

RECEIVED

APR 27 1988

STATE OF WISCONSIN

CIRCUIT COURT

PIERCE COUNTY

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

West Central Education Association,

Plaintiff,

MEMORANDUM OPINION

Case No: 87CV257

vs.

Wisconsin Employment Relations Commission, Decision No. 22264-B

Respondent

The petitioner commenced this action on July 22nd, 1987, under Chapter 227, Stats. to review a decision and order of the respondent dated June 23, 1987.

The respondent concluded that the Plum City School District did not violate Section 111.70, when it refused to continue to pay employees according to the salary schedule in the expired collective bargaining agreement during a contractual hiatus.

ISSUE

Did the Plum City School District fail to maintain the status quo during a contract hiatus when it did not pay experience and educational compensation increments in the hiatus?

Based on a review of the briefs filed with the court this question hinges not so much on whether a dynamic approach to the status quo should be taken as opposed to a static approach but rather how the dynamic approach to the status quo should be implemented.

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 duty to bargain under Section 111.70(3)(a) 4.

The past decisions of respondent show that the respondent has attempted to formulate principles that would define the status quo in terms of the parties expectations. To determine the parties expectations regarding the meaning of the status quo the terms of the contract, bargaining history and past practice of the parties are considered.

The fundamental flaw the court sees in the respondent's decision is that it gave weight to a past practice, not of the parties, but of the school district. School board president Lawrence Von Holtum testified that he was unaware of any employees receiving salary grid increases during a hiatus. He did not testify that this practice had been acquiesced in by employees. Furthermore, at the time of this hiatus the employees were not represented by their current bargaining unit.

Past practice of the parties can only be relevant if in fact it represents a past practice of the parties not the unilateral action of one of the parties. The refusal to advance employees under the salary grid is within the control of the district. Thus before the district may use that unilateral act to support its claim of past practice it must demonstrate that that past practice was agreed to by the employees. Since there is no showing whatsoever in this record that the employees agreed in the past to this action on the part of the district during a hiatus, the testimony of the school board president has no

relevance on the issue of what the parties expected the status quo would be when the present collective bargaining agreement expired.

Based on the court's review of the expired agreement, the court concludes that the parties did expressly provide for on going compensation. They established a salary grid depending on experience and education. They expressly provided procedures to be followed by employees in order to advance on the grid the next school year and provided procedures that the district must follow by March 1st of the year to withhold advancement the following year. These provisions clearly provide for advancement the following contract year. To view this language any differently considering that this is a one year contract would render the contract language meaningless.

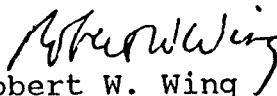
As set forth above the district's action in this case violates sec.111.70(3)(a) 4, unless it has a defense. The court interprets this to be an affirmative defense on which the district carries the burden of proof. Looked at in the context of the burden of proof, the district has not met the burden of demonstrating that the parties understood that there would be no advancement during a hiatus by the school board president's vague testimony that he did not recall such advancement in past hiatuses. Such testimony even though unrebutted does not establish a defense to the unilateral action of the district in this case.

For the reasons set forth above the court finds that the

School District of Plum City failed to maintain the status quo in the hiatus following the expiration of the 1983-1984 collective bargaining agreement and therefore is hereby ordered that the decision of the respondent be reversed.

Dated this 22nd day of April, 1988.

BY THE COURT;


Robert W. Wing
Circuit Judge

cc: Joel L. Aberg
David C. Rice
Melissa A. Cherney