June 12, 1995

Mr. Edward J. Hellner
Clerk of Circuit Court
Wood County Courthouse
400 Market Street
Post Office Box 8095
Wisconsin Rapids, Wisconsin 54495-8095

Re: Schill, et al. v. WERC, Case No. 94-CV-257

Dear Mr. Hellner:

Enclosed for filing is an original notice of entry of decision and order and affidavit of mailing to be filed in the above action.

Sincerely,

/s/ David C. Rice
David C. Rice
Assistant Attorney General
State Bar No. 1014323

cc: Susan Schill
Jack Walker
Melissa Cherney
Peter Davis, WERC

STATE OF WISCONSIN
CIRCUIT COURT
WOOD COUNTY
BRANCH 2

KAREN M. SCHILL, ROXANNE BEMBENEK, SUSAN DEYO, NATALIE NIENHUIS, STEPHANIE J. SCHMIDT and KARL M. NIENHUIS,
Petitioners,

vs.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION,
Respondent.

Case No. 94-CV-257
Decision No. 28029-A

NOTICE OF ENTRY OF DECISION AND ORDER

To: Susan C. Schill
Crowns, Midthun, Metcalf & Quinn, S.C.
480 East Grand Avenue
Post Office Box 759
Wisconsin Rapids, Wisconsin 54495-0759

Jack D. Walker
Melli, Walker, Pease & Ruhly, S.C.
119 Martin Luther King, Jr., Blvd.
Post Office Box 1664
Madison, Wisconsin 53701-1664

Melissa A. Cherney
Wisconsin Education Association Council
Post Office Box 8003
Madison, Wisconsin 53708-8003

PLEASE TAKE NOTICE that a decision and order affirming the decision of the Wisconsin Employment Relations Commission, of which a true and correct copy is hereto attached, was signed by the court on the 9th day of June, 1995, and duly entered in the Circuit Court for Wood County, Wisconsin, on the 9th day of June, 1995.

Notice of entry of this decision and order is being given pursuant to secs. 806.06(5) and 808.04(1), Stats.

Dated this 12th day of June, 1995.

James E. DOYLE
Attorney General

/s/ David C. Rice
DAVID C. RICE
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State Bar No. 1014323
Attorneys for Respondent Wisconsin Employment Relations Commission
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Post Office Box 7857
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STATE OF WISCONSIN
CIRCUIT COURT BRANCH 2
WOOD COUNTY

KAREN M. SCHILL, ROXANNE BEMBENEK, SUSAN DEYO, NATALIE NIENHUIS, STEPHANIE SCHMIDT and KARL M. NIENHUIS,
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DECISION AND ORDER

The petitioners are employees of the Wisconsin Rapids School District and members of the Wisconsin Rapids Education Association. They ask this court to declare that the 199395 collective bargaining agreement between the district and the association violates Sec. 111.70(4)(cm) 8p, Stats. The district and the association contend that it doesn't. Petitioners presented their case to the Wisconsin Employment Relations Commission, which decided that although the 1990-93 collective bargaining agreement provided for annual step increases for employees/members, it also reserved to the district and the association the right to negotiate other than annual step increases, i.e., that every annual step increase was subject to this reservation, and that under such a construction the 1993-95 collective bargaining agreement did not violate Sec. 111.70(4)(cm) 8p, Stats. 1/ I sustain the commission's decision.

The commission's construction is a reasonable one. The commission considered the '90-93 agreement and the agreements of the district and the association going back to 1984. It found that in some cases the agreement called for an annual step increase but that in other cases, 1984-85 and 1985-86, a year of work was not commensurate with a step increase on the salary structure. Even though the 1990-93 agreement called for a step increase for each year of employment, it also contained the language that "the teaching experience steps on the salary schedule will be normally construed as consisting of one (1) year's satisfactory teaching experience each." Sec. 802.2, Collective Bargaining Agreement (CBA). One may consider the quoted words to be either a historical note referring to what happened in 1984-85 and 1985-86 or as a reservation of rights by the parties to the agreement.

Petitioners argue that the words are merely an announcement of historical fact, reminding members and administrators of the fact that a satisfactory year's teaching experience in '84-85 or '85-86 doesn't constitute a step increase on the salary schedule. This construction makes the words redundant and inoperative. The association and the district know, without the 1990-93 contract telling them, that a satisfactory year's teaching experience in '84-85 or '85-86 doesn't constitute a

step increase. Moreover, the quoted words are not in the past tense as a historical reference might be; they are rather in the passive voice of the future tense - 'the teaching experience steps... will normally be construed...

An agreement should ordinarily receive a construction that gives its words operative effect. That would occur if the quoted words are a reservation of rights by the association and the district. Members/employees received a step increase for each year's work in '90-93, but they received it subject to the right of the association and the district to change it in the future. Normally members/employees could expect to receive a step increase for each year's teaching experience, but not always; the step increase that members/employees received in '90-93 was subject to this reservation. The agreement contained this reservation just as it contained the step increase for each year of teaching experience. The association and the district reserved to themselves the right to alter the way that step increases would occur. Both provisions, the step increase and the reservation, are operative aspects of the agreement.

This construction, the construction by the commission, attains greater respect, not less, because on prior occasions the association and the district found that an agreeable solution to negotiations did not necessitate annual step increases (perhaps necessitated other than annual step increases). With this background, it seems reasonable that the association and the district reserved the right to engage in negotiations and a contract which might not base step increases on each year's teaching experience.

The purpose of Sec. 111.70, Stats., appears in subsec. (6), which says:

> DECLARATION OF POLICY. The public policy of the state as to labor disputes arising in municipal employment is to encourage voluntary settlement through the procedures of collective bargaining . . .

With this policy in mind, a court should consider a commission construction that recognizes the mutual negotiations and agreement of the parties and that considers the reasonable construction that they place upon the agreement. The association and the district negotiated the '90-93 agreement which contained the step increase schedule and the reservation. They also negotiated and agreed upon the step increases for '93-95, implying that they recognized and relied upon the reservation that the '90-93 agreement contains. Both the association and the district support the construction that Sec. 802.2 of the '90-93 CBA contained a salary range structure which by its own terms was subject to change. In their '93-95 CBA the association and the district didn't alter that salary range structure; they applied it. This is the commission's construction of the '90-93 CBA. Following this rationale, it would constitute an alteration of the '90-93 CBA's salary range structure if the reservation could not be considered in making the '93-95 agreement. So while the salary range structure under the '93-95 agreement is different from that of the '90-93 agreement, the difference is according to the salary range structure under the '90-93 CBA and is not an alteration which violates Sec. 111.70(4)(cm)8p. This construction, the construction of the commission, doesn't have to be the only one; it doesn't have to be the only reasonable one; it does have to be a reasonable one; it is; policy applications make it more so.

Given the statutory policy of promoting voluntary settlement through collective bargaining, given

the mutuality of the association and the district on the construction of the agreement, given that the commission issued its declaratory ruling and conclusion of law in an area in which it has responsibility for policy determinations, given that the commission faced a legal decision laden with value and policy determinations, and given that the commission's construction of the agreement is a reasonable one, a court should give weight to the commission's decision. For these reasons, I defer to the construction that the commission has given to the collective bargaining agreement. I dismiss the petition for review.

SO ORDERED.

Dated this 9th day of June, 1995.

BY THE COURT:

/s/ James Mason
James Mason
Circuit Judge, Branch 2

ENDNOTES

1/ Section 111.70(4)(cm) 8p, Stats., says:

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 August 12, 1993, 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 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 at the minimum possible cost to the municipal employer.