STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of FOX POINT-BAYSIDE EDUCATION ASSOCIATION Requesting a Declaratory Ruling To Resolve a Dispute Between FOX POINT-BAYSIDE EDUCATION ASSOCIATION and JOINT SCHOOL DISTRICT NO. 2, VILLAGES OF FOX POINT AND BAYSIDE	Case IX No. 28897 DR(M)-215 Decision No. 19619

Appearances:

Mr. Bruce Meredith, Staff Counsel, Wisconsin Education Association Council, 101 West Beltline Highway, P.O. Box 8003, Madison, Wisconsin 53703, appearing on behalf of the Association.

Mr. Roger E. Walsh, Lindner, Honzik, Marsack, Hayman & Walsh, S.C., Attorneys at Law, 700 North Water Street, Milwaukee, Wisconsin 53202, appearing on behalf of the District.

FINDINGS OF FACT, CONCLUSION OF LAW AND DECLARATORY RULING

Fox Point - Bayside Education Association having on July 9, 1981, in a single document, filed a complaint alleging that Joint School District No. 2, Villages of Fox Point and Bayside, committed certain prohibited practices within the meaning of Sec. 111.70(3)(a) of the Municipal Employment Relations Act by refusing to bargain with the Association with respect to the Association's salary proposal affecting teachers in the employ of the District for the school year 1981-1982, and, in the alternative, a petition for declaratory ruling requesting the Wisconsin Employment Relations Commission to determine whether said salary proposal constituted a mandatory subject of bargaining under the terms of the collective bargaining agreement existing between the parties; and on August 26, 1981 the District having filed a counter claim alleging that the Association committed certain prohibited practices within the meaning of Sec. 111.70(3)(b) of MERA by improperly insisting upon bargaining to which the Association was not entitled; and prior to the conduct of the hearing in the matter the parties having agreed that the Commission should issue a declaratory ruling in the matter, and that the complaints should be dismissed; and hearing on the petition for declaratory ruling having been conducted on September 22, 1981 at Milwaukee, Wisconsin, before William C. Houlihan, an Examiner on the Commission's staff; and the parties having filed briefs by November 24, 1981; and the Commission, having reviewed the record, and the briefs of the parties, being fully advised in the premises, makes and files the following

FINDINGS OF FACT

1. That Fox Point-Bayside Education Association, hereinafter referred to as the Association, is a labor organization representing municipal employes for the purposes of collective bargaining, and has its offices in care of North Shore United Educators, 4620 West North Avenue, Milwaukee, Wisconsin 53208.

2. That Joint School District No. 2, Villages of Fox Point and Bayside, hereinafter referred to as the District, operates a public school system in the Villages of Fox Point and Bayside, Wisconsin, and maintains its principal offices at 7300 North Lombardy Road, Milwaukee, Wisconsin 53217.

3. That at all times material herein the Association has been, and is, the

exclusive certified collective bargaining representative of all certified full-time and regular part-time non-supervisory instructional personnel in the employ of the District, excluding administrators, supervisors, and substitute teachers, and all non-instructional personnel; and in that relationship the Association and the District are parties to a collective bargaining agreement, covering the wages, hours and working conditions of the employes in the aforementioned collective bargaining unit, which agreement, by its terms is effective from July 1, 1979 through at least June 30, 1982; and that said agreement contains, among its provisions, the following material herein:

ARTICLE VI

SALARY AND BENEFITS

6.1 Salary Ranges:

The salary ranges of teachers covered by this Agreement and conditions governing such ranges are set forth herein and under the Salary Administration provisions of this Agreement. The Bachelor's Degree base salary range for 1979-80 shall be $10,700 to $18,680. The Master's Degree base salary range for 1979-80 shall be $11,600 to $22,965. These ranges will be adjusted for 1980-81 and 1981-82 by the salary adjustment formula set forth in Appendix C. . . .

6.2 Salary Administration

6.2.1 The initial base salary of a new teacher shall be determined according to previous years of pertinent experience, plus training. Full credit for previous experience may be granted at the discretion of the Superintendent, not to exceed ten (10) years credit without prior approval of the School Board. New teachers will not be placed at a salary higher than teachers already in the District with the same experience, training and educational background.

6.2.2 Annually each teacher who is below the salary range maximum may receive a $900 increment; upon satisfactory evaluation of his work by the Principal and Superintendent and approved by the School board. Any teacher who is at the salary range maximum and does not receive an increment will receive a longevity payment. $200 will be paid to the Bachelor's Maximum teachers and $300 will be paid to the Master's Maximum teachers. Upon recommendation of the Superintendent, the Board may withhold all or part of any salary increase of any teacher whose work or maintenance of professional standards is not satisfactory. Such increase may in the future be restored in full. A teacher receiving a Master's degree while employed by this School District shall progress to the Master's degree salary range when contracts are adjusted in the next succeeding September or February.

6.2.3 All regular contract salaries will be paid monthly. Payday will be on the 15th of the month. (If the payday falls on a weekend or holiday, checks will be issued on the last working day prior to that date.)

6.2.4 All salaries will be paid on a ten (10) payment basis. If any person would wish to receive a larger amount in June it is possible to request a monthly deduction for that purpose. Any such deductions would be made from each of the ten (10) checks issued during the school year and paid on a separate check on the last day of school. See the Business Office for the required form requesting such deduction.

6.2.5 The Board reserves the right to recognize by remuneration of up to $900 the additional instructional leadership responsibilities of team leaders, unit leaders, District Librarian and resource personnel; as described by job descriptions and the "Sketch of Leadership Responsibilities." The Board further reserves the right to select the exact positions and personnel involved.

APPENDIX "C"

FOX POINT-BAYSIDE SCHOOL DISTRICT
SALARY ADJUSTMENT FORMULA
FOR
THREE YEAR AGREEMENT

CRITERIA:

1. Milwaukee Consumer Price Index for All Urban Consumers (January 1979 200.6 minus January 1978 183.5 equals 17.1 points or 9.3%) or the United States Consumer Price Index for All Urban Consumers if the Milwaukee CPI isn't available.

2. MCPI modified by 25% to reflect School Board Insurance and Retirement payments, teacher work year (190 days vs 240 days), and discretionary spending factors.

3. 75% MCPI multiplier applied to Bachelors Degree Base Salary (BA Base representative of consumer lower budget).

4. Purchasing Power Fact - as income increases so does discretionary spending. Therefore, the effect of higher living costs tapers off. Most of the salary up to the consumer intermediate budget is rather extensively impacted by MCPI increases. The salary up to the consumer higher budget is affected to a lesser degree. Therefore, in order to hold purchasing power, apply (in steps) the MCPI factor up to salary range maximums.

5. President's Wage and Price Guidelines - In order to comply with the guidelines standard, the average compensation increase may not exceed 7%. Therefore, cap the MCPI increase at 9% in the second year and third year with a salary reopener if the MCPI exceeds 10% in the third year of the Agreement (January, 1981) or if the President's Wage and Price Guidelines are no longer in effect.

6. The BA and MA salary range maximums will be adjusted by the longevity payments of $200 and $300 respectively for 1979-80 and 1980-81. The longevity payments for 1981-82 will be one-time payments.

FORMULA: (1979-80)

Step 1 - 75% MCPI X 1st $10,000 of salary = 1st increment. Apply 1st increment to the base salaries within the $10,000 to $14,000 salary range.

Step 2 - 50% MCPI X next $8,000 of salary = 2nd increment. Apply 1st and 2nd increments to the base salaries within the $14,000 to $18,000 salary range.

Step 3 - 25% MCPI X salary over $18,000 up to salry range maximum = 3rd increment. Apply 1st, 2nd and 3rd increment to the base salaries within the $18,000 to maximum salary range.

FORMULA: (1980-81 and 1981-82)

Step 1 - 75% MCPI X 1st $10,000 of salary = 1st increment. Apply 1st increment to the base salaries within the $10,000 to $15,000 salary range.

Step 2 - 50% MCPI X next $8,000 of salary = 2nd increment. Apply 1st and 2nd increments to the base salaries within the $15,000 to $20,000 salary range.

Step 3 - 25% MCPI X salary over $18,000 up to salary range

maximum = 3rd increment. Apply 1st, 2nd and 3rd increments to the base salaries within the $20,000 to salary range maximum.

4. That although the collective bargaining agreement contained no provision for reopening bargaining for the school year 1980-1981, as a result of a request of the Association in February, 1980, the parties in April, 1980 modified their agreement by setting the "cap" on the cost-of-living (COLA) formula at 10%, rather than at 9%, for the 1980-1981 school year, and at the same time added longevity amounts to the maximum salary rate ranges, as well as an increment of $900 if the new base salary figure was below the maximum of the salary range; and that said agreement to amend the collective bargaining agreement was as a result of changes in the Milwaukee Consumer Price Index (MCPI), as well as changes in the Wage and Price Guidelines.

5. That in mid-February, 1981 the Association, by letter over the signature of Joan C. Pray, its Chief Negotiator, requested an "updating" of the criteria relating to the "salary reopener" for the third year of the agreement, which criteria was set forth in para. 5 of Appendix "C" of the collective bargaining agreement; that the District on February 18, 1981 responded to such request, in a letter over the signature of its Business Manager, indicating that the MCPI would not be published until later that month, and that a meeting regarding the Association's request would be appropriate on either March 7th or 14th; that representatives of the parties met on March 7th for the purposes of establishing ground rules for the negotiations suggested by the Association; that prior to April 11, 1981 the MCPI had been published and indicated that the rate of inflation had exceeded the 10% cap which had been established previously for the school year 1980-1981; that on the latter date the parties met to exchange initial proposals with respect to the contractual "salary reopener" for the school year 1981-1982; that in said regard the Association proposed a 14.6% increase in salary benefits; and that at said meeting the District proposed that the cap be removed from the cost of living adjustment, thus limiting its proposal to calculating any salary increase on the established contractual COLA formula.

6. That the parties again met on May 2, 1981 in negotiations, during which the District indicated that it interpreted the contractual provision relating to "salary reopener" in para. 5 of Appendix "C" to preclude any salary proposal in an amount greater than would be generated by an uncapped COLA formula; that during said meeting, the District indicated that it was willing to implement an increase based on the uncapped COLA formula, and that therefore no further negotiations were necessary; and that on May 15, 1981 the Association proposed that an additional 2% be added to the amount generated by the uncapped COLA formula, and that such proposal was rejected by the District as being beyond the scope of the reopener.

7. That the President's Wage and Price Guidelines had been eliminated by December, 1980; and that the Milwaukee Consumer Price Index had increased to 12.5% between January, 1980 and January, 1981.

8 That on or about June 25, 1981 the Association filed a petition requesting the Wisconsin Employment Relations Commission to initiate a mediation-arbitration proceeding, pursuant to Sec. 111.70(4)(cm)6 of the Municipal Employment Relations Act, in order to determine the issue as to salaries to be paid to certified teaching personnel represented by the Association for the school year 1981-1982; and that said proceeding is pending before the Commission, in the investigation stage, as a result of the instant dispute between the parties.

9. That the parties have agreed that the Commission, in the instant declaratory ruling proceeding, should determine whether para. 5 of Appendix "C", a part of the existing collective bargaining agreement, restricts the Association's salary proposal for the school year 1981-1982 to an increase not to exceed that generated by an uncapped version of the existing contractual COLA provision, or whether to the contrary, the salary reopener of the Association can exceed the amount which would be generated by utilizing the MCPI and the formula set forth in Appendix "C".

Upon the basis of the above and foregoing Findings of Fact, the Commission makes and issues the following

CONCLUSIONS OF LAW

That the salary proposal of the Fox Point-Bayside Education Association falls within the scope of bargaining permitted by paragraph 5 of Appendix C of the collective bargaining agreement, and thus relates to a mandatory subject of bargaining within the meaning of Sec. 111.70(1)(d) of the Municipal Employment Relations Act.

Upon the basis of the above and foregoing Findings of Fact and Conclusions of Law, the Commission makes and issues the following

DECLARATORY RULING

That the Fox Point-Bayside School District has a duty to bargain collectively with the Fox Point-Bayside Education Association, within the meaning of Sec. 111.70(3)(a)4 of the Municipal Employment Relations Act with respect to the Association's salary proposal, and should the parties fail to reach a voluntary settlement, the Association may include such a proposal as its final offer in mediation-arbitration pursuant to Sec. 111.70(4)(cm) Stats. 1/

Given under our hands and seal at the City of Madison, Wisconsin this 20th day of May, 1982

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Gary L. Covelli, Chairman

_____
Morris Slavney, Commissioner

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Herman Torosian, Commissioner

1/ 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

(Footnote continued on page 6)

(Continuation of Footnote 1)
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.

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECLARATORY RULING

As indicated in the preface to our decision, the instant proceeding was initiated by the Association in a joint pleading entitled "Prohibited Practice Complaint in the Alternative, Petition For Declaratory Ruling, where the Association, among other matters, alleged that the District had committed prohibited practices within the meaning of Secs. 111.70(3)(a)(1), (4), and (5) of the Municipal Employment Relations Act (MERA) by maintaining that the "salary reopener" for the 1981-1982 school year, the final year of a three year agreement, was limited to the amount generated by a formula in the agreement based on the Milwaukee Consumer Price Index (MCPI) in effect in the spring of 1981, and by asserting that it had no duty to bargain on any Association proposal which was in an amount over and above that amount. In the alternative, the Association requested that the Commission treat the complaint as a petition for declaratory ruling, find that the contractual provision did not so limit the Association's proposal, and that therefore should the parties not reach an accord in their bargaining thereon, the Commission should conclude that the Association's proposal may be properly submitted in its final offer for the purposes of mediation-arbitration.

Prior to the conduct of any hearing in the matter, the District agreed to the withdrawal of the complaint by the Association and to proceed on the basis of the dispute being resolved by declaratory ruling. On January 6, 1982, Examiner Houlihan who conducted hearing in the matter, issued an order dismissing the "complaint", as well as a "counterclaim" filed by the District. 2/

In effect, this proceeding requires the Commission to determine the meaning of the term "salary reopener" as set forth in para. 5 of Appendix "C" of the collective bargaining agreement. Normally the Commission will not make such a determination in a declaratory ruling proceeding, but inasmuch as the issue has arisen in negotiations with respect to salaries to be paid teachers in the employ of the District for the 1981-1982 school year, we have determined to issue a declaratory ruling in the matter pursuant to the request of the parties.

Position of the Parties

The Association contends that it is entitled to bargain over salary increases separate and apart from increases generated by the COLA, whether capped or not. The Association points to para. 5 of Appendix "C" in support of its argument, contending that the plain and ordinary meaning of "salary reopener" confirms its position. According to the Association the language is sufficiently clear as to preclude examining the parol evidence submitted by the District. The Association goes on to argue that the parol evidence offered by the District is unreliable, unconvincing and, at best, goes to the subjective understanding of the District's negotiators, rather than the mutual intent of the parties. Any ambiguity should be construed against the District, since the language was authored by Orvin Clark, the District's labor negotiator.

The District dismisses the Association's position as simplistic and as ignoring the understanding of the parties. Orvin Clark, the District Labor Negotiator, testified that the reopener was only to be applied to the COLA cap. The phrase "salary reopener" must be read in the context of the entire agreement. The District argues that the term was included in paragraph 5 of a clause entitled Salary Adjustment formula because it was intended to deal solely with the COLA formula. Since the District has offered to remove the cap, it has fully satisfied its duty to bargain. Ms. Pray's letter of February 17 requests "an updating of the number 5 criteria." Within the referenced paragraph, only the cap is susceptible to updating.

2/ Decision Nos. 18896-A, 18943-A

Discussion:

The District argues that since the reopener is placed in midst of the provision involving the COLA formula, the scope of the reopener was intended and should be interpreted to be limited to uncapping the COLA. However this is neither the only nor the most reasonable interpretation to be given to the provision. There is nothing in said provision limiting the scope of the salary reopener to the COLA. As the reopener language reads, reference to the MCPI is clearly for determining whether the reopener is triggered. There is no reference that once the reopener is triggered, the extent of the salary increase is limited by the MCPI cap. Further, since variations in the cost of living may trigger the reopener, it is entirely appropriate to find the reference to the reopener within the COLA clause rather than in a separate section or paragraph of its own.

Thus, unless there is other evidence which convincingly alters such interpretation, the Commission must give effect to the clear and most reasonable meaning of the reopener provision as discussed above. In this regard the District argues that the parties bargaining history establishes an intent that the scope of salary reopener be limited only to the uncapping of the existing COLA clause. While District negotiators may have held this belief there is no persuasive evidence in the record that this intent was ever communicated to the Association. Had both parties intended the restriction argued, certainly they could have clearly expressed such a important limitation in definite language.

What's more, there is a canon of contractual interpretation that the parties are presumed to have intended their language to have a meaning and thus that interpretations which could render language a nullity are to be avoided. Here, as per the contractual provision, if the MCPI had remained at or under 9% but the Wage and Price Guidelines had been lifted, the salary reopener would have been triggered. However, under the District's interpretation, the Association could not have proposed any salary increase under the foregoing scenario because an uncapped COLA would have generated no increase. Thus such an interpretation would render the reopener a nullity, a result the parties cannot be presumed to have intended.

The District also argues that as the very basis of the salary increases during the term of the agreement is the formula outlined in Appendix C, wherein based on the MCPI, the salary reopener is limited to the MCPI. The more reasonable interpretation of the language, as it appears, is that the formula determines the salary increases to be implemented during the first two years of the agreement, and does not necessarily relate to the salary reopener for the third year. Th Commission cannot reasonably interpret the salary reopener provision, even in light of the enunciated formula, in a manner which would limit a salary reopener to the MCPI cap as argued by the District.

Finally, the District argues that Ms. Pray's letter of February 17 requests "an updating of the number 5 criteria". It is argued that within the referred paragraph, only the cap is susceptible to updating. This portion of the letter, however, appear to have been copied from the Migel letter of the previous year. In that context, and considering the fact that the Pray letter goes on to refer to a "salary reopener" and to request a meeting between the parties, the letter has little interpretive significance.

Based upon the foregoing the Commission concludes that the contractual language in question does not impose the limitation upon the scope of the salary reopener sought by the District. Therefore the District does have a duty to bargain over the salary proposal submitted by the Association.

Dated at Madison, Wisconsin this 20th day of May, 1982.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Gary L. Covelli, Chairman

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Morris Slavney, Commissioner

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Herman Torosian, Commissioner