STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

WEBSTER EDUCATION ASSOCIATION, Complainant, vs. SCHOOL DISTRICT OF WEBSTER, Respondent.	CASE XII No. 32447 MP-1528 Decision No. 21312-A

Appearances:

Ms. Melissa A. Cherney, Staff Attorney, Wisconsin Education Association Council, 101 West Beltline Highway, P.O. Box 8003, Madison, Wisconsin 53708, appearing on behalf of the Complainant.

Mulcahy & Wherry, S.C., Attorneys at Law, by Mr. Michael J. Burke, 21 South Barstow Street, P.O. Box 1030, Eau Claire, Wisconsin 54701-1030, appearing on behalf of the District.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Webster Education Association having, on November 15, 1983, filed a complaint with the Wisconsin Employment Relations Commission, alleging that the School District of Webster had committed prohibited practices within the meaning of Sections 111.70(3)(a)1 and 4 of the Municipal Employment Relations Act, herein MERA; and the Commission having, on January 11, 1984, appointed Lionel L. Crowley, a member of its staff, to act as Examiner and to make and issue Findings of Fact, Conclusions of Law and Order as provided in Section 111.07(5), Stats.; and hearing on said complaint having been held in Webster, Wisconsin on February 22, 1984; and the parties having filed post-hearing briefs in the matter, the last of which was received on May 17, 1984; and the Examiner having considered the evidence and arguments of counsel and being fully advised in the premises, makes and issues the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. That the Webster Education Association, hereinafter referred to as the Association, is a labor organization which functions as the exclusive collective bargaining representative of all regular employes of the School District of Webster engaged in teaching; and that its address is: c/o Barry Delaney, Route #1, Box 1055, Hayward, Wisconsin 54843.

2. That the School District of Webster, hereinafter referred to as the District, is a municipal employer which operates a public school system for the benefit of the inhabitants of the District, and its offices are located in Webster, Wisconsin 54893.

3. That the District and the Association have been parties to successive collective bargaining agreements including a 1982-83 agreement which provided, in pertinent part, as follows:

Article VIII - Salary Schedule

REGULAR SCHEDULE

STEP	BA	BA+15	MA	MA+15	MA+30
0	12,500	12,900	13,300	13,700	14,100
Inc't.	(475)	(500)	(525)	(550)	(575)

MERIT SCHEDULE

Performance Level	BA	BA+15	MA	MA+15	MA+30	Merit Bonus
Under 2.5						
2.5 - 2.99	475	500	525	550	575	Inc't. only
3.0 - 3.24	"	"	"	"	"	100
3.25- 3.49	"	"	"	"	"	200
3.50- 3.74	"	"	"	"	"	300
3.75- 3.99	"	"	"	"	"	400
4.0 - 4.24	"	"	"	"	"	500
4.25- 4.49	"	"	"	"	"	600
4.50- 5.0	"	"	"	"	"	700

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1. The above schedules apply to the 1982-83 school term.

2. The schedule is for 180 actual teaching days with the children present, two days for teacher orientation, two legal holidays, and one day for in-service.

Teaching days	180
Orientation	2
Legal Holidays	2
In-Service	1
	185

   The teacher's workday shall be (8) eight hours per day Monday through Thursday, and seven and one half (7 1/2) hours per day on Friday and the day before a vacation period. On days when school has been called for a late start the teachers will report late the same amount of time as the students. However, for inclement weather conditions, and two days end of year testing; any part of a day shall count as a whole day.

3. All full time classroom teachers above "Regular Schedule" are eligible for merit increases at their respective performance level as determined by their composite evaluation score plus increment at respective tracks.

4. Composite evaluations are determined by evaluations made between February 1 of the previous year, to January 31 of the current year and is the score used to determine merit increases for the following school term. Example: a composite score of 3.78 accumulated between February 1, 1982 and January 31, 1983 would result in a $400 merit increase. First year teachers will use the fall and spring evaluations.

5. Merit increases and increments are accumulative.

6. The study hall monitor's salary to be negotiated in Spring of 1983.

7. Each full time teacher shall receive a $640.00 bonus payment for the 1982-83 school year. This item shall terminate on June 30, 1983. Less than full time teachers shall be prorated based on time. (eg. a 60% contract would receive 60% of $640).

8. The payroll check stub shall indicate:
   1. The pay period ending dates to read the 5th and 20th of each month.
   2. The amount of current accumulative sick leave.

9. The issued teacher's contracts shall include the following information:

81-82 salary	$ _____
Merit increases	_____
Increment increases	_____
Bonus payment	_____
1982-83 Salary	$ _____

. . .

This Agreement shall be in effect July 1, 1982 and shall remain in effect through June 30, 1983.
This Agreement shall be binding on the parties who are signatories thereto.;

and that pursuant to the duration clause, the agreement expired on June 30, 1983.

4. That at the commencement of the 1983-84 school term the parties had not reached agreement on the terms of the successor agreement to the 1982-83 agreement; that at the commencement of the 1983-84 school year, the District continued to pay all returning teachers their 1982-83 salary; that the parties continued negotiations for a successor agreement with the base salary and bonus payment amounts in dispute until about December 1, 1983, when agreement was reached on the terms of a new agreement; and that all teachers were paid all amounts due under this new agreement retroactive to the beginning of the 1983-84 school year.

5. That the Salary Schedule format has been in the parties' agreements since at least the 1978-79 school year as set forth below:

Article VIII - Salary Schedule

REGULAR SCHEDULE

STEP	BA	BA+15	MA	MA+15	MA+30
0	9,000	9,400	9,800	10,200	10,600
Inc't.	(325)	(350)	(375)	(400)	(425)

All second year teachers shall receive a $700 salary increase.

MERIT SCHEDULE

Performance Level	2 yr.	3 yr.	B.A.	B.A.+15	M.A.	M.A.+15	M.A.+30	Merit Bonus
Under 2.5								Increm't
2.5 -2.99	200	225	325	350	375	400	425	only
3.0 -3.24	"	"	"	"	"	"	"	100

Article VIII - Salary Schedule

REGULAR SCHEDULE

STEP	BA	BA+15	MA	MA+15	MA+30
0	9,600	10,000	10,400	10,800	11,200
Inc't.	(475)	(500)	(525)	(550)	(575)

All second year teachers shall receive a $700 salary increase.

MERIT SCHEDULE

Performance Level	BA	BA + 15	MA	MA+15	MA+30	Merit Bonus
Under 2.5						
2.5 -2.99	475	500	525	550	575	Inc't only
3.0 -3.24	"	"	"	"	"	100
3.25-3.49	"	"	"	"	"	200
3.50-3.74	"	"	"	"	"	300
3.75-3.99	"	"	"	"	"	400
4.0 -4.24	"	"	"	"	"	500
4.25-4.49	"	"	"	"	"	600
4.50-5.0	"	"	"	"	"	700

1. The above schedules apply to the 1979-80 school term.

. . .

Article VIII - Salary Schedule

REGULAR SCHEDULE

STEP	BA	BA+15	MA	MA+15	MA+30
0	10,400	10,800	11,200	11,600	12,000
Inc't.	(475)	(500)	(525)	(550)	(575)

MERIT SCHEDULE

Performance Level	BA	BA + 15	MA	MA+15	MA+30	Merit Bonus
Under 2.5						
2.5 -2.99	475	500	525	550	575	Inc't only
3.0 -3.24	"	"	"	"	"	100
3.25-3.49	"	"	"	"	"	200
3.50-3.74	"	"	"	"	"	300
3.75-3.99	"	"	"	"	"	400
4.0 -4.24	"	"	"	"	"	500
4.25-4.49	"	"	"	"	"	600
4.50-5.0	"	"	"	"	"	700

1. The above schedules apply to the 1980-81 school term.

. . .

Article VIII - Salary Schedule

REGULAR SCHEDULE

STEP	BA	BA+15	MA	MA+15	MA+30
0	10,900	11,300	11,700	12,100	12,500
Inc't.	(475)	(500)	(525)	(550)	(575)

MERIT SCHEDULE

Performance Level	BA	BA + 15	MA	MA+15	MA+30	Merit Bonus
Under 2.5						
2.5 -2.99	475	500	525	550	575	Inc't only
3.0 -3.24	"	"	"	"	"	100
3.25-3.49	"	"	"	"	"	200
3.50-3.74	"	"	"	"	"	300
3.75-3.99	"	"	"	"	"	400
4.0 -4.24	"	"	"	"	"	500
4.25-4.49	"	"	"	"	"	600
4.50-5.0	"	"	"	"	"	700

1. The above schedules apply to the 1981-82 school term.;

and that in each of these years the parties had reached agreement prior to the start of the school year for which the agreement was effective.

On the basis of the above and foregoing Findings of Fact, the Examiner makes the following

CONCLUSION OF LAW

1. That the District's refusal at the beginning of the 1983-84 school year to grant an increase pursuant to the Merit Schedule contained in the expired 1982-83 agreement did not violate Sections 111.70(3)(a)4 or 1 of MERA.

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

ORDER 1/

IT IS ORDERED that the complaint be, and the same hereby is, dismissed in its entirety.

Dated at Madison, Wisconsin this 22nd day of June, 1984.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Lionel L. Crowley
Lionel L. Crowley, Examiner

1/ Any party may file a petition for review with the Commission by following the procedures set forth in Sec. 111.07(5), Stats.

(footnote continued on page 6)

1/ (footnote continued)

Section 111.07(5), Stats.

(5) The commission may authorize a commissioner or examiner to make findings and orders. Any party in interest who is dissatisfied with the findings or order of a commissioner or examiner may file a written petition with the commission as a body to review the findings or order. If no petition is filed within 20 days from the date that a copy of the findings or order of the commissioner or examiner was mailed to the last known address of the parties in interest, such findings or order shall be considered the findings or order of the commission as a body unless set aside, reversed or modified by such commissioner or examiner within such time. If the findings or order are set aside by the commissioner or examiner the status shall be the same as prior to the findings or order set aside. If the findings or order are reversed or modified by the commissioner or examiner the time for filing petition with the commission shall run from the time that notice of such reversal or modification is mailed to the last known address of the parties in interest. Within 45 days after the filing of such petition with the commission, the commission shall either affirm, reverse, set aside or modify such findings or order, in whole or in part, or direct the taking of additional testimony. Such action shall be based on a review of the evidence submitted. If the commission is satisfied that a party in interest has been prejudiced because of exceptional delay in the receipt of a copy of any findings or order it may extend the time another 20 days for filing a petition with the commission.

SCHOOL DISTRICT OF WEBSTER, XII, Decision No. 21312-A

MEMORANDUM ACCOMPANYING
FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

In its complaint, the Association alleged that the District did not bargain in good faith in violation of Sec. 111.70(3)(a)4, Stats., by its failure to maintain the status quo during the hiatus period between contracts by unilaterally withholding experience and merit increases as set forth in the expired agreement. The District answered the complaint contending the case was moot because the parties had reached agreement on a successor contract and had paid all increases retroactively to employes and denying that it had unilaterally changed the status quo in violation of Sec. 111.70(3)(a)4, Stats.

ASSOCIATION'S POSITION:

The Association contends that the settlement of the 1983-84 contract, which provided for retroactive payments, did not render the instant complaint moot. It argues that the settlement did not provide for interest on pay wrongly withheld, did not involve the posting of a compliance notice, and did not resolve the issue of what constitutes the status quo on the increments, which issue can arise again in the next round of negotiations. It asserts that the issue is a live controversy which must be addressed to adjudge the rights of the parties. It further contends that, even if the instant case is technically moot, the issue is one of public juris, which compels a determination of the merits.

With respect to the merits of the complaint, the Association argues that the District's obligation to maintain the status quo during the hiatus period required it to pay the experience and merit increases specified in the expired agreement. It claims that the Merit Schedule established a dynamic and continuous system which provides automatic increases at the start of each school year, based on experience and based on performance during the past year. It notes that this has been continuously done since 1978. It points to the language of Article VIII, Section 4, which references the period February 1, 1982 through January 31, 1983, as establishing the continuous nature of the Merit Schedule. It further points out that the bonus payment set forth in Section 7 is expressly excepted from the automatic nature of the salary system. Citing Commission decisions and cases from other jurisdictions, the Association argues that the status quo is dynamic and incorporates automatic movements established by past practice or the parties' collective bargaining agreement. It contends that merit increases had been granted at the beginning of each school term and employes had an expectation of receiving them at the start of the 1983-84 school year. It argues that the system of evaluations would be meaningless, unless the system is continuous. It insists that the Merit Schedule is dynamic and automatic, and the District's failure to apply it after the expiration of the agreement constituted a change in the status quo in violation of Sections 111.70(3)(a)4 and 1, Stats.

DISTRICT'S POSITION:

The District contends that it maintained the status quo during the contractual hiatus period by not granting experience and merit increases. It points out that the parties had always reached agreement on a contract prior to

The District, citing Menasha Joint School District 2/, claims that the District, by withholding the increment and merit increases at the beginning of the 1983-84 school year, maintained the status quo. It refers to the evidence in regard to a new teacher, Thecla Trost, that she was not granted an experience increment until after agreement was reached, establishes that there is no basis to depart from the holding in Menasha, supra. It also points to the contractual language which allows the District the discretion to determine the salary of new hires. The District also cites case law from other jurisdictions to support its position with respect to the status quo and requests that the complaint be dismissed.

DISCUSSION:

Mootness

In its answer, the District asserted as an affirmative defense that the complaint was moot as a result of the subsequent settlement on a successor collective bargaining agreement in December, 1983. The District did not address this issue in its brief. The Wisconsin Supreme Court has defined mootness as follows:

> "A moot case has been defined as one which seeks to determine an abstract question which does not rest upon existing facts or rights, or which seeks a judgment in a pretended controversy when in reality there is none, or one which seeks a decision in advance about a right before it has actually been asserted or contested, or a judgment upon some matter which when rendered for any cause cannot have any practical legal effect upon the existing controversy." 3/

In Unified School District No. 1 of Racine County 4/, the Commission held that a prohibited practice complaint is not mooted merely because the parties have reached an agreement. The Commission stated as follows:

> "The activity in question violates the public policy of Wisconsin as expressed in MERA and the Complainant has a legal right to ask that the Respondent be directed to cease engaging in that activity and take such affirmative action as might be appropriate to insure its non-recurrence. The controversy is certainly not "pretended" and the Complainant is not merely seeking a "decision in advance", since the complaint in this case was not filed until after the conduct had actually taken place. The only possible basis on which the controversy could be found to be moot would be on the claim that a judgment in the matter would not have any "practical legal effect".
>
> Even though the activity complained of has ceased, the terms of the current collective bargaining agreement is (sic) subject to renegotiation beginning in January, 1974 and the agreement can be terminated by either party as early as August 25, 1974. If the Commission were to dismiss the case as moot at this point in time, the Respondent could engage in the same conduct in the future with the foreknowledge that there would be a considerable time lag between the filing of the complaint and a decision in the matter. Such conduct could frustrate the public policy expressed in MERA and would have the "practical legal effect" of leaving the Complainant without an effective remedy." 5/

2/ Decision Nos. 16589-A (4/80) and 16589-B (9/81).

3/ WERB v. Allis Chalmers Workers Union Local 248, UAWA-CIO, 252 Wis. 436, 32 N.W. 2d 190 (1948).

4/ Decision No. 11315-D (4/74).

5/ Id.

This rationale is similar to that applied by the National Labor Relations Board to cases under its jurisdiction. That rationale has been stated as follows:

> ". . ., it is well settled that an employer's execution of a contract with a union with which it previously refused to bargain in violation of the Act does not render the issue of such violation moot. 2/ This principle is premised on the theory that the Board does not oversee the settlement of private disputes but, rather, is entrusted with the responsibility of protecting public rights under the Act. These rights are not protected, and the effects of the unfair labor practices found are not expunged, merely because of a private settlement of the dispute by the parties, which may or may not serve to remedy the adverse effect on the Section 7 rights of the employees." (footnote omitted) 6/

In the instant complaint the Association has alleged that the District has refused to bargain in good faith by unilaterally changing the status quo. The Association is entitled to know whether or not the District's conduct violated MERA. If it is determined that the District violated MERA, the Association has the right to such affirmative relief as will prevent any recurrence of such conduct. There is no guarantee that a party charged with a prohibited practice, who voluntarily ceases such conduct, will not in the future resume such improper conduct. The imposition of an appropriate order to conform its conduct to the law is the best means of preventing such a recurrence. 7/ Therefore, it is concluded that the instant complaint is not moot. Additionally, the complaint involves legal questions of public interest and importance and presents a factual situation which is likely to recur, hence the rule of mootness is not applicable to the complaint. 8/

Merits

The Commission set forth the general rule with respect to status quo in City of Greenfield 9/, wherein it stated:

> ". . .we begin with the general rule that an employer must, pending discharge of its duty to bargain, maintain the status quo of all terms of the expired agreement which concern mandatory subjects of bargaining. Thus, even though the amount of wages owing originally was established by the expired agreement an employer may not change the established wage rates without first discharging its duty to bargain over that item."

The Commission also explained that the duty to maintain the status quo is not dependent on the continuation of the contractual obligations of the expired contract but on the obligation of the employer to bargain over changes in mandatory subjects of bargaining. 10/ In support of its general rule on status quo, the Commission cited cases arising under the National Labor Relations Act. 11/ With respect to the granting of wage increases, the status quo under that Act requires the employer to refrain from granting any increases except

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6/ Massillon Publishing Co., 88 LRRM 1040 (1974).

7/ Galloway Board of Ed. v. Ed. Assn., 100 LRRM 2250 (N.J., 1978).

8/ Local 150, SEIU, 16277-C (10/80).

9/ Decision No. 14026-B.

10/ Id.

11/ Id at footnote 4, wherein NLRB v. Katz, 369 U.S. 736, 50 LRRM 2177 (1962) and NLRB v. Frontier Homes Corp., 371 F. 2d 974, 64 LRRM 2320 (8th Cir. 1967) are cited.

increases pursuant to a long-standing practice or policy of automatic pay increases which involve little or no discretion by the employer. 12/

The issue in the instant case is whether the District maintained the status quo by refraining from granting any wage increases or whether the Merit Schedule of the expired contract established a practice or policy of automatic increases which the District was required to grant in order to maintain the status quo. In Wisconsin Rapids Board of Education 13/, the employer had a policy of wage progression that provided for automatic increases at the end of 6, 12, 24 and 36 months, respectively. The policy also provided for increases in vacation at 8 and 15 years of service, respectively. During negotiations for an initial collective bargaining agreement, the employer froze the wages and vacation amounts of each employe and refused to apply the progression policies. The Examiner held that the employer had failed to maintain the status quo by its conduct.

In Menasha Joint School District 14/, the parties' expired collective bargaining agreement contained a salary grid, i.e., a salary schedule which consisted of columns, which listed the salaries for teachers with a certain educational attainment and vertical steps of salaries dependent on years of experience. A teacher who moved from one column to the next would receive an increase in pay for the "lane change", and with another year of experience, each teacher would receive an increase, an increment, by movement to the next vertical step.

The Examiner held that the District maintained the status quo by not granting teachers the increment increase set forth in the grid during the contractual hiatus period. The Commission, with Commissioner Torosian dissenting, affirmed the Examiner's decision that the status quo did not require the District to grant increments during the contractual hiatus period. 15/ Commissioner Torosian concluded that inasmuch as the District had granted lane change increases to teachers for educational credits and experience increments to new hires and to teachers who were rehired after being non-renewed, the status quo required granting increments to all eligible teachers. On appeal to the Circuit Court, the Commission was reversed with the Court deciding the status quo on the basis of Commissioner Torosian's dissent. 16/ The Association, of course, relies on Wisconsin Rapids, supra, and cases from other jurisdictions holding that increments based solely on experience and education attainment pursuant to a salary grid in an expired contract are automatic increases. 17/ The District, of course, relies on the rationale set forth in Menasha, supra, as supporting its position.

The applicability of the appropriate cases depends on the facts of each individual case and the basic underlying issue presented here is whether the expired agreement established a system of automatic increases with little or no discretion on the part of the District. The Examiner concludes that it does not.

First, the Merit Schedule is not comparable to a salary progression system or grid which provides for pay increases based merely on the amount of service with the District. For example, under the Merit Schedule an employe with less educational attainment and less experience may receive more pay than one with

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12/ NLRB v. Katz, supra, NLRB v. Southern Coach & Body Co., 336 F. 2d 214, 57 LRRM 2102 (5th Cir., 1964); NLRB v. Phil-Modes, Inc., 406 F. 2d 556 (5th Cir., 1969).

13/ Decision No. 19084-B (7/82).

14/ Decision No. 16589-A (4/80).

15/ Decision No. 16589-B (9/81).

16/ Case No. 81-CV-1007 (Winnebago County Circuit Court, 1983).

17/ Galloway Board of Education v. Galloway Education Association, 100 LRRM 2250 (N.J., 1978); Indiana Educ. Employment v. Mill Creek Teachers, 456 N. E. 2d 709 Ind., 1983. Arguably, these cases can be distinguished on the basis that they involve interpretation of local statutes which have no counterpart in Wisconsin.

higher educational attainment and greater experience. Additionally, the increase in pay for the following year may be less than the previous year, even though a higher educational level has been attained. In Wisconsin Rapids, supra, an employe advanced to an established pay level merely upon the attainment of a certain amount of service with the employer. In Menasha, an employe advanced to the next lane or step merely with educational attainment or another year's experience. Movement under the Merit Schedule is not merely dependent on experience or educational attainment. There is no grid established which provides for an increase solely due to greater experience. The Merit Schedule depends on the performance evaluation which, in turn, determines the amount of merit. The result could be no increase or an increase of as much as an increment plus $700. Therefore, a review of the Merit Schedule does not establish that it is a system of automatic progression along an established schedule or from one cell of a grid to another with a concomitant pay increase. The Association points out that, because the performance level is known and determined before the contract has expired, application of the performance level to the expired schedule yields a known amount of merit increase for each teacher. This alone, however, does not convert the schedule to one of automatic progression. The measurement of performance is usually based on some period in the past. It is the evaluation of performance that is significant because that in turn determines the amount of increase. The evaluations resulting in the performance level rating are based on the judgment and discretion of the District as to a teacher's performance. It is the exercise of this discretion which determines not only the eligibility for an increase but also the amount of any increase. This amount is simply an increase in pay determined by the District's evaluation of performance. It is not part of a system of pay progression from one level through a series of steps to another level. It must be concluded that this system does not have the earmarks of an automatic progression system. The Merit Schedule does not provide a system of set increases in pay, and any increases involve more than minimal discretion on the part of the District and, therefore, the Merit Schedule fails to meet the test for wage increases which may be granted by an employer pursuant to the status quo as provided by NLRB v. Katz, supra.

Furthermore, the evidence failed to demonstrate that the parties intended that the Merit Schedule would continue beyond the contract. The language of the agreement specifies that the schedules apply to the 1982-83 school term. Nothing in the language indicates that the schedule will be applied for the next school year. Although the contract expressly specifies that the bonus payment terminates on June 30, 1983, this does not infer that the Merit Schedule is automatic. Suppose, for example, that the Agreement provided that teachers would receive a 5% increase for the 1982-83 school year, and also the bonus payment provision which specifically provided that it terminated on June 30, 1983. The inclusion of the expiration of the bonus would not mean that the 5% increase would apply automatically during the hiatus. The same result is reached with respect to the Merit Schedule. There has been no past practice of granting merit increases during the hiatus as the parties have always reached agreement before the start of the school year in the past. Additionally, the treatment of new hires which evidenced the automatic nature of the schedule in Menasha, supra, is not present in this case. The only new hire on which evidence was presented was not given any increment for her last year of experience until after the successor contract had been implemented. 18/ It would make no difference if she had been given the full amount of credit for experience since the actual salary of any teacher depends on the increment, merit bonus, and the additional bonus amounts, all of which are cumulative. The actual placement of a new hire with experience does not correlate to the placement of returning teachers. Furthermore, the Merit Schedule does not apply to new hires. Article VI, Section D, 2, provides that after May 14, 1982, the District can negotiate and give credit for years of experience and other

Finally, it must be noted that in the past, the Merit Schedule has provided the entire wage increase for all but second-year teachers, or has accounted for the greatest percentage of the negotiated wage increase each year. In the 1978-79 school term, the Merit Schedule provided the entire wage increase for teachers with two or more years of experience. 19/ In 1979-80, the same was true. 20/ In 1980-81, the teachers were granted a $400 bonus in addition to the Merit Schedule amounts. 21/ The same was true for 1981-82. 22/ In the 1982-83 school term, the bonus was $640.00, 23/ and for 1983-84 the bonus was $354.00. 24/ The amount of any salary increase is usually one of the more important items in negotiations, and where, as here, the wage increase agreed to by the parties is established entirely or almost entirely by the Merit Schedule, a finding that such provision is automatically applied the following year is tantamount to taking the issue of wages out of the negotiations, and providing an increase identical to the previous year's. The evidence failed to demonstrate that the parties intended such an unusual result. Therefore, the Examiner concludes that the Merit Schedule does not provide a system of automatic increases with little or no discretion by the District, and the District's refraining from granting any increases pursuant to the Merit Schedule in the expired contract during the contractual hiatus period did not constitute a change in the status quo as to a mandatory subject of bargaining. Consequently, it is concluded that the District did not violate Section 111.70(3)(a)4 and 1 of MERA, and the complaint is dismissed in its entirety.

Dated at Madison, Wisconsin this 22nd day of June, 1984.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Lionel L. Crowley
Lionel L. Crowley, Examiner

19/ Ex-2.

20/ Ex-3.

21/ Ex-4.

22/ Ex-5.

23/ Ex-1.

24/ Tr-15.