STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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

Appearances:
Mr. Michael L. Stoll and Ms. Melissa A. Cherney, 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 and Grimstad, Attorneys at Law, by Mr. John M. Spindler, 201 East Waldo Boulevard, Manitowoc, Wisconsin 54220-2992, appearing on behalf of the Respondent.

ORDER AFFIRMING, MODIFYING AND SETTING ASIDE 1/ EXAMINER'S FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Examiner Mary Jo Schiavoni, having on October 20, 1987 issued Findings of Fact, Conclusions of Law and Order with Accompanying Memorandum in the above matter wherein she inter alia concluded that Respondent had breached its duty to bargain obligation to maintain the status quo by failing to pay vertical increments to returning teachers in September, 1986 and thereby violated Secs. 111.70(3)(a)4 and 1, Stats.; and Respondent having on November 9, 1987 timely filed a petition with the Commission seeking review of the Examiner's decision pursuant to Secs. 111.70(4)(a) and 111.07(5) Stats.; and the parties thereafter having filed written argument, the last of which was received on January 4, 1988; and the Commission having reviewed the record and being fully advised in the premises, make and issues the following

ORDER 2/

A. That Examiner's Findings of Fact of 1-7, 9, and 11-25 are affirmed.

B. That Examiner's Findings of Fact 8, 10 and 26 are hereby modified to read:

> 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 during bargaining, the Association advised the District that the Association's salary proposal included vertical increments which would produce an automatic increase in compensation based upon a teacher's years of employment and the District advised the Association that the District opposed any such salary proposal; 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:

Footnotes 1 and 2 on page 2.

1/ We have set aside those portions of the Examiner's decision which dealt with the Association's allegations regarding a refusal to supply information because the parties were voluntarily able to resolve their dispute as to said matters after the issuance of the Examiner's decision.

2/ Pursuant to Sec. 227.48(2), Stats., the Commission hereby notifies the parties that a petition for rehearing may be filed with the Commission by following the procedures set forth in Sec. 227.49 and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.53, Stats.

227.49 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025(3)(e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

227.53 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefore personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.49, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.48. If a rehearing is requested under s. 227.49, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 77.59(6)(b), 182.70(6) and 182.71(5)(g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.57 upon which petitioner contends that the decision should be reversed or modified.

. . .

(c) Copies of the petition shall be served, personally or by certified mail, or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon all parties who appeared before the agency in the proceeding in which the order sought to be reviewed was made.

Note: For purposes of the above-noted statutory time-limits, the date of Commission service of this decision is the date it is placed in the mail (in this case the date appearing immediately above the signatures); the date of filing of a rehearing petition is the date of actual receipt by the Commission; and the service date of a judicial review petition is the date of actual receipt by the Court and placement in the mail to the Commission.

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	25,518.	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.
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.	+ $412,629.	$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 limitations on recalls from lay-off, (4) the wording of the provision on rights of part-time teachers, (5) the wording of a 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.

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 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.
>
> * * * *

That in Exhibit 7c to Arbitrator Fleischli, the District argued in pertinent part:

> If the proposed MEA salary schedule were to be

26. That the District, by its September 1986 refusal to pay teachers the appropriate vertical increment contained in the expired 1985-1986 contract salary schedule, altered the status quo as to wages.

C. That Examiner's Findings of Fact 27-44 are hereby set aside.

D. That Examiner's Conclusion of Law 1 is hereby modified to read:

That the District, by its September 1986 alteration of the status quo as to wages, breached its duty to bargain with the Association and thereby committed prohibited practices within the meaning of Secs. 111.70(3)(a)4 and 1, Stats.

E. That Examiner's Conclusions of Law 2-9 are hereby set aside.

F. That Paragraph 2(A)1 and 3 and Paragraph 2(B)3 and 4 of the Examiner's Order are hereby affirmed.

G. That Paragrph 2(B)1 of the Examiner's Order is hereby modified to read:

1. To the extent that it has not already done so by its implementation of a successor to the parties' 1985-86 agreement or otherwise, make whole with interest 3/ all eligible employes in the bargaining unit represented by the Manitowoc Education Association for any salary losses experienced by the employes due to Respondent's above-noted unilateral wage change during the period from September 1986 to the date of implementation of a successor collective bargaining agreement.

H. That Paragraph 1, Paragraph 2(A)2, and Paragraph 2(B)2 are hereby set aside.

I. That Appendix A as referenced in Paragraph 2(B)3 is modified to read:

3/ The applicable interest rate is the Sec. 814.04(4), Stats., rate in effect at the time the complaint was initially filed with the agency. The instant complaint was filed on December 12, 1986, at a time when the Sec. 814.04(4), Stats., rate in effect was "12% per year." Sec. 814.04(4), Wis. Stats. Ann. (1983). See generally, Wilmot Union High School District, Dec. No. 18820-B (WERC, 12/83), citing, Anderson v. LIRC, 111 Wis.2d 245, 258-59 (1983) and Madison Teachers Inc. v. WERC, 115 Wis.2d 623 (CtApp IV, 1983).

APPENDIX A

NOTICE TO EMPLOYES

Pursuant to an Order of the Wisconsin Employment Relations Commission, and in order to effectuate the policies of the Municipal Emloyment Relations Act, we hereby notify our employes that:

1. We will not commit unlawful unilateral changes in wages covering bargaining unit employes represented by the Manitowoc Education Association.

2. To the extent that we have not already done so, we will make whole, with interest, eligible bargaining unit employes represented by the Manitowoc Education Association for salary losses experienced during the period from September 1986 to the date of implementation of a successor bargaining agreement with the Manitowoc Education Association.

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

Dated at Madison, Wisconsin, this ____ day of _____, 1988.

School District of Manitowoc

By _____

Given under our hands and seal at the City of Madison, Wisconsin this 4th day of March, 1988.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld
Stephen Schoenfeld, Chairman

Herman Torosian, Commissioner

A. Henry Hempe, Commissioner

MANITOWOC PUBLIC SCHOOL DISTRICT

MEMORANDUM ACCOMPANYING ORDER AFFIRIMING, MODIFYING AND SETTING ASIDE EXAMINER'S FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

EXAMINER'S DECISION:

Examiner Schiavoni ruled the District violated its duty to bargain when it refused to grant vertical/experience increments to its teachers at the beginning of the 1986-1987 school year. Her conclusion was primarily based upon the bargaining history generated before interest arbitrator George Fleischli. She stated in her decision:

> 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.

POSITION OF THE PARTIES ON REVIEW:

The District maintains that the Examiner improperly applied the status quo doctrine. It argues that the Association has the burden of proving that vertical increments are part of the status quo and that the Association has failed to meet the burden of proof here because: (1) nothing on the face of the expired contract mandates such payments; (2) there was no past practice of paying such increments; and (3) there was no clear bargaining history. Acknowledging that its brief to Arbitrator Fleischli discussed increments, the District asserts that "this does not constitute bargaining history. It is merely a statement of what was understood to be the MEA's expectations" which were made "for the purpose of trying to influence the Arbitrator to select the final offer of the District over that of the Association." It thus asserts: "There is absolutely no evidence that at any time the District expressed in writing or orally that it would be obligated to pay an increment during a contractual hiatus" and that, furthermore, "The admitted fact that the school district knew that the Association expected a step increase at the commencement of the school year 1986-87 does not mean that, therefore, the Association's position in this matter is legally correct." (Emphasis in original.)

The Association urges affirmance of Examiner Schiavoni's decision, claiming that she correctly applied the Commission's status quo doctrine. The Association argues that the facts here support her analysis since: (1) the Association's bargaining representative in negotiations told the District's representative, in answer to the District's own question, that it expected to be paid automatic increments under its contract proposal; (2) the District's brief to Arbitrator Fleischli talked about "returning to a built-in automatic step or increase" and asserted that "the Association wants an increase each year built into the schedule"; and (3) that after Arbitrator Fleischli issued his decision in favor of the Association, the District's representative was quoted in the local newspaper as saying that the Fleischli Award provided for automatic step increases which would cost the District about $275,000 in the next year.

DISCUSSION:

As the Examiner and the parties correctly note, our determination of the contours of the status quo Respondent was obligated to maintain is guided by an examination of any pertinent bargaining history, language, or past practice.

In our view, the bargaining history generated by the parties during their negotiations and when they litigated the interest arbitration case before

Arbitrator Fleischli is determinative in this case. As the Examiner correctly found, the Association explicitly argued during bargaining and interest arbitration that its offer would produce an automatic increase at the commencement of the 1986-1987 school year. The Respondent District echoed that position during bargaining and in its brief to the Arbitrator. 4/ Under such circumstances, we think it is clear that there was a mutual expectation between the parties that if the Arbitrator selected the Association's salary schedule, then a vertical increment would be automatically paid in September, 1986. We have therefore affirmed the Examiner's conclusion 5/ that the Respondent's failure to pay the vertical increment in September, 1986 breached Respondent's obligation to maintain the status quo and thus violated Secs. 111.70(3)(a)4 and 1, Stats.

Dated at Madison, Wisconsin this 4th day of March, 1988.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld
Stephen Schoenfeld, Chairman

Herman Torosian, Commissioner

A. Henry Hempe, Commissioner

4/ We have modified the Examiner's Findings of Fact 8 and 10 to more fully set forth the parties' arguments during bargaining and to the Arbitrator.

5/ We have slightly modified Examiner's Finding of Fact 26 and Conclusion of Law 1 to reflect September, 1986 as the time of the violation. We have also modified the Examiner's Order and Notice to more accurately reflect the District's make whole obligation.