STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of :

CLINTONVILLE PUBLIC SCHOOL DISTRICT : Case 23 No. 42472 INT/ARB-5305

To Initiate Arbitration Between : Decision No. 26552

Said Petitioner and :

CLINTONVILLE SCHOOL DISTRICT EDUCATIONAL SUPPORT PERSONNEL UNION :

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Appearances:

Mr. Ronald Bacon, Executive Director, United Northeast Educators, 1136 North Military Avenue, Green Bay, WI 54303, for the Union.

Mulcahy and Wherry, S.C., Attorneys at Law, by Mr. Robert W. Burns, 414 East Walnut Street, P.O. Box 1103, Green Bay, WI 54305, for the District.

FINDINGS OF FACT, CONCLUSION OF LAW, AND ORDER DENYING MOTION TO REOPEN INVESTIGATION

Clintonville School District Educational Support Personnel Union having on February 5, 1990, filed a motion with the Wisconsin Employment Relations Commission requesting that the Commission reopen the investigation of the above-captioned interest-arbitration petition; and the Clintonville Public School District having on February 6, 1990, filed a statement with the Commission opposing the Union's motion to reopen; and hearing on the motion having been conducted on April 30, 1990 in Clintonville, Wisconsin before Examiner Peter G. Davis; and written argument having been received until May 21, 1990; and the Commission having reviewed the record and being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. That the Clintonville Public School District, herein the District, is a municipal employer having principal offices in Clintonville, Wisconsin.

2. That the Clintonville School District Educational Support Personnel Union, herein the Union, is a labor organization having its principal offices at 1136 North Military Avenue, Green Bay, Wisconsin and functioning as the collective bargaining representative of certain employes of the District.

3. That on July 7, 1989, the District filed a petition with the Wisconsin Employment Relations Commission requesting that the Commission determine whether interest-arbitration should be initiated under Sec. 111.70(4)(cm)6, Stats., for the successor to the existing contract between the District and Union; that pursuant to the District's petition, the parties met on September 14, 1989 with Commission Investigator Jane B. Buffett and reached a tentative agreement on a 1989-1991 contract; that both parties subsequently ratified the tentative agreement; and that Investigator Buffett then closed the investigation of the petition.

4. That following ratification, the District prepared a draft of the 1989-1991 contract for the Union's review; that the draft contract prepared by the District contained the following language as to health insurance premium contributions for 1990-1991:

> For the 1990-1991 school year, the parties agree that if the health insurance premium rate increase
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> (September 1, 1990) exceeds 15% from the previous premium, the premium cost beyond the 15% will be divided equally between the District and the employee.

that during the September 14, 1989 investigation, Investigator Buffett drafted and the parties approved the following tentative agreement as to health insurance premium contributions for 1990-1991:

> If the health insurance premium increase in the second year of the contract exceeds 15%, the cost beyond 15% will be divided equally between the board and the employe;

that after the Union reviewed the District's draft, the Union advised the District that the Union understood that the parties' cost sharing agreement for 1990-1991 health insurance premiums was only applicable to family premiums; that shortly thereafter, the District advised the Union that it understood the agreement applied to both family and single premiums; that the parties were unable to resolve their disagreement and have not signed a 1989-1991 contract; and that the Union then filed the instant motion to reopen the investigation.

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

CONCLUSION OF LAW

That because the parties have ratified a 1989-1991 collective bargaining agreement, no dispute presently exists between which is subject to the interest-arbitration provisions of Sec. 111.70(4)(cm)6, Stats.

Based upon the above and foregoing Findings of Fact and Conclusion of Law, the Commission makes and issues the following

ORDER 1/

That the Union's motion to reopen the investigation is denied.

Given under our hands and seal at the City of Madison, Wisconsin this 13th day of July, 1990.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
A. Henry Hempe, Chairman

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Herman Torosian, Commissioner

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(Footnote 1/ apperas on page 3.)

1/ 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.

CLINTONVILLE PUBLIC SCHOOL DISTRICT

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER DENYING MOTION TO REOPEN INVESTIGATION

POSITIONS OF THE PARTIES:

The Union asserts that its motion should be granted because the parties never had a "meeting of the minds" as to the issue of potential employe contribution toward single family health insurance premiums. The Union contends that the parties thus "ratified" different understandings of the language they had tentatively agreed upon and therefore do not presently have agreement on a new 1989-1991 contract. Therefore, the Union argues that there remains a dispute between the parties which is subject to Sec. 111.70(4)(cm) 6, Stats. Given the foregoing, the Union asks that its motion to reopen the investigation should be granted.

The District asks that the Union motion be denied because the parties have reached agreement on and ratified a 1989-1991 contract. The District argues that the existing dispute between the parties is over the appropriate interpretation of the language the parties agreed upon and ratified and not over whether a contract exists. Thus, the District asserts that the instant dispute is appropriately raised in the grievance arbitration process, not through a return to interest arbitration.

DISCUSSION:

The interest-arbitration provisions of Sec. 111.70(4)(cm)6, Stats., are provided to resolve disputes over wages, hours and conditions of employment to be included in a new collective bargaining agreement. 2/ Where, as here, the parties have ratified a new collective bargaining agreement, there no longer exists a dispute which is subject to the interest arbitration. To allow a party to successfully assert that no new agreement has been reached after ratification has occurred "would create an awesome and unacceptable potential for uncertainty and chicanery within the collective bargaining process which would fly in the face of the goal of peaceful and harmonious bargaining relationships which MERA attempts to encourage." 3/

Our conclusion does not leave parties without the means to resolve disputes which arise following ratification. If a party refuses to execute a collective bargaining agreement, a prohibited practice proceeding under either Sec. 111.70(3)(a)4 or 3(b)3, 4/ Stats. is available to determine whether the proposed agreement accurately reflects the result of the parties' bargain. 5/ Grievance arbitration or prohibited practice proceedings under Sec. 111.70(3)(a)5 or (3)(b)4, Stats., are available to resolve disputes as to the interpretation of contractual language. 6/

2/ City of Beloit, Dec. No. 17033-A (WERC, 8/79).

3/ Supra.

4/ Said provisions provide in pertinent part that a union or employer commits a prohibited practice when they refuse "to execute a collective bargaining agreement previously agreed upon."

5/ See City of Monroe, Dec. No. 25681-A (Gratz, 2/89); Racine Schools, Dec. Nos. 15890-D, 15914-D (Hoornstra, with final Commission authority 2/78).

6/ See Racine Schools, Dec. No. 17022 (WERC, 5/79).

Given the foregoing, we have denied the Union's motion. We have also concluded that the parties' disagreement over the meaning of their agreement is best left for resolution, if necessary, through a prohibited practice or grievance arbitration proceeding. Thus, we do not express an opinion as to that matter.

Given under our hands and seal at the City of Madison, Wisconsin this 13th day of July, 1990.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
A. Henry Hempe, Chairman

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Herman Torosian, Commissioner

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William K. Strycker, Commissioner

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