STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

NORTHWEST UNITED EDUCATORS, Complainant, vs. SCHOOL DISTRICT OF TURTLE LAKE, Respondent.	Case 24 No. 33146 MP-1586 Decision No. 21685-A

Appearances:

Mr. Alan D. Manson, Executive Director, Northwest United Educators, 16 West John Street, Rice Lake, Wisconsin, 54868, appearing on behalf of the Northwest United Educators.

Mr. Michael J. Burke, and Ms. Kathryn J. Prenn, Mulcahy & Wherry, S.C., Attorneys at Law, 21 South Barstow, P. O. Box 1030, Eau Claire, Wisconsin, 54702, appearing on behalf of the School District of Turtle Lake.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Northwest United Educators filed a complaint of prohibited practice with the Wisconsin Employment Relations Commission on April 5, 1984, in which the Northwest United Educators alleged that the School District of Turtle Lake had committed prohibited practices with the meaning of the Municipal Employment Relations Act. The Commission, on May 15, 1984, appointed Richard B. McLaughlin, a member of its staff, to act as an Examiner to make and issue Findings of Fact, Conclusions of Law and Order, as provided in Sec. 111.70(4)(a) and Sec. 111.07 of the Wisconsin Statutes. No hearing was scheduled on the matter pending the parties' efforts to reach a stipulation of the relevant facts. The parties submitted a stipulation of facts on July 9, 1985, and agreed to waive evidentiary hearing on the matter. The parties filed briefs by October 4, 1985.

FINDINGS OF FACT

1. The Northwest United Educators (NUE) and the School District of Turtle Lake (the District) submitted the following "STIPULATION OF FACTS" to the Wisconsin Employment Relations Commission on July 9, 1985:

> The Turtle Lake School District and Northwest United Educators hereby enter into this Stipulation of Facts relative to WERC Case XXIV, No. 33146, MP-1586.
>
> 1. I. through X. of the original complaint filed by NUE against the School District of Turtle Lake.
>
> 2. The 1983-84 (sic) collective bargaining agreement between the District and NUE.
>
> 3. Carolyn Willi was hired as a full-time teacher by the Turtle Lake School District in August, 1979, and worked as a full-time teacher from that time until June, 1984.
>
> 4. Carolyn Willi held the following co-curricular assignments during her employment with the District:
>
> 1979-80 - assistant volleyball coach, head girls varsity basketball coach;
>
> 1980-81 - assistant volleyball coach, head girls varisty basketball coach, student council advisor;

1981-82 - none;

1982-83 - junior high volleyball coach, year book advisor;

1983-84 - junior high volleyball coach, year book advisor.

5. Carolyn Willi successfully completed her probationary status with the completion of the 1981-82 year; she was a regular full-time employee until June, 1984.

6. The 1982-84 collective bargaining agreement between Northwest United Educators and the Turtle Lake School District was resolved by an arbitration award (Arbitrator Sharon Imes, WERC Case XXI, No. 30587, M/A-1974, Decision No. 20707-A) issued November 16, 1983. The 1983-84 wages and the retroactive pay were calculated by the School District in December, 1983.

7. The difference between BA step 3 and BA step 4 in the 1983-84 Turtle Lake/NUE collective bargaining agreement is $558.00.

8. NUE's position relative to this grievance is that Carolyn Willi should be on BA step 4 of the 1983-84 salary schedule whereas the School District believes that she should be placed on BA step 3 of the 1983-84 salary schedule.

9. That on the Employer-generated hiring date list of the NUE Turtle Lake teacher bargaining unit available in the spring of 1984, C.W. is listed with a hiring date of August, 1979.

2. Paragraphs I through X of the original complaint filed by the NUE on April 5, 1984, read as follows:

I.

That Complainant Northwest United Educators is a labor organization within the meaning of Wisconsin Statute 111.70(1)(j) and is the exclusive collective bargaining representative for all full-time and regular part-time employees of the Turtle Lake School District engaged in teaching; and that its President is Darwin Destache whose address is 16 West John Street, Rice Lake, Wisconsin, 54868.

II.

(a) That the Turtle Lake School District is a municipal employer within the meaning of Wisconsin Statute 111.70(1)(a) and that the President of the Turtle Lake School Board is Don Niemann whose address is Turtle Lake, Wisconsin, 54889.

III.

That the Complainant and the Turtle Lake School District are parties to a collective bargaining agreement commencing on July 1, 1982 and extending to June 30, 1984; and that they have been parties to collective bargaining agreements since at least the 1976-77 school year, including agreements effective July 1, 1980 through June 30, 1981, and effective July 1, 1981 through June 30, 1982.

IV.

That Carolyn Willi is employed as a regular full-time teacher by the Respondent District, and has been employed since at least 1980-81.

V.

That in the negotiations for the 1980-81 agreement the Complainant and Respondent agreed to a side letter as follows:

> "The parties agree that Carolyn Willi shall have her probation extended through the 1981-82 school year. The pay will be frozen at her present step as adjusted by the increase in base salary. However, she will not receive an increment for the 1981-82 school year, additionally, she shall not be eligible for any co-curricular assignments during the 1981-82 school year.
>
> If Ms. Willi is non-renewed during the 1981-82 school year it shall be subject to just cause review. If Ms. Willi continues in the employment of the District beyond the 1981-82 school year she shall move 1 step for the 1982-83 school year.
>
> In addition, the parties agree that a six person committee composed of three appointees of the Association and three appointees of the Board will meet to review extra-curricular compensation."

VI.

That during the 1981-82 school year Ms. Willi was appropriately frozen, in accordance with the agreement in V., on the same step she had been on in 1980-81.

VII.

That during the 1982-83 school year Ms. Willi was appropriately moved 1 step, in accordance with the agreement in V., up from her position on the 1980-81 and 1981-82 salary schedules.

VIII.

That during the negotiations for the 1982-84 agreement, which was completed with an arbitration decision lawfully made under Wisconsin Statute, the parties included in the contract the following language (Article XXIX):

> This agreement, reached as a result of collective bargaining, represents the full and complete agreement between the parties and supersedes all previous agreements between the parties. Amendments to this agreement or past practices shall not be binding upon either party unless executed in writing by the parties hereto. Waiver of any breach of this agreement by either party shall not constitute a waiver of any future breach of this agreement.

IX.

That the Respondent District, in computing and paying Ms. Willi the wages provided for in the 1983-84 portion of the 1982-84 agreement, has taken the position that the frozen pay/increment referred to in V. in the 1981-82 and 1982-83 years represents a step that "was lost forever."

X.

That Ms. Willi, with the assistance of NUE, processed a grievance on this question of increment/pay freeze in 1983-84 in a timely manner and that the contractual grievance procedure was exhausted when the Respondent District denied the grievance at the Board level.

3. The NUE and the District are parties to a collective bargaining agreement which, by its terms, is in effect from July 1, 1982, until June 30, 1984. That collective bargaining agreement is referred to in paragraph 2 of the parties' stipulation of facts which is set forth as Finding of Fact 1 above. That collective bargaining agreement contains, among its provisions, and in addition to Article XXIX, which is set forth in paragraph VIII of the original complaint, which is set forth in Finding of Fact 2 above, the following:

V. TEACHER'S STATUS

. . .

B. . . .

One year of teaching experience is defined as: Paid classroom-teaching for not less than 18 consecutive weeks and/or not more than 37 consecutive weeks. Teachers who were employed in the 1973-74 school year in the Turtle Lake School System shall continue to have their teaching experience computed on the same basis as it has been prior to 1974-75.

. . .

E. The Board of Education shall not have the right to contract any faculty above or below the existing salary schedule. Any such action will open salary negotiations between the Board of Education and the NUE.

. . .

IX. DISCIPLINE PROCEDURE

A. No teacher shall be discharged, suspended, reduced in rank or compensation without cause.

. . .

XXI. TEACHER'S RIGHTS

. . .

D. All rules and regulations governing instructional staff activities and conduct shall be interpreted and applied uniformly throughout the District.

. . .

XXVI. A. SALARY SCHEDULE

	BA		MA	
	1982-83	1983-84	1982-83	1983-84
0	13,115	13,967	14,298	15,227
1	13,640	14,527	14,869	15,835
2	14,164	15,085	15,441	16,445
3	14,689	15,644	16,013	17,054
4	15,213	16,202	16,585	17,663
5	15,738	16,761	17,157	18,272

(Continued on Page 5)

SALARY SCHEDULE (Continued from page 4)

6	16,263	17,320	17,729	18,881
7	16,787	17,878	18,301	19,491
8	17,312	18,437	18,873	20,100
9	17,836	18,995	19,445	20,709
10	18,361	19,554	20,017	21,318
11	18,886	20,114	20,588	21,926
12	19,410	20,672	21,160	22,535
13	19,935	21,231	21,732	23,145

CONCLUSIONS OF LAW

1. Northwest United Educators is a "Labor organization" within the meaning of Sec. 111.70(1)(h), Stats.

2. Turtle Lake School District is a "Municipal employer" within the meaning of Sec. 111.70(1)(j), Stats.

3. Carolyn Willi was, throughout the period of her employment with the Turtle Lake School District from August of 1979 until June of 1984, a "Municipal employe" within the meaning of Sec. 111.70(1)(i), Stats.

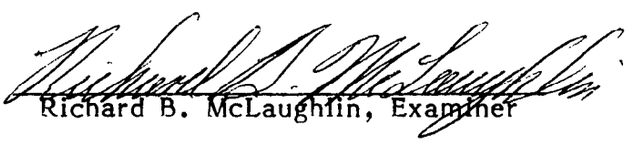
4. The Turtle Lake School District did not, by placing and compensating Carolyn Willi at the BA step 3 cell of the salary schedule which governs the 1983-84 school year, and which is set forth in Article XXVI A of the parties' 1982-84 collective bargaining agreement, commit any violation of Sec. 111.70(3)(a) 1, 4, 5 or 7, Stats.

ORDER1/

The complaint filed by the Northwest United Educators on April 5, 1984, is dismissed in its entirety.

Dated at Madison, Wisconsin this 18th day of March, 1986.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Richard B. McLaughlin, 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.

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

(Footnote 1 continued on Page 6)

(Footnote 1 continued from Page 5)

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.

TURTLE LAKE SCHOOL DISTRICT

MEMORANDUM ACCOMPANYING
FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

THE PARTIES' POSITIONS

Noting it is undisputed that "the parties agreed to freeze the advancement of Ms. Willi on the salary schedule during the 1981-82 year, and to provide her with only one step for placement on the 1982-83 schedule," the NUE contends that "the side letter regarding the placement of Ms. Willi on the salary schedule in the 1981-82 and 1982-83 years is limited to those years, and that thereafter the placement of Ms. Willi on the salary schedule is to be governed by the then existing collective bargaining agreement." The NUE grounds this contention on the provisions of Article XXIX of the 1982-84 labor agreement which, the NUE notes, was not agreed upon until November of 1983 "by which time the entire 1982-83 school year (and the last remaining aspects of the 1980-81 side letter on Willi) had been completed." According to the NUE, the wording of the side letter establishes that it was intended to impose only a "temporary loss of compensation" on Willi. Even if there could be doubt regarding the duration of the side letter, the NUE aserts that such doubt was "resolved by the parties agreeing to make no reference to the 1980-81 side letter in the subsequent collective bargaining agreement except to say, in that subsequent collective bargaining agreement, that that side letter (a previous agreement) was superceded by the new collective bargaining agreement which was completed several years after the Willi side letter was signed." Concluding its review of the record, the NUE argues: "Absent any specific language to continue such retarded salary schedule placement, and in light of specific language abrogating the 1980-81 side letter, the terms of the 1982-84 collective bargaining agreement must be applied in establishing the 1983-84 salary schedule placement and wages of Ms. Willi. Those terms provide for placement based on specific measurements of experience . . . which are not subject to unilaterally (sic) modification by the employer . . ." The NUE requests that, to remedy the District's violation of Sec. 111.70(3)(a) 1, 4, 5, and 7, Stats., the District be ordered to pay Ms. Willi $558 together with interest at the appropriate rate.

The District contends that: "Had Ms. Willi not experienced problems with the quality of her teaching performance, the Union's position would be correct." However, according to the District, Ms. Willi's teaching performance resulted in the execution of a side letter by which the NUE "bargained away Ms. Willi's increment for the 1981-82 school year." Noting that the "side letter provides no mechanism by which this benefit would ever be recaptured for Ms. Willi", the District concludes that the side letter represents "a tradeoff" which the NUE must have felt was "reasonable and necessary." The side letter is, according to the District, a "valid and enforceable written contract" which is clear and unambiguous, and must be given its intended effect. Because the side letter contains no termination date, the District concludes "the side letter remains in effect and represents the bargain that was struck betweeen (sic) the parties for Ms. Willi." According to the District, the NUE's assertion that Article XXIX negates the side letter must be considered unpersuasive for at least two reasons. First, the District asserts that arbitral authority and policy considerations establish that "side agreements made by the parties which modify or supplement the collective bargaining agreement must be honored notwithstanding a contract provision stating that the agreement constitutes the entire contract between the parties." Second, the District urges that the side letter constitutes a written amendment to the labor agreement which is enforceable under the provisions of the second sentence of Article XXIX. In addition to this, the District urges that "there are no new contract provisions which operate to reinstate the year of Ms. Willi's teaching experience which was earlier bargained away." Concluding that the side letter must continue to be enforced, the District concludes: "The Union cannot have it both ways. It cannot be permitted to bargain a special arrangement to enhance the job security of a teacher and later seek to renege on the deal which has been reduced to a written and executed agreement."

DISCUSSION

The complaint alleges the District violated Sec. 111.70(3)(a) 1, 4, 5, and 7, Stats., by placing Willi on the BA step 3 cell of the salary schedule governing the 1983-84 school year. A review of the parties' arguments and the stipulated

facts establishes that the parties' differences turn on an alleged District violation of Sec. 111.70(3)(a) 5, Stats., which, if proven, would establish a derivative violation of Sec. 111.70(3)(a) 1, Stats. The evidence regarding bargaining history in the stipulated facts is insufficient to make Sec. 111.70(3)(a) 4, Stats., relevant to the issues presented here. Although the stipulated facts do contain a citation to the mediation/arbitration award which addressed the parties' 1982-84 labor agreement, the decision is not discussed in the NUE's arguments and how the District could have violated the terms of the award by placing Willi on the salary schedule as it did is not apparent, and is, then, irrelevant to the issues presented here.

As noted in Paragraph X of the Complaint, which the parties acknowledge as fact in Paragraph 1 of their stipulation of facts, the grievance procedure contained in the 1982-1984 collective bargaining agreement culminates at the Board level, and contains no provision for final and binding arbitration. It follows that an Examiner can exercise the Commission's jurisdiction under Sec. 111.70(3)(a) 5, Stats., to determine if the District violated the 1982-1984 collective bargaining agreement by placing Willi at BA step 3 of the relevant lane of the salary schedule. 2/

The parties' conflicting contentions center on the relationship of the first two sentences of Article XXIX to the side letter referred to in Paragraph V of the complaint. The parties do not dispute that the terms of the side letter have been complied with through at least the 1982-1983 school year. The parties do dispute whether the frozen increment must be limited in effect to the 1981-1982, and 1982-1983 school years. The NUE argues that Willi must be placed at BA step 4, while the District argues she must be placed at BA step 3, for the 1983-1984 school year.

An examination of the parties' arguments regarding the relationship of Article XXIX to the side letter establishes that the District's interpretation is more persuasive. The NUE interprets the side letter to mandate a loss of compensation to Willi which, by the first sentence of Article XXIX, must be viewed as temporary. Though plausible, the NUE's interpretation of the side letter is not persuasive. The use of the term "frozen" can, as the NUE asserts, indicate a temporary measure implying a subsequent "thaw." However, the NUE's interpretation ignores that the side letter itself provides that the freeze is temporary by mandating a one step movement for the 1982-1983 school year if Willi's employment continued beyond the 1981-1982 school year. That Willi was not eligible for co-curricular assignments in the 1981-1982 school year can be interpreted, as the NUE urges, to imply her compensation was to be temporarily reduced. It can, however, just as plausibly be interpreted to indicate the parties intended that Willi not have any duties beyond the classroom to permit her to concentrate her efforts on her classroom performance.

More significant problems exist in the NUE's interpretation of the application of the first sentence of Article XXIX to the side letter. The first sentence of Article XXIX provides that the provisions of the 1982-1984 agreement supercede "all previous agreements." The NUE's assertion that the side letter is a "previous agreement" ignores that the side letter spanned the negotiation of three collective bargaining agreements and had an impact on the first school year covered in the 1982-1984 agreement which contains the provisions of Article XXIX at issue here. How a side letter which was coextensive with Article XXIX can be considered a "previous agreement" to Article XXIX is not apparent. The NUE's interpretation is, then, unpersuasive.

Even if the side letter could be considered a "previous agreement", there is no provision of the 1982-1984 labor agreement to supercede the terms of the side letter. The NUE has asserted that the terms of the 1982-1984 collective bargaining agreement demand that Willi move to the fourth step of the BA lane, but the NUE has asserted no specific provision to effect this two step movement. Article XXIX does not specifically address the point. The salary schedule itself is silent on the subject and provides only a grid of steps and lanes without addressing how placement is to be effected. Article V, Section B, cited by the NUE, provides a definition for "One year of teaching experience" without mandating

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2/ Waupun School District, Dec. No. 22409 (WERC, 3/85); Monona Grove School District, Dec. No. 22414 (WERC, 3/85).

any specific salary schedule placement. Article XXI, Section D, has no demonstrated relevance to this matter since the stipulated facts concern only Willi's situation. Thus, any conclusions regarding the uniformity of application of "rules and regulations" would be speculative on the present record. To the extent Article IX, Section A, has a bearing on this matter, it indicates that if cause is present, a teacher may be "reduced in . . . compensation."

The provision cited by the NUE and most directly on point to "supercede" the provisions of the side letter is Article V, Section E. That provision can not, however, be interpreted, as the NUE asserts, to mandate that Willi be placed at BA step 4. Article V, Section E, denies "the Board of Education" the "right to contract any faculty above or below the existing salary schedule." The prohibition on contracting a teacher above or below the salary schedule can plausibly be read, as the NUE asserts, to deny the District the right to place Willi at a step not reflecting the actual number of years of her employment with the District. This reading is, however, only plausible, and Article V, Section E, can not be persuasively interpreted as the mandate for a specific salary schedule placement that the NUE aserts it is. Significantly, the Section does not enforce a District violation with the ministerial salary schedule placement asserted by the NUE here, but instead provides: "Any such action will open salary negotiations between the Board of Education and the NUE." The Section does not, then, necessarily provide the remedy of a double increment which the NUE advances here. The ultimate impact of Article V, Section E, is to demand that the District not unilaterally establish a wage rate not reflected in the existing salary schedule and to remedy any such unilateral placement by opening negotiations. The provision does not, as the NUE asserts, mandate a specific salary schedule placement which, by the terms of the first sentence of Article XXIX would supercede the agreement set forth in the side letter. In sum, the side letter can not persuasively be characterized as a "previous agreement" within the scope of the first sentence of Article XXIX since it was effective during the term of the collective bargaining agreement containing Article XXIX. In addition, even if the side letter could be considered a "previous agreement" within the meaning of the first sentence of Article XXIX, the NUE has not demonstrated any agreement provision which would supercede the side letter.

The more persuasive interpretation of the relationship between Article XXIX and the side letter is the District's, which focuses on the second sentence of Article XXIX. The parties' arguments acknowledge that if it were not for the side letter, Willi would have advanced year by year on the salary schedule to BA step 4. Thus, the side letter can be considered an amendment to the provisions of the labor agreements negotiated by the parties while the side letter effected Willi's salary schedule placement. This interpretation does not present the difficulties noted above regarding the coextensive effect of the side letter and the provisions of Article XXIX. As provided by the second sentence to Article XXIX, the amendment is binding since it was executed in writing by the parties.

Even though the side letter can be considered binding under the second sentence of Article XXIX, the NUE persuasively argues that the side letter is something less than clear and unambiguous regarding its ultimate effect on Willi's compensation. Nevertheless, the ambiguity the NUE points to is more persuasively resolved by the District's interpretation of the side letter and Article XXIX. The NUE's interpretation poses the provisions of the 1982-1984 agreement and the side letter against each other, and overturns the action taken in the side letter. This interpretation, as discussed above, has little support in the language of the side letter or in the language of the 1982-1984 agreement. Contrary to this, the District's interpretation gives effect to the provisions of both the side letter and the labor agreement. As the District notes, the side letter contains no termination date. This does not imply that the side letter is of unlimited duration, but does support the inference that the parties, in the side letter, bargained Willi's salary schedule placement and intended that placement to be effective. The silence of the side letter beyond the step movement for the 1982-1983 school year indicates the parties understood her future movement on the salary schedule would proceed as before, under the terms of the relevant collective bargaining agreement, with one step for each year of experience. If the NUE's assertion that the 1982-1984 labor agreement contains language overturning the salary schedule placement effected by the side letter could be accepted, then her placement at BA step 4 would follow. However, as noted above, the NUE has not demonstrated any contractual provision mandating this placement and in the absence of such a provision the side letter must be given

effect with the collective bargaining agreement granting Willi one step for the year of teaching experience after her placement on the salary schedule in the side letter had been effected. The District's placement of Willi on BA step 3 reflects, then, the more persuasive interpretation of the relationship between the side letter and the provisions of Article XXIX.

In sum, the side letter can not be characterized as a "previous agreement" superceded by the provisions of the first sentence of Article XXIX since the negotiation of the side letter spanned the negotiation of three collective bargaining agreements, and was coextensive in effect with the first school year of the agreement containing the language of Article XXIX at issue here. Even if the side letter could be considered a "previous agreement" within the meaning of the first sentence to Article XXIX, the NUE has not demonstrated any provision of the 1982 - 1984 agreement, including Article V, Section E, which mandates that Willi be given nothing other than one step for each year of her employment with the District. The District's interpretation of the side letter as an amendment to the labor agreement more specifically and accurately characterizes the import of the side letter than does the NUE's characterization of the side letter as a previous agreement. Since the side letter is in writing executed by the parties, it is binding under the second sentence to Article XXIX. Although the precise effect of the side letter on Willi's placement on the salary schedule can be characterized as something less than clear and unambiguous, the District's interpretation of the side letter is more persuasive since it gives effect to both the side letter and to the provisions of Article XXIX. The NUE's interpretation of the relationship of the side letter to Article XXIX effectively denies meaning to the side letter without any clear support in the language of the parties' 1982 - 1984 collective bargaining agreement.

Accordingly, the District did not violate Sec. 111.70(3)(a)5, Stats., by placing Willi on the third step of the BA lane for the 1983 - 1984 school year. Thus, the District has not committed any violation of Sec. 111.70(3)(a) 1 or 5, Stats., on the present record. Since the evidence does not support the NUE's allegation that the District's conduct violated Sec. 111.70(3)(a) 4 or 7, Stats., the complaint has been dismissed in its entirety.

Dated at Madison, Wisconsin, this 18th day of March, 1986.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Richard B. McLaughlin, Examiner