STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

WONEWOC CENTER EDUCATION ASSOCIATION, Complainant, vs. WONEWOC-UNION CENTER SCHOOL DISTRICT, Respondent.	Case 16 No. 39325 MP-2016 Decision No. 25093-A

Appearances:

Mr. Gerald Roethel, Executive Director, Coulee Region United Educators, 2020 Caroline Street, P.O. Box 684, LaCrosse, Wisconsin 54602-0684, appearing on behalf of the Complainant.

Curran, Curran & Hollenbeck, S.C., Attorneys at Law, by Mr. Fred D. Hollenbeck, 111 Oak Street, P.O. Box 140, Mauston, Wisconsin 53948, appearing on behalf of the Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Wonewoc Center Education Association having, on September 8, 1987, filed a complaint with the Wisconsin Employment Relations Commission alleging that the Wonewoc-Union Center School District had committed prohibited practices within the meaning of Sec. 111.70(3)(a)5 of the Municipal Employment Relations Act, herein, MERA; and the Commission having, on January 19, 1988, appointed Lionel L. Crowley, a member of its staff, to act as Examiner and to make and issue Findings of Fact, Conclusions of Law and Order as provided in Sec. 111.07(5), Stats.; and the hearing on said complaint having been held in Wonewoc, Wisconsin on March 3, 1988; and the parties having completed the briefing schedule on May 5, 1988; and the Examiner having considered the evidence and arguments of counsel, and being fully advised in the premises, makes and issues the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. That Wonewoc Center Education Association, hereinafter referred to as the Association, is a labor organization within the meaning of Sec. 111.70(1)(h), Stats., and is the exclusive bargaining representative of employes in the bargaining unit consisting of the District's regular teaching personnel under contract, excluding substitute per diem teachers, office, maintenance, and clerical employes, the superintendent and principal; and that its offices are located at 2020 Caroline Street, LaCrosse, Wisconsin 54603.

2. That Wonewoc-Union Center School District, hereinafter referred to as the District, is a municipal employer within the meaning of Sec. 111.70(1)(j), Stats., and its offices are located at Wonewoc, Wisconsin 53968.

3. That at all times material hereto, the Association and the District have been parties to a series of collective bargaining agreements including an agreement for 1986-87 which contains a teacher salary schedule which has fifteen vertical steps and eight horizontal lanes; that said agreement contains the following language in Article XIII, Section 19:

> 19. Lane Change - If a teacher receives graduate credit and qualifies for a lane increase, the teacher will be placed on schedule at the beginning of the next semester. At the beginning of the year a full lane increase shall be granted; at the beginning of the second semester one-half (1/2) of the lane increase shall be granted.;

that the collective bargaining agreement is silent with respect to the requirements for advancing on the vertical steps of the salary schedule; that full-time teachers in the District who work a full year are advanced one step on the succeeding year's salary schedule; that within the last two years, a District kindergarten teacher was granted a one semester maternity leave; that when the District Administrator, Oscar Pynnonen, hereinafter District Administrator, issued the kindergarten teacher the succeeding year's individual teacher contract, the District Administrator advanced the kindergarten teacher one-half step on the salary schedule; that when the kindergarten teacher objected to the one-half step advancement, the District Administrator informed the kindergarten teacher that he would discuss the matter with the District's School Board; that the District's School Board credited the kindergarten teacher with a full year's teacher experience and advanced the kindergarten teacher one full step on the salary schedule; and that the School Board's rationale for crediting the kindergarten teacher with a full year's teaching experience was the fact that the kindergarten teacher was a long term full-time employe of the District.

4. That the parties' collective bargaining agreement contains a grievance procedure in Article V which provides as follows:

> A grievance shall be defined as any question raised by an Aggrieved Person concerning the interpretation or application of this Agreement.
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> Level One: The Aggrieved Person will first discuss his/her grievance with his/her principal or immediate supervisor, and/or the Superintendent and put it in writing. The grievance must be filed within ten (10) days of the occurrence and it must be based on the provisions of this Agreement.
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> Level Two: If the Aggrieved Person is not satisfied with the disposition of his/her grievance of (sic) Level One, or if no decision has been rendered within ten (10) school days after presentation of the grievance, he/she may submit his/her receipt of a written grievance by the Superintendent, the Superintendent will meet with the Aggrieved Person, and, if the Aggrieved Person so desires, with association representatives in an effort to resolve it. The Superintendent will make his/her recommendation in writing.
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> Level Three: If the Aggrieved Person is not satisfied with the discipline (sic) of his/her grievance at Level Two, or if no decision has been rendered within ten (10) school days after he/she has first presented his/her written grievance, he/she may file the grievance in writing to the Board. At the next regularly scheduled board meeting, the Aggrieved Person will discuss his/her written grievance with the Board and, if the Aggrieved Person so desires, association representatives.;

and that the parties' contract does not provide for final and binding arbitration, nor does it provide for any other final and binding resolution of grievances.

5. That Ms. Marilyn Champlin was employed by the District at the beginning of the 1985-86 school term and was placed on Step 3 of the 1985-86 teacher salary schedule; that since her employment by the District, Ms. Champlin has worked as a half-time (50%) speech therapist; that in February, 1986, the District's School Board issued Ms. Champlin an individual teaching contract for the 1986-87 school year which placed Ms. Champlin at Step 3 1/2 on the 1986-87 teacher salary schedule; that following a discussion with Ms. Champlin, wherein Ms. Champlin objected to her placement at Step 3 1/2 and requested that she be placed at Step 4, the District Administrator changed Ms. Champlin's 1986-87 individual teacher contract to reflect a placement at Step 4; that Ms. Champlin recalls that the discussion and change occurred prior to April 10, 1986, the date upon which she signed her 1986-87 individual teacher contract; that the District Administrator recalls that the discussion and change occurred in the fall of the 1986-87 school year, several months after Ms. Champlin had signed her 1986-87 individual teacher contract; that in the fall of the 1986-87 school year, Ms. Champlin noticed that she was being paid at Step 3 1/2, rather than at Step 4,

and after speaking to the District Administrator, the District Administrator caused Ms. Champlin's October, November and December, 1986 paychecks to reflect placement at Step 4 of the existing salary schedule; that in December, 1986, Arbitrator Robert Mueller issued an interest arbitration award which established the teacher's 1985-86 salary schedule; that when Ms. Champlin received the retroactive wage check resulting from the interest arbitration award, the wages for the 1986-87 school year reflected a placement at Step 3 1/2 of the salary schedule; that when Ms. Champlin again objected to her placement at Step 3 1/2, the District Administrator refused to adjust Ms. Champlin's wages to reflect a placement on Step 4 of the 1986-87 salary schedule; that, thereafter, Ms. Champlin filed a written grievance objecting to her placement at Step 3 1/2 of the 1986-87 salary schedule, which grievance was denied at all levels of the contractual grievance procedure.

6. That on September 8, 1987, the Association filed the instant complaint wherein it alleged that the District violated the parties' collective bargaining agreement, thereby violating Sec. 111.70(3)(a)5, Stats., when the District advanced Ms. Champlin one-half step on the 1986-87 salary schedule, rather than one full-step; and that at the hearing on the complaint, held on March 3, 1988, the parties agreed that the issue in this matter should be framed as follows:

> Where is the proper place on the wage schedule for Marilyn Champlin for 1986-87 and 1987-88?

7. That Ms. Champlin's objection to being advanced one-half step on the 1986-87 salary schedule, rather than one full step, was a grievance within the meaning of Article V of the parties' collective bargaining agreement; that Ms. Champlin is an Aggrieved Person within the meaning of Article V of the parties' collective bargaining agreement; that under the provisions of Article V of the parties' collective bargaining agreement, an Aggrieved Person has authority to resolve his/her grievance; that under the provisions of Article V of the parties' collective bargaining agreement, the District Administrator, referred to therein as the "Superintendent," has authority to resolve grievances filed thereunder; that by changing Ms. Champlin's 1986-87 individual teacher contract to reflect placement at Step 4 of the salary schedule and by causing Ms. Champlin's October, November and December, 1986 paychecks to reflect payment at Step 4 of the existing salary schedule, the District Administrator demonstrated his acceptance of Ms. Champlin's position that she was entitled under the terms of the collective bargaining agreement to be advanced one full step on the salary schedule, rather than one-half step and, thus, resolved the grievance to the mutual satisfaction of each; that this resolution of Ms. Champlin's grievance, by those contractually authorized to resolve the grievance on behalf of the District and the Association, is binding upon both the District and the Association; and that the District violated the grievance settlement when it refused to advance Ms. Champlin one step on the salary schedule for 1986-87 and another step for 1987-88.

Based upon the above and foregoing Findings of Fact, the Examiner makes and issues the following

CONCLUSIONS OF LAW

1. That the parties' collective bargaining agreement does not contain a grievance procedure culminating in final and binding arbitration, and thus, the jurisdiction of the Wisconsin Employment Relations Commission may be invoked to determine whether said agreement has been violated in violation of Sec. 111.70(3)(a)5, Stats.

2. That the grievance objecting to Ms. Champlin's one-half step advancement on the salary schedule was settled in accordance with the provisions of the parties' collective bargaining agreement.

3. That the grievance settlement is a legally enforceable collective bargaining agreement for the purposes of Sec. 111.70(3)(a)5, Stats.

4. That by failing to comply with the settlement agreement to advance Ms. Champlin to Step 4 on the 1986-87 salary schedule, the District has violated the grievance settlement agreement, thereby violating a collective bargaining agreement in violation of Sec. 111.70(3)(a)5, Stats.

5. That by failing to advance Ms. Champlin to Step 5 on the 1987-88 salary schedule, the District has violated the parties' collective bargaining agreement

in violation of Sec. 111.70(3)(a)5, Stats.

Based upon the foregoing Findings of Fact and Conclusions of Law, the Examiner makes and issues the following

ORDER 1/

IT IS HEREBY ORDERED that the Wonewoc-Union Center School District, its officers and agents, shall immediately:

1. Cease and desist from violating the grievance settlement agreement by refusing to advance Ms. Champlin to Step 4 on the 1986-87 salary schedule and to Step 5 on the 1987-88 salary schedule.

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

a. Advance Ms. Champlin to Step 4 on the 1986-87 salary schedule and to Step 5 on the 1987-88 salary schedule.

b. Make Ms. Champlin whole for the loss incurred as a result of the District's prohibited practice by reimbursing Ms. Champlin for wages and fringe benefits lost as a result of the District's failure to advance Ms. Champlin on the salary schedule, together with interest at the statutory rate. 2/

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

Dated at Madison, Wisconsin this 29th day of June, 1988.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Lionel L. Crowley
Lionel L. Crowley, Examiner

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

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/ The applicable interest rate is 12 per cent per Sec. 814.04(4), Stats.

WONEWOC-UNION CENTER SCHOOL DISTRICT

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

BACKGROUND

In the complaint initiating these proceedings, the Association alleged that the District violated Sec. 111.70(3)(a)5, Stats., by violating the parties' collective bargaining agreement by advancing Ms. Marilyn Champlin only one-half step on the 1986-87 salary schedule instead of a full step. On September 23, 1987, the District filed an Answer with the Commission denying that it had violated any provision of the parties' collective bargaining agreement. At the hearing, the parties agreed to frame the issue in the matter as follows:

> Where is the proper place on the wage schedule for Marilyn Champlin for 1986-87 and 1987-88?

Neither party disputes the right of the Commission to decide the breach of contract claim alleged herein. Inasmuch as the parties' agreement does not provide for the final and binding arbitration or other final resolution of grievances arising under the agreement, it is appropriate for the Commission to assert its jurisdiction under Sec. 111.70(3)(a)5, Stats., and decide the instant dispute.

Association's Arguments

Inasmuch as the collective bargaining agreement does not contain specific language on salary placement of part-time employes, the conduct of the parties is the determinant factor in establishing the parties' intent with respect to Ms. Champlin's placement on the salary schedule. When negotiating the successor agreement, each party utilized the cast forward method when calculating the costs of bargaining proposals. In making these calculations, both the District and the Association costed Ms. Champlin at one full step. Thus, the evidence of bargaining history, demonstrates that the parties had an understanding with respect to the instant issue, i.e., that Ms. Champlin would be advanced one full step on the salary schedule. This understanding is also evidenced by the fact that the District issued Ms. Champlin an individual contract which set forth a salary equivalent to Step 4 of the existing salary schedule and by the fact that the District initially paid Ms. Champlin at the Step 4 rate.

It would be inequitable to allow the District to place Ms. Champlin at Step 3 1/2. First, the District and Ms. Champlin have entered into a valid individual employment contract which provides that Ms. Champlin is to be paid at the Step 4 rate. The District should be required to abide by the terms of this contract. Second, by issuing the individual employment contract and by paying Ms. Champlin at the Step 4 rate, the District gave assurance that Ms. Champlin would be advanced to Step 4. Ms. Champlin relied upon such assurances and, therefore, the District is estopped from placing Ms. Champlin at Step 3 1/2.

Both the kindergarten teacher and Ms. Champlin worked approximatlely 90 days during the school year. It should not and does not matter that the kindergarten teacher taught first semester and that Ms. Champlin taught on alternating days throughout the school year. The kindergarten teacher was advanced one full step on the salary schedule, while Ms. Champlin was advanced only one-half of a step. Such disparate treatment violates Article VII (d) of the collective bargaining agreement, which provision requires "the Board" to "apply its rules . . . even-handedly."

Under the District's theory, an employe such as Ms. Champlin, who works half time, receives only 1/4 of the wage increase of a full-time employe. Acceptance of the District's position, i.e., that a step increase is equivalent to a full year's seniority, discriminates against part-time employes. This discrimination violates the provision of Article VII (d) which requires "the Board" to "apply its rules . . . even handedly."

The doctrine of estoppel, the obligations of the individual contract, and the conduct of the parties require the conclusion that Ms. Champlin is entitled to be placed at Step 4 and Step 5 of the salary schedule for 1986-87 and 1987-88,

respectively. By failing to make such a placement, the District has violated Sec. 111.70(3)(a)5 of MERA. The Association requests that the District be ordered to (1) cease and desist from committing prohibited practices; (2) place Ms. Champlin on Step 4 of the 1986-87 teacher salary schedule and Step 5 of the 1987-88 teacher schedule; (3) to make Ms. Champlin whole for all losses occasioned by the failure of the District to place Ms. Champlin on Step 4 of the 1986-87 teacher salary schedule and on Step 5 of the 1987-88 teacher salary schedule; (4) to reimburse the Association for representation fees and other costs of this action; (5) to post the appropriate compliance notice and (6) to take whatever other remedial action the Commission deems appropriate.

District's Arguments

The master contract provides for salary "steps" without defining that term. It is generally recognized, however, that the purpose of a step increase is to reward a teacher for one year of teaching experience, the underlying rationale being that teaching ability improves with experience. Under the teaching schedule at Wonewoc-Union Center, full-time teachers in the District advance one step on the salary schedule for each full year of teaching experience. We believe that this practice is consistent with that of every other district in the state. To advance Ms. Champlin one step on the salary schedule is illogical and inequitable in that she has had only one-half year increase in teaching experience.

Contrary to the argument of the Association, Ms. Champlin is not penalized for teaching half-time. Ms. Champlin contracted to work half-time and is being compensated for working half-time. The advancement on the salary schedule of one-half step reflects that her teaching experience has increased at only one-half the rate of a full-time teacher. Contrary to the argument of the Association, the District does not have a past practice of advancing a part-time teacher a full step on the salary schedule. First, the factual circumstances in the present case are so different from those of the kindergarten teacher case as to make the kindergarten teacher case irrelevant. Second, one prior instance does not make a past practice.

Section 118.21, Stats., empowers the School Board to issue teacher contracts. To the extent that either Ms. Champlin or the District Administrator sought to modify the terms of the individual contract issued by the School Board, such modifications are invalid. To apply the doctrine of estoppel herein, Complainant must demonstrate by clear, satisfactory and convincing evidence that the action or nonaction of the School Board induced her to rely on such action or nonaction to her detriment. There is no evidence that the School Board induced Ms. Champlin to rely upon the altered contract to her detriment. Further, any reasonable teacher would know that she could not rely upon marginal notes made on the contract by the administrator and teacher.

It may well be that the parties costed Ms. Champlin's raise at the full salary step. This oversight, which was not called to the School Board's attention during negotiations, cannot be held against the School Board in view of the small amount of money involved and the existence of other, more important matters.

DISCUSSION

The salary schedule in the parties' agreement provides for vertical step increases, however, the contract does not contain any language which defines the circumstances under which a teacher is entitled to advance a vertical step. 3/ No evidence of bargaining history was presented to shed light on the parties' intent with respect to vertical advancement. The reference to the kindergarten teacher's advancement is not sufficient evidence of a past practice, as one case is not sufficient to establish a past practice. The Examiner has considered the Association's arguments on equitable estoppel but finds it unpersuasive as there is no detrimental reliance by Ms. Champlin.

3/ The agreement does contain an express provision on lane changes at Article XIII, Sec. 19, which expressly provides for full lane increases and 1/2 lane increases, but the agreement is silent on vertical step increases.

As the District argues, it is generally recognized that the purpose of the vertical step increase is to reward a teacher for having an additional year's teaching experience. That is, it is a longevity payment. Thus, there is logic to the District's argument that a teacher such as Ms. Champlin, who works only fifty per-cent of the school year, should advance one-half step on the salary schedule.

In the absence of any contractual language, bargaining history, or past practice, the logic of the District's argument surely supports the District, however, in the present case, the conduct of the parties persuades the Examiner that Ms. Champlin is entitled to be advanced one full step on the salary schedule.

Article V, Grievance Procedure, defines a grievance as "any question raised by an Aggrieved Person concerning the interpretation or application of this Agreement." Ms. Champlin's initial objection to the District Administrator concerning her placement at Step 3 1/2 on the 1986-87 salary schedule, is a "question raised by an Aggrieved Person concerning the interpretation or application" of the Agreement, i.e., placement on the contractual salary schedule. Thus, Ms. Champlin's objection to placement at Step 3 1/2 is a "grievance" and Ms. Champlin is an "Aggrieved Person" within the meaning of Article V of the parties' collective bargaining agreement. Level One of the contractual grievance procedure provides that an Aggrieved Person, such as Ms. Champlin, "will first discuss his/her grievance with his/her principal or immediate supervisor, and/or the Superintendent." In the present case, Ms. Champlin discussed her objection to her placement at Step 3 1/2, i.e. her grievance, with the District Administrator, who is the individual referred to in the collective bargaining agreement as the "Superintendent." Following this discussion, the District Administrator in writing changed the face of Ms. Champlin's 1986-87 individual teacher contract to reflect a placement at Step 4 of the salary schedule and after her further complaint, caused her October, November and December 1986 paychecks to be paid at Step 4 of the existing salary schedule. 4/ By such conduct, the District Administrator demonstrated that the grievance was resolved to the satisfaction of each, i.e., that Ms. Champlin would be advanced one full step on the salary schedule. No explanation was given as to why the District Administrator refused to continue compliance with the grievance settlement.

While Level One of the grievance procedure does not expressly state that the Aggrieved Person and the District Administrator have authority to resolve grievances, such authority may be implied. Specifically, it is not mandatory that a grievance be processed from Level One to Level Two. Rather, Level Two is available when the "Aggrieved Person is not satisfied with the disposition of his/her grievance of Level One." From this language, one may reasonably conclude that the parties intended the Aggrieved Person and the District's Level One representative, in this case the District Administrator, to have authority to dispose of, i.e., resolve, grievances at Level One.

For the reasons discussed supra, the Examiner is persuaded that the District Administrator and Ms. Champlin settled a grievance which is whether Ms. Champlin is contractually entitled to move one step or one-half step on the salary schedule. Where, as here, a grievance is resolved by those authorized to resolve the grievance, the settlement is enforceable as a collective bargaining

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4/ For the purpose of the analysis used herein, it is immaterial whether the modification was made prior to or after Ms. Champlin signed her 1986-87 individual employment contract. Accordingly, it is not necessary to resolve the conflicting testimony of Ms. Champlin and the District Administrator regarding the date upon which the modification was made. The Examiner is without authority to enforce the terms of an individual teacher contract and makes no determination with respect to whether the District Administrator has the statutory authority to modify the terms of an individual teacher contract. Rather, the jurisdiction of the Examiner is limited to enforcing the terms of the collective bargaining agreement. Clearly, the District Administrator has contractual authority to resolve grievances, including those involving the placement of teachers on the salary schedule.

agreement, 5/ unless its provisions are illegal or irreconciably in conflict with other statutory provisions 6/ There is no conflict present here, so the settlement must be enforced. Failure to comply with the terms of such settlement is also a violation of Sec. 111.70(3)(a)5, Stats. 7/ Thus, Ms. Champlin must be placed at Step 4 in 1986-87, in accordance with the grievance settlement.

With respect to her placement for 1987-88, the issue is the same, the parties are identical and the contract language has not changed. While there are no facts of a grievance settlement for 1987-88 or evidence that the 1987-88 placement was even discussed, the principles of equity require that the settlement reached in 1986-87 should continue to apply until the evidence establishes something different was intended by the parties. Silence in the agreement will leave this matter unresolved and the parties are encouraged to negotiate language in the agreement just as they have done on lane changes so there is no doubt how the matter should be handled.

For the reasons discussed supra, the Examiner is persuaded that the District violated Sec. 111.70(3)(a)5, Stats., by failing to advance Ms. Champlin to Step 4 on the salary schedule in 1986-87 and to Step 5 in 1987-88. In remedy of this violation, the District is ordered to advance Ms. Champlin to Step 4 on 1986-87 and to Step 5 on the 1987-88 salary schedules. Additionally, the District is ordered to restore to Ms. Champlin all wages and fringe benefits lost as a result of the District's failure to advance Ms. Champlin one full step on the salary schedules, with interest calculated at the statutory rate. The Association's request for representational fees and costs are hereby denied because of the absence of specific statutory and contractual language requiring such relief. 8/

Dated at Madison, Wisconsin this 29th day of June, 1988.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Lionel L. Crowley
Lionel L. Crowley, Examiner

5/ Oneida County, Dec. No. 15374-B (Yaeger, 12/77), aff'd. Dec. No. 15374-C (WERC, 6/78).

6/ Kenosha County, Dec. No. 17384-A (Lynch, 9/80), aff'd. by operation of law, Dec. No. 17384-C (WERC, 10/80).

7/ City of Prairie Du Chien, Dec. No. 21619-A (Schiavoni, 7/84), aff'd. by operaton of law, Dec. No. 21619-B (WERC, 8/84).

8/ Madison Metropolitan School District, Dec. No. 16471-D (WERC, 5/81), aff'd in relevant part, (Ct.App. IV) 115 Wis.2d 623 (1983).