STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

CHEQUAMEGON UNITED TEACHERS, Complainant, vs. COOPERATIVE EDUCATIONAL SERVICES AGENCY #12, Respondent.	Case 6 No. 50553 MP-2859 Decision No. 27992-A

Appearances:

Mr. Barry Delaney, Executive Director, Chequamegon United Educators, 213 East First Street, P.O. Box 311, Hayward, Wisconsin 54843-0311, appeared on behalf of the Complainant.

Mr. Ernest J. Korpela, Administrator, and Ms. Jean M. Wahlquist, Administrative Assistant, Cooperative Educational Services Agency #12, 618 Beaser Avenue, Ashland, Wisconsin 54806, appeared on behalf of the Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

On January 20, 1994, the Chequamegon United Teachers filed a complaint with the Wisconsin Employment Relations Commission, alleging that the Cooperative Educational Services Agency #12 was violating Sec. 111.70(3)(a)5, Wis. Stats., by improperly implementing the terms of an interest-arbitration award as applied to employes Kathleen Bloomquist and Robert Sukala. On March 18, 1994, the Commission appointed William C. Houlihan, a member of its staff, to act as Examiner in this matter and to make and issue Findings of Fact, Conclusions of Law and Order, as provided in Sec. 111.07, Wis. Stats. A hearing was held on April 27, 1994, in Ashland, Wisconsin, at which time the parties were given full opportunity to present evidence and argument. The parties waived transcription of the proceedings. Both parties filed briefs which were received and exchanged by May 16, 1994. The Examiner, having considered the evidence and arguments and being fully advised in the premises makes and files the following Findings of Fact, Conclusions of Law and Order.

No. 27992-A

FINDINGS OF FACT

1. Complainant Chequamegon United Teachers, is an employe organization in which employes participate and which exists for the purpose, at least in part, of engaging in collective bargaining with municipal employers concerning grievances, labor disputes, wages, hours and conditions of employment, and which maintains an office at 213 East First Street, P.O. Box 311, Hayward, Wisconsin 54843-0311.

2. Cooperative Educational Services Agency #12 is a political subdivision of the State of Wisconsin, which engages the services of employes to perform a variety of educationally-related tasks, and which maintains an office at 618 Beaser Avenue, Ashland, Wisconsin 54806.

3. At all times material to this proceeding, Complainant has been the exclusive collective bargaining representative of all regular full-time and regular part-time non-certified employes employed by CESA #12, excluding confidential, temporary, casual, supervisory and managerial employes.

4. The parties stipulated that there occurred a representation election which was conducted on the last Friday of October, 1991. As a result of that election, Complainant Union was selected as the representative of the employes described in Paragraph 3 above.

5. The parties thereafter entered into negotiations over the terms of the initial collective bargaining agreement applicable to associate staff. Certain terms of this agreement were ultimately resolved by an arbitrator rendering a decision in interest-arbitration. The parties stipulated that the existing salary schedule (Joint Exhibit #10, a portion of which is set forth below), was in effect in 1990-91, and was maintained during 1991-92, 1992-93, and 1993-94 until the interest-arbitration award was received in December of 1993, and subsequently implemented. Backpay was retroactive to July, 1991.

6. Excerpts of the associate staff salary schedule in effect from the 1990 through 1993 years, are set forth below:

CESA #12
ASSOCIATE STAFF
APPROVED SALARY SCHEDULE
1990-91

STEP	0	1	2	3	4
Level 1	5.93	6.25	6.56	6.88	7.19
Level 2	6.87	7.19	7.51	7.82	8.14
Level 3	7.82	8.14	8.45	8.77	9.08
Teacher Ass't	6.30	6.61	6.93	7.24	7.56

1) Job descriptions will establish the level of salary.

7. The parties stipulated that employes eligible for step movement on the then-existing salary schedule received their steps.

8. Kathleen Bloomquist was hired by Ken Rogers, Director of Instructional Services in August, 1989 as the IMC Clerk. Her job title was Program Assistant. Ms. Bloomquist was employed by CESA #12 until June 12, 1992, during which period she was supervised by Dale Baggerly, IMC Supervisor.

9. At the time of hire, Ms. Bloomquist was placed at Level 3 of the salary schedule. It was her understanding that she was working as the IMC Coordinator. Ms. Bloomquist worked largely unsupervised. Her work tasks included research, ordering materials, and making decisions as to what materials to order. She made orders based upon her own research, based upon teacher requests, and teacher and staff requests. Ms. Bloomquist did surveying. She cataloged materials under the Dewey Decimal System. She did shelving and made computer entries. She did written reviews of materials for inclusion in the monthly CESA newsletter, The Courier. She testified to performing numerous other tasks including the supervision of student and volunteer help.

10. In the spring of 1991, certain management officials including Rogers, Baggerly, and Ernest Korpela, Agency Administrator, met and determined that a reorganization of the IMC was appropriate. It was their conclusion that the IMC hours of Baggerly would be increased and the clerical support would be decreased. To accomplish that, Baggerly would be assigned approximately twice as many hours in the IMC, and Bloomquist would be demoted to a Clerk/Typist II. Korpela indicated that Rogers and Baggerly were directed to establish with Bloomquist that she was demoted. Korpela had no direct knowledge as to whether or how that occurred. Rogers indicated that he directed Baggerly to tell Bloomquist that she was demoted. Baggerly, who is no longer employed by the Agency, did not testify. Rogers testified that he believed Baggerly talked with Bloomquist because he (Rogers) subsequently talked to Bloomquist and indicated that she seemed disappointed but that she understood the Program Assistant III work was beyond her capacity. Rogers had no personal knowledge as to what Baggerly told Bloomquist or how her pay was handled. Bloomquist testified that no one ever talked to her about being demoted.

11. On November 11, 1991, Bloomquist was given a performance evaluation document. Attached to that document was a job description for a Clerk/Typist II. Bloomquist believed that a mistake had been made, since the position she occupied was a Program Assistant III. Following receipt of this memo and evaluation document, she returned the memo, and attached one of her own, which provided the following:

> RE: Your memo dated November 11, 1991
>
> I am unable to respond as requested, as the job description attached (Clerk/Typist II) is not mine. I was hired as a Program Assistant, and that is the job that I have been doing for going on three years.

The memo was returned to its sender, Jean Wahlquist. Wahlquist brought the memo back to Bloomquist and indicated that Ken Rogers would have to make a decision as to what job level

Bloomquist was performing. Bloomquist then sent the above-described documents along with a note indicating, "Jean informed me that Item 1 was your decision - therefore, this should come to you" to Rogers and initialled her memo. Rogers promptly responded in writing: "Level 3 as you stated".

12. Rogers acknowledges receipt of Bloomquist's November, 1991 note indicating she believed herself to be a Program Assistant. He testified that he and she agreed that she be evaluated at a Level 3, for now since she refused to be evaluated at a Level 2. He testified that this was not intended as recognition that she was indeed at Level 3.

13. Rogers was unable to point to a specific date when Bloomquist went from a Range 3 to a Range 2. He testified that it was Baggerly's assignment to tell her of that fact, but that he had no personal knowledge that it had been accomplished. Rogers testified that there existed written confirmation of Bloomquist's demotion in the form of an evaluation, but the evaluation could not be found in her personnel file, and that he had no idea where it was. The parties stipulated that the evaluation to which Rogers referred is not retrievable by CESA #12. Rogers did not write this evaluation, and cannot recall having read it. He could not recall whether or not he had ever seen it.

14. Bloomquist was paid at Level 3 (Program Assistant) for the three years she was employed by CESA #12. She was given step increases in 1990-91 and in 1991-92. The Employer never altered Bloomquist's rate of pay because it had been advised that it was not free to do so during the pendency of a petition for election and during the subsequent ongoing negotiations.

15. Bloomquist's November, 1991 evaluation was as a Program Assistant. It was Bloomquist's understanding that she had been, and remained, a Program Assistant III. It was her testimony that no one had ever advised her that she had been erroneously granted a step. She further indicated that during the course of her three years with CESA #12, her duties never really changed. The only change she acknowledged was that in her third year of employment, her responsibilities increased somewhat.

16. At some point, the Employer became aware of the fact that its intended demotion did not occur as anticipated. In a January 6, 1994 letter from Jean Wahlquist to Barry Delaney, the Employer explains its perceptions and actions as follows:

> Ms. Bloomquist was hired 8-23-89 as the IMC program assistant (old Level III), step 0. In the 1990-91 year, her supervisors determined that she was not performing at the expectations of a level III position and she was therefore demoted to the level of IMC Clerk II, step 4. In 1990-91, the hourly wage for Level II, step 4 and Level III, step 1 were identical @ $8.14, therefore there was no reduction in pay. In 1991-92, she should have remained at Level II Step 4, (the

highest step). The Headbookkeeper, on 7-1-91, incorrectly moved her one step on the Level III schedule. I became aware of this when preparing the exhibits used in the negotiations/arbitration process. CESA #12 did not correct this error, after the fact, because our agreement with CUT in the negotiations process was to maintain the status quo, not changing any bargaining unit members job description, wage, level or step.

17. Kathryn Chandler, the Head Bookkeeper, is a member of the Union's negotiations team. Historically, Ms. Chandler prepared a document implementing what she understood to be the Agency's pay plan, submitted that document to Mr. Korpela, and had Mr. Korpela sign off on the document. In approximately November of 1991, Korpela indicated to Chandler that employes should be given their steps. Chandler took the message to mean that she should implement the steps when they came due, and thereafter gave progression steps to those employes (including Bloomquist) who Chandler believed were due steps. Chandler testified that she was never told to change Kathryn Bloomquist's rate of pay. It is her testimony that she was never advised that Bloomquist was demoted.

18. On January 10, 1992, Bloomquist authored a two-page detailed memo to co-worker Dawn Oreskovich in which she (Bloomquist) outlined numerous clarifications of Oreskovich's duties. Upon becoming aware of this memorandum, Wahlquist wrote Bloomquist the following memo on January 23, 1992:

TO: Kathi Bloomquist

FROM: Jean M. Wahlquist, Administrative Assistant

RE: IMC Duties

Regarding your memo dated 1-10-92 to Dawn Oreskovich:

(1) What prompted this correspondence?

Did Dawn ask for clarification?
Did Dale request your clarification?

(2) Has someone in a supervisory position defined the specifics of the job description duties you listed, or is this your personal interpretation of those duties?

(3) Has someone in a supervisory position

decided that you are to designate these duties to Dawn?

Unless your response is YES to all the questions above, your memo dated 1-10-92 will be considered null and void and I will instruct Dawn to ignore it totally.

Two additional items for your consideration:

(1) Dale Baggerly is the supervisor in the IMC - he is to decide what specific duties are and who is to be responsible.

(2) The Administrative Assistant is per Board Policy to oversee support staff assignments.

p.c. Ken Rogers
Dale Baggerly

Dawn Oreskovich
Personnel file

19. Upon receipt of Wahlquist's memo, Bloomquist responded as follows:

TO: Jean Walquist

FROM: Kathi Bloomquist, IMC Coordinator

SUBJECT: IMC Duties - As RE your memo 1-23-92

In answer to your questions: 1) YES. 2) YES. 3) YES.

As to specifics:

(1) Dawn had time on her hands, was spending that time unproductively, and was spending **less** time in the IMC than she is scheduled. Also she was **not** doing her Video duties thoroughly. Further, as Dawn is IMC backup she is eligible for any work that needs doing in the IMC that she is capable of doing. When I suggested she file catalogs or read shelves, she flatly stated she didn't **want** to. This uncooperativeness could be read as an attitude problem.

When I asked Dale what Dawn should be doing in her spare time, he said I should take care of it.

(2) As IMC Coordinator for three years, I **know** the specifics of the duties assigned Dawn. Being new she doesn't, until someone who knows informs her. Bob, with his new duties, didn't have time to train her. Bob (see his attached job description) was under the supervision of the IMC Coordinator, as far as his IMC duties went. Bob, however, did his IMC duties so very efficiently as not to need much, if any, supervision.

I have been acting in a limited supervisory position for three years, e.g., our RSVP person, CEP workers, and students. Dale **depends** on me not to have to bother him with everyday decisions. He is not always there when a question comes up. It is time- and money-efficient for the IMC Coordinator to make decisions on the everyday workings of the IMC, following the Director's overall standards for the general operation of the IMC.

(3) **You** and Dale decided that Dawn would do the Videos and laminating. Delivery, Planetarium, Programs for Dale and IMC Backup are listed on her 1991-92 job duties.

. I have not **changed** Dawn's staff assignment, I have merely **clarified** her duties, so that she can be an asset to the IMC in the limited time she is available to us. Originally she was hired to take some of the load off of me. No one has told me otherwise.

You are certainly welcome to come to the IMC when Dawn doesn't have anything to do and oversee her. I just don't want her wasting time on IMC money especially when there is so much to do and when she is supposed to be working in the IMC. Frankly, it puzzles me why **you** would expect or want Dawn to work in the dark without having her duties clarified.

p.c. Ken Rogers
Dale Baggerley
Dawn Oreskovich
Personnel file (Kathi Bloomquist)

It was Bloomquist's testimony that she never received a response to her memo of January 24.

20. A number of employes, including Kathryn Chandler, Susan Miller, Sandra Raspotnik, and Linda Toldness, testified as members of the Union's negotiating committee. Their testimony can be summarized as follows: That the 1991-94 collective bargaining agreement was the first agreement between the parties. That during the course of the negotiations, the Union team was never told that Bloomquist was to be demoted. That during negotiations, the Union's bargaining committee never saw a document purporting to demote Ms. Bloomquist. Each of these individuals testified that the Union never agreed that Bloomquist would be classified as a Clerk/Typist II.

21. The parties submitted certain matters to interest-arbitration. They agreed to a costing scenario that treated Ms. Bloomquist as a Clerk/Typist II. The written confirmation of that agreement contained in a letter from Delaney to Kathryn Prenn, attorney for the Employer, reads, in relevant part, as follows:

. . .

> For purposes of costing comparisons, it is my understanding that we agreed to the following:
>
> 1) Use the base year employees of 1990-91.
>
> 2) Use the employees and data in the letter dated January 7th (and the list of employees) that I faxed to you on January 7th. This includes keeping Kathleen Bloomquist as Clerk Typist II placed on Level II (of the old wage schedule) and on Step 4 for the 1990-91 year.

. . .

22. Delaney testified that during the course of negotiations he was given six different lists of bargaining unit employes with costing information included. He testified that no one list agreed with any other. Delaney indicated that names varied, hours varied, salary placement and positions were different. Delaney testified that on January 6, 1993, the parties were approaching the point where they would be submitting final offers. He indicated that he called Kathryn Prenn, concerned about costing, and suggested that they pick one data set. It was Delaney's testimony that he suggested, and that Prenn concurred, that they use a single list; that any one list would produce the same basic dispute; that is, that both the percent and dollar increase were common to all of the documents. Delaney proposed using the most recent list generated by the District, Prenn agreed, and the parties did so. The excerpts from the letter set forth in paragraph 21 above serve to confirm that agreement. Delaney testified that the agreement was for the sole purpose of costing comparison.

23. The Union introduced a number of costing documents over a District letterhead. Delaney testified that the included documents had been sent him by the District. Some of those documents treat Bloomquist as a Level 3 employe. Korpela testified that the documents which purportedly treated Bloomquist as a Level 3 employe were neither created, nor sent by the District. Korpela testified that he believed the Union substituted pages in the combined document.

24. Robert Sukala is a van driver and custodian, who has been employed by the Agency for approximately 10 years. Prior to the arrival of the Union, under the unilateral pay plan, Sukala was paid $8.14 per hour for all work performed. There was no distinction drawn between his tasks for pay purposes. At the time, he was at Level 2, Step 4.

25. During the course of negotiations, the parties agreed that for pay purposes, Sukala's job would be divided into two different assignments. While they agreed that different pay rates would be applicable, they disagree as to what those rates would be and submitted that dispute to the arbitrator. Van driving was paid significantly less than $8.14 per hour in each of the two final offers. Custodial work was paid considerably more than $8.14 in each of the final offers.

26. The parties further agreed to include the following sentence in Article XIV of their collective bargaining agreement:

> No employee shall receive a reduction in the wage rate he/she received on the last work day of the 1990-91 work year.

The salary schedules which set forth the wages of bargaining unit positions followed this provision.

27. After his job duties were separated, Sukala maintained records of hours spent on each of his tasks. In 1991-92, Mr. Sukala drove the van for 1,248.75 hours, he worked as a custodian for 1,033 hours, a total of 2,281.75 hours. In 1992-93, Mr. Sukala drove a van for 819.75 hours, he worked as a custodian for 1,413.5 hours, totalling 2,233.25 hours.

28. Upon receipt of the arbitration award, the Employer calculated Mr. Sukala's backpay by multiplying the contractual rate times his hours as a van driver, and adding that to the sum of the contractual rate for custodian multiplied times the hours worked as a custodian. The Union challenged the application of the van driver rate, contending that Article XIV required the Employer to pay no less than $8.14 for hours worked as a van driver.

29. The first sentence of Article XIV was proposed and drafted by the Employer.

30. In academic year 1990-91, Mr. Sukala worked a total of 1,753 hours. 788 of those hours were spent driving a van. 965 of those hours were spent performing custodial work. Each party, in its costing to the arbitrator, costed their respective proposals on the assumption that those same hours would be worked. Further, the costings were each predicated on the assumption that

Sukala would be paid at the amount specified in the final offers of the parties. There is no costing that assumes that Sukala would be paid $8.14 an hour for van driving.

31. Barry Delaney testified that he alone prepared the exhibits for the arbitration in this matter. Delaney indicated that he forgot about the "floor language" contained in Article XIV. That item was agreed upon 8 months prior to the preparation of the exhibits. Delaney testified that his costing was a mistake.

32. The collective bargaining agreement has no provision for final and binding arbitration of disputes.

Upon the basis of the foregoing Findings of Fact, I make the following

CONCLUSIONS OF LAW

1. That the Cooperative Educational Services Agency #12 is a municipal employer within the meaning of Sec. 111.70(1)(j), Wis. Stats.

2. That the Chequamegon United Teachers is a labor organization within the meaning of Sec. 111.70(1)(h), Wis. Stats.

3. That the Agency's calculation of backpay to Kathryn Bloomquist violates Article XIV of the collective bargaining agreement and therefore, violates Sec. 111.70(3)(a)5, Wis. Stats.

4. That the Agency's calculation of backpay for Mr. Sukala violates Article XIV of the collective bargaining agreement and therefore, violates Sec. 111.70(3)(a)5, Wis. Stats.

On the basis of the above and foregoing Findings of Fact and Conclusions of Law, I make and issue the following:

ORDER 1/

It is ordered that the Cooperative Educational Services Agency #12 immediately:

(Footnote 1/ appears on page 12.)

1. Make Ms. Bloomquist whole for the loss of pay she has suffered due to the District's violation of the collective bargaining agreement by computing her backpay at a Level 3 and crediting her with the step movement she made while employed by the Agency. A supplemental check reflecting that amount of money should be sent to Ms. Bloomquist.

2. Make Mr. Sukala whole for monies he has lost as a result of the Agency's violation of the terms of the collective bargaining agreement by computing his backpay in a manner which treats van driving as paid at no less than $8.14 per hour. Mr. Sukala should be issued a supplementary backpay check reflecting those monies.

3. Notify the Complainant and this Examiner what the Agency has done to comply with the foregoing.

Dated at Madison, Wisconsin this 10th day of February, 1995.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By William C. Houlihan /s/
William C. Houlihan, 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.

This decision was placed in the mail on the date of issuance (i.e. the date appearing immediately above the Examiner's signature).

COOPERATIVE EDUCATIONAL SERVICES AGENCY #12

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

POSITIONS OF THE PARTIES

Complainant Chequamegon United Teachers contends that Ms. Bloomquist was initially hired as a Program Assistant/IMC Coordinator for the 1989-90 year. She worked for CESA #12 in this capacity for three years with her last work day being June 12, 1992. The Complainant goes on to describe Ms. Bloomquist's duties for the three-year period. It notes that she received very little supervision of her daily work; that 95% of her work time was unsupervised. Complainant contends that Ms. Bloomquist's duties did not change from 1989-90 to 1990-91. For 1991-92 her responsibilities increased. At no time during her three years of employment were her responsibilities reduced. At no time during Ms. Bloomquist's employment did any person representing CESA #12 ever inform her (either verbally or in writing) that she was being demoted from Program Assistant to Clerk Typist II. CESA #12 claims that Ms. Bloomquist was reduced from Program Assistant to Clerk Typist II effective July 1, 1991. Ms. Bloomquist testified that the only time anyone from CESA #12 approached the subject of Clerk/Typist II with her was during her November, 1991 evaluation, four months after CESA #12 claims that the demotion became effective. Ms. Bloomquist was evaluated as a Program Assistant in December of 1991. The first page of that evaluation indicates that Ms. Bloomquist's position was Program Assistant.

In summary, the Union Complainant argues that Ms. Bloomquist's retroactive pay for 1991-92 be based upon the wage rate for the position of Program Assistant because: (1) she was hired as a Program Assistant and she worked in this capacity for the three years she was employed; (2) her duties are those that fit the job description for Program Assistant and not for Clerk/Typist II; (3) she received very little supervision while performing her duties; (4) her duties were not reduced and her responsibilities increased for the 1991-92 year; (5) she was never informed that she was demoted to Clerk/Typist II; (6) in November of 1991, (four months after CESA #12 says she was demoted) Mr. Rogers informed her that she was still a Program Assistant; (7) in November of 1991, she was evaluated as a Program Assistant with the cover of the evaluation showing her position as Program Assistant.

The Complainant notes that the District contends that Ms. Bloomquist was demoted. The Complainant notes that no person at the hearing testified that they had, in fact, implemented the Administration's decision in this regard, and/or had told Ms. Bloomquist that she would be relieved of her duties. Nor is there any documentation entered into this record that would indicate that her duties were reduced or that she was told of such reductions. CESA #12 argues that Ms. Bloomquist was head of the IMC in the 1989-90 year, and then when she did not work out, CESA #12 hired a Program Director for the IMC. This is not supported by the facts. Ms. Bloomquist testified that she was originally interviewed by Mr. Rogers and Mr. Baggerly; that Mr. Baggerly was the IMC

Program Director; and that Mr. Baggerly was her immediate supervisor for all three years she worked. Under cross-examination, Mr. Rogers testified that Mr. Baggerly was employed during the 1989-90 year. Consequently, the Employer's argument that Ms. Bloomquist's position was downgraded due to the hiring of an IMC Program Director for 1990-91 does not hold water. For all three years, Ms. Bloomquist was a Program Assistant working under a Program Director, Mr. Baggerly. Her duties were not reduced due to a Program Director being hired in the middle of her employment.

In its answer to the complaint, CESA #12 states that during the negotiations it left Ms. Bloomquist on Level 3 of the salary schedule because there was an agreement with the Union to maintain the status quo. At the hearing, Mr. Korpela testified that there was no such agreement. CESA #12's argument that it kept Ms. Bloomquist at Level 3 during negotiations only because of an agreement with the Union is a total fabrication. In its response to the complaint, CESA #12 claims that throughout the negotiations process, it presented Ms. Bloomquist as a Level 2 employe. Union Exhibit No. 4 clearly shows that on December 30, 1991, CESA #12 informed the Union that Ms. Bloomquist was on Level 3, Step I for 1991 and on Level 3, Step II for 1991-92.

Complainant acknowledges that the costing documents utilized by both parties treated Ms. Bloomquist at Level 2. The Union contends that the agreement to so cost was entered into strictly for the purpose of having both parties use a common list of employes for costing purposes, rather than using different lists and thus making a comparison of the merits of each offer meaningless. No substantive consequence was intended.

With respect to Mr. Sukala, the Complainant contends that during the 1990-91, 1991-92 and 1992-93 years, CESA #12 employed Mr. Sukala as a van driver and as a custodian. For all three years, CESA #12 paid Mr. Sukala $8.14 per hour for all work he did in both positions as per the 1990-91 salary schedule, and on such schedule he was placed on Level 2, Step IV. When the collective bargaining agreement was settled, the salary schedules provided different rates of pay for custodial duties and for van driving. Van driving was placed on Level 3 of the schedule, and custodial was placed on Level 7. For 1991-92 the negotiated salary schedule provided a wage rate of $7.55 per hour for Mr. Sukala and for 1992-93 it provided a wage rate of $7.92 per hour for his van driving duties. The Complainant Union contends that the District miscalculated Mr. Sukala's backpay. The Union contends that the language speaks of "wage rate", not of average wage rate, nor does it speak of average salary, reduced salary, or combined wages. In 1990-91 Mr. Sukala was receiving a wage rate of $8.14 per hour for his work as a van driver. That rate must be applied to his van driving.

The Complainant contends that if I find the language is not clear, then the drafter of the language, the Employer had the responsibility to write the language clearly. The Complainant contends that any ambiguity should be construed against the drafter. As to the costing, Mr. Delaney testified that he prepared the Union's costing exhibits himself and when preparing the documents forgot about the stipulated agreement which was reached 8 months before the exhibits were

prepared. This error should not compromise Mr. Sukala's backpay.

In its defense, the agency notes that Ms. Bloomquist was hired as a Program Assistant on August 23, 1989. In the 1990-91 year the IMC was reorganized and a certified staff member was assigned the duties of IMC Program Director. In the spring of 1991, CESA #12 administration made reorganization decisions. In August of 1991 Mr. Baggerly was issued a full 190-day contract, and the title "Director of Instructional Communications". Mr. Rogers testified that Mr. Baggerly's percent of time assigned in the IMC doubled in 91-92 over the previous year. This increased supervisory role of a certified staff person diminished the expectations and responsibilities for Ms. Bloomquist. The Employer notes that the expectations of Program Assistant and Clerk Typist II are very similar except as to the degree of accountability, independence and decision making. The increase in Baggerly's responsibility resulted in a concomitant decrease in the expectations the District held out for Ms. Bloomquist. The agency argues that the Union has not demonstrated that Ms. Bloomquist was doing the work of Program Assistant.

Placement of Ms. Bloomquist at Clerk/Typist II by the agency was presented to the Union throughout the negotiations process. Union exhibits also presented her at that level. The agency is skeptical of the Union's contention that its costing treatment of Ms. Bloomquist's position was for purposes of costing only. If the Union had any reason to believe that Ms. Bloomquist was doing the work of a Program Assistant, why would they have agreed to the agency's placement at Clerk/Typist II?

The agency contends that Ms. Bloomquist's wage rate was incorrect. Her step increases were received without specific approval by the agency administration. It was the Employer's understanding that due to the pendency of the Union certification and on-going negotiations, there was an implied agreement to maintain the status quo, and changes to bargaining unit positions and/or wages were not permissible except as it was necessary for normal operations of the agency.

The agency reads a different meaning into Rogers' November, 1991 note. The agency does not believe that note recognizes Bloomquist's position as a Program Assistant. Rogers testified that the note was simply approval for her to be evaluated at Level 3, not recognition of her position at that level. Rogers was not the administrative staff person responsible for oversight of support staff. Official agency policy comes from the agency administrator and it is only the administrator who had the ability to confirm Bloomquist's placement. Ms. Wahlquist's subsequent memo to Ms. Bloomquist clearly stated that Ms. Bloomquist was not in a supervisory position, and that per Board policy, the administrative assistant was to oversee support staff assignments.

In summary, CESA #12 presented evidence of a restructuring of the IMC program which affected Ms. Bloomquist's condition of employment. This resulted in a certified person assuming a greater role as Director and Ms. Bloomquist's responsibilities were lessened to those of Clerk/Typist II. The wage step increase of July 1, 1991 was implemented by the Head Bookkeeper without agency approval, and should not have occurred. Conversations Ms. Bloomquist had with

administrative personnel prove that she was knowledgeable of her Level 2 status. Ms. Bloomquist was presented as a Clerk/Typist II position throughout negotiations, and in both parties' final exhibits presented to the arbitrator for the award decision. Mr. Delaney states that the Union agreed to the placement of Ms. Bloomquist for costing. Mr. Delaney led the parties at the hearing to believe that neither he nor the bargaining unit staff on the negotiating team had known of the agency's intent to place her at that level. The agency contends that they could not have been more explicit than listing her as a Clerk/Typist II through every step of negotiations. Mr. Delaney stated that he did not share information received from CESA with the staff negotiating team. That is unfortunate, but not the responsibility of CESA #12. It is the Union representative's responsibility to keep bargaining unit members informed, not the Employer's role. The date of placement occurs at the time agreed to between the Union and the agency, not four or five months before those two parties agreed. Mr. Delaney, as the bargaining unit's representative, never objected to, inquired about, or questioned the placement, costing, wage rate, or status of Ms. Bloomquist. Since the Union had knowledge of the agency's placement of Ms. Bloomquist and voiced no objections, their silence could only be perceived by the agency as acceptance.

Relative to Mr. Sukala, CESA #12 agrees that Mr. Sukala was paid a wage rate of $8.14 per hour for van driving hours on his last day worked in 1990-91. The critical issue the Union failed to mention in the complaint and hearing is that Article 14.0 does not apply to Mr. Sukala because he also earned $8.14 per hour for his custodial hours worked in 1990-91.

Mr. Korpela's testimony clearly shows that the intent of the agency in proposing and agreeing to the language of 14.0 was to ensure that no bargaining unit member would receive a reduction in the wage they received in 1990-91. Article 14.0 should be interpreted to read: "A reduction in the combined wage rate" he received in 1990-91. Again, the agency explicitly stated Mr. Sukala's placement and wage calculation in all exhibits to the Union and arbitrator. The Union also placed Mr. Sukala at Level 3, Step III in their final offer and exhibits to the arbitrator. CESA #12 clearly stated that they used a combined wage rate "so that the employe would receive a combined salary that equalled or exceeded his 1990-91 salary". The combination of wages earned on the last day of 1990-91 is less than the combined wages of Mr. Sukala for any time in 1991-92.

DISCUSSION

Ms. Bloomquist was hired as a Program Assistant. Her testimony, which is meaningfully uncontradicted, is that her duties never changed. The Employer challenges that, but offers no proof. Clearly, the Employer intended to demote Ms. Bloomquist. Orders were parcelled out within the management ranks. It appears to me that that effort failed. There was testimonial evidence to a "telling evaluation". That document is missing. Ms. Bloomquist denies ever having seen it. No management person could produce it, nor had any management person ever seen it. When the Employer attempted to evaluate Bloomquist as a Clerk/Typist, she objected. The Employer's reaction to her objection was to immediately back off. Rogers testified that his subsequent note was not intended to confirm Bloomquist's status at Level 3. However, the note read: "Level 3 as you

stated". To me, this is an unequivocal confirmation of Bloomquist's contention that she is to be evaluated at Level 3. It is difficult for me to see what other construction those words could be given. Paragraph No. 1 of the salary schedule provides: "Job descriptions will establish the level of salary". This exchange and this note occurred after the decision to demote Bloomquist. It seems to me that this is something that Rogers ought properly to have been sensitive to. It also seems to me that the decision to evaluate Bloomquist at Level 3 should have at least triggered some thought as to the propriety of paying her at Level 3.

Bloomquist, testified, without contradiction, that she was never told that she had been demoted. Employer witnesses testified that a decision to demote her had occurred. Rogers testified as to a conversation which suggested to him that she had been told. However, no person came forward to indicate that he or she had done so. No person came forward to testify that it was within their knowledge that Bloomquist was so advised. I have concluded that no one ever told her she was demoted.

Bloomquist was paid at Level 3, as a Program Assistant, for the duration of her employment with the Agency. The Employer points a finger at the Bookkeeper, claiming error. However, the Bookkeeper testified without contradiction, that she was told to pay steps that were due and that she was never told to treat Bloomquist other than as a Level 3 Program Assistant. The Employer sat through the hearing, listened to that testimony, and offered no rebuttal.

The Employer discovered an "error" in preparing for the negotiations and the arbitration. There is no indication that that discovery ever led the Employer to bring the matter to the Union/or to the bargaining table. To the contrary, all testimony was that this issue was never made a part of the bargain. This is not explained. In a letter to the Union, the Employer indicates there was an agreement to maintain positions at the status quo. Clearly, no such agreement existed. It appears that the Employer, acting on advice of Counsel, decided that it could not, or should not, correct what it regarded as error. The Employer's decision relative to Bloomquist had wage implications. Clearly, portions of that decision were mandatorily bargainable. Yet the Employer, who was in the midst of negotiations, never brought the matter to the table.

In January of 1992, Bloomquist gave direction to a co-worker. Her authority to do so was called into question by Wahlquist. On January 24, 1992, Bloomquist responded by memo, declaring that she did have authority to give such direction, and that she was, and had been, the IMC Coordinator for a three-year period. This declaration, which runs in stark contrast to where the Employer believed her classification to be, was allowed to stand without response. It appears to me that as late as January, 1992, the Employer was on clear notice that Bloomquist regarded herself as the IMC Coordinator, and as someone whose job functions had not changed.

Bloomquist's last day was June 12, 1992. The arbitration award was issued in December of 1993. It was only upon receipt of her backpay that Bloomquist became aware that she had been demoted. This is amazing! In my experience, retroactive demotions are somewhat unusual. Here, the Employer did not even tell the employe that she had been demoted and subsequently tried to

execute that demotion after the employe had left the Employer's employment.

The single factor supporting the Employer's contention in this matter is the fact that both the Employer and Mr. Delaney treated Ms. Bloomquist as a Clerk/Typist for purposes of costing their arbitration offers. Delaney offers two explanations. The first is that he was the recipient of poor data. It was Delaney's testimony that he got inconsistent and incompatible data from the District over the course of time. The District contends that the allegedly inconsistent data was never sent. The District contends that the Union altered documents, evidently for the purposes of this hearing. I do not know what the truth is. There is nothing obviously altered or conspicuous about the data that is the subject of this dispute. However, I am unwilling to credit the Employer's testimony in this regard. It seems to me that the Employer's theory in this dispute is essentially that there was an enormous and pervasive conspiracy. The Employer contends that Bloomquist was demoted. Baggerly, who, through the process of elimination, must have been the person to tell her, was not called. Baggerly no longer works for the Agency. Bloomquist, according to the Employer, was improperly placed at Step 3 and improperly given steps at least twice. The Employer believes that the Bookkeeper was acting outside the scope of her employment by so doing. According to the Employer, Bloomquist's rate of pay was a mistake, which it discovered. According to the Employer, its attorney advised the Agency that the mistake could not be corrected. The Employer proceeded in this matter without Counsel. According to the Employer, there was an evaluation which would support its contention. That evaluation is missing. That evaluation was never seen by any person who testified in this proceeding. The Employer believes that all documents that were submitted for costing support its position. Those which do not, and which appear to have been issued from the Employer's office, are alleged to have been forged by the Union. No facet of this grand conspiracy theory is supported by the record.

Mr. Delaney offers a second reason for his stipulation as to the costing. Delaney testified he was willing to proceed with data that was consistent. He testified that so long as the data was consistent, the dollar and percent costs would be common, and that that would allow the arbitration to proceed. In this instance, by treating Ms. Bloomquist as a Clerk/Typist II, the parties treated her as if she were at the top step of the schedule, i.e., she would not receive a step during those years which the parties were litigating. It appears to me that with respect to both costs and percentage, the Union package would be minimized by treating Bloomquist in this fashion. Delaney's letter, which confirms the agreement, does say that the agreement is for costing purposes. Given the foregoing, I believe that Delaney made a conscious decision to treat Bloomquist in this fashion, and that that decision was motivated, at least in part, by a desire to move forward, and a desire to stipulate to something that would minimize the facial cost of the package.

While I believe that there was a considerable amount of gamesmanship that transpired in this whole affair, I do not believe Bloomquist was ever demoted. I believe that the overwhelming weight of the evidence is that she was treated as a Level 3 employee by everyone to this proceeding.

The parties, in their negotiations, agreed to contractual language which provides: "No

employee shall receive a reduction in the wage rate he/she received on the last work day of the 1990-91 work year." The parties used the term "wage rate". The common use of the term "rate" suggests a ratio or a charge per unit of some other commodity. Here, a charge per unit of work. This, in contrast with the more general term wages, earnings, or salary. I regard wage rate to be the equivalent of hourly pay.

The Union objected in writing to the agency's application of retroactivity. In response to the Union's objection, Jean Wahlquist wrote an explanatory letter dated January 10, 1994, which included the following explanation:

> ARTICLE 14.0 does not require CESA #12 to pay a wage rate of $8.14. The article states that "No employee shall receive a reduction in the wage rate he/she received on the last work day of the 1990-91 work year." Please refer once again to ER.EX 11 footnote - which states that CESA #12 used a combined rate "SO THAT EMPLOYEE WOULD RECEIVE A COMBINED SALARY THAT EQUALLED OR EXCEEDED HIS 1990-91 SALARY.
>
> Mr. Sukala's combined wage had to equal or exceed $8.14. Therefore, we have adhered to the negotiated agreement and arbitration award in calculating the retropay for Mr. Sukala.

This explanation refers to a "combined salary", a "combined rate", and a "combined wage". The collective bargaining agreement does not make reference to a combined wage rate. The Employer letter emphasizes that the purpose of the Article XIV provision is "so that employee would receive a combined salary that equalled or exceeded his 1990-91 salary." The words are in quotes, they are capitalized, and at least one of them is underlined. This is not what this contract provides. There are two very real variables that this pronouncement ignores. The hours worked by Sukala appear to vary substantially from year to year. In 1990-91, the base year, and the basis of all calculations, Mr. Sukala worked 1,753 hours. The very next year his hours increased to 2,281.75. They increased yet further the subsequent year. The second variable is Mr. Sukala's work assignment. The relatively low-paying van driving went from 1,248.75 hours to 819.75 hours in the course of one year. These are huge variables. Nothing in the record indicates that this provision was intended to address or guarantee annual income, and/or salary regardless of hours worked. That is not what this contract says.

The Employer introduced an exhibit (Employer Exhibit 11) submitted to the arbitrator in the wage dispute. That exhibit lists Mr. Sukala's rate of pay as including an $8.65 rate for 1991-92, and two footnotes. The first indicates that van driver wage rate is - $7.55 for 91-92 under both parties' offers. The second notes that in placing employe on schedule as a custodian, District used a combined, weighted average of wage rates for van driver and custodian so that employe would receive a combined salary that equalled or exceeded his 1990-91 salary. Read literally, I believe

this language is at odds with the stipulated Article XIV guarantee. This clause becomes compatible with the Employer's theory if one assumes that the hours worked remain common. The Employer also introduced in exhibit (Union Exhibit 73 and 74) which constituted the Union's costing of its offer to the arbitrator. Those exhibits costed Mr. Sukala at two different rates of pay; one applicable to van driving, the other applicable to custodial work. There is no $8.14 per hour floor. Both offers are obviously costed on a basis that Mr. Sukala would receive the actual arbitrated rates for work performed.

The Employer's application is premised on the theory that the "floor" does not apply until such time as all of Mr. Sukala's wages divided by Mr. Sukala's hours yield a figure that is less than $8.14 per hour. This notion of composite wage, or average wage pervades the Employer's approach to this case. However, nothing in Article XIV refers to an average or composite wage.

What the parties have done here is to write language guaranteeing that the "wage rate" will not fall below the standard established by the last day of 1990-1991. They did so knowing that Mr. Sukala's wage rate for all work performed on the last day of 1990-91 was $8.14 per hour. They thereafter divided Mr. Sukala's job into two different tasks for pay purposes. Having done that, they established (through arbitration) different wage rates which attach to the performance of those different assignments. Reading the language literally, and applying it in this context, it appears to me that the application of rate is to each of the respective tasks.

The testimony establishes that this language was both suggested and drafted by the Employer. The Union contends that the ambiguities in this language, if any, ought be construed against the District, as drafter. I agree that that is a common construction technique.

The bargaining history in this matter is, at best, ambiguous. Mr. Korpela testified and indicated that it was always the Agency's intent that the average rate be applicable. He points to exhibits submitted by both the Union and the District to the arbitrator in support of his perspective. Each of the Union witnesses testifying say that the understanding was clearly that each rate was subject to the floor independently. Union witnesses testify that Mr. Delaney was specific in that regard, and that examples were provided in caucus that demonstrated how the Union's application of this floor would operate.

Both parties did cost this before the arbitrator at the individualized rate. That is, there was no application of the floor in either party's costing of the van driver's pay. Delaney indicates that he simply forgot about the floor. These exhibits to the arbitrator certainly suggest that the Employer's application is appropriate.

I believe the best evidence of what the parties intended in this agreement is the words they used in the contract. I think the use of the term "wage rate" is a precise and specific provision. I am not prepared to allow a rule of construction, the bargaining history or costing documents to alter what I think is, on its face, a clear provision. I am therefore, sustaining the complaint.

Dated at Madison, Wisconsin this 10th day of February, 1995.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By William C. Houlihan /s/
William C. Houlihan, Examiner