STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MANITOWOC EDUCATION ASSOCIATION,		
Complainant,		Case 32 No. 37972 MP-1905
vs.		Decision No. 24205-A
MANITOWOC PUBLIC SCHOOL DISTRICT,		
Respondent.		

Appearances:

Mr. Michael L. Stoll, Staff Counsel, Wisconsin Education Association Council, 101 West Beltline Highway, P. O. Box 8003, Madison, Wisconsin 53708, appearing on behalf of the Complainant.

Nash, Spindler, Dean & Grimstad, Attorneys at Law, by Mr. John M. Spindler, 201 East Waldo Boulevard, Manitowoc, Wisconsin 54220-2992, appearing on behalf of the Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Manitowoc Education Association, having on December 12, 1986, filed a complaint with the Wisconsin Employment Relations Commission alleging that the Manitowoc Public School District has committed and continues to commit prohibited practices in violation of Secs. 111.70(3)(a)4 and 1, Stats.; and the Commission having appointed Mary Jo Schiavoni, a member of its staff, to act as Examiner and to make and issue Findings of Fact, Conclusions of Law and Order in this matter as provided in Sec. 111.07(5), Stats.; and hearing on said complaint having been held on February 24, 1987, in Manitowoc, Wisconsin; and the parties having completed their briefing schedule on May 5, 1987; and the Examiner, having considered the evidence and arguments of the parties 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 Complainant, Manitowoc Education Association, hereinafter referred to as the Association, is a labor organization and the exclusive representative of certain of the District's employes in a unit consisting of all persons certified as and employed by the District as teachers, librarians and counselors; that the Association's principal place of business is 3841 Kohler Memorial Drive, Sheboygan, Wisconsin 53081; and that at all times relevant herein, the Association's principal representatives and agents were Michael L. Stoll, Gary Bents and Richard Terry.

2. That Respondent, Manitowoc Public School District, hereinafter the District, is a municipal employer with offices located at 1010 Huron Street, P.O. Box 605, Manitowoc, Wisconsin 54220; and that at all times relevant herein, the following named individuals have occupied and do occupy the positions set forth opposite their respective names and each of them is and has been at all times material hereto an authorized representative and agent of said District acting on its behalf:

Peter DeZeeuw	-	President of the Board of Education
Ron Kaminski	-	Member
Vernon C. Childs	-	Superintendent
John M. Spindler	-	Chief Negotiator for the District

3. That the Association and the District have been parties to a series of collective bargaining agreements which have governed the wages, hours and conditions of employment of the employes in the bargaining unit described above in Finding of Fact 1.

4. That prior to the parties entering into a collective bargaining agreement for the 1978 and 1979 calendar years, teachers in the District's employ had been paid according to a salary schedule which compensated teachers based upon a formula incorporating as factors a base salary and each individual's years of teaching experience and level of education; that effective January 1, 1978, and continuing through December 31, 1979, the parties implemented a new form of salary schedule whereby only two columns of educational training were recognized -- Bachelors Degree and Masters Degree -- and years of experience were recognized as "steps" for each individual teacher within the appropriate educational training column such that each "step" was defined as a year of service to the District, except that the starting step for each teacher was to be determined by the Board upon initially hiring that teacher; and that the method of paying teachers described above was continued by the parties during the next successor agreement which had as its term January 1, 1980 through December 31, 1980.

5. The parties subsequently entered into a successor to the agreement referred to above in Finding of Fact 4, having as its term January 1, 1981 through December 31, 1982; that the salary amounts to be received by teachers during the term of the parties' 1981 and 1982 collective bargaining agreement were listed in Exhibit A to that agreement in each of three single columns of salary figures, effective, respectively, on: September 1980 (the status quo regarding teacher salaries as of the date the parties entered into their new agreement), January 1981, and January 1982 along with the following relevant language:

> WAGES AND COMPENSATION
>
> A. The entry level wage range will be $12,000 to $18,000 at the discretion of the Board and Administration, but no new employee can be paid more than a current employee of the same degree and years of experience.
>
> B. Effective January 1, 1981 there will be no salary schedule and no teacher will be paid on the basis of years of experience on the previous salary schedule. All present staff will be paid as per the amounts shown on Exhibit "A." Those teachers not previously compensated for a Masters Degree will qualify for $1,100 upon completion of an approved Masters Degree as per Part III, 5, A.
>
> EXHIBIT A
>
> MANITOWOC PUBLIC SCHOOL DISTRICT
> Manitowoc, Wisconsin
>
> Salary
>
> The Salary for which a teacher qualifies in September 1980 will be changed in January 1981 and January 1982 horizontally as follows:

September 1980	January 1981	January 1982
$10,968	$12,284	$13,635
11,503	12,883	14,300
12,038	13,483	14,966
12,359	13,842	15,365
12,894	14,441	16,030
13,429	15,040	16,695
13,964	15,640	17,360
14,499	16,238	18,025
15,034	16,838	18,690
15,141	16,958	18,823

September 1980	January 1981	January 1982
15,569	17,437	19,355
15,783	17,677	19,621
16,425	18,396	20,420
16,853	18,875	20,952
17,067	19,115	21,218
17,495	19,594	21,750
17,709	19,834	22,016
18,137	20,313	22,547
18,351	20,553	22,814
18,779	21,032	23,346
18,993	21,272	23,399
19,100	21,312	23,443
19,421	21,752	24,144
19,795	21,972	24,169
20,170	22,590	25,075
20,919	23,429	25,772
21,026	23,477	25,824
21,507	23,873	26,260
21,721	24,110	26,521
22,201	24,643	27,107
22,363	24,823	27,305
22,379	24,840	27,324

> The retirement payment by the Board shall be 5% of the amount for which each teacher qualifies on this salary schedule throughout the term of this agreement.

6. That on May 17, 1983, the parties entered into a successor to the collective bargaining agreement described above in Finding of Fact 5, said successor agreement having as its term January 1, 1983 through June 30, 1985; that this collective bargaining agreement again contained an Exhibit A which set forth in two single columns the salary amounts to be paid effective with the beginning of the 1982-1983 and 1983-1984 school years, thereby departing from the parties' traditional practice of bargaining for calendar year, rather than school year, agreements; that the 1983-1985 collective bargaining agreement continued to include the relevant contract language quoted above in Finding of Fact 5; that in addition, the 1983-1985 collective bargaining agreement provided as follows:

> No later than March 1, 1984, the parties will meet to discuss negotiations for salary adjustments of the salaries shown on Exhibit A for school year 1984-1985 using the salary structure shown therein;

and that pursuant to the reopener language quoted above, the parties negotiated over a successor salary structure without reaching final agreement.

7. That inasmuch as the parties were unable to reach agreement on their reopened salary structure for the 1984-1985 school year, the issue of which of the following final offers should be incorporated into the parties' 1984-1985 agreement was submitted to a voluntary final and binding arbitration proceeding; that the single column salary structure was not an issue in the arbitration proceedings before Arbitrator Joseph Kerkman; that the "wage reopener" in the collective bargaining agreement for January 1, 1983 through June 30, 1985 provided as follows:

> "No later than March 1, 1984, the parties will need to discuss negotiations for salary adjustments of the salaries shown on exhibit A for school year 1984-1985 using the salary structure shown therein";

and that the final offers submitted to Arbitrator Kerkman reflected different monetary amounts; and that on June 26, 1984, Arbitrator Joseph B. Kerkman determined that the District's offer, should be included in the parties' 1983-1985 collective bargaining agreement.

8. That prior to the expiration on June 30, 1985, of their 1983-1985 collective bargaining agreement, the parties entered into negotiations over a successor agreement; that on June 15, 1985, they filed a stipulation with the Wisconsin Employment Relations Commission for the purpose of initiating the mediation/arbitration provisions of Sec. 111.70(4)(cm), Wis. Stats; that as a result of the parties' participation in the mediation/arbitration procedure set forth in Sec. 111.70(4)(cm), Wis. Stats., the parties submitted detailed final offers to Arbitrator George R. Fleischli at an arbitration hearing on January 30, 1986; that at this hearing, the parties established their final offers with respect to teachers' salaries as follows:

Association Proposal

EXHIBIT A - SALARY SCHEDULE

Bachelors	Masters
17,000	18,200
17,745	19,500
18,928	20,800
20,111	22,100
21,294	23,400
22,477	24,700
23,660	26,000
24,843	27,300
26,026	28,600
27,209	29,900
28,392	31,200
29,575	32,500

District Proposal

SALARIES

Number	1984-85	Increase	1985-86
8.8	$ 17,000.	$ 1,600.	$ 18,600.
4.12	17,500.	1,600.	19,100.
12.02	18,000.	1,600.	19,600.
1.9	18,665.	1,635.	20,300.
4	19,300.	1,670.	21,000.
3	19,995.	1,605.	21,600.
5.69	20,660.	1,640.	22,300.
1	21,095.	2,005.	23,100.
6	21,325.	1,775.	23,100.
2	21,990.	1,910.	23,900.
4	22,123.	1,777.	23,900.
1	22,655.	1,945.	24,600.
8	22,921.	1,679.	24,600.
1	23,318.	1,682.	25,000.
10.5	23,720.	1,680.	25,400.
2	24,067.	1,833.	25,900.
3	24,252.	1,645.	25,900.
12.8	24,518.	1,682.	26,200.
4.7	25,050.	1,950.	27,000.
1	25,169.	1,831.	27,000.
10	25,316.	1,684.	27,000.
1	25,618.	1,882.	27,500.
1	25,847.	1,653.	27,500.
8	26,114.	1,686.	27,800.
10	26,646.	1,754.	28,400.
10	26,699.	1,701.	28,400.
31	26,743.	1,657.	28,400.
1	27,110.	1,990.	29,100.
1	27,260.	1,840.	29,100.

Number	1984-85	Increase	1985-86
3	27,444.	1,656.	29,100.
7	27,469.	1,631.	29,100.
5.8	28,375.	1,625.	30,000.
7	29,072.	1,728.	30,800.
11	29,124.	1,676.	30,800.
24	29,560.	1,640.	31,200.
3.88	29,821.	1,679.	31,500.
6	30,605.	1,695.	32,300.
8	30,624.	1,676.	32,300.
245.21	$6,208,680.	+ $412,659.	$6,621,339. (6.65%)

and that teachers' salaries and a salary schedule were just two of seven issues litigated by the parties at the arbitration hearing, the other issues being (1) whether certain changes should be made in the insurance program relating to additional coverage and limitations on the District's right to change carriers; (2) the salary to be paid teachers returning from leaves of absence, (3) the wording of time limitation on recalls from lay-off, (4) the wording of the provision on rights of part-time teachers, (5) the wording provision dealing with various contractual rights of teachers hired after the start of the school year, and (6) the question of whether the 1986-87 calendar should be established under the terms of the 1985-86 agreement.

9. That subsequent to the hearing both parties filed post-hearing briefs with the arbitrator.

10. That in its brief to the arbitrator, the District set forth its argument with respect to the Association's salary demands as follows:

> I. AUTOMATIC STEP INCREASE
>
> The school district regards the most critical issue of this mediation/arbitration to be the issue of returning to a built-in automatic step or increase.
>
> The first contract which did not have an automatic step was that for calendar year 1981 and calendar year 1982. . . . This two year voluntary agreement was followed by a two and one-half year contract which was a mediated agreement and is shown as Exhibit #1. As pointed out at the hearing, there was a wage reopener in that contract for school year 1984-1985 "using the salary structure shown therein". In other words, when the contract for the period January 1, 1983 through June 30, 1985 was entered into following mediation, the Association agreed to retain the "no step" salary format.
>
> * * * *
>
> There has been no showing by the Association of any need for a change. The only apparent reason is that the Association wants an increase each year built into the schedule, regardless of what economic conditions may be.
>
> As shown on Exhibit 7c, this built-in increase, if selected by the arbitrator, will cost the Manitowoc School Board $275,347 for school year 1986-87.
>
> The Manitowoc Board of Education has been a pioneer in getting away from the old traditional step system, as is indicated by the news article entitled "Time for a Change More Apparent". . . . That same article sets forth several reasons why the old lane and step schedule is out-of-date and no longer meets the needs of school districts.
>
> * * * *

11. That the Association, in its brief, made the following arguments:

Finally, the Association suggests that the Arbitrator should give consideration to the fact that Manitowoc teachers have been without increased compensation for a considerable period of time. Arbitrator Flatten in Washington County Dec. No. 13443) articulated the Association's position in this matter:

> The point is that without fault on anyone's part the union has been without a contract since December 1, 1974 and the association members have been living for almost ten complete months on a 1974 salary. Thus, three-fourths of the calendar year will have elapsed before a decision is reached and the deputies lost the purchasing power of any pay raise for that period, be it 8% or 9 1/2%.

See also Arbitrator Mueller in Portage County (Dec. No. 15497-A) and Bilder in Madison Schools (Dec. No. 18028-A). The facts in the instant case are equally as compelling as those in Washington County. Bargaining unit employees have been without a substantial increase for a major portion of the 1985-86 school year and have lost the purchasing power of those dollars.

In fact, since there is currently no salary schedule in Manitowoc School district, the employees have been without any increase since July 1, 1985 (retroactive pay from July of 1984). The employees in all other districts receive, as a matter of law, (see School District of Webster, WERC Dec. No. 21312-B) the annual step increase, commonly referred to as the increment, at the beginning of each school year. This partially offsets the cost of delayed salary increases to employees during any contract hiatus. Manitowoc employees do not currently receive an increment since there is no salary schedule!

. . . .

VII. OF THE TWO CHANGES IN THE STATUS QUO RELATIVE TO THE SALARY SCHEDULE - THAT OF THE ASSOCIATION IS PREFERRED

In the January 1, 1981 Collective Bargaining Agreement between the parties (ER-38-B), the Employer and Association voluntarily agreed to a new concept in salary schedule structure. In that experiment, the parties agreed that the "traditional" salary schedule format would be eliminated in favor of a flat percentage increase (ER-38-A). This concept was agreed upon in the next two successive Collective Bargaining Agreements (1982-83 and 1983-85). This concept included a differential or stipend of $1100 for employees who achieve a Master's Degree (UN-2), at part IV, section 18, B.

. . .

> . . . Those teachers not previously compensated for a Master's Degree will qualify for $1100 upon completion of approved Masters' Agree (sic) as per part III, 5, A.

The structure also provided for an entry range of from $12,000 to $18,000 at the discretion of the Employer, provided that no new employee was to be hired at a level highter than a current employee (see ER-38-B).

This pay structure proved unsatisfactory to both parties and both have proposed changes in the structure for the 1985-86 Collective Bargaining Agreement. Both the Union

and the Employer have resisted arbitrating a change due to the arbitral axiom which requires the party proposing a change to show that the status quo was either inequitable or unworkable. However, in the instant dispute, since both parties are proposing a major revision in the structure of the salary schedule, what remains for the arbitrator to determine is which structure is preferable. The Union contends that its structure is favored and that of the Employer is severly flawed.

12. That Arbitrator Fleischli characterized the salary and salary schedule issue in the dispute as follows:

SALARY AND SALARY SCHEDULE

As noted above this is the most significant issue in dispute. The final offers of the parties not only differ with regard to the overall level of salary increase to be granted teachers, they also differ substantially as to the salary structure to be utilized for the purpose of compensating teachers. The latter aspect of the dispute has its origin in the negotiations leading up to the Collective Bargaining Agreement covering calendar years 1981 and 1982.

The parties reached voluntary agreement in their negotiations for an agreement to cover calendar years 1981 and 1982 which eliminated the then existing salary schedule, which contained a step and lane structure. During the two years of that agreement teachers were granted across the board increases of 12% and 11% respectively, (1% less in the case of staff at the top of the preexisting schedule) in accordance with a range of salaries beginning at $13,635 and ending at $27,324 in the second year of the agreement. As part of the agreement, the parties also agreed that the District could hire new teachers at a range between $12,000 and $18,000 per year, provided no new employee was paid more than a current employee of the same degree level and years of experience. Another stipulation of the agreement provided that teachers who had not previously received compensation for a master's degree would qualify for an additional $1,100 in salary, upon completion of an approved master's degree.

In their negotiations for the transition agreement beginning on January 1, 1983 and ending on June 30, 1985, the parties reached a voluntary agreement which also provided for salary increases outside the traditional salary schedule structure. That agreement established the range of salaries which would be applicable in the first school year (1983-1984) and provided for a wage reopener on the salary range to be applied in the second year (1984-1985). It continued the provisions of the agreement permitting the District to pay new teachers an entry level range between $12,000 and $18,000 and the provision calling for an additional payment to teachers who completed an approved master's degree.

In their negotiations under the reopener provision, the parties were unable to reach voluntary agreement on the range of salaries which would be applicable during the 1984-1985 school year. The Association proposed a range which reflected an approximate 8.98% increase, the establishment of a BA minimum and MA minimum and an increase in the additional compensation to be paid teachers who completed a master's degree. The District proposed a range of salaries having a substantially increased minimum of $17,000 and a maximum of $30,624. Under that offer, which was selected by Arbitrator Joseph B. Kerkman in any award issued June 26, 1984, most teachers working wihtin the existing salary range received a $1,000 increase. The overall value of salary increases granted under that award was approximately 4.35%.

In its final offer, the Association proposes to eliminate the provisions of the agreement which abolished the old salary schedule and established the minimum hiring rate and master's degree compensation requirements and substitute a provision which states that employees covered by the agreement are to be paid in accordance with the salary schedule attached to its offer. That salary schedule is attached hereto and identified as Attachment "A." Also, as part of its final offer, the Association makes specific provision for placement of teachers earning existing salary figures on the new salary schedule which it proposes. The Association estimates the actual cost of its proposal, in salary alone to be $6,673,990, which represents a 7.49% increase and will generate new money for returning staff of $1,898, on average. In making these calculations, the Association did not use the "case forward" method normally utilized in conjunction with salary schedules, based on its belief that such an evaluation is inappropriate under the circumstances. Using that same method of costing, the Association estimates the cost of the District's proposal at $6,620,079, representing an incrase of 6.62% or an incrase, on average, of $1,678 per returning teacher.

The District proposes to continue the language contained in the expired agreement dealing wiht salary and to grant dollar increases to all returning staff in amounts ranging from a low of $1,600 to a high of $2,005 in order to establish a salary range from $18,600 to $32,300. That offer, which is attached hereto as Attachment "B," would significantly reduce the number of separate salary figures with the range as well. According to the District, the cost of its offer is $6,621,339, with an average increase of 6.65% or $1,683 for all of the returning teachers. These cost figures are based on the assumption that all staff members who taught during the 1984-1985 school year returned and were placed within the salary range as reflected in its offer. Utilizing that same "case forward" method of costing, the District estimates the cost of the Association's proposal at $6,673,985, which equals a 7.49% increase and generating, on average, $1,898 per returning teacher. The District estimates the overall total package percentage increase under its offer at 7.70%, compared to 8.61% for the Association's offer.

. . .

and that Fleischli stated his understanding of at least certain aspects of the parties' respective positions to be as follows:

> According to the District, the most critical issue in this proceeding relates to the question of whether the District should return to the granting of "build in" automatic step increases. The District reviews the history of negotiations leading up to the current salary structure and its proposal in this case and notes that, by agreement between the parties, the District has not had step increases or a formal salary schedule since January 1, 1981. It notes that the parties have reaffirmed their agreement to abolish the salary schedule on several occasions and argues that, therefore, the Association should be required to show good cause for changing the compensation system which the parties have agreed to.
>
> According to the District, the Association has failed to establish any evidence of need for the proposed change. Its apparent reason for desiring a return to a salary schedule is to provide for a built in increase, regardless of what economic conditions may be. The cost of that built in increase, according to the District fugures, would be $275,347 for the 1986-1987 school year.

The District argues that it has been a pioneer in getting away from the traditional salary step system and argues that there are sound reasons for doing so as reflected in an educational news release introduced into evidence. Among those reasons are the difficulty in raising the salary base for new teachers when all increases are reflected throughout the schedule; the fact that such schedules are incompatible with a "career ladder" approach to employment; the fact that such schedules are incompatible with a merit pay plan; and the fact that salary schedules tend to focus negotiations on low salary base figures rather than average salaries and total compensation.

With regard to the Association's claim that the Board's salary offer also constitutes a change in salary format, the District admits that its porposal would consolidate two or more salary figures which are close together into a new higher salary figure, but argues that such proposal does not constitute a departure from the simple "no step" schedule agreed to since 1981.

. . .

The Association makes a number of points in support of its proposal on salary, including its request that a salary schedule be reestablished. Those points may be summarized as follows:

. . .

10. While the Association's final offer produces a smaller increase than that justified by comparisons, its proposal is intended to ease the transition back to the establishment of a salary schedule.

11. Both final offers contain a change in the status quo relative to the question of salary structure and therefore the only question is which proposal is to be preferred, not whether either party has met the burden of proving that the existing structure is inequitable or unworkable.

12. The District's salary structure is flawed because it does not take into consideration a differential for educational attainment. The inequity of this aspect is demonstrated by the testimony concerning three employees with highly divergent educational background and experience, all of whom are receiving $18,000.

13. The District's offer is flawed because it provides increases in a subjective and discriminatory manner. This is evidenced by the varying increases granted to employees earning various sums of money within the range that existed during the 1984-1985 school year. In the past, employees received an equal percentage increase and there was no basis for possible favoritism or subjective judgments.

14. The Association's request for the reestablishment of a traditional salary schedule format is appropriate because sound principles. A single salary schedule, based upon

of the comparable districts already have. Numerous arbitration awards have made a distincition between proposals which remove existing benefits and proposals which add benefits, justified by comparability data and other criteria. In fact, the evidence of comparability is so overwhelming that the burden should be placed on the Employer to prove that the adoption of a salary schedule would be unworkable or inequitable.

13. That, in his discussion of the rationale behind his award, Fleischli stated:

Discussion on Salary and Salary Schedule

As noted in the parties' arguments, there are really two aspects to this issue. Most important, according to the District, is the question of whether the agreement should contain a traditional salary schedule providing separate lanes for educational attainment and step increases, reflecting additional compensation for experience.

As the Association points out, salary schedules of the type proposed herein exist in all of the comparable districts and constitute the predominant method for establishing compensation in school districts generally. The problem arises in this case because the parties agreed in their negotiations leading up to the 1981-1982 agreement, to abolish the then existing salary schedule and substitute a salary range in its place. As a result, the parties have voluntarily established a compensation scheme which is somewhat unique. If the parties had been able to continue their agreement on that salary range and its application to existing staff and new staff, and the only dispute in this case was the size of the salary increases to be granted, this would be a much simplier (sic) case.

Both parties advance certain arguments which ultimately go to the policy question of whether the District should or should not have a compensation system based upon a salary range rather than a traditional salary schedule. In all candor, the undersigned feels very uncomfortable addressing those arguments in a proceeding of this type. While it is true that the statutory criteria make reference to the interests and welfare of the public, the undersigned is of the opinion that the legislature did not intend that individual arbitrators would be making policy choices of the type presented by this case under the rubric of the criterion making reference to the interests and welfare of the public, without regard to the other statutory criteria. The focus of this proceeding, in the view of the undersigned, is to attempt to select that offer which establishes an agreement reflecting wages, hours and working conditions which the parties themselves would have established, had they been able to reach voluntary settlement under the existing statutory arrangements in Wisconsin. In doing so, emphasis must be given to all of the statutory criteria, particularly those which have been found most persuasive for such purpose.

The undersigned recognizes that arbitrators generally give great weight to the fact that the parties may have agreed to a particular provision or arrangement contained in their prior agreement and generally place the burden of persuasion on the party proposing a change in the "status quo" thus established. Further, the undersigned is unpersuaded by certain Association arguments to the effect that it is not proposing a change in the status quo, but is merely seeking to establish a benefit that doesn't presently exist and that the

District itself is proposing a significant change in the status quo. Even so, the undersigned is satisfied that the Association has met its burden in this case.

While it is true that the parties have in the past few years agreed to utilize a salary range, there is no agreement on the District's proposal to reduce the number of steps within that range. Further, there is no agreement on fundamental questions such as the criteria to be utilized for initial placement and advancement through that salary range. An objective review of the District's proposal does not suggest that it is driven by improper considerations such as favoritism, as suggested by the Association. On the contrary, the apparent motivation for granting various dollar increases at the various levels is to achieve a reduction in the number of levels by the device of "rounding off" numbers at $100 levels. Based upon the District's stated reasons for desiring to keep a salary range rather than revert to a salary schedule, the undersigned concludes that the District's apparent motivation is to achieve some of the policy goals referred to above. Even so, it is important to note that there is a lack of agreement on the approach being taken by the District in its offer, which would make the District's salary arrangements even more unique among the comparables.

Not only is the Association's position strongly supported by evidence concerning how comparable employees are compensated, is is also supported the consequences of employing such an approach in terms of dollar increases received. Thus, under the approach proposed by the District is is possible to substantially increase the starting and ending salaries in a way which generates increases for existing staff whcih are significantly below those of their peers in other districts. If both parties were in agreement on the achievement of an ultimate goal which might justify a continuing impact of this type, the District's case would be much more persuasive. However, it is the District alone which proposes this course of action for the future, even though its impact is adverse on existing staff, at least in the short run.

For these reasons, the undersigned believes that the Association's proposal, insofar as it would reestablish a salary schedule, is justified under the circumstances present in this case. There remains, the question of whether its proposed salary increases should be favored over those which would be generated within the Employer's proposed salary range.

It is significant to note that teachers in this District received increases which were, in retrospect, even more than 2% lower in 1984-1985, than that received by their peers in comparable districts. it is also significant that the increases proposed by the Association for 1985-1986 are generally lower than average among the most relevant group of comparables and in relation to the District's near neighbor, Two Rivers.

The District is undoubtedly correct in its contention that a 7.49% increase in wages is significantly highter than the increase in the cost of living in the year prior to the year of this agreement as well as increases in certain other municipal employment (such as the City and County) and in the private sector in Manitowoc County. It is also true that the District continues to compare relatively well in terms of starting salaries and top salaries. However, it is not unusual for employees to receive salary increases which are, in a given time frame, substantially below or above changes in

> the cost of living. Further, it is not at all uncommon for employees in one sector of the economy or in one sector of government to receive salary increases which are, on a percentage basis, higher or lower than those received by others. These differences reflect differences in supply and demand for given skills, relative availability of funds and social and political judgments concerning the appropriate level of compensation for differing types of work. It is not the function of the undersigned to attempt to thwart or redirect those influences. Instead, the award should, in the view of the undersigned, attempt to approximate the outcome that should have been achieved, had the parties been able to reach voluntary agreement under existing statutory arrangements.
>
> Both parties have made valid points concerning the economic conditions of Manitowoc County. It is undoubtedly true that the farming sector and heavy manufacturing sector of Manitowo (sic) County's economy has suffered substantially in the recent past and continues to suffer at this time. Further, it is undoubtedly true that the unemployment rate in Manitowoc County lingers at a higher level than elsewhere, among the comparables. However, as the Association points out, there are also bright spots in the evidence concerning the economy in Manitowoc County. Certain elements of the service sector are improving substantially and the County ranks relatively high on certain important measures such as per capita income. Also, as the Association points out, the cost of its proposal is lower than the cost of other proposals in comparable districts and the dollar increases granted will also be lower. This is true, in spite of the fact that the increases granted during 1984-1985 were significantly lower than the comparables and the fact that administrators received a larger increase.
>
> For these reasons, the undersigned concludes that the Association's final offer on salary and salary schedule should be favored over that of the District. What remains is to weigh that conclusion, in conjunction with the other conclusions reached, in an overall analysis under the statutory criteria.

and that Arbitrator Fleischli premised his ultimate award wherein he decided in favor of the Association's final offer upon his determination that the Association's proposal on the issue of salary and salary schedule, was the most significant issue in the proceeding.

14. That, on or about April 12, 1986, in response to the award issued by Arbitrator Fleischli, the Herald-Times Reporter, a newspaper published in Manitowoc, printed the following story:

> An Arbitrator from Madison has ruled in favor of the Manitowoc Education Association in its dispute with the Manitowoc Public School District over teacher salaries for the 1985-86 school year.
>
> Arbitrator George R. Fleischli accepted the MEA offer of a 7.7 percent general wage increase. The district had been offering a 6.5 percent increase.
>
> "We're very pleased, we felt we had a good case," Gary Bents, chief negotiator for the teachers union, said today.
>
> Attorney John Spindler, who represents the school district, said about 245 teachers are covered in the contract, which expires June 30. It is estimated the wage increases will cost the district about $625,000 this year.

The new pact also reinstitutes automatic step wage increases, which are given as a teacher advances to certain stages of longevity. They had been negotiated out of contracts in 1981, Spindler said. He also said reintroduction of the automatic increase could cost the district about $275,000 next year.

"The board of education had in mind the economic conditions of this area when it made its offer," Spindler said, "but the arbitrator also bases his decision on (contract) settlements in other school districts in the area. He must have felt the offer made by the board was low by comparison."

Under the pact, salaries for Manitowoc teachers will range from $17,000 for new teachers to a top of $32,500, Spindler said.

Other aspects of the pact deal with the school calendar, insurance issues and some changes in contract language.

Bents said negotiation on a contract for the 1986-87 school year would begin soon, "probably within 30 days."

15. That in his award issued on April 1, 1986, Arbitrator Fleischli directed that the Association's final offer be incorporated into the parties' 1985-86 collective bargaining agreement; and that the parties incorporated Fleischli's award into their 1985-1986 collective bargaining agreement and fully implemented its provisions.

16. That as a result of said Award the teachers were placed upon the salary schedule and the following relevant language appeard in the 1985-86 agreement:

Part I - Basic Declaration

. . .

11. TERM OF AGREEMENT

This Agreement shall be effective July 1, 1985, and shall continue in force and effect through June 30, 1986, and thereafter as herein provided. The contract will continue for the school year 1986-1987 unless either party gives to the other written notice of intent to terminate or modify this contract on or before March 1, 1986.

Written notice to the Board shall be given by mail or delivery to the Superintendent of Schools. Written notice to the MEA shall be given or mailed to the President of the MEA.

The parties will meet to discuss negotiations no later than March 1, 1986, wherever possible.

PART IV - Fringe Benefits and Wages

. . .

19. WAGES AND COMPENSATION

EXHIBIT A - SALARY SCHEDULE

Bachelors	Masters
17,745	19,500
18,928	20,800
20,111	22,100
21,294	23,400
22,477	24,700
23,660	26,000
24,843	27,300
26,026	28,600
27,209	29,900
28,392	31,200
29,575	32,500

20. TRAVEL PAY

A. Full-time teachers who are assigned to teach in and travel daily to two (2) or more buildings will be compensated at the rate of Three Hundred Dollars ($300) per year.

B. Teachers shall be allowed mileage at the rate of Twenty and one-half cents (20.5¢) per mile for travel outside the District or for making home calls.

21. EXTRA-CURRICULAR ACTIVITIES AND COMPENSATION

A. Definition. Extra-curricular activities are those activities performed outside the regular school day which involve direct student contact as shown in Exhibit "B".

B. Compensation.

1. Extra-curricular compensation may be made in one payment at the end of the season or activity. The amount of payment may be pro-rated.

2. Stipends for intramurals and publications are to be allocated by the teachers involved and the building administration.

3. Compensation shall be as set forth in Exhibit "B" for the 1985-1986 school year.

4. The extra-curricular pay schedule is based on compensation for services in addition to regular school day employment for the 1985-1986 school year sports and activities seasons.

C. Adjustments. Extra-curricular pay will be reviewed annually to make adjustments of pay parity or equity for girls' coaching positions based on changes in factors and elements of particular coaching assignments.

and that this salary provision along with certain other provisions was made retroactive to July 1, 1985.

17. That prior to the expiration of their 1985-1986 agreement, on June 30, 1986, the parties initiated bargaining over a successor agreement; that on June 10, 1986, during negotiations for a successor agreement, the District proposed the following salary options:

EXHIBIT A - Option I

B. The current salary format will be retained; however, there will be no additional increases in salary other than what is provided in the step increments. Those teachers at the top of the Bachelors and Masters columns will receive no increase in salary.

EXHIBIT A - Option II

B. The total monies generated by the built-in step increments will be equally divided among all staff members.

Those teachers not previously compensated for a Masters Degree will qualify for $1,100 upon completion of an approved Masters Degree as per Part III, 5, A.

that the proposals made as Option I and Option II were promptly rejected by the Association; that the District made no furher offers which included a step increment; that these events took place prior to the commencement of the 1986-1987 school year; and that the parties were unable to resolve their dispute informally with respect to a successor agreement and once again initiated the mediation/arbitration procedure.

18. That on September 10, 1986, the parties submitted bargaining proposals to the Wisconsin Employment Relations Commission, with the District's proposals reflecting a return to the single column salary structure in existence prior to Fleischli's award; and that the Association's proposal, submitted to the Wisconsin Employment Relations Commission on September 10, 1986, contained a traditional salary schedule.

19. That on July 16, 1986, Richard Terry, Executive Director of the Kettle Moraine UniServ Council, bargaining representative for the Association, wrote to Spindler asserting that the Association's position with respect to the payment to teachers of salary increments during the 1986-1987 school year, based on the parties' 1985-1986 collective bargaining agreement and unresolved negotiations over a successor thereto, required that the District pay such increments:

Dear Mr. Spindler:

The purpose of this letter is to confirm the understanding relative to the payment of the increment (step advancement) of the Manitowoc Public School District employees covered by the Collective Bargaining Agreement.

As we discussed earlier this summer, it is the position of the Manitowoc Education Association that all employees covered by the Collective Bargaining Agreement are entitled to advancement on the salary schedule beginning with the 1986-1987 school year. This position is supported by the WERC decision in School District of Webster, WERC Dec. No. 21312-B (8/85), received September 20, 1985. This decision quotes extensively from the Commission's decision in Wisconsin Rapids Schools, WERC Decision No. 19084-C (3/85), which is the other pronouncement on the issue of payment of increments during a hiatus between contracts. Since the employer's current proposal for a salary increase for the 1986-1987 year consists of payment of the increment, the Association assumes that increment will be forthcoming regardless of whether a settlement is reached between the parties. If this does not comport with your understanding, please contact me at your earliest covenience so that we may discuss this further.

Thank you for your attention to this matter. If you have any questions or concerns, please feel free to contact me.

20. That in response to Terry's letter as set forth in Finding of Fact 18, the District's attorney, John Spindler replied on August 4, 1986, as follows:

> Dear Mr. Terry:
>
> This is in reply to your letter of July 16, 1986, with respect to the payment or nonpayment of a step increment by the Manitowoc Public School District should a hiatus continue to exist into the next school year, which seems likely.
>
> The Board of Education of the Manitowoc School District has been fully advised as to the WERC Decisions referred to in your letter involving the school district of Webster and also the school district of Wisconsin Rapids Schools. Thre are other cases. Namely, the Plum City School District and also the Tomorrow River School District.
>
> All of these cases are grounded on the prior history of the school district in granting a step increase or not granting a step increase.
>
> The Manitowoc School District has a unique situation. We have not had a step increase since the beginning of the collective bargaining agreement for 1981-82. There is no recent history on step increases during the hiatus period since we have not had step increases.
>
> Prior to 1981-82, the school district was on a calendar year contract rather than a school year contract. We had step increases, but they were always in place. In the several years prior to the entering into of a no step type salary schedule, again there is no history of granting or withholding step increases during hiatus which would set a precedent in the Manitowoc Public School District situation.
>
> The collective bargaining agreement itself is silent as to what should be done. This being the case and since there is no bargaining history, it seems that the Manitowoc Public School District would be justified in refusing to grant a step increase to teachers returning to the school district this fall if a collective bargaining agreement is not in place calling for a step increase.
>
> So far as I am able to determine, this fact situation is without precedent.
>
> If the force of the WERC Decisions is that the "status quo" should be maintained following the expiration of a collective bargaining agreement, the status quo does not provide for the implementation of a step increase since that has not been the bargaining history.
>
> You make reference to the Board's proposal for a salary increase for the 1986-87 school year. As you know, the Board made an alternative salary proposal. It was either the step increase on the present salary format and nothing more or using the same number of dollars a step increase would generate and distributing this sum equally among the teaching staff.
>
> At our last bargaining session, both of these alternatives were rejected. However, all of this is immaterial. In the WERC cases referred to above, a step type salary format was expected by both parties.
>
> To answer your letter, the Manitowoc Public School District will not grant a step increase if no agreement is reached prior to the commencement of the next school year.

21. That in response to teacher demands for payment of salary increments for the 1986-1987 school year, Board Member Kaminski expressed objections, as reported in a September 10, 1986, story in the Manitowoc Herald-Times Reporter:

> Manitowoc school teachers should not expect the automatic increment in their salaries in the 1986-87 school year just because they received it in the 1985-86, one school board member said at Tuesday's Board of Education meeting.
>
> In response to a number of letters and telephone calls he has received, board member Ron Kaminski said he objected to the allegations that the school board failed to live up to its part of the bargain. That is, to go ahead with an automatic increase step in teachers' salaries based on the 1985-86 school year.
>
> Teachers received an automatic step increase last year as part of the arbitrator's decision, but that does not mean it should or will be put into effect this school year, Kaminski said.
>
> "The increment was for one year and one year only," Kaminski argued. "Every single teacher has been paid 100 percent (of what was owed him) ...We are not compelled legally or otherwise to give the automatic increment unless...we agree to do so."
>
> Kaminski said he has a hard time accepting the fact the teachers have argued they are due the increment this year, especially since they have asked for an 8.6 percent increase in pay this year and then again next year.
>
> "That means as (sic) $2,300 average increase this year and $2,500 next year," Kaminski said. "We have to exercise restraint and responsibility. This community is suffering more so than any other community in Wisconsin. To unilaterally ask us to be bound by something we are not legally bound to is (unfair)."
>
> School Board president Peter DeZeeuw said the average salary last year was $26,781. With the average increment increase of $1,105, the average teacher's salary totaled $27,886.

22. That consistent with the position of the District expressed in Spindler's letter as set forth in Finding of Fact 19, and Kaminski's statement of position as set forth above in Finding of Fact 20, the District has not paid teachers any of their vertical salary increments for the 1986-1987 school year.

23. That the District has, however, moved at least one employe horizontally, on August 22, 1986, based upon increased educational credit, pursuant to the terms of the salary schedule in the expired agreement.

24. That the parties' 1985-1986 collective bargaining agreement expired by its terms on June 30, 1986; that the parties have not agreed to voluntarily extend the provisions of their 1985-1986 collective bargaining agreement beyond its expiration date; that since the 1985-1986 collective bargaining agreement expired, the parties have been engaged in negotiations over a successor agreement; that among the issues unresolved in the parties' negotiations over a successor to their 1985-1986 collective bargaining agreement is the amount of salary each teacher

26. That the District by its refusal to pay teachers who were employed by the District in the 1985-1986 school year and returned to teach in the 1986-87 school year, vertical step increments as contained in the expired 1985-86 collecrive bargaining agreement during the contractual hiatus following the expiration of the parties' 1985-86 collective bargaining agreement unilaterally altered the status quo.

27. That on March 13, 1986, Terry served a request on District Superintendent Vernon Childs for specific information in the possession of the District which he claimed was needed by the Association for negotiations for a successor to the parties' 1985-1986 agreement, including the following items: (1) Census data for all employes, including their names, sex, annual salary, date of birth and whether or not each person so listed was in or not in the collective bargaining unit represented by the Association, said data to be linked to employe name insofar as possible; (2) the term of duration of the health insurance agreement affecting bargaining unit members; (3) the numbers of bargaining unit employes enrolled in the single or family insurance plans for the duration of the health insurance plan; (4) the premium amounts for each of the insurance plans carried by the carrier; (5) the incurred losses for the appropriate time periods and an indication of the portion of such total losses which represented paid losses, reserves, and major medical expenses; (6) the expense factor the current carrier was using for each of the described plans; (7) a copy of the plan description for each of the described plans.

28. That on March 19, 1986, Association Negotiator Gary Bents made a request for information from Childs similar to the request made by Terry set forth above in Findings of Fact 26.

29. That Childs, by memo dated April 10, 1986, forwarded to Bents, a list of the birthdates for all male and female employes of the District, but did not provide names of the individuals for whom the birthdates were listed nor whether said individuals were members of the Association's bargaining unit; and that Childs did provide the Association with a copy of the teachers' salary schedule with numbers handwritten beside each salary figure, purporting to indicate how many bargaining unit members wer being paid each salary, but that again, no names were provided to indicate who individually was earning what amount.

30. That on May 15, 1987, Childs sent the following letter to Terry:

> In answer to your letter of March 13, we respond as follows:
>
> 1. We have previously furnished to Gary Bents the sex, salaries, and dates of birth of all bargaining unit members.
>
> 2. The term of the current insurance agreement is July to July.
>
> 3. Number of bargaining unit employees enrolled in the single and family insurance plans:
>
> | Health Insurance | | Dental Insurance | |
> |---|---|---|---|
> | Single | 54 | Single | 48 |
> | Family | 174 | Family | 171 |
>
> 4. The monthly premium for each of the plans is as follows:
>
> | Health Insurance | | Dental Insurance | |
> |---|---|---|---|
> | Single | $ 55.94 | Single | $ 10.81 |
> | Family | 155.40 | Family | 31.59 |
>
> Long Term Disability:
>
> $7.92 per teacher per month

Life Insurance:

Age	Per $1,000.
under 35	.09
35-39	.12
40-44	.21
45-49	.30
50-54	.48
55-69	.60

5. The information requested at your paragraph 5 is not available.

6. The request for the "expense factor" is obviously for the purpose of having a competing carrier quote on this coverage. It is not necessary for a competing carrier to know this in order to make a quotation. In fact, it would put such carrier in an unfair position. When data of this type was requested from the WEA Trust some years ago, it was flatly refused.

7. So far as copies of the plan descriptions, certificates for booklets, I believe Gary Bents has this data. If he does not, have him contact me and we will give him that which he does not have.

31. That on August 4, 1986, Spindler responded to an oral request from Terry as follows:

> At the last negotiation session with the MEA, you requestred the same data that you asked for in your letter dated March 13, 1986, addressed to Dr. Childs.
>
> In enclose a copy of your letter of March 13, 1986, and also the answer to that letter dated May 15, 1986, and also material previously furnished to Gary Bents.
>
> These enclosures show the birthdates for all male and female employees in the bargaining unit.
>
> They also show the number of teachers in each salary classification. The enclosures also give you the insurance data which was requested in your letter of March 13th.
>
> The administration does not have the type of listing you requested at our last negotiations session linking an individual's name with the other data.

32. That contrary to the representation in Spindler's letter of August 4, 1986, the District does possess documents linking individual employes' names with their salaries and birthdates.

33. That, not being satisfied with the information provided herein, the Association included allegations with respect to this alleged failure on the District's part to furnish the requested information in the instant complaint.

34. That the parties entered into a post-hearing stipulation which was intended to replace all of the failure to provide information allegations in the Association's complaint; that said stipulation is as follows:

STIPULATION

> The Manitowoc Education Association and the Manitowoc Public School District are parties to the above-captioned prohibited practice proceeding. The Association and the

District jointly desire to clarify their mutual obligations with respect to the District's duty to furnish relevant information upon request to the Association under the Municipal Employment Relations Act (MERA), sections 111.70 et seq., in order to improve their bargaining relationship and avoid future litigation. Accordingly, the Association and the District jointly stipulate and agree to authorize the Examiner in the above-captioned matter to consider and decide (subject to each party's right to appeal the Examiner's rulings to the Wisconsin Employment Relations Commission) whether the District is obligated under the provisions of the MERA to provide the information listed below to the Association upon request. In ruling on whether the District has a duty to furnish the information listed below to the Association under the MERA, the Association and the District stipulate and agree that the Examiner shall (1) consider the entire record presented by the parties at the hearing in the above-captioned case, including the testimony of witnesses, exhibits and statements of counsel for the parties, and the briefs to be filed in this case by the Association and the District; (2) assume that the Association has requested from the District at the hearing in this case all of the information listed below, that the reasons for the Association's requests and its explanation of the relevance of the requested information to the Association's bargaining and contract administration functions are as expressed and set forth in the hearing record, and that the authority asserted by the Association for the District's obligation to provide the Association with the requested information is the provisions of section 111.70 et seq.; and (3) assume that the District contests the Association's position that the District is required to furnish the information listed below, upon request, under the provisions of section 111.70 et seq., and that the explanations for the District's position that it is not obligated to furnish the information listed below to the Association are as set forth and contained in the hearing record. The Association and the District will set forth their respective legal arguments and authorities in support of their respective positions in the briefs to be filed with the Examiner.

As part of this stipulation, the Association agrees to waive all remedies with respect to the Examiner's ruling concerning the information request issues involved in the above-captioned case and to withdraw all of the allegations of its prohibited practice complaint related to the District's alleged refusal to provide information to the Association upon request.

The following are the items of information requested by the Association from the District and concerning which an Examiner ruling is hereby mutually sought by the Association and the District:

1. A list of the names of all of the employees of the District (bargaining unit and non-unit), specifying for each named employee, that employee's job position, percentage of full-time employment worked, and the District's position as to whether or not the named employee is in the bargaining unit represented by the Association.

2. A list of the names of all bargaining unit employees employed by the District, specifying for each named employee that employee's (a) sex, (b) birthdate, (c) annual salary, (d) percentage of full-time employment worked, (e) job position/title, (f) academic degrees held and educational level (e.g., B.A., M.A., B.A.+12), (g) number of years of teaching experience with the District, and (h) extra-curricular assignments.

(It is the intent of the Association's information request that the individual employee data listed above (a) - (h), be identified for each named bargaining unit employee, so that the Association can identify all of the requested data for each individual employee. The Association's information request does not assume that all of the listed individual employee data be furnished by the District on a single document. If the form in which this information is stored and maintained by the District makes the furnishing of this information in several documents more efficient or economical for the District, the Association's information request should be understood to permit such multiple documents. The two essential components of this Association information request are that the individual employee data listed in (a) - (h) be provided for each bargaining unit employee, and that the individual employee's name be connected with each of the listed data items.)

3. For a relevant period of time to be specified by the Association (e.g., a school year, a fiscal year, etc.), the number of bargaining unit employees enrolled in the District's family health insurance plan.

4. For a relevant period of time to be specified by the Association (e.g., a school year, a fiscal year, etc.), the number of bargaining unit employees enrolled in the District's single health insurance plan.

5. For a relevant period of time to be specified by the Association (e.g., a school year, a fiscal year, etc.), the number of bargaining unit employees enrolled in the District's family dental insurance plan.

6. For a relevant period of time to be specified by the Association (e.g., a school year, a fiscal year, etc.), the number of bargaining unit employees enrolled in the District's single dental insurance plan.

7. For a relevant period of time to be specified by the Association (e.g., a school year, most recently completed fiscal year, most recently completed fiscal quarter, monthly, etc.), the actual District expenditures per bargaining unit employee required to provide the benefits of the District's family health insurance plan. (If accurate, this information can be stated as the relevant insurance premium paid by the District.)

8. For a relevant period of time to be specified by the Association (e.g., a school year, most recently completed fiscal year, most recently completed fiscal quarter, monthly, etc.), the actual District expenditures per bargaining unit employee required to provide the benefits of the District's single health insurance plan. (If accurate, this information can be stated as the relevant insurance premium paid by the District.)

9. For a relevant period of time to be specified by the Association (e.g., a school year, most recently completed fiscal year, most recently completed fiscal quarter, monthly, etc.), the actual District expenditures per bargaining unit employee required to provide the benefits of the District's family dental insurance plan. (If accurate, this information can be stated as the relevant insurance premium paid by the District.)

10. For a relevant period of time to be specified by the Association (e.g., a school year, most recently completed fiscal year, most recently completed fiscal quarter, monthly, etc.), the actual District expenditures per bargaining unit employee required to provide the benefits of the District's

single dental insurance plan. (If accurate, this information can be stated as the relevant insurance premium paid by the District.)

11. With respect to each of the group insurance plans provided by the District through third-party administrators, the monthly deposit or payment made by the District to each third-party administrator, the quarterly total of such deposits or payments, and the annual total of such deposits or payments.

12. With respect to each of the group insurance plans provided by the District and for which the District purchases stop-loss insurance protection/coverage, the identity of the stop-loss carrier, a copy of the stop-loss insurance agreement between the District and the carrier, and the monthly, quarterly and annual stop-loss insurance premiums paid to that carrier by the District.

13. With respect to each of the gorup insurance plans provided by the District through third-party administrators, the amounts paid or contributed monthly, quarterly and annually by the District to the third-party administrator for the purposes of establishing and maintaining financial reserves with respect to each said group insurance plan.

14. With respect to each of the gorup insurance plans provided by the District through third-party administrators, the total amount of incurred claims of bargaining unit employees paid by the plan (or third-party administrator), for a relevant period of time to be specified by the Association (e.g., most recently completed fiscal year, most recently completed fiscal quarter, monthly, etc.).

15. With respect to each of the gorup insurance plans provided by the District through third-party administrators, the amount of any end-of-plan-year "settlement payment" (see hearing transcript, pp. 88-89) paid by the District to the third-party administrator.

16. A list identifying and describing all programs (in addition to the group insurance plans) funded, in whole or in part, by the District out of the reserves established and maintained with respect to the District's group insurance plans provided through third-party administrators, and specifying for each such program the monthly and annual costs of that program funded from the insurance plan reserves.

35. That in its post-hearing brief, the District urged the Examiner not to make any determinations with respect to specific information which the District, at hearing, stated it was now willing to supply; and that the Association, in its reply brief, urged the Examiner to abide by the stipulation in its entirety or to reinstate the failure-to-furnish-information allegations in the complaint.

36. That the post-hearing stipulation is not ripe for adjudication; and that consideration of the duty-to-furnish-information allegations is appropriately before the Examiner for consideration.

37. That the census data requested by the Association including name, sex and date-of-birth, and salary for all bargaining unit employes linked with the names of the specific employe is relevant to the Association's responsibilities with respect to contract negotiation; and that the District refused to provide said information up to the date of the hearing.

38. That the names and positions of all employes of the District is data relevant to bargaining and contract enforcement, but that the District has not refused to provide this information.

39. That the Association, by means of seniority and fair share/dues deduction lists along with the District's comprehensive all-employe directory, possesses sufficient information to ascertain whom the District considers to be included in or excluded from the bargaining unit.

40. That the Association failed to establish the relevancy of sex and date-of-birth data for nonbargaining unit employes.

41. That wage information for nonbargaining unit employes is relevant to contract negotiation; and that the District has refused and continues to refuse to provide said information.

42. That copies of the insurance plan descriptions are relevant to negotiations, but that the Association has not proven that the District refused to provide copies of the insurance plans to the Association.

43. That the information requested by the Association with respect to the expense factor being utilized by the current carrier for each of the insurance plans including the actual cost of the stop loss insurance, and the administrative costs to the District by the third party administrator is relevant to negotiations; and that the District has failed and refused to provide and continues to refuse to provide said information to the Association although this information is in its possession.

44. That the insurance information requested by the Association with respect to incurred losses for appropriate time periods, and an indication of the total losses with a break-down of the portion of such total losses which represented paid claims or paid losses, reserves, and major medical expenses is relevant to contract negotiation; that the District possesses or has easy access to said information; that the District has not attempted to segregate out claims made and paid to bargaining unit employes from the claims of all District employes covered by the District's insurance plan; that the District failed and refused to provide information on the reserves and total claims until the date of the hearing; and that it has failed and refused and continues to refuse to provide total paid claims information for bargaining unit employes only.

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

CONCLUSIONS OF LAW

1. That the District, by its failure and refusal to pay teachers who were employed by the District in the 1985-86 school year and returned to teach in the 1986-87 school year vertical step increments as contained in the expired 1985-86 collective bargaining agreement during the contractual hiatus following the expiration of said agreement, unilaterally altered the status quo and therefore committed and continues to commit a unilateral change and refusal to bargain prohibited practice in violation of Sec. 111.70(3)(a)4 and 1 of MERA.

2. That the District by failing and refusing until the date of hearing to provide certain census data to the Association in a form so that the sex, date-of-birth, and salary information for each bargaining unit employe can be ascertained committed a refusal to bargain in good faith within the meaning of Sec. 111.70(1)(a), Stats., and therefore committed a prohibited practice in violation of Sec. 111.70(3)(a)4 and 1 of MERA.

3. That the District has not refused to provide requested information with respect to the names and positions of all of its employes and its position as to whether said employes are properly included or excluded from the bargaining unit; and therefore, has not committed a prohibited practice with respect to this requested information in violation of Sec. 111.70(3)(a)(4) and 1 of MERA.

4. That because the Association has failed to establish the relevancy of the requested sex and date-of-birth information for nonbargaining unit employes, the District by its continuous refusal to provide this data has not committed a refusal to bargain in good faith prohibited practice in violation of Sec. 111.70(3)(a)4 and 1 of MERA.

5. That the District by its continuous refusal to provide relevant wage information for nonbargaining unit employes, has committed and continues to commit a refusal to bargain in good faith prohibited practice in violation of Sec. 111.70(3)(a)4 and 1 of MERA.

6. That because the Association has not proven that the District refused to provide copies of the insurance plans it requested, the District has not committed a refusal to bargain in good faith prohibited practice with respect to this information in violation of Sec. 111.70(3)(a)4 and 1 of MERA.

7. That the District by its continuous failure and refusal to provide information with respect to the expense factors in the various insurance plans, including the information as to the actual price of the stop-loss insurance purchased by the District and the administrative costs charged by the third party administrator, has committed and continues to commit a refusal to bargain in good faith prohibited practice in violation of Sec. 111.70(3)(a)4 and 1 of MERA.

8. That the District by failing and refusing up to the date of the hearing to provide insurance information with respect to incurred losses, including reserves and total claims paid for all of its employes included in the current insurance plans committed a refusal to bargain in good faith prohibited practice in violation of Sec. 111.70(3)(a)4 and 1 of MERA.

9. That the District by continuously failing and refusing to provide insurance information as to total claims paid with respect to bargaining unit employes only has committed and continues to commit a refusal to bargain in good faith prohibited practice in violation of Sec. 111.70(3)(a)4 and 1 of MERA.

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

ORDER 1/

IS IS ORDERED

1. That the allegations in the complaint alleging that the District failed and refused to provide the names and positions of all its employes, the age and sex data for nonbargaining unit employes, the District's position on inclusion or exclusion from the bargaining unit for each of its employes, and the copies of current insurance plans, be and hereby are dismissed.

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 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.

2. That the District, its officers and agents shall immediately:

A. Cease and desist from

(1) Refusing to bargain in good faith by failing to maintain the status quo by not granting its eligible employes the vertical step increment in accordance with the salary schedule contained in the expired agreement.

(2) Refusing to bargain collectively with the Association as the exclusive bargaining representative of certain employes of the District by refusing to provide said labor organization, when requested to do so, with information reasonably necessary to the Association's bargaining duties and contract administration, including census data linking names, sex, date-of-birth and wage information for bargaining unit employes, wage data for nonbargaining unit employes, insurance data, especially the expense factors in the various insurance plans and the breakdown of total incurred losses, including reserves, total claims paid for all employes covered by the plans as well as total claims paid for bargaining unit employes only.

(3) In any like or related manner interfering with, restraining or coercing employes in the exercise of rights guaranteed under Sec. 111.70(2), Stats.

B. Take the following affirmative action which the Examiner finds will effectuate the purpose of the Municipal Employment Relations Act:

(1) Immediately pay all teachers who, at the beginning of the 1986-87 school year were eligible to receive a vertical increment step increase pursuant to the salary schedule in the expired agreement, interest at the rate of 12% per year on the amounts due them commencing upon the first day of the 1986-87 school year.

(2) Timely provide the Association with the information it requested above which was found to be relevant and necessary to collective bargaining and furnish upon request in the future all information relevant and necessary to bargaining or contract administration.

(3) Notify all employes by posting in conspicuous places where bargaining unit employes are employed and other notices to employes are usually posted, copies of the Notice attached hereto and marked "Appendix A." Such copies shall be signed by the District's administrator and shall be posted immediately upon receipt of a copy of this Order for sixty (60) days thereafter. Reasonable steps shall be taken to insure that said Notice is not altered, defaced or covered by other material.

(4) Notify the Wisconsin Employment Relations Commission in writing within twenty (20) days following the date of this Order as to what steps have been taken to comply herewith.

Dated at Madison, Wisconsin this 20th day of October, 1987.

By _____
Mary Jo Schiavoni, Examiner

"APPENDIX A"

NOTICE TO ALL 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, absent impasse, unilaterally change the method of advancing teachers on the salary schedule contained in the expired agreement.

2. We will make whole bargaining unit employes represented by the Manitowoc Education Association for losses incurred by reason of the above action by payment of interest at the rate of 12% on amounts wrongfully withheld.

3. We will upon timely request furnish to the Manitowoc Education Association all information it seeks that is relevant and necessary for contract negotiations or contract administration, including census data for individual bargaining unit employes, wage information for nonbargaining unit employes and certain information relating to the insurance plans currently in effect as it applies to both bargaining unit and nonbargaining unit employes.

4. We will not in any other or related manner interfere with the rights of our employes pursuant to the provisions of the Municipal Employment Relaitons Act.

Dated this _____ day of _____ , 1987.

By _____
for Manitowoc Public School District

THIS NOTICE MUST BE POSTED FOR SIXTY (60) DAYS FROM THE DATE HEREOF AND MUST NOT BE ALTERED, DEFACED OR COVERED BY ANY MATERIAL.

MANITOWOC SCHOOL DISTRICT

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Introduction

The parties both agree that the case presents essentially two separate issues for determination. The first issue relates to the District's refusal to pay vertical step increments during the contractual hiatus period following the expiration of the 1985-86 agreement. The second issue involves the District's obligation, if any, to provide certain types of information to the Association as the exclusive bargaining representative of certain employes employed by the District. Each issue will be treated separately.

Status Quo

Position of the Parties:

The Association argues that the specific facts of the instant dispute will establish that continuation of the payment of vertical step increments was and is part of the status quo and that the District's failure to pay the vertical step increases is a violation of Sec. 111.70(3)(a)4 and 1, Stats. The main thrust of the Association's argument with respect to the status quo issue is that the expired compensation plan, by its terms, and as clarified by bargaining history, clearly provides that employes should receive vertical increments during the contractual hiatus at the beginning of the school year based upon their having gained another year of experience. The Association argues that the compensation plan in the expired agreement, a matrix consisting of two vertical columns of twelve steps each with the vertical columns representing the Bachelors Degree and Masters Degree levels of educational achievement, is a salary system rather than a singular set of salaries. It bases its contention on the accompanying language in the agreement which provides that "all employes . . . shall be paid according to the salary schedule." This language, it argues, in plain terms establishes a salary system. This interpretation of the above language is further supported, it maintains, by both past practice with respect to the parties' historical treatment of wages and recent bargaining history leading up to the 1985-86 agreement.

With respect to past practice, the Association readily admits that prior to the 1985-86 contract, the parties had a different method of compensation which expressly rejected the concept of a salary schedule and teacher payment premised on years of experience or educational degree. This history, it claims, clearly demonstrates that the parties understood and distinguished between a compensation plan which merely established a singular set of salaries for the term of the agreement and a compensation schedule which contemplates increases for education and experience.

Stressing the bargaining history leading up to the 1985-86 agreement, the Association asserts that both parties understood that the salary compensation plan ultimately selected by the arbitrator and incorporated into the agreement was a system of salaries dependent on experience and education, and providing for "automatic" or "built-in" increases based upon increases in education and experience. The Association claims that the District is required, despite its strenuous arguments to the arbitrator and opposition to the award rendered, to continue the compensation plan selected by the arbitrator as part of the status quo unless or until it succeeds in bargaining a change in that compensation system or in obtaining said change through interest arbitration. Based upon the factual bargaining history and language of the agreement, the Association stresses that the fact that there has been no recent history of step increases during the hiatus is irrelevant to a determination of what constitutes the status quo in the instant dispute. Noting that there have been no hiatus periods in the past, the Association contends that there is no historical past practice and that this factor is simply not useful in analyzing the instant dispute. The Association also urges the Commission to find the District's proposal for a successor agreement to be irrelevant as to what constitutes the status quo during bargaining.

The District, on the other hand, argues that because there is no history or past practice of granting or not granting a step increase during any hiatus period, and because the bargaining history clearly demonstrates that the parties, by agreement, retained a "no-step salary compensation plan" until the most recent agreement, the automatic vertical step increases claimed by the Association are not part of the status quo. The District admits that it and its counsel clearly understood that a step increase was intended and expected for succeeding years by the Association as a result of the 1985-86 arbitration award. The District, however, argues that notwithstanding this understanding, a finding by the examiner that the teachers should have been offered a vertical step increase at the beginning of the 1986-87 school year would result in granting a salary to employes which might be contrary to the ultimate award rendered by an interest arbitrator on the successor agreement. According to the District, such an award, would not be based upon any past practice.

The District stresses that there has been no dynamically ongoing salary compensation arrangement in any year from 1981 through 1985. The District stresses that the Fleischli award was implemented retroactively with no step increase being granted to teachers in September of 1985 as a result of the implementation of the schedule. It points out that teachers were merely placed on the schedule at that time. The District contests the Association's assertion that the language is supportive of the Association's position. It claims this allegation of the complaint should be dismissed.

DISCUSSION:

The parties in the instant case do not dispute that the District was obligated to maintain the status quo during the hiatus period between the expiration of the 1985-86 agreement and an agreement upon a successor contract. Rather, the parties, like the parties in School District of Plum City, 2/ disagree as to what constitutes the status quo in the instant case. Consequently, they disagree as to what obligation, if any, the District has at the start of the 1986-87 school year to compensate teachers for vertical movement on the salary schedule contained in the expired 1985-86 collective bargaining agreement under the particular facts presented.

While at least one Commissioner, Chairman Schoenfeld, rejects the concept of the dynamic status quo previously ennunciated 3/ in the Wisconsin Rapids 4/ and School District of Webster, 5/ decisions, nevertheless all three Commissioners still look to the language in the expired agreement along with the bargaining history of the parties as it relates to this language and the parties' past practice in determining exactly what the status quo is in any given case. 6/

Although the Commissioners may disagree as to the appropriate analysis to be employed in determining the status quo in salary and compensation plan cases, their recent decision in Sun Prairie Joint School District No. 2 makes it clear that all three Commissioners look at the same three factors:

> As we have previously indicated, status quo determinations are to be made on a case-by-case basis after examination of the parties' language, past practice and bargaining history. While the Examiner correctly noted that no form or method of compensation is excluded from the employer's obligation to maintain the status quo, it does not follow that application of the parties' language, past practice and bargaining history to each form of compensaion

---

2/ School District of Plum City, Dec. No. 22264-B (WERC, 6/87).

3/ Ibid. at p. 12.

4/ School District of Wisconsin Rapids, Dec. No. 19084-C (WERC, 3/85).

5/ School District of Webster, Dec. No. 21312-B (WERC, 9/85).

6/ School District of Plum City, supra,; Kenosha County, Dec. No. 22167-D (WERC, 7/87) and Sun Prairie Joint School District No. 2, Dec. No. 22660-B (WERC, 7/87).

> must produce consistent "pay all or nothing" results. Each form or method of compensation at issue must be separately examined and if warranted by differing language, past practice or bargaining history, different status quo results may be reached. . . . 7/

In Sun Prairie, 8/ the Commission then went on to analyze the District's status quo obligation to make COLA payments in light of these factors.

Turning to the instant dispute, the language in the expired agreement does not expressly address the effects of or the continuation of the contract terms upon expiration of the agreement. Part I, Article 11, states that the agreement shall continue in force and effect for the 1986-87 school year unless either party gives written notice of intent to terminate or modify the contract on or before March 1, 1986. It does not cover what terms of the agreement continue should either party desire to modify or terminate the agreement. Part IV, Article 19 simply provides that all employes covered by the contract "shall be paid according to the salary schedule attached as Exhibit A (Salary Schedule)." It further states that "no new employe can be paid more than a current employe of the same degree and years of exerience."

While the first sentence of Article 19 is somewhat vague, providing essentially for pay in accordance with the salary schedule attached; the existence of the grid itself with vertical increments supports an inference of anticipated movement. The language contained in the second sentence buttresses this conclusion because it speaks to the placement of new teachers in such a manner so that they will not exceed a current employe with the same educational degree and years of experience. When the bargaining history is coupled with this second sentence in Article 19, it is evident that Appendix A represents a traditional teacher schedule with provisions for both vertical and horizontal placement upon the grid depending upon years of experience (vertical lanes) and educational achievement (bachelor or master degree horizontal lanes).

Nevertheless, this language in and of itself does not unambiguously establish when the movement is to occur or if the schedule itself is to remain in effect although a successor agreement has not been reached. Moreover, the language itself provides no clear guidance as to whether the parties intended the grid to be considered as the ongoing salary compensation system argued by the Association or merely as a recitation of salary amounts for the contract period in question as argued by the District.

Therefore, it is necessary to look to the other two factors considered by the Commission. The parties agree that there is no applicable history or past practice of granting or not granting vertical step increments during any hiatus period which may have occurred following the expiration of previous collective bargaining agreements between the parties. This is true for the period prior to December 31, 1980, and for the time from 1981 to the expiration of the 1983-85 agreement because no traditional schedule providing for vertical increments existed from January 1, 1981 until Fleischli's award in April of 1986. The Association asserts that this nonexistence of a past practice supports its position because it demonstrates that the parties were well aware of arrangements which effectively preclude the receipt of a vertical step increment during a hiatus, having agreed to such an arrangement in the past and departed from it in the most recent collective bargaining agreement. The District, on the other hand, contends that this past practice establishes that there is no dynamically ongoing compensation arrangement whereby the District paid an increment at the beginning of any school year from 1981 up to and including September of 1985.

Notwithstanding the contentions of both parties, because of the entirely different salary arrangements in existence between the parties prior to the Fleischli award in April of 1986, past practice in the instant case does not support either party's position. Accordingly, there is no relevant evidence of past practice which would shed light on the current salary arrangement as manifested by the language in the expired agreement. Simply put, past practice is

---

7/ Sun Prairie Joint School District No. 2, supra, at 7.

8/ Ibid.

is not instructive with respect to the status quo determination in the instant dispute. 9/

Bargaining history, on the other hand, does offer, critical, if not controlling, evidence with respect to the instant dispute. The parties, by their briefs to Arbitrator Fleischli, as set forth in Findings of Fact 10 and 11 strenuously argued their respective positions with respect to the effect of built-in automatic vertical step increases. The Association made it clear that it desired the increment so that employes would receive it during a contract hiatus. The District strenuously objected to a return to a schedule with built-in or automatic step increases. Moreover, in anticipation that such a schedule would be dynamically ongoing for the 1986-87 school year (a year not included in the current agreement being arbitrated), it argued that the vertical step increases to be implemented under the Association offer would cost the District $275,347 for 1986-87. In its brief to this Examiner, the District stated "there is no question but that the Manitowoc Board of Education and its counsel understood clearly that a step increase was intended and expected for succeeding years by the Manitowoc Education Association as a result of the arbitration award of Arbitrator Fleischli."

The District's statements in its briefs, especially the District argument that it would be obligated to pay a specified amount in vertical increments to employes even after the expiration of the agreement, leads to the inescapable conclusion that the District understood the Association's compensation proposal to the arbitrator to be "dynamically ongoing" and that the vertical increments set forth therein were to be part of the ongoing status quo. Furthermore, because the District was very aware that it might in future final offers propose totally different salary compensation arrangements such as a return to the pre-Fleischli arrangement in existence, its vehement opposition to "automatic built-in vertical increases" must have been premised upon District fears as to a continuing obligation during a contractual hiatus. Inasmuch as two Commissioners continue to ascribe to the dynamic status quo doctrine, a violation has been found herein.

Nevertheless, under the facts presented herein, it is equally apparent that under Chairman Schoenfeld's theory of status quo determination, a violation would not be found because the expired agreement does not contain any provision directly addressing payments during a hiatus, and bargaining history where, as here, an arbitrator has imposed the terms of the salary compensation arrangement upon the parties and there is no applicable past practice, would not suffice in and of itself to meet the clear and satisfactory preponderance of evidence standard claimed necessary for the Association to meet its burden of proof.

In response to District arguments that the Examiner in finding a violation is granting an award which has not been agreed to and which might be contrary to the ultimate final offer selected by an arbitrator, a majority of the Commission has already addressed this argument. It said in School District of Webster:

> We reject the Examiner's view that by so concluding we are "taking wages out of the negotiations" for a successor agreement. As the Complainant persuasively argues, and as we

---

9/ The Association argues that the District is acting inconsistently by crediting at least one employe with educational advancement and moving her horizontally in August of 1986 from the bachelors to masters column. It points out that the District paid her an amount provided for in the Masters Column of the expired agreement, thus picking and choosing what aspects of the schedule it will continue to follow and what it will reject. The District argues that its action was consistent with its past practice with respect to horizontal movement. Because the granting of horizontal, i.e., educational lane changes, movement is not at issue in the instant case and the Commission in Sun Prairie Unified School District No. 2, supra, has expressly rejected the all-or-nothing approach with respect to salary compensation plans, holding that various aspects of a compensation plan must be separately examined in light of differing language, past practice, and bargaining history and that different status quo determinations may result, this evidence as to past practice with respect to horizontal movement is not relevant to the vertical increment issue herein presented.

> have previously noted in our City of Brookfield 10/ and Green County 11/ decisions, the Employer is free to propose whatever salary arrangements it deesm appropriate, and to further propose that such arrangements be given retroactive effect; but it must also maintain the status quo compensation arrangements in effect at the time the predecessor agreement expires while it is pursuing such an outcome. Rather than taking salary out of the negotiations, our outcome requires that the existing (and in this case dynamically ongoing) compensation arrangements between the parties be maintained until they are changed (retroactively or prospectively) through the bargaining process including interest arbitration. If either of the parties prefers a different status quo for possible future hiatuses, it can, of course, pursue in bargaining adjustments in the language of successor agreements to achieve such an outcome in future hiatuses. 12/

Because a majority of the Commission currently adheres to the dynamic status quo doctrine and the language as supported by the bargaining history establishes that the salary compensation arrangements with respect to vertical increments were intended to be ongoing, and because the District has offered no valid reason for its refusal to pay said increments, the District is found to have committed a unilateral change-refusal to bargain in violation of Sec. 111.70(3)(a)4 and 1, Stats.

Refusal to Furnish Information

At hearing on this issue, during presentation of the Association's case, the District agreed to provide certain items included in the request for information. It continued, however, to refuse to provide other types of information which the Association was requesting. Moreover, of the information that it was agreeing to provide, the District expressly stated that said information would be provided pursuant to Chapter 19, the Open Records Law. As a result of the change in the District's position at the time of hearing, the parties agreed to enter into a joint stipulation to replace all of the refusal-to-furnish-information allegations contained in the complaint. Such a joint stipulation was agreed to and received by the Examiner subsequent to the hearing and close of the record.

Positions of the Parties:

The Association claims that all of the requested information is necessary to carry out its obligations as the collective bargaining representative of certain employes of the District. It points out that the District acknowledges that it has most of the infomration sought in the general form requested by the Association. The Association stresses that all of the information requested is relevant to its union responsibilities in either negotiation or contract administration.

Because of the presumption of relevancy, it asserts, the burden is on the District to show that the information requested is not relevant to the Association's duties. This it cannot do because each of the items requested relates to an aspect of the current negotiations between the parties. It stresses that the District's claim that the Association has not demonstrated a need for the data is unsupported by either the facts or the applicable case law. Moreover, according to the Association, the District's contention that it should not be required to provide the Association with information it does not provide to competitor insurance companies is without basis. The Association maintains that the Examiner is authorized by the parties to determine the rights of the parties with respect to its entire request under the Municipal Employment Relations Act (MERA), notwithstanding the District's willingness to now provide some of the

---

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

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

12/ School District of Webster, supra, at 14.

information under the Open Records Law. It requests that the Examiner clarify the parties' duties and rights in this area.

The District's position varies with respect to each piece of information requested by the Association. With respect to the information which the District agreed at hearing to provide, the District now claims that a ruling by the Examiner will not be required. With respect to other items, the District contends that it partially acceded to the Association's request although not in the form requested by the Association. With respect to yet other items, the District's position is that to provide the information would be troublesome and take excessive time. Another defense raised by the District with respect to certain information is that said information is readily available to the public in another form. It argues that the Association, through other documents such as seniority lists, dues deduction list, etc., already possesses the necessary information. The position of the District with respect to providing insurance cost data to the Association is that the data which it has already provided to the Association is sufficient to obtain quotations from competing insurance companies. It maintains that if the Association was not satisfied by the data received, it should have made its dissatisfaction known upon receipt of the District's response to the request for the information.

The District, in its brief, urges the Examiner to decline to rule on those information items in the stipulation which the District at hearing expressed a willingness to provide. In light of the District's position as reflected in its post-hearing brief, the Association requests the Examiner to abide by the stipulation of the parties. Should the Examiner refuse to fully honor the stipulation, the Association asserts that it is entitled to a finding on the allegations of the complaint inasmuch as waiver of such findings was made only as a quid pro quo for the stipulation.

Discussion:

A threshold issue for determination of the refusal-to-furnish-information issues is the appropriateness of considering the parties' joint stipulation instead of the specific allegations contained in the Association's complaint. The stipulation provided that the Association and the District jointly stipulate and agree to authorize the Examiner to consider and decide (subject to early party's right to appeal the Examiner's rulings to the Wisconsin Employment Relations Commission) whether the District is obligated under the provisions of MERA to provide specific information listed elsewhere in the stipulation. The stipulation itself provides for consideration of the entire record at hearing and the briefs of the parties; an assumption that the Association requested certain specified information detailed in the stipulation and explained the reasons for and relevance of its requests as stated in the hearing record pursuant to Sec. 111.70 et. seq., Stats.; and an assumption that the District contests the Association's position as to it being required to provide said information; and that the explanations for the District's position are also contained in the hearing record. As part of the stipulation, the Association agreed to waive all remedies with respect to the Examiner's ruling on the information issues and to withdraw all of the refusal-to-furnish information allegations from its complaint.

In its brief, the District, contrary to the parties' stipulation, argues that the Examiner should not examine and determine the District's obligations, if any, under MERA, for those items which the District has, at hearing, agreed to make available to the Association. The Association, in its reply brief, upon ascertaining the District's position vis-a-vis the stipulation, maintains that the stipulation must be honored in its entirety or the relevant portions of the complaint must be reinstated for consideration.

When said stipulation is analyzed along with the applicable portions of the hearing record, it is evident that there are little or no concrete facts to underpin either the request or refusal to provide certain data. The parties, in essence, have asked the Examiner to speculate, premised upon some assumptions contained in the stipulation, facts which may never come to be. Because there is no factual underpinning to various items set forth in the stipulation, it is difficult to find that a genuine case or controversy exists with respect to those items. While this Examiner understands the parties' desire for a resolution of the District's obligation to provide the Association with certain data which it

has not yet requested, she must reluctantly conclude that these items are not yet ripe for adjudication in the context of a prohibited practice proceeding. Because certain aspects are not yet ripe for determination and because the District now seeks to retreat from the stipulation in a material respect, the Examiner declines to rule on said stipulation.

Inasmuch as the Association's withdrawal of the allegations in the complaint relating to the District's failure to furnish information and the waiver of remedies with respect to these issues was premised upon the Examiner's consideration and ruling upon the stipulation in its entirety, it is appropriate for the allegations in the complaint to be reinstated. Consideration of these allegations by the Examiner does not prejudice either party nor operate to its detriment as these issues were fully litigated at the hearing on this matter, the disputed stipulation not having been drafted nor forwarded to the Examiner until after the record in this matter had been closed.

Generally speaking, a municipal employer has a duty to provide information which is relevant and necessary to the union's responsibilities with respect to to negotiations and contract administration. 13/ To refuse to provide such information constitutes a refusal to bargain which is a prohibited practice independently within the meaning of Sec. 111.70(3)(a)4, Stats., 14/ and derivatively as interference with the rights of municipal employes within the meaning of Sec. 111.70(3)(a)1. 15/ Information relative to wages and fringe benefits is presumptively relevant to carrying out the union's duties and it is not necessary to make a case by case determination as to the relevancy of such requests. 16/

However, even where the information is clearly relevant, the union may not be entitled to said information where the employer has bona fide objections or where there is an undue burden in compilation. 17/ Moreover, the municipal employer is not required to furnish information in the exact form requested by the union and it suffices for the information to be made available in a manner not so burdensome or time-consuming as to impede the process of bargaining. 18/ On the otherhand, the costs and burdens of compilation will not justify an initial categorical refusal to supply relevant information, 19/ but the employer must assert this claim promptly at the time of the request so that the parites may bargain to lessen the burden. 20/ The courts have held that these types of cases must turn on their particular facts 21/ and whether or not the obligation to bargain in good faith has been met.

13/ Board of School Directors of Milwaukee, Dec. No. 15825-B (Yaeger, 6/79); Sheboygan Schools, Dec. No. 11990-A (Schurke, 1/76) cited with approval in State of Wisconsin, Dec. No. 17115-C (WERC, 3/82).

14/ City of Janesville, Dec. No. 22943-A (Gallagher, 3/86) aff'd by operation of law, Dec. No. 22943-B (WERC, 3/86).

15/ Ibid.

16/ Board of School Directors of Milwaukee, supra; Racine Unified School District, Dec. No. 23094-A (Crowley, 6/86) aff'd by operation of law, Dec. No. 23094-B (WERC, 7/14).

17/ Racine Unified School District, supra; see also Safeway Stores v. NLRB 111 LRRM 2745 (10th Cir. 1982); Soule Glass and Glazing Company v. NLRB, 107 LRRM 2781 (1st Cir., 1981).

18/ Racine Unified School District, supra; see also, Cincinnati Steel Castings Co., 24 LRRM 1657 (1949).

19/ Racine, supra; Oil Chemical Atomic Workers v. NLRB, 113 LRRM 3163 (D.C. Cir, 1983).

20/ Racine, supra; Shell Oil Co. v. NLRB, 79 LRRM 2997 (9th Cir., 1972).

21/ NLRB v. Truit Manufacturing Co., 351 U.S. 149 (1956).

With respect to the facts of this case it is undisputed that the Association on March 13, 1986, requested the following information:

> (1) Census data for all employees, including their names, sex, annual salary, date of birth and whether or not each person so listed was in or not in the collective bargaining unit represented by the Association;
>
> (2) A copy of the plan description for each of the described plans.
>
> (3) The incurred losses for the appropriate time periods and an indication of the portion of such total losses which represented paid losses, reserves, and major medical expenses;
>
> (4) The expense factor the current carrier was using for each of the described plans;

On March 19, 1987, it followed up with a second letter confirming its initial request. This information, basically, falls into two categories, census data and insurance information.

1. Census Data

The Association requested the following census data for all employes of the District: names, sex, annual salary, date of birth and whether the individual was a member of the bargaining unit represented by the Association. The Association requested that this information be linked with specific employes' names insofar as possible so that the names could be linked with the other census data received. The District, in response to the Association's March 18, 1986, letter, supplied lists of the birthdates for all male and all female employes of the District, but did not provide the names of the individuals for whom birth dates were listed nor whether said individuals were members of the bargaining unit represented by the Association. Similarly it provided the Association with a copy of the teachers' salary schedule with numbers handwritten beside each salary figure, purporting to indicate how many bargaining unit members were being paid each salary. It did not, however, provide any names of individual employes which would indicate what each employe was earning.

The Association claims that it needs to know the names of all of the District's employes and the District's position as to whether or not they are in the bargaining unit so that it can verify who exactly is, or should be, included in the unit. It argues that it needs the annual salary of employes linked to the name of the employe to verify that each employe is receiving the appropriate salary. It stresses that it needs the salary information connected with the birthdate information in order to intelligently discuss proposals such as voluntary early retirement and long-term disability. It points out that in order to weigh the costs versus the benefits of each proposal it must be able to link salary with birthdate and, in the case of long-term disability, also age. The Association stresses that it needs this information in such a form so that the census data could be linked with employe names for consideration in making bargaining proposals.

Childs admitted at the hearing that the District possessed all of the census information sought by the Association. He, however, maintained that there might be some problem seeking out said information and providing it because of the time it would take to compile the data. In response to questions by the Association's counsel, however, Childs admitted that he refused an Association offer to provide an Association representative to assist in the compilation of the data. Moreover, he admitted that a document linking names, ages and salaries for all employes exists and is provided to the State Life Insurance Plan. Childs, during the hearing, ultimately agreed to provide the Association with the census information it was requesting with respect to bargaining unit employes only. He continues, however, to refuse to provide said information with respect to non-bargaining unit employes. Childs testified that the District publishes and distributes to all employes and to the Union, a directory which includes names, addresses, telephone numbers and job titles of every employe in the District. Pointing to this directory and the revised seniority and fair share/dues deduction lists agreed to

annually by both District and Association representatives, Childs maintains that the Association already possesses information as to whom specifically the District considers to be appropriately included in the bargaining unit.

All of the census data requested as it applies to bargaining unit employes is plainly relevant. The courts and the NLRB have had little difficulty in finding that unions are entitled to such data under a discovery-type relevancy standard. 22/ Moreover, the information as to sex, birthdates, and salaries provided by the District is insufficient because the Association has no way of verifying that it is correct and need not be placed in a position of having to rely upon the District's assertions in this respect. 23/ The District's contention that providing said information is burdensome because it would be extraordinarily time-consuming is unpersuasive, in light of the fact that documents already exist linking names, birthdates, and salaries which are presently supplied to the current life insurance carrier. Moreover, the Association offered to help in the compilation of said information. Furthermore, the District did not assert this claim of burdensomeness promptly. The District is not obligated to render this information in exactly the form requested but it must provide the information in such a manner so that linkage between the bargaining unit employes' names and the other census data can be established. 24/

At hearing, the District agreed to provide the requested census data for the bargaining unit employes. It did not, however, provide this information when the Association requested it. Having agreed to provide this census data for bargaining unit employes at the hearing, the District now argues that this claim is moot. One of the definitions of a moot claim set forth by the Wisconsin Supreme Court is a claim where a judgement would not have any practical legal effect upon the existing controversy. 25/

In an employment discrimination case, the Wisconsin Supreme Court rejected such a finding of mootness even though the alleged discrimination had ended prior to the administrative hearing. 26/ Citing the fact that the employer had denied the complainant the job opportunity for two years, it stressed that she was entitled to know whether or not it was due to discrimination or some other cause. Moreover, the court held that if discrimination were found it could order prospective relief insofar as future employment opportunities. 27/

Adopting this rationale, at least one Examiner declined to rule that a controversy was moot where the allegation involved union restrictions on WEPA and MERA rights. 28/ She held that the complainant in that case had a legal right to known whether the action taken against him was unlawful and to ask that the respondent be directed to cease and desist from engaging in the unlawful conduct in the future. 29/

22/ Press Democrat Publishing Co., 105 LRRM 3046 (9th Cir, 1980); see also Van Leer Containers, Inc., 123 LRRM 1244 (1986).

23/ Stecker's Supermarket, Inc., 111 LRRM 1401 (1982).

24/ Soule Glass and Glazing Co. v. NLRB, supra. Cowles Communications, Inc., 69 LRRM 1100 (1968); see also Boston Record, 37 LRRM 1500 (1956); and Boston-Herold Traveler.

25/ WERB v. Allis Chalmers Workers Union, Local 248, US WA CIO, 252 Wis. 436, 32 N.W. 2d. 190 (1948); Watkins v. ILHR Department 69 Wis 2d. 782, 233 N.W. 2d. 360 (1975); see also NLRB v. Pearl Bookbinding Co., 577 F2d 1108, 89 LRRM 2614 (1st Cir., 1975)

26/ Watkins v. ILHR Department, supra.

27/ Ibid.

28/ Local 150, Service Employees International Union, Dec. No. 16277-C (Henningson, 10/80).

29/ Local 150, supra.

In the present case it is undisputed that the District failed and refused to furnish the census data for bargaining unit employes until the hearing. The Association, like the Complainant in the Local 150 case, is entitled to a finding as to whether or not such conduct was violative of MERA. Moreover, if it is determined that a violation occurred, the Association is then entitled to a remedy to insure that such conduct will not reoccur. 30/ Therefore, these allegations are not moot simply because the District now agrees to provide this information. Accordingly, it must be concluded that the District violated Sec. 111.70(3)(a)4 and 1 by failing and refusing to provide the requested census data with respect to bargaining unit employes.

The Association requested census data with respect to all of the District's employes which the District is still refusing to provide. The courts and the NLRB by-and-large have concluded that a union is entitled to certain information with respect to non-bargaining unit employes. 31/ The names and positions of non-bargaining unit employes may be relevant to verifying proper inclusion in or exclusion from the bargaining unit. Based upon Child's testimony that he has supplied the Association with a directory of all District employes and that the Association and the District have agreed to updated seniority and fair share/dues deduction lists, it must be concluded that the District has fulfilled any duty which it may have to supply this type information to the Association. From the information presented to it, the Association can determine whether disputes exist as to the inclusion or exclusion of various individuals or positions from the bargaining unit.

The Association, however, also asks for census data with respect to sex, date of birth, and wages of these non-unit employes. The Association failed to give any reason as to why it might need the sex and date-of-birth data for non-unit employes. Accordingly, because it advanced no reason for its request in this respect, the District is under no obligation to furnish this data. The Association, on the other hand, did advance a rationale for requesting the wage information of non-bargaining unit employes, i.e., to prepare for upcoming negotiations. Such wage data is presumptively relevant. 32/ It is not difficult to envision the usefulness of such data given arbitral consideration of the wages of other groups of employes employed by the same municipal employer. The District, by its continuous refusal to provide such information linked with the names of non-bargaining unit employes, has violated and continues to violate Sec. 111.70(3)(a)4 and 1 of MERA.

2. Insurance Data

The Association requested information with respect to the insurance plans covering its bargaining unit members. It requested a copy of the plan description for each of the plans, the expense factor for each plan is in effect, the incurred losses for appropriate time periods and an indication of the portion of the total losses which represented paid losses, reserves, and major medical expenses.

With respect to the plan descriptions, Childs in his letter of May 15, 1987, informed Terry that he had already provided the plan descriptions to Bents. By letter dated August 4, 1986, Spindler informed Terry that he was enclosing insurance data that Terry requested on March 13 and May 15, 1986 which had previously been furnished to Bents. Although the letters were admitted, no such enclosures, were introduced and the Association continued to request the plan descriptions up to the date of the filing of the instant complaint. Benz was called to testify with respect to other matters, but neither party asked him whether or not he had received the plan descriptions.

30/ Tomorrow River School District, Dec. No. 21329-A (Crowley, 6/64).

31/ Jaggers-Chiles-Stovall, Inc., sub nom. NLRB v. Jaggers-Chiles-Stovall, Inc., 106 LRRM 2821 (5th Cir., 1981); see also Leland Stanford Junior University, 114 LRRM 2444 (9th Cir., 1983).

32/ Leland Stanford Junior University, 110 LRRM 1275 (1982) aff'd 114 LRRM 2444 (9th Cir., 1983); see also, NLRB v. Pearl Bookbinding Co., supra.

The Association is entitled to the plan descriptions as they bear directly upon fringe benefits. However, where both Childs and Spindler maintain that they sent this information, it was incumbent upon the Association to prove that it never received the descriptions. Benz did not, in his testimony, establish that the Association did not receive this information. Therefore, the District cannot be found to have committed a prohibited practice with respect to failing to provide the insurance plan descriptions.

With respect to the expense factor which is being utilized by the current carrier for each of the insurance plans and the information on incurred losses, reserves, and major medical expenses, the District refused to furnish any of this information up to the date of the hearing. On May 15, Childs informed Terry that the information he was requesting on incurred losses was not available. Childs, in this May 15 letter, also refused to provide information on the expense factor.

At hearing, Childs agreed to provide information on the reserves. He also agreed to provide total claims paid for a given period for everyone covered by the health insurance program, but would not provide the figure for total claims paid on behalf of bargaining unit employes only segregated from the whole group. He maintains that such information is not available.

He also, refused at hearing and continues to refuse to provide the dollar amounts the District pays to the current carrier for the stop-loss insurance that it has purchased or to provide the expense factor, i.e., administrative costs, for the current carrier, although he admits that he possesses such information.

Notwithstanding Child's May 15 representation to the contrary, all of the requested insurance data, with the possible exception of claims made by bargaining unit employes only segregated from all of the District's employes covered by the plan, is in the possession of the District and is readily available. All of the requested insurance data is relevant. 33/ The Association cannot know whether the current plans are competitive or less expensive than other available plans without a breakdown of actual insurance costs, including the administrative cost to the District and the actual cost of the stop-loss insurance purchased. By failing and refusing to provide the information with respect to the expense factors in the plan, i.e., administrative costs as well as the actual purchase price of the stop-loss insurance, the District has committed and continues to commit a prohibited practice within the meaning of Sec. 111.70(3)(a)4 and 1. By failing to provide an accounting of the reserves and actual incurred losses until the date of the hearing, it also violated Sec. 111.70(3)(a)4 and 1.

With respect to the Association's request for the total paid claims on behalf of the bargaining unit employes only, the District maintains that it does not possess this information. It did concede that it could obtain said information from its third party administrator by providing the administrator with a list of bargaining unit employes. Inasmuch as the District can readily obtain such information from its third party administrator, it is obligated to do so. 34/ Therefore, the District's continuous failure to provide the paid claims information requested for bargaining unit employes only was and continues to be violative of Sec. 111.70(3)(a)4 and 1.

With respect to certain census and insurance data which the District at hearing agreed to provide, the District took great pains to state that it would provide said information pursuant to the state's Open Records Law, Chapter 19, Stats., and not in fulfillment of any bargaining obligation under MERA.

33/ Borden, Inc., Borden Chemical Div., 98 LRRM 1098 (1978); Bendix Corp., 101 LRRM 1118 (1979); and also White Farm Equipment Co., subsidiary of White Motor Corp., 101 LRRM 1470 (1979).

34/ Borden, Inc., supra, at 1100, where NLRB held that even if some of requested information was unavailable in form requested, Respondent fell short of its obligation to make a reasonable effort to obtain this information, to investigate alternative means for obtaining this information, or to explain or document the reasons for its unavailability; also John S. Swift, 44 LRRM 1388, aff'd 46 LRRM 2090 (7th Cir., 1960) where employer made no reasonably diligent effort to obtain the requested information.

Chapter 19 was designed in part to ensure employer-employe confidentiality under certain circumstances as well as the public's "right-to-know" about various functions of government. 35/ Chapter 19 must be harmonized with the clear mandates of MERA and where, as here, the requested information is relevant and necessary for the proper performance of the Association's bargaining responsibilities, Chapter 19 can not be asserted as a defense to deny the Association the requested information. 36/ The remedial order makes it clear that the District is obligated to furnish certain of the data requested by the Association pursuant to a good faith duty to bargain with the Association under MERA.

Dated at Madision, Wisconsin this 20th day of October, 1987.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Mary Jo Schiavoni
Mary Jo Schiavoni, Examiner

35/ City of Janesville, supra.

36/ Ibid.