting with the Commission's investigator, who was at that time acting essentially as a mediator, an agreement was arrived at almost entirely without face-to-face discussion between the parties. It is undisputed that the agreement provided for a two-year contract, including such monetary items as salaries and a mileage allowance increase in the second year (1980-81), and that at no time during this "bargaining" was the Complainant's interpretation of Article III(A) communicated to the Respondent; nor is there any evidence that Complainant advised the mediator of its interpretation of Article III(A).

Both Respondent's principal negotiator, Laurence Rodenstein, and Complainant's, Robert West, testified that no mention was made of Section III(A) in their "postprandial" discussions of the bargaining. Rodenstein testified that certain statements allegedly made to him by West contributed to his understanding that the two-year agreement was not reopenable, and in particular quoted West as telling him, on the night that agreement was reached, "I'm really glad we got this over with. It's hard bargaining in my own home town. We've had a lot of problems here. I would just as soon get this settled and get a two-year contract and I don't have to worry about it for a while." (Tr. p. 26)

The Complainant argues that it was aware all along of the presence of Article III(A) in the Agreement, that it at all times assumed that this Article allowed for a reopener in the second year of a two-year contract, and that it saw no need to advise the District of this in advance of making use of the provision. West, in testimony, noted however that he had at one time told Rodenstein's predecessor as District negotiator, Harold Roethel, that "I saw potential problems relative to renewal and to the nature of that particular language that could give rise to all kinds of difficulty between the parties in the future." (Tr. p. 38) The Complainant argues from this that the District was on notice that this language could allow a reopener. With respect to the apparent conflict with other contractual provisions, the Complainant argues that in the presence of

language such as that in Article III(A), the utility of a second-year salary schedule and other provisions covering the second year of the Agreement is only that they will apply if neither party chooses to invoke the reopener and, if the reopener is used, they place a "heavy burden" 1/ on the party attempting to renegotiate terms for the second year.

The Respondent argues that Article III(A) was at all times unthought-of in the context in which the Complainant now wishes it used, and that on its face it is at most ambiguous as distinct from being a clear reopener provision. The Respondent argues that this reading of Article III(A) is in conflict with Aritlce XVII(A) and (B) and that the latter should control in view of Article III(A)'s lack of clarity. The Respondent also contends that Complainant's arguments lead to a nonsensical result - that if Article III(A) is a midterm reopener it is so for all contractual provisions and that the end result is no different from a one-year contract, with the second year mere verbiage renegotiable at either party's whim.

Each party requests an award of costs and attorney's fees, on account of the egregious conduct of the other.

West's conversation with Roethel, as the former testified to it, does not establish that the subject was being talked about as a midterm reopener: it is equally logical to construe West's phrases as referring to the potential for this language to be used to seal in terms of employment beyond the contract's expiration, if one party failed to send a timely notice of intent to amend it. Consequently, even though this testimony is unrebutted it does not show that Respondent had notice of the potential interpretation of Article III(A) which the Complainant now wishes to exercise.

The Examiner finds Article III(A) less than crystal clear on its face, if indeed it was ever intended to act as a midterm reopener: but even assuming arguendo that that is its interpretation, it is an inescapable conclusion that such a reopener conflicts with those sections of the Agreement which lay out, without reference to a reopener, salaries, insurance, mileage, co-curricular pay and other economic items for the 1980-81 year. Moreover, such an interpretation of Article III(A) is in sharp conflict with the relatively broad "zipper" clause set forth in Article XVII(B). Finally, there is merit in the Respondent's claim that were Article III(A) considered a midterm reopener, the two-year contract would be an exercise in futility; for unlike the familiar variety of reopener, Article III(A) would contain no limitation whatsoever on the number or types of contractual provisions that could be reopened. The "heavy burden" theory (of residual utility of all these 1980-81 provisions) advanced by the Complainant is ingenious but strained, and there is no evidence that it has been accepted at any time either by Respondent or, for that matter, by any other management or union, anywhere.

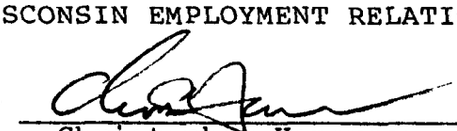
In view particularly of the number of other contractual items in conflict with the Complainant's interpretation of Article III(A), the degree to which Article XVII(B) conflicts with said interpretation, and the inherent improbability of a reopener unlimited as to number or types of provisions, the Examiner concludes that the Agreement, read as a whole, does not provide for reopening of negotiations for 1980-81.

1/ Complainant's term.

With respect to Respondent's claim for costs and attorney's fees, the Examiner notes that Article III(A), read alone, raises a colorable claim of annual duty to bargain, that no precedent exists in which the Commission has ever granted attorney's fees to a respondent, that it is doubtful whether the statute even allows the Commission to do so, and that a complainant's fees and costs have only been ordered paid by a respondent in rare and extreme cases where the defenses presented were appallingly meretricious. For these reasons, the Examiner considers such an award not warranted here.

Dated at Madison, Wisconsin this 21st day of November, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Christopher Honeyman, Examiner