STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

STEVE HARTMANN, BUSINESS REPRESENTATIVE, LOCAL 95, OFFICE AND PROFESIONAL EMPLOYEES INTERNATIONAL UNION, AFL-CIO,	
Complainant,	Case 24 No. 28629 MP-1251 Decision No. 19084-C
vs.	
SCHOOL DISTRICT OF WISCONSIN RAPIDS, THROUGH ITS AGENT, RICHARD WASSON, DIRECTOR OF OPERATIONS, 1/	
Respondent.	

Appearances:

Mr. Joseph E. Finley, Attorney at Law, 57 Brookstone Drive, Princeton, New Jersey 08540, and Mr. Steve Hartmann, appearing on behalf of the Complainant.

Melli, Walker, Pease & Ruhly, S.C., Attorneys at Law, by Mr. James K. Ruhly, 119 Monona Avenue, P. O. Box 1664, Madison, Wisconsin 53701, appearing on behalf of the Respondent.

ORDER MODIFYING EXAMINER'S FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Examiner Christopher Honeyman having, on July 26, 1982, issued his Findings of Fact, Conclusions of Law and Order, together with accompanying Memorandum, in the above-entitled matter, wherein he concluded, inter alia, that the Respondent School District of Wisconsin Rapids had committed prohibited practices within the meaning of Secs. 111.70(3)(a)1 and 4, Stats., by failing to automatically advance and progress non-professional employes of the District represented by the Complainant Local 95, Office and Professional Employees International Union, AFL-CIO, after June 30, 1981, in the manner provided by salary and vacation schedules contained in the employes' manuals promulgated by the District; and the Respondent District having, on August 13, 1982, filed a timely petition, pursuant to Sec. 111.07(5), Stats., requesting the Commission to review the Examiner's decision; and the parties having filed briefs in support of and opposition to the petition for review, the lastof which was received on November 4, 1982; and the Commission, having offered further opportunity for briefing by the parties in light of subsequent developments in Menasha Schools; 2/ and the District's supplemental brief having been filed on October 17, 1983; and the Commission, having reviewed the record, the Examiner's decision, the petition for review, and the parties written arguments, and being satisfied that the Examiner's Findings, Conclusions and Order should be modified;

1/ The Respondent's memorandum in support of the petition for review contained a motion to correct the caption in this case so as to correctly identify the School District of Wisconsin Rapids as the Respondent, rather than Richard Wasson, its Director of Operations. The record reflects that the Complainant, on November 13, 1981, responded to the Examiner's Order Granting Motion to Make the Complaint More Definite and Certain, Extending the Time to File Answer and Denying Motion to Dismiss, Dec. No. 19084-A (11/81), by naming as the Respondent the School District of Wisconsin Rapids, acting through its agent, Richard Wasson. The Examiner did not correct the case caption to reflect said amendment. Therefore, the case caption has been revised herein to read as set forth above.

2/ See Notes (5) and (12), infra.

NOW, THEREFORE, it is

ORDERED 3/

A. That the Examiner's Findings of Fact, Conclusions of Law and Order, as modified below, are hereby adopted by the Commission:

3/ Pursuant to Sec. 227.11(2), Stats., the Commission hereby notifies the parties that a petition for rehearing may be filed with the Commission by following the procedures set forth in Sec. 227.12(1) and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.16(1)(a), Stats.

227.12 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025 (3)(e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

227.16 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.15 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefor personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.12, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.11. If a rehearing is requested under s. 227.12, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 182.70(6) and 182.71(5)(g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.20 upon which petitioner contends that the decision should be reversed or modified.

. . .

(c) Copies of the petition shall be served, personally or by certified mail, or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon all parties who appeared before the agency in the proceeding in which the order sought to be reviewed was made.

Note: For purposes of the above-noted statutory time-limits, the date of Commission service of this decision is the date it is placed in the mail (in this case the date appearing immediately above the signatures); the date of filing of a rehearing petition is the date of actual receipt by the Commission; and the service date of a judicial review petition is the date of actual receipt by the Court and placement in the mail to the Commission.

MODIFIED FINDINGS OF FACT

1. That Local 95, Office and Professional Employees International Union, AFL-CIO, herein Complainant or the Union, is a labor organization having its principal offices at 111 Jackson Street, Wisconsin Rapids, Wisconsin 54494; and that Steve Hartmann is its Business Representative.

2. That the School District of Wisconsin Rapids, herein the Respondent or District, is a public school district organized under the laws of the State of Wisconsin, having its principal offices at 510 Peach Street, Wisconsin Rapids, Wisconsin 54494, and is a municipal employer; and that Richard Wasson is its Director of Operations and its agent.

3. That for the 1975-76 school year, prior to the certification of Complainant as the representative of the employes involved herein, the District adopted a single manual specifying terms and conditions of employment for full-time and school year clerical employes; that said manual contained the following provision:

> Wages and Salaries
>
> Wages and salaries for District employees are determined by the Board of Education, taking into account position responsibilities, individual merit and longevity. Consideration will also be given to the levels of wages and salaries paid for comparable positions by other employers in our area. Another relevant factor is the total amount of money available to the District through its annual budget.

4. That the next such manual covered full-time and school year secretarial, clerical and aide employes and contained the following wage and longevity pay schedule:

SECRETARIAL/CLERICAL/AIDE WAGES

July 1, 1977 to June 30, 1978

	Group						
	A	B	C	D	E	F	G
Start	3.00	3.15	3.33	3.52	3.94	4.40	4.88
6 mo.	3.09	3.26	3.45	3.64	4.07	4.56	5.05
12 mo.	3.20	3.37	3.57	3.77	4.21	4.71	5.22
24 mo.	3.30	3.48	3.68	3.89	4.35	4.87	5.40
36 mo.	3.41	3.59	3.80	4.02	4.49	5.02	5.57
48 mo.	3.52	3.70	3.92	4.14	4.63	5.18	5.74

LONGEVITY - 5 or more years 4¢

10 or more years 8¢

15 or more years 12¢

and that said manual further contained the following provision governing establishment of the wage schedule:

XVII. Installation Considerations

A. It is proposed that the program be installed August 1, 1977.

B. Maximum increases on August 1, 1977 would be 50¢ per hour or one-half of what is required to reach the appropriate level, whichever is higher. The remainder of the increase would be given on January 1, 1978.

C. The schedule would be reviewed for possible wage adjustments on July 1, 1978 and each July 1st thereafter. Wages would be adjusted as the schedule changes and when experience level criteria are met on July 1 and January 1.

5. That on July 10, 1978, Respondent's Board of Education approved an eight percent increase in each of the wage rates on the wage schedule set forth above, for the 1978-79 school year and implemented same effective retroactive to July 1, 1978.

6. That on July 9, 1979, the Respondent District's Board of Education approved a separate 1979-80 wage and benefits package for full-year secretarial employes, and a separate 1979-80 wage and benefit package for school year secretarial, clerical and aide employes; that the full-year secretaries' new wage and benefits were subsequently incorporated into a manual and distributed to affected employes, and included a dental insurance program, an additional paid holiday, a revised secretarial handbook and the following wage and longevity schedule for full-year secretarial employes:

WAGE SCHEDULE

July 1, 1979 - June 30, 1980

. . .

Secretary	I	II	III	IV	V
Start	3.90	4.11	4.41	4.92	5.65
6 months	4.03	4.25	4.56	5.09	5.84
12 months	4.16	4.40	4.71	5.25	6.03
24 months	4.30	4.53	4.86	5.42	6.23
36 months	4.43	4.67	5.01	5.59	6.42

Longevity

5 or more years	4¢ per hour
10 or more years	8¢ per hour
15 or more years	12¢ per hour

The schedule would be reviewed for possible adjustments on or before July 1 each year and adjustments made after July 1 may be retroactive to July 1.

and that the July 1979 wage and benefit package covering school year secretarial, clerical and aide employes was incorporated into a manual and distributed to affected employes and included a liberalized sick leave policy, a revised secretarial/clerical handbook and the following wage schedule, made effective retroactively to the period July 1, 1979:

SCHOOL YEAR

SECRETARIAL, CLERICAL AND AIDE EMPLOYEES

Wage Schedule

July 1, 1979 - June 30, 1980

	I	II	III	IV	V
Start	3.71	3.91	4.12	4.22	4.43
6 Months	3.84	4.04	4.26	4.37	4.58
12 Months	3.97	4.17	4.40	4.51	4.73
24 Months	4.09	4.31	4.54	4.66	4.88
36 Months	4.22	4.44	4.68	4.80	5.03

Longevity - 5 or more years - 4¢ per hour

10 or more years - 8¢ per hour

15 or more years - 12¢ per hour

and that said school year manual also contained the following provisions:

XIII. Wages and Salaries

Wages and salaries for District employees are determined by the Board of Education, taking into account position responsibilities, individual merit and longevity. Consideration will also be given to the levels of wages and salaries paid for comparable positions by other employers in our area. Another relevant factor is the total amount of money available to the District through its annual budget. (See the attached schedules).

XVII. Adjustments

The schedule would be reviewed for possible wage adjustments each July 1. Wages will be adjusted as the schedule changes and when experience level criteria are met.

7. That on July 14, 1980, the Board of Education of the School District of Wisconsin Rapids approved a manual for full-year secretarial employes which added an emergency leave provision and included the following wage schedule:

SECRETARIAL CLASSIFICATION

WAGE SCHEDULE

July 1, 1980 - June 30, 1981

. . .

Secretary	I	II	III	IV	V
Start	4.28	4.51	4.84	5.40	6.20
6 Months	4.42	4.67	5.01	5.59	6.42
12 Months	4.57	4.82	5.17	5.77	6.63
24 Months	4.71	4.98	5.34	5.96	6.84
36 Months	4.86	5.13	5.50	6.14	7.05

(Table continued on Page 6)

Longevity

5 or more years	4¢ per hour
10 or more years	8¢ per hour
15 or more years	12¢ per hour

This schedule would be reviewed for possible adjustments on or before July 1 each year and adjustments made after July 1 may be retroactive to July 1.

8. That the manual for full-year secretarial employes referenced above in Finding of Fact 7 also contained the following provisions:

3. Wage Program Guidelines

Employees will be compensated on the basis of position evaluation and length of service.

3.1 Position evaluation changes will be submitted to the Assistant Superintendent Operations and the Board for prior approval. A six-month job review must precede any job reclassification.

Factors influencing reclassification will include the following: skills and experience required, working conditions, responsibility for administrative procedures, student contact, money and equipment and public relations.

3.2 New employees will be started at experience level one of the group to which their position is assigned. Exceptions will be made only in the following cases:

A new employee who has advanced education beyond high school and/or previous experience may be paid at such accelerated rates commensurate with such education and/or experience.

Employees who previously worked for the Wisconsin Rapids Board of Education may be given one-half credit for former service.

3.3 Experience level adjustments will be made at the 6 months, 12 months, 24 months and 36 month level. Wage steps shall be only from and after the month in which the applicable anniversary date of the secretary falls. If a secretary's wage step or anniversay (sic) date falls within the first fifteen (15) days of a month, the employee shall receive credit for the entire month, otherwise the employee shall receive such credit as of the beginning of the next month. For the purposes of administration, the experience levels will be based on calendar months since initial employment.

3.4 Cases of secretarial employees who are required to consistently fulfill tasks on a regular basis in a higher classification will be reviewed individually by the Administration for possible reclassification of up to one-half step higher on the approved wage schedule.

4. Holidays, Personal Time and Vacations

. . .

4.3 Paid vacations are granted only to employees who work on a year-round basis. Paid vacations are granted according to the schedule below:

80 hours after one year (75 hours for a 37 1/2 hour work-week employee)

120 hours after eight years (112 1/2 hours for a 37 1/2 hour work-week employee)

160 hours after fifteen years (150 hours for a 37 1/2 hour work-week employee)

The vacation year shall run from the anniversary date each year. If a vacation period includes one of the paid holidays listed in Section 4.1 only the working days off will be charged to vacation. Holidays that fall on Saturday or Sunday are taken before or after the weekend depending on the school calendar and the office work load.

9. That the Board of Education issued a revised manual for school year secretarial, clerical and aide employes in the late summer of 1980; that the manual contained the following wage schedule:

SCHOOL YEAR

SECRETARIAL, CLERICAL AND AIDE EMPLOYEES

Wage Schedule

July 1, 1980 - June 30, 1981

	I	II	III	IV	V
Start	4.07	4.29	4.52	4.64	4.86
6 Months	4.21	4.43	4.68	4.80	5.02
12 Months	4.35	4.58	4.83	4.95	5.19
24 Months	4.49	4.72	4.99	5.11	5.35
36 Months	4.63	4.87	5.14	5.27	5.52

Longevity - 5 or more years - 4¢ per hour

10 or more years - 8¢ per hour

15 or more years - 12¢ per hour

and that the manual for school year employes also contained the following provisions:

5. Wages and Salaries

Wages and salaries for district employees are determined by the Board of Education, taking into account position responsibilities, individual merit and longevity. Consideration will also be given to

the levels of wages paid for comparable positions by other employees in our area. Another relevant factor is the total amount of money available to the District through its annual budget (See the attached schedules).

5.1 Employees will be compensated on the basis of position evaluation and length of service.

A. Position Evaluations

Position evaluation changes will be submitted to the Assistant Superintendent - Operations and the Board of Education for prior approval. A six-month job review must preceed any job reclassification.

Factors influencing reclassification will include the following: skill and experience required, working conditions, responsibility for administrative procedures, student contact, money and equipment and public relations.

B. Experience Levels

New employees will be started at experience level one of the group to which their position is assigned. Exceptions will be made only in the following cases:

A new employee who has advanced education beyond high school and/or previous experience may be paid at such accelerated rates commensurate with such education and/or experience.

Employees who previously worked for the Wisconsin Rapids Board of Education may be given one-half credit for former service.

Experience level adjustments may be made annually for most employees or for some new employees.

For purposes of administration, the experience levels will be based on calendar months since initial employment. A "school year" employee would receive twelve months credit for each school year of work and six months for each semester.

An exception to the experience level criteria would be part-time aides working 3-1/2 hours or less per day. Such employees will only one-half credit for time lapsed since they work much days than other employees. (sic)

5.2 The schedule will be reviewed for possible wage adjustments each July 1. Wages will be adjusted as the schedule changes and when experience level criteria are met.

10. That under the "wage schedules" in existence as described above, the District granted step increases to employes after certain periods of employment as provided therein; that pursuant to the 1980-1981 wage schedules, such increases were scheduled at 6 months, 12 months, 24 months and 36 months; that by its terms, the 1980-1981 wage

schedule extended from July 1, 1980 to June 30, 1981; and that employes reaching the above-described length of service points with the District since July 1, 1981, have not received wage increases.

11. Under the policies in existence in the various manuals described above, the District granted paid vacations to full-year employes according to schedules provided therein; that this vacation was available to the employe to be taken after the conclusion of one year of employment, during the second year of employment; that school year employes did not receive paid vacation; and that since June 30, 1981, the District retained each employe's vacation entitlement where it was as of that date.

12. That on December 23, 1980, after an election conducted by it, the Wisconsin Employment Relations Commission certified the Complainant as exclusive representative of all regular full-time and regular part-time office clerical employes and aides employed by the District, but excluding supervisors, confidential employes, professional employes, maintenance and kitchen employes, and administrators.

13. That Complainant and Respondent commenced negotiations for an initial collective bargaining agreement on May 27, 1981; that among the issues discussed during negotiations were wage rates, salary schedule, vacation entitlement and effective date of contract; and that salary schedules (based on classification and length of service) and vacation schedules were among those items at issue between the parties until at least January 19, 1982.

14. That after June 30, 1981, the Respondent, by failing to (1) grant experience increments as provided in the wage schedule in the manuals in existence on June 30, 1981, and (2) apply the vacation progression schedule to employes reaching the lengths of service as specified in the manual in existence on June 30, 1981, unilaterally altered the wages and terms of conditions of employment of full-time secretarial and school year secretarial, clerical and aide employes.

15. That Respondent has not been shown to have taken the actions described above in Finding of Fact 14, in whole or in part, to discriminate against employes in order to discourage membership in Complainant.

MODIFIED CONCLUSIONS OF LAW

1. That the Respondent, by its above-noted failure on and after July 1, 1981, to grant wage and vacation length increases upon employe attainments of length of service levels corresponding to higher wages and longer vacations in the expired schedules noted in Findings 7 - 9, above:

a. committed a unilateral change refusal to bargain in violation of Sec. 111.70(3)(a)4, Stats.;

b. derivatively interfered with employes' exercise of their Sec. 111.70(2), Stats., right to bargain collectively through a representative, in violation of Sec. 111.70(3)(a)1, Stats.; but

c. did not commit a prohibited practice within the meaning of Sec. 111.70(3)(a)3, Stats.

MODIFIED ORDER

IT IS ORDERED that Respondent School District of Wisconsin Rapids, its officers and agents, shall immediately:

1. Cease and desist from implementing unlawful unilateral changes in wage and vacation policies covering employes represented by the Union.

2. Take the following affirmative action which the Commission finds will effectuate the policies of the Municipal Employment Relations Act:

a. To the extent that the Respondent has not already done so, make all employes (and former employes) in the bargaining unit represented by the Union whole for any losses of wages and paid vacation benefits occasioned by the above-noted change in its wage and vacation policies, experienced during the period from July 1, 1981, to the date of implementation of a successor collective bargaining agreement between the parties, with interest 4/ on monetary losses experienced.

b. Notify its employes in the bargaining unit represented by the Union, by posting in conspicuous places on its premises where notices to such employes are usually posted, a copy of the Notice attached hereto and marked "Appendix A." That notice shall be signed by an authorized representative of the Respondent and shall be posted immediately upon receipt of a copy of this Order and shall remain posted for thirty (30) days thereafter. Reasonable steps shall be taken by the Respondent to ensure that said notices are not altered, defaced or covered by other material.

Given under our hands and seal at the City of Madison, Wisconsin this 22nd day of March, 1985.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Herman Torosian /s/
Herman Torosian, Chairman

Marshall L. Gratz /s/
Marshall L. Gratz, Commissioner

Danae Davis Gordon /s/
Danae Davis Gordon, Commissioner

4/ The applicable interest rate is the Sec. 814.04(4), Stats., rate in effect at the time the complaint was initially filed with the agency. The instant complaint was filed on September 11, 1981, at a time when the Sec. 814.04(4), Stats., rate in effect was "12% per year." Sec. 814.04(4), Wis. Stats. Ann. (1983). See generally, Wilmot Union High School District, Dec. No. 18820-B (WERC, 12/83), citing, Anderson v. LIRC, 111 Wis. 2d 245, 258-59 (1983) and Madison Teachers Inc. v. WERC, 115 Wis. 2d 623 (CtApp IV, No. 82-579, 10/83).

MODIFIED APPENDIX A

NOTICE TO EMPLOYES

Pursuant to an Order of the Wisconsin Employment Relations Commission, and in order to effectuate the policies of the Municipal Employment Relations Act, we hereby notify our employes that:

1. We will not commit unlawful unilateral changes in wage and vacation policies covering bargaining unit employes represented by Local 95, Office and Professional Employees International Union, AFL-CIO.

2. To the extent that we have not already done so, we will make whole present and former bargaining unit employes represented by Local 95 for wage and vacation losses experienced during the period from July 1, 1981 to the date of implementation of our first collective bargaining agreement with Local 95, and we will pay affected employes interest on any monetary loss experienced.

Dated at _____, Wisconsin, this _____ day of _____, 1985.

School District of Wisconsin Rapids

By _____

MEMORANDUM ACCOMPANYING ORDER MODIFYING EXAMINER'S FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

BACKGROUND

This case was submitted without a hearing on stipulated facts which are adequately detailed in the Commission's modified Findings of Fact. To briefly summarize, prior to Complainant Union's certification as representative, the Respondent District had adopted, on an annual basis, manuals detailing the compensation scheme for, among others, its full-year and school-year clerical employes and aides. Among the provisions of the manuals for 1980-81 were a wage schedule entitled "July 1, 1980 - June 30, 1981," and a full-year employe vacation schedule providing for varying rates of pay or vacation length corresponding to an employe's classification and years of service. On December 23, 1980, Complainant OPEIU was certified as the bargaining representative for the District's clerical employes and aides, and bargaining commenced over an initial labor agreement. As of July 1, 1981, during bargaining of the parties' initial agreement, the Respondent froze wages and vacation allotments for full-year employes and wages for school year employes at the employe's experience level attained as of June 30, 1981. The instant complaint was filed on September 11, 1981.

EXAMINER'S DECISION

The Examiner dismissed that portion of the complaint which alleged that the Respondent had discriminated against employes in violation of Sec. 111.70(3)(a)3, Stats. The Examiner found, however, that the Respondent had refused to bargain in violation of Sec. 111.70(3)(a)4, Stats., by unilaterally altering wages and conditions of employment. The Examiner reasoned that the compensation policies of the Respondent had created a reasonable expectation of automatic pay increases in the unit members. While the Examiner recognized that the majority Commission opinion of Commissioners Covelli and Slavney in Menasha Joint School District 5/ discounted expectations as a measure of the status quo during the contract hiatus, he found that there were sufficient distinctions between an initial contract and a hiatus between contracts to justify a more dynamic definition of the status quo in the former than in the latter. The Examiner found two primary grounds for the application of a different rule. First, the Examiner perceived negotiations over an initial contract as fraught with uncertainty for all parties and particularly the newly established Union. If the freeze of salaries and benefits mandated by Menasha, were applied to the conditions prevailing prior to an initial contract, the Employer might be tempted to prolong negotiations with an eye to having the Union decertified upon expiration of the one year election bar. The Examiner concluded that this possibility, fueled by an extended period with no increase of compensation, would undermine stability in collective bargaining. The second distinction with Menasha drawn by the Examiner is that the employes here have not consented to an expiration of their compensation plan. Terming the presence of an agreed-upon contract expiration date "an undercurrent" in the Menasha majority opinion, the Examiner determined that employe expectations under a unilaterally adopted scheme of progressive compensation would not encompass the termination of that progression at a set date. The Examiner thus concluded that Menasha did not preclude the adoption of a dynamic status quo rule for initial contract bargaining situations.

In view of the above policy considerations, as well as the Commission's decision affirming the Examiner in Mid-State Vocational, Technical and Adult Education District, 6/ the Examiner found that the Respondent District had violated its statutory duty to bargain when it refused to pay increases on the salary and vacation schedules.

5/ Dec. No. 16589-B (WERC, 9/81), rev'd, Case No. 81-CV-1007 (CirCt Winnebago, 8/83), hereinafter referred to as Menasha.

6/ Dec. No. 14958-B (5/77), aff'd Dec. No. 14958-D (WERC, 4/78), hereinafter referred to as Mid-State.

PETITION FOR REVIEW

On August 13, 1982, the Respondent filed a timely petition for Commission review of the Examiner's decision, pursuant to Sec. 111.07(5), Stats. In its petition, the Respondent alleged that it was dissatisfied with the Examiner's decision because: (a) the Examiner's Finding of Fact 6 (that the District had policies of automatic salary and vacation progression and had unilaterally changed same after June 30, 1981) was clearly erroneous and prejudiced the Respondent; (b) the Examiner's Conclusion of Law 1 (that the District had committed a unilateral change refusal to bargain by its conduct noted in Finding 6) raised a substantial question of law and policy and was clearly erroneous; and (c) the affirmative relief ordered by the Examiner was rendered inappropriate and moot by the subsequent ratification of a retroactive collective bargaining agreement.

In support of its petition, the Respondent argues that the Examiner based his adoption of a dynamic status quo on unwarranted suppositions about the facts in this case and conditions in labor relations generally. The Respondent takes exception to the Examiner's speculation that an employer might take advantage of a freeze in compensation to provoke a decertification effort upon expiration of the one year election bar. This presupposes union animus and ignores the fact that recent economic times may make a freeze a disadvantage to employers, rather than employes. Moreover, the Respondent suggests that the Examiner's dynamic status quo may hamper bargaining by further committing the parties to existing compensation plans and chilling either party's efforts to negotiate a different structure for wages and benefits.

The Examiner's adoption of a status quo for initial contracts which centers on employe expectations results from his conclusion, erroneous in the Respondent's view, that the "proximity of first contract bargaining to the possible heat of an election campaign," justifies consideration of those expectations. The Respondent asserts that the Examiner's mixing of the organizational status quo and the bargaining status quo flows from a confusion over the legal underpinnings of the two doctrines. The Employer's obligation to meet employe expectations during a Union organizing campaign derives from the laboratory conditions mandated by Sec. 111.70(3)(a)1, Stats. After the election, the focus shifts from the expectations of the individual employes to the framework for bargaining with their exclusive representative. The bargaining status quo is a recognition that the employer is no longer an independent actor, but a party to an enforceable bargaining relationship. Unilateral change thereafter denigrates the role of the Union in violation of Sec. 111.70(3)(a)4, Stats. As the obligation to maintain the status quo in each instance flows from differing legal and policy considerations, the Respondent concludes that the Examiner erred in applying the dynamic organizational status quo in a bargaining context.

The Respondent finally contends that the parties have, subsequent to the Examiner's decision, entered into a collective bargaining agreement, the economic terms of which were made retroactive to July 1, 1981. Respondent argues that because the agreement covers the period during which the improvements were alleged to have been due, that aspect of the case is, for all practical purposes, moot and therefore those portions of the Examiner's Order requiring reinstatement of the former policies and the posting of a notice promising to make employes whole under the former policies should be vacated by the Commission.

The Complainant urges that the Examiner's decision be affirmed. Responding to the Respondent's arguments, the Complainant asserts that there is a substantial difference between a first contract situation and a continuing contractual relationship and that this difference merits a more dynamic definition of the status quo in the former situation. Whereas expectations in a collective bargaining arrangement are defined by the agreement of the parties, including the expiration date set forth in the contract, the expectations of employes working outside the bargaining relationship are defined by the promises and past conduct of the employer. In this case, the employer has, for five years, provided increases in salary based upon length of service. In the absence of any substantial evidence that a change in this practice was mandated by some neutral consideration (such as unforeseen changes in economic conditions or alteration of revenue sources), Complainant argues that a failure to meet the employes' reasonable expectations of a continuation of such experienced-based increases constitutes a penalty for their decision to engage in collective bargaining. The Complainant cites private sector decisions, 7/ as well as the Commission's

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7/ Complainant cites NLRB v. Dothan Eagle, Inc., 434 F.2d 92 (CA 5, 1970) and Galloway Township Board of Education v. Galloway Education Association, ___ N.J. ___, 393 A.2d 218, 100 LRRM 2250, (1978).

decision in Mid-State, in support of its position. The Complainant avers that these private sector decisions, although not controlling, should be persuasive inasmuch as there is no compelling distinction between the public and private sectors with respect to progressive increases in compensation plans.

Finally, the Complainant submits that the dispute decided before the Examiner is not rendered moot by the subsequent labor agreement. A finding of mootness would ignore the fact that the conduct complained of may be repeated and would constitute an open invitation to employers to commit violations of their duty to bargain, so long as these violations might be cured by subsequent agreement.

DISCUSSION

The Status Quo Issue

It is well settled that, absent a valid defense, a unilateral change in the status quo wages, hours or conditions of employment--either during negotiations of a first agreement or during a hiatus after a previous agreement has expired--is a per se violation of the MERA duty to bargain. Unilateral changes are tantamount to an outright refusal to bargain about a mandatory subject of bargaining because each of those actions undercuts the integrity of the collective bargaining process in a manner inherently inconsistent with the statutory mandate to bargain in good faith. 8/ In addition, an employer unilateral change evidences a disregard for the role and status of the majority representative which disregard is inherently inconsistent with good faith bargaining.

The dispute in this case is about what the status quo was after June 30, 1981, i.e., whether the District changed or maintained the status quo wages and vacation benefits when it chose not to advance bargaining unit employes in the manner provided in experience-based wage and vacation schedules after those schedules expired by their terms on June 30, 1981. The District asserts it maintained the status quo by paying wages and granting vacation lengths to employes based on their experience level attainment as of June 30, 1981. The Union asserts that maintenance of the status quo required, instead, that the District continue advancing employes upon attainments of higher experience levels on the expired schedules after June 30, 1981.

In the private sector, case law under the National Labor Relations Act has essentially recognized a need to view the status quo dynamically. 9/ For example, Professor Gorman's treatise summarizes the NLRA law as follows:

> . . . "conditions of employment" are to be viewed dynamically, over a period of time, and the status quo against which the employer's "change" is considered must take account of any regular and consistent past pattern of changes in employee status. Employer modifications consistent with such a pattern are not a "change" in working conditions at all. Indeed, if the employer, without bargaining with the union, departs from that pattern by withholding benefits otherwise reasonably expected, this is a refusal to bargain in violation of section 8(a)(5). . . . 10/

8/ E.g., NLRB v. Katz, 396 U.S. 736, 50 LRRM 2177 (1962); City of Brookfield, Dec. No. 19822-C (WERC, 11/84) at 12 and Green County, Dec. No. 20308-B (WERC, 11/84) at 18-19.

9/ See, e.g., Crestline Co., 133 NLRB 256, 46 LRRM 1623 (1961) (employer committed unilateral changes refusal to bargain by discontinuing holiday payments after contract expired while parties negotiating successor agreement); NLRB v. Southern Coach & Body Co., 336 F.2d 214, 57 LRRM 2102 (CA 5, 1964) (granting automatic wage increases and paying employes according to type of operation performed was continuation of long-standing company practice and policy and hence "a mere continuation of the status quo during the bargaining period (which) cannot constitute a disparagement of the bargaining process.") and NLRB v. Dothan Eagle, Inc., 434 F.2d 92, 75 LRRM 253 (CA 5, 1970) ("Whenever the employer by promises or by a course of conduct has made a particular benefit part of the established wage or compensation system, then he is not at liberty unilaterally to change this benefit either for better or for worse . . . during the period of collective bargaining . . . (or) to change the established structure of compensation.")

10/ Gorman, Basic Text On Labor Law: Unionization and Collective Bargaining, at 450 (1976).

In the public sector, some labor relations tribunals have adopted a dynamic view of the status quo, others have viewed the status quo in static terms, but the overall trend is toward the dynamic view. 11/

11/ Pajaro Valley Education Association v. Pajaro Valley Unified School District, California PERB No. 51 (1978) (citing Katz, supra, PERB applies dynamic analysis but concludes District acted lawfully when it unilaterally passed on to employes an increase in insurance premiums where such action continued a 1973-1977 negotiated arrangement of employer paying dollar amount and the District paid the same dollar amount after contract expired); California School Employees Association v. Davis Unified School District, California PERB No. 116 (1980) ("unilateral elimination of a past practice of granting annual step and column salary increases constitutes a change in the status quo and may be a violation of the duty to negotiate in good faith"); and Indiana Education Employment Relations Board and Mill Creek Community School Corporation Board of School Trustees v. Mill Creek Classroom Teachers Association, ___ Ind. ___, 1183 S.397 (1983) ("one of the major factors in determining the status quo is the expectation of employees in the continuance of existing terms and conditions of employment. . . . Since the salary increments were part of the existing wage structure, they were part of the status quo.")

Examples of other public sector jurisdictions which have adopted the dynamic view of status quo include: Town of Hamden and the Hamden Paid Firemen's Sick Benefit Association, Conn. BLR #1044 (1972); City of Norwalk, Conn. BLR #MPP-3224, MPP-3172, MPP-3179, MPP-3197, BLR #1361 (1976); Springfield Board of Education v. Education Association, ___ Ill. ___, 95 LRRM 3000 (1977); Galloway Board of Education v. Education Association, ___ N.J. ___, 100 LRRM 2250 (1978); Fairview School District v. Unemployment Compensation Board of Review, ___ Penn. ___, 434 A. 2d 884 (1981), and Forsyth Education Association v. Rosebud County School District No. 14, Montana Board of Personnel Appeals, Case No. 37-81 (1983) ("maintenance of the status quo means adherence to the expired collective bargaining agreement (cba). If the cba contains a wage scale (pay matrix) based on (a) the number of years of teaching experience, and (b) the degree (B.A., M.A.) and the number of 15-credit increments that a given teacher has, then adherence to the expired cba means that a teacher must be given the salary reflected by his years of experience and number of post-B.A. college credits at the start of each year.").

Cases exemplifying public sector states adopting a static view of status quo include: Blue Mountain Community College Faculty Association v. Blue Mountain Community College, Oregon OERBC-179-77, 3 PE CBR 2025 (1978) ("The Katz doctrine is intended to prohibit unilateral action by the employer which 'directly obstructs or inhibits the process of discussion.' Discussion is more likely to be obstructed or inhibited where economic or monetary benefits of an expired contract are extended beyond the term of the contract. . . .") and Warren Consolidated Schools, Michigan ERC No. C73 J-223 (1975) (dismissing a union charge that the employer refused to bargain when it refused to pay the teachers an increase in accordance with the salary grid in an expired contract concluding that "these provisions . . . expired with the contract"); but cf; In re City of Portage, Michigan ERC No. C79 I-268 (1981) (COLA increases are not automatic after contract expires unless clear and convincing language in contract shows adjustments were intended to survive).

In Triborough Bridge and Tunnel Authority v. District Council 47 and Local 1396, AFSCME, 5 N.Y. PERB 4520 (1972) the Board held an employer's refusal to grant pay longevity increments after contract expired did not constitute maintenance of status quo and was violative of the employer's duty to bargain in good faith. The New York Appellate and Supreme Courts essentially disagreed in subsequent cases, holding continuation of similar employe benefits post-contract was not required absent contract or statutory authorization. Cardinale v. Andersen, 347 N.Y. 2d 284, 84 LRRM 2268 (1973) and Board of Cooperative Education Services v. PERB, 41 N.Y. 2d 753, 95 LRRM 3046 (N.Y. 1977). In 1982, the New York State statutes were amended such that the employer is prohibited from "refus(ing) to continue all the terms of an expired agreement until a new agreement is negotiated . . ." Taylor Act, Sec. 209.a.1(e). Thereafter, N.Y. PERB readopted its

(Footnote 11/ continued on next page)

The current status of case law under MERA on this subject does not provide clear-cut guidance for determining the status quo after expiration of a schedule on which wage rates or benefits vary according to levels of employe attainment of work experience, education, licensure, etc.

The Commission majority decision in Menasha Schools, supra, on which the District relies in part herein is of little utility in view of post Commission-decision developments in that case. 12/ The Commission's majority decision in

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(Footnote 11/ continued)

Triborough ruling in Cobleskill Central School District v. Cobleskill Teachers Association, 16 PERB 4501 (1983), aff'd, Cobleskill Central School District v. PERB, N.Y. Sup.Ct., Albany County, Case No. U-6374 (1983), appeal pending.

In 1979, Florida's Public Employment Relations Commission distinguished continuing benefits (those which did not expire with the contract, i.e. insurance programs, dues deductions or grievance procedures) from cyclical benefits (those which expire with the contract, i.e. (1) the step merit pay plans which provide increases on employes' anniversary dates and (2) employer paid annual physical exams). Pinellas County Police Benevolent Association and IAFF Local 747 and Firemen and Oilers Local 1220 v. City of St. Petersburg, Fla. PERC Case Nos. 8H-CA-766-2147, 8H-CA-766-1196, and 8H-CA-766-1197 (1977). However, in 1982 PERC expressly retreated from its continuing/cyclical mode of analysis and held in Nassau County School Board, Fla. PERC No. CA-79-065, 067, 8OU-119 (1980) that the employer's freezing of employes' salaries during reopener negotiations over a salary schedule violated its obligation to bargain in good faith because it "unilaterally altered the criteria for placement on the salary schedule and deprived all eligible teachers of the incremental pay increases to which they were entitled under the existing salary schedule."

12/ The majority representative of the Menasha teachers' bargaining unit complained that the district had committed a unilateral change refusal to bargain and anti-union discrimination by failing to advance existing staff on the experience-by-educational-attainment grid schedule during a contract hiatus. No previous hiatuses had occurred; there had been no occasion for experience-based increases for returning teachers during the term of the schedule; and new employes (unlike returning employes) were placed on the expired schedule at experience levels commensurate with their teaching experience in the new school year.

The examiner dismissed the complaint in both respects. The Commission affirmed in a 2-1 decision.

In affirming the examiner's outcome, the Commission majority (consisting of then-Commissioners Covelli and Slavney) reasoned that the Menasha district had properly frozen the employes at the dollar amounts of their salaries at the time the schedule expired. Those dollar amounts being received upon expiration of the agreement, the majority stated, were the only consideration relevant to determining the status quo, "not cost, not the expectations of the employes, not the absence of past practice, not whether the salary schedule is at issue during bargaining . . . ."

Commissioner Torosian dissented, stating that whatever the outcome might have been had the District treated new employes the same as it treated returning staff members (and contrary to the Examiner and the Commission majority views) the District's advancement of new employes commensurate with their experience committed it to treating experience-based increases as a part of the status quo for balance of the bargaining unit, as well.

The Circuit Court reversed the Commission and entered a narrowly drawn judgment finding a unilateral change refusal to bargain had been committed when the District failed in the circumstances to advance all of its teachers on the expired schedule. Following a change in the composition of the Commission, the Commission advised the parties that it would not appeal the Circuit Court's judgment because a majority of the Commissioners considered the judgment to have reached the outcome appropriate to the particular circumstances of the case. The Commission further advised the parties, however, that if any appeal were taken in the matter the Commission would appear and argue for a Court of Appeals' affirmance on grounds narrow enough to permit the Commission to determine through future cases in what other situations, if any, a failure to advance employes as provided in an expired experienced-based salary schedule constitutes a unilateral change refusal to bargain. Ultimately, no party appealed the Circuit Court judgment.

that case was explained in opinion language that appears consistent only with a static view of the status quo. However, that decision was reversed by a Circuit Court judgment which, while narrowly drawn, was inconsistent with the Commission majority's static status quo dictum, 13/ and no appeal was taken from that judgment by any party. Thus, the ultimate Menasha outcome is, if anything, inconsistent with a strict static view of the status quo, but it has little other significance beyond its specific fact situation. Rather, the ultimate disposition in Menasha leaves the Commission free in this and future cases to determine in what other fact situations, if any, the status quo includes post-expiration increases upon attainment of experience levels specified in the expired schedule.

In our recent City of Brookfield decision, 14/ we agreed with the City's contention that the proper mode of analysis for determining the status quo must take into account not only the terms of the expired collective bargaining agreement bearing on the subject, but also the history of bargaining and history of administration of the language in question. Consistent with our City of Brookfield analysis and with the ultimate judgment entered in the Menasha case, we expressly disavow the Menasha majority's static view dicta and adopt, instead, a dynamic view of the status quo. 15/

As we are applying it, the dynamic status quo doctrine calls upon parties to continue in effect the wages, hours and conditions of employment in effect at the time of the expiration of the predecessor agreement or the time of the union's initial attainment of exclusive representative status. In applying that doctrine to periods of time after expiration of wage or benefit compensation plans and schedules relating level of compensation to levels of employe experience, education or other attainments, we consider the dynamic status quo doctrine to require adherence to the following partial statement of controlling principles: 16/

> 1. Where the expired compensation plan or schedule, including any related language--by its terms or as historically applied or as clarified by bargaining history, if any--provides for changes in compensation during its term and/or after its expiration upon employe attainment of specified levels of experience, education, licensure, etc., the employer is permitted and required to continue to grant such changes in compensation upon the specified attainments after expiration of the compensation schedule involved. (To do otherwise would undercut the majority representative and denigrate the bargaining process in a manner tantamount to an outright refusal to bargain.)
>
> 2. Where the expired compensation plan or schedule, including related language--by its terms or as historically applied or as clarified by bargaining history, if any--provides that there is to be no advancement on the schedule during its term or no advancement on the schedule after its expiration, then the employer is prohibited by its duty to bargain from unilaterally granting such advancement.

13/ Prior to signing the narrowly drawn order, the Circuit Judge had rendered a bench decision. While it was later transcribed, that decision was not formally signed and issued in a memorandum form.

14/ City of Brookfield, Dec. No. 19822-C (WERC, 11/84).

15/ Compared to the Menasha majority's emphasis on freezing dollar amounts, we consider our approach herein more consistent with the Commission's previous decision in Mid-State VTAE, Dec. No. 17952-D (4/78), affirming the examiner's conclusion that where the employer's past policy provided for 100% employer-paid insurance the duty to bargain required the employer to pick up premium increases as part of maintaining the status quo.

16/ The principles stated herein are not intended to answer the additional question of how specific the expired language must be for schedule advancement to be deemed a part of the status quo where there is no past pattern of advancement on a given schedule either during the life of the schedule or during prior hiatuses between such schedules.

Because we consider the dynamic status quo doctrine to be applicable during negotiations for a first contract and as well as in inter-contract situations, we find it unnecessary to draw the distinction along those lines that was relied upon in this case by Examiner Honeyman in explaining his non-application of the Commission majority's static status quo dictum in Menasha.

However, as the District has argued, there is a difference between the statutory requirements applicable prior to the attachment of a duty to bargain but during an organizing campaign and the statutory requirements applicable after a labor organization has attained exclusive representative status. As an example, during an organizing campaign, an employer would be required to continue to grant discretionary increases in the same general manner as before the organizing campaign began, even where such would involve substantial employer discretion. Once a union attains exclusive representative status, however, the employer is required to fulfill its duty to bargain before making any further changes that would involve substantial employer discretion. 17/

In the instant situation, the District froze wages and vacation allotments for full-year employes and wages for school year employes at the employe's experience level attained as of June 30, 1981.

The language of the school year employe manual adopted in the late summer of 1980 contains unequivocal language stating that "Wages will be adjusted as the schedule changes and when experience level criteria are met." It also appears clear from the parties' stipulations of fact that experience-based increases within the 1980-81 wage schedule were in fact granted to employes who met a higher experience level criterion during the term of the 1980-81 schedule. Under the principles set forth above, the above-quoted wage administration language alone is sufficient to have made payment of the experience-based wage increases in the expired school year employe schedule a part of the status quo after June 30, 1981. Moreover, the above-noted practice of paying increases within the schedule upon experience level attainment during the term of the schedule would also be sufficient to require that conclusion. Both the language and the practice make it clear that experience-based increases are to be anticipated apart from possible annual adjustment of the contents of the schedule itself.

The wage adjustment language of the manual for full-year employes adopted on July 14, 1980, states:

> Experience level adjustments will be made at the 6 months, 12 months, 24 months and 36 month level. Wage steps shall be only from and after the month in which the applicable anniversary date of the secretary falls. . . .

It also appears clear from the parties' stipulations of fact that, in practice, prior to July 1, 1981, full-year employes were granted experience-based increases within the 1980-81 wage schedule upon meeting a higher experience level on the schedule. Again, under the principles set forth above, experience-based wage increases upon attainment of a higher experience level as specified on the expired 1980-81 full-year employe wage schedule were a part of the status quo. Again, either the language or the practice of on-schedule advancement during the term of the schedule would independently suffice to warrant that conclusion.

The language of the full-year employe manual adopted on July 14, 1980, provided the following concerning length of paid vacation:

> Paid vacations are granted only to employes who work on a year-round basis. Paid vacations are granted according to the schedule below:
>
> 80 hours after one year (75 hours for a 37 1/2 hour work-week employee)

17/ Compare, NLRB v. Exchange Parts Co., 375 U.S. 405 (1964) and McCormick Longmeadow Stone Co., 158 NLRB 1237 (1966), with, NLRB v. Katz, 369 U.S. 736 (1962), Allis Chalmers Corp., 237 NLRB 290 (1978) and Kendall College, 228 NLRB 1083, 1085 (1977).

120 hours after eight years (112 1/2 hours for a 37 1/2 hour work-week employee)

160 hours after fifteen years (150 hours for a 37 1/2 hour work-week employee)

The vacation shall run from the anniversary date each year. . . .

It is also clear from the parties' stipulations that prior to July 1, 1981, full-year employes were granted longer vacations upon attaining a higher years of service plateau. Again, both the vacation administration language and the practice of advancement within the schedule during the term of the schedule would independently warrant the conclusion that vacation advancement in accordance with the schedule was a part of the status quo to be maintained after June 30, 1981.

Accordingly, although we have expanded the findings for clarity sake and adopted a different rationale, we have generally affirmed the outcome represented by the Examiner's disputed Finding of Fact 6 and his conclusion that the District committed unilateral change refusals to bargain by discontinuing length-of-service-based wage and vacation improvements for the employe groups herein involved after June 30, 1981. While the wage schedules, and arguably the manuals generally, were due for a discretionary overall review by the District on July 1, 1981, our conclusion herein does not require or permit the District to have effected such discretionary changes. Rather, we are requiring that the District continue in effect the pattern of nondiscretionary length-of-service-based increases in wages and vacation length that were in effect during the life of the most recently adopted schedules and that were expressly provided for in the expired wage and vacation administration language. Overall modifications of the existing policies are matters to be resolved by the parties through bargaining.

Mootness and Remedy Issues

The District asserts that because the parties ultimately agreed upon and executed a collective bargaining agreement retroactively effective for the entire period of alleged liability beginning on July 1, 1981, this case, or at least the Union's request for back pay relief, is rendered moot. We disagree.

A waiver of statutory rights by contract must be established by clear and unmistakable contract language or bargaining history. The District has not met that test herein as regards a showing that the Union has waived the instant complaint or the claim for relief advanced herein, as a part of the agreement it reached with the District. Furthermore, neither the complaint nor the request for monetary relief advanced by the Union are properly deemed moot herein. 18/

As we noted in Green County 19/ and City of Brookfield, supra, the conventional remedy for a unilateral change refusal to bargain is to order the Respondent to reinstate the status quo ante and to make whole the affected employes with interest to the extent that the Respondent has not already done so.

In view of the parties having entered into a collective bargaining agreement, it is not appropriate to order reinstatement of the status quo ante. However, the parties' agreement does not render make-whole relief inappropriate. The District had no right to mandatorily bargain for withdrawal of the Union's claim for make-whole relief, and, as noted, the Union has not been shown to have unequivocally agreed to waive same as a part of the agreement. Unless make-whole relief is an available remedial measure in such cases, there is little meaningful disincentive to such violations in the future.

Accordingly, we have ordered that the District make whole employes for losses of wages or paid vacation time off experienced by them on account of the District's failure--between July 1, 1981, and the date on which the parties' first agreement was retroactively implemented--to grant wage and vacation advancement in accordance with the status quo arrangements in effect on June 30, 1981. We have fashioned our order to make it clear that to the extent that retroactive wage payments and retroactive vacation allotments were provided to an employe as

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18/ City of Brookfield, supra, and cases cited therein at Note 24, p. 18.

19/ Dec. No. 20308-B (WERC, 11/84).

regards the period during which the employe was affected by the District's prohibited practice, our order is not requiring that the District pay those dollars or provide those vacation allotments again. We have also incorporated in our order the usual interest on back pay element. It is our intent that the District pay each affected employe or former employe interest at the statutory rate 20/ for the period of time the employe experienced a monetary loss by reason of the District's prohibited practice, even if retroactive payments as regards that period were paid pursuant to the parties' agreement in amounts that equalled or exceeded the amount of the employe's loss.

Dated at Madison, Wisconsin this 22nd day of March, 1985.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Herman Torosian /s/
Herman Torosian, Chairman

Marshall L. Gratz /s/
Marshall L. Gratz, Commissioner

Danae Davis Gordon /s/
Danae Davis Gordon, Commissioner

20/ See, Note 4, supra.