STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of STEPHEN KIPFER and OTHERS Requesting a Declaratory Ruling Pursuant to Sec. 227.41, Stats. Involving a Dispute Between Said Petitioners and WISCONSIN RAPIDS SCHOOL DISTRICT and WISCONSIN RAPIDS EDUCATION ASSOCIATION	Case 37 No. 50416 DR(M)-536 Decision No. 28029

Appearances:
Crowns, Midthun, Metcalf & Quinn, S.C., by Ms. Susan C. Schill, 480 East Grand
Melli, Walker, Pease & Ruhly, S.C., by Mr. Jack D. Walker, 119 Martin Luther
Ms. Melissa A. Cherney, Staff Counsel, Wisconsin Education Association Counci

FINDINGS OF FACT, CONCLUSION OF LAW
AND DECLARATORY RULING

On January 20, 1994, Stephen Kipfer and twenty-eight other employes of the Wisconsin Rapids School District filed a petition with the Wisconsin Employment Relations Commission pursuant to Sec. 227.41, Stats. seeking a declaratory ruling as to whether the terms of a proposed collective bargaining agreement between the District and the Wisconsin Rapids Education Association violated the requirements of Sec. 111.70(4)(cm)8p, Stats.

Hearing on the petition was held in Wisconsin Rapids, Wisconsin on March 10, 1994, before Examiner Peter G. Davis. A stenographic transcript of the hearing was prepared and the parties filed briefs, all of which were received March 21, 1994.

Having considered the matter, the Commission makes and issues the following

FINDINGS OF FACT

1. The Wisconsin Rapids School District, herein the District, is a municipal employer having its principal offices at 510 Peach Street, Wisconsin Rapids, Wisconsin 54494. The District employs certain individuals, including Stephen Kipfer, who are represented for the purposes of collective bargaining by the Wisconsin Rapids Education Association, a labor organization having its principal offices at Wisconsin Rapids, Wisconsin.

2. Since at least July, 1982, the District and the Association have been parties to collective bargaining agreements which contained salary schedules. Employe placement of the salary schedules is established by the terms of the contract language implementing the schedule. The salary schedules from the parties' 1982-1984, 1984-1987, 1987-1990 and 1990-1993 are attached to this decision as Appendices "A"-"D", respectively, and incorporated into our Findings of Fact. These four collective bargaining agreements all contained the following provision which states in pertinent part:

> 802.2 -- It is agreed that the teaching experience on the salary schedule will be normally construed as consisting of one (1) year's satisfactory teaching experience each. Placement on the salary schedule shall be in accordance with the credited number of years of teaching experience, the degree, and the number of graduate credits beyond the degree.

The parties' 1984-1987 agreement contained the following provision:

> 802.7 -- During this contract term only, placement on the salary schedule will be based on Attachment "A", with no vertical movement (increment) during 1984-85 or 1985-86. Normal vertical movement will resume in 1986-87.

Pursuant to Section 802.7, employes who were covered by the 1984-1987 contract did not change levels or steps as a result of their employment during the 1984-1985 and 1985-1986 school years.

Aside from the 1984-1985 and 1985-1986 school years, employes covered by the four bargaining agreements in effect between 1982 and June, 1993, have changed levels or steps on the salary schedule with each additional year of service until they reached the top of the schedule (i.e., Step 1 or Level 1).

3. The parties reached agreement on a 1993-1995 collective bargaining agreement after August 12, 1993, the effective date of 1993 Wisconsin Act 16. Pursuant to the terms of the 1993-1995 agreement, no employes would move a step or level on the salary schedule during the 1993-1994 school year and during the 1994-1995 school year:

> 2. For those persons covered by the terms of this Agreement, who would normally receive one experience step, a one-half experience increment will be provided.

The 1993-1995 agreement includes Section 802.2 as set forth in Finding of Fact 2 and retains the same "levels" and "lanes" contained in the 1990-1993 agreement (Appendix "D").

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

CONCLUSION OF LAW

The 1993-1995 collective bargaining agreement between the Wisconsin Rapids School District and the Wisconsin Rapids Education Association did not alter the salary range structure, number of steps or requirements for attaining a step or assignment of a position to a salary range within the meaning of Sec. 111.70(4)(cm)8p, Stats.

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

DECLARATORY RULING 1/

The 1993-1995 collective bargaining agreement between the Wisconsin Rapids School District and the Wisconsin Rapids Education Association does not violate Sec. 111.70(4)(cm)8p, Stats.

Given under our hands and seal at the City of Madison, Wisconsin this 3rd day of May, 1994.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By A. Henry Hempe /s/
A. Henry Hempe, Chairperson

Herman Torosian /s/
Herman Torosian, Commissioner

William K. Strycker /s/
William K. Strycker, Commissioner

(Footnote 1/ appears on the next page.)

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.

(Footnote 1/ continues on the next page.)

(Footnote 1/ continues from the previous page.)

> (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.
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> . . .
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> (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.

WISCONSIN RAPIDS SCHOOL DISTRICT

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSION OF LAW AND DECLARATORY RULING

The issue before us is whether Sec. 111.70(4)(cm)8p, Stats. prohibited the District and Association from agreeing to give employes something other than a full step or level on the salary schedule for an additional year of experience.

POSITIONS OF THE PARTIES

The Petitioners

Petitioners argue the 1993-1995 contract between the District and the Association violates the unambiguous provision of Sec. 111.70(4)(cm)8p, Stats., that the requirements for obtaining a step on a salary schedule remain constant.

Petitioners contend that under the 1990-1993 contract, employes received one step for each year of work. They assert that one year of work was the "requirement" for obtaining a step which was in effect on August 12, 1993, the effective date of Act 16. Because the 1993-1995 agreement provides that employes will not receive one step for each additional year of work, Petitioner argues the agreement violates Sec. 111.70(4)(cm)8p and thus is null and void.

Petitioner allege that the parties' experience under agreements prior to 1990-1993 contract is irrelevant. In Petitioners' view, all that matters is the maintenance of the step requirement in effect on August 12, 1993. Thus, Petitioners assert the freezing of step movement in contracts prior to the 1991-1993 agreement is of no consequence.

Petitioners contend the language of Act 16 makes no distinction between agreements voluntarily reached and agreements established through interest-arbitration. If the legislature had intended to allow the parties to voluntarily alter the requirements for obtaining a step, Petitioners assert the legislature would have so stated. Petitioners cite ERB 33.03 as confirmation of the view that no collective bargaining agreement can override the provisions of Sec. 111.70(4)(cm)8p, Stats.

Contrary to the District and the Association, Petitioners assert the result they seek does not discourage voluntary settlements and thus is consistent with the general spirit of the law. By establishing mandatory minimum standards, Petitioners argue the legislature has provided less room for conflict and thus encouraged voluntary agreements.

Given the foregoing, Petitioners contend the legislature clearly intended to prohibit agreements such as that reached by the District and the Association. Thus, Petitioners ask the Commission to declare the 1993-1995 agreement null and void.

The District

The District contends that the 1993-1995 contract does not run afoul of Sec. 111.70(4)(cm)8p, Stats.

The District argues Section 802.2 of the 1990-1993 contract establishes that the applicable "requirement for attaining a step" is agreement by the District and the Association that a step should be paid. In this regard, the District cites the parties' use of the contract words "normally construed" as demonstrating receipt of a step is contingent on whether the parties agree a year is "normal" and thus that a step is to be received. The District asserts the happenstance that under the 1990-1993 agreement the parties agreed to give steps should not override the parties' contractually-established ability to determine how a step should "normally" be "construed".

Even without the phrase "normally construed", the District argues Sec. 111.70(4)(cm)8p, Stats. does not prohibit the parties from agreeing to freeze or give partial steps. It contends that the statutory language in question is vague, but can most reasonably be interpreted as only preventing parties from unilaterally altering the matters set forth in Sec. 111.70(4)(cm)8p, Stats.

The District additionally asserts a temporary hiatus in the application of the requirements for a step does not itself alter the requirements.

Given the foregoing, the District asserts the Commission should declare that Sec. 111.70(4)(cm)8p, Stats. "has not been offended" by the parties' 1993-1995 contract.

The Association

The Association argues the parties' 1993-1995 contract does not conflict with the prohibitions of Sec. 111.70(4)(cm)8p, Stats.

It contends that the statutory interpretation proposed by the Petitioners runs contrary to the overwhelming policy interest in encouraging voluntary settlements which is evident when reading Act 16. The Association asserts that Act 16 evidences an intent to give parties far more leeway when seeking a voluntary agreement than is present when an employer chooses to unilaterally rely on a qualified economic offer. For instance, the Association argues that the statute specifically requires that steps be given (subject to their financial impact) as part of a qualified economic offer but does not require that steps be given under voluntary agreements. The Association contends that although the parties cannot alter the basic structure of the salary schedule, they can voluntarily agree how the structure will be implemented in a given year. The Association asserts there is no statutory or policy basis for prohibiting the parties from freezing or providing partial step advancement if they agree such a contract best meets their perspective needs. In the Association's view, such an agreement does not change the normal requirements for obtaining a step.

The Association alleges its general position is specifically supported by the parties' experience under their salary schedule. The Association notes that because of prior step freezes and the full step/half step salary structure, an employe's step placement and experience level do not generally correspond.

Given all of the foregoing, the Association contends the parties' 1993-1995 contract does not conflict with Sec. 111.70(4)(cm)8p, Stats.

DISCUSSION

Section 111.70(4)(cm)8p, Stats. provides:

> 111.70(4)(cm)8p. 'Professional school employe salaries.' In every collective bargaining unit covering municipal employes who are school district professional employes in which the municipal employe positions were, on the effective date of this subdivision....[revisor inserts date], assigned to salary ranges with steps that determine the levels of progression within each salary range, the parties shall not, in any new or modified collective bargaining agreement, alter the salary range structure, number of steps or requirements for attaining a step or assignment of a position to a salary range, except that if the cost of funding the attainment of a step is greater than the amount required for the municipal employer to submit a qualified economic offer, the parties may alter the requirements for attaining a step to no greater extent than is required for the municipal employer to submit a qualified economic offer. (emphasis added).

The instant dispute is limited to the question of whether the 1993-1995 contract violates the prohibition in Sec. 111.70(4)(cm)8p, Stats. against altering the "requirements for attaining a step..." We conclude that the contract does not violate this statutory prohibition.

As persuasively and dispositively argued by the District, Section 802.2 of the 1990-1993 contract establishes that the "requirement for attaining a step" when Sec. 111.70(4)(cm)8p, Stats. became effective was "normally" but thus not always a year of teaching experience. 2/ Thus, we think it clear that these parties had contractually reserved the right to determine whether, in any given year, a year of teaching experience would generate a step for eligible employes. Thus, an agreement to freeze steps and then provide partial steps does not violate the pertinent portion of Sec. 111.70(4)(cm)8p, Stats.

2/ The 1984-1985 and 1985-1986 step freeze is consistent with the interpretation we have given "normally construed".

Given our rationale and result, we need not and do not reach the broader question of whether a freeze or partial step would be permissible without language akin to Section 802.2.

Dated at Madison, Wisconsin this 3rd day of May, 1994.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By A. Henry Hempe /s/
A. Henry Hempe, Chairperson

Herman Torosian /s/
Herman Torosian, Commissioner

William K. Strycker /s/
William K. Strycker, Commissioner