DECISION AND DISMISSAL OF COMPLAINT

On March 12, 1997, Local 1303-209, Council 4, AFSCME, AFL-CIO (the Union) filed a complaint with the Connecticut State Board of Labor Relations (the Labor Board), alleging that the Waterford Board of Education (the Board of Education) had engaged in practices prohibited by § 7-470 of the Municipal Employee Relations Act (MERA or the Act) by refusing to grant step increments to eligible bargaining unit employees. Specifically, the Union alleged that the Employer's actions repudiated the collective bargaining agreement, constituted a unilateral change in a mandatory subject of bargaining and violated §7-475 of the Act.

After the requisite preliminary administrative steps had been taken, the case came before the Labor Board for a hearing on October 24, 1997. Both parties appeared, were represented by counsel and allowed to present evidence, examine and cross examine witnesses and make argument. The parties entered into a partial stipulation of facts and exhibits. Both parties filed post-hearing briefs which were received by the Labor Board on January 9, 1998. Based on the entire record before us, we make the following findings of fact and conclusions of law and we dismiss the complaint.
FINDINGS OF FACT

The findings of fact are based on the entire record before us, including the parties' partial stipulation of facts entered into the record as Exhibit 2.

1. The Board of Education is an employer pursuant to the Act.

2. The Union is an employee organization pursuant to the Act and at all material times has represented a bargaining unit of paraprofessional employees employed by the Board of Education.

3. The Board of Education and the Union were parties to a collective bargaining agreement with effective dates of September 1, 1993 through August 31, 1996, which contained the following relevant provision:

   **ARTICLE XIV**
   
   **WAGE SCHEDULE**

<table>
<thead>
<tr>
<th>Year</th>
<th>Step I (completed less than 3 yrs continuous employment)*</th>
<th>Step II (completed 3 or more years continuous employment)*</th>
</tr>
</thead>
<tbody>
<tr>
<td>1993-94</td>
<td>9.51</td>
<td>10.96</td>
</tr>
<tr>
<td>1994-95</td>
<td>9.80</td>
<td>11.29</td>
</tr>
<tr>
<td>1995-96</td>
<td>10.09</td>
<td>11.63</td>
</tr>
</tbody>
</table>

   For purpose of step placement, a member must:

   a. have completed continuous years of service prior to the beginning of a contract year
   b. work at least ninety (90) days during a contract year in a position within the bargaining unit to be credited with a year of continuous employment.

   *Employees who have worked at least ninety (90) days in their first year of continuous employment with the Board will be credited with one (1) year of service for purposes of step placement on the salary schedule. (Ex. 2B).

4. During the term of the September 1, 1993 through August 31, 1996 collective bargaining agreement, employees received their step increments on September 1, pursuant to Article XIV of the collective bargaining agreement. (Ex. 2).

5. By letter dated February 26, 1996, the Union requested negotiations for a successor
collective bargaining agreement. (Ex. 2A).

6. Negotiations began on June 11, 1996 for the successor agreement to the agreement which was to expire on September 1, 1996. (Ex. 2, 2B).

7. On September 1, 1996, the parties were still in negotiations for a successor agreement. (Ex. 2).

8. On September 1, 1996, the bargaining unit members did not advance a step on the wage schedule in the contract. (Ex. 2).

9. Some time in late 1996 or early 1997, the Union informed the Board of Education that it believed the September 1996 increments should be paid. The Board of Education responded that an increment would not be paid because they had always handled increments during negotiations in this manner.

10. On March 12, 1997, the Union filed the complaint in this case numbered MPP-18,949. (Ex. 2).

11. The parties entered into a successor agreement on September 12, 1997. (Ex. 2C).

12. The successor agreement contained, in Article XIV, a different wage schedule from that contained in the previous contract (set forth in Finding of Fact #3 above). The changes included an increase to nine step increments in each contract year. (Ex. 2C).

13. Pursuant to the terms of the successor agreement, anyone who would have advanced an increment on the wage schedule of the previous agreement on September 1, 1996 received retroactive until [sic] September 1, 1996 an increase to $11.92. (Ex. 2).

14. The $11.92 amount includes a general wage increase negotiated for the successor agreement. (Ex. 2, 2C).

15. The Employer did not pay interest on the retroactive wage payments.

16. A prior collective bargaining agreement with effective dates of 1990 to 1993 was not settled prior to the expiration of the previous contract. Employees with sufficient service time to warrant a step increment in September 1990 pursuant to the previous contract did not receive that increment until the 1990-1993 contract was settled and the increase was paid retroactively. No interest was paid on the retroactive increment and the Union did not object or request interest payments.

17. The 1990-1993 collective bargaining agreement contained the same language (not wage amounts) found in Article XIV of the 1993-1996 contract concerning wages (referenced in Finding of Fact #3) except that employees were required to complete five years of service to
qualify for the step increment.

18. The 1993-1996 collective bargaining agreement was not settled prior to the expiration of the 1990-1993 contract. Employees with sufficient service time to warrant a step increment in September 1993 pursuant to the previous contract did not receive that increment until the 1993-1996 contract was settled and the increment was paid retroactively. No interest was paid on the retroactive increment and the Union did not object or request interest payments.

19. During negotiations for the 1996-2000 collective bargaining agreement, the Union did not demand interest on any retroactive increment wages.

CONCLUSIONS OF LAW

1. The Board of Education did not repudiate the 1993-1996 collective bargaining agreement by failing to pay a step increment on September 1, 1996.

2. The Board of Education did not make an unlawful unilateral change in a mandatory subject of bargaining by failing to pay a step increment on September 1, 1996.

DISCUSSION

In this case, the Union claims that the Board of Education repudiated the 1993-1996 contract and/or unlawfully unilaterally changed a mandatory subject of bargaining by failing to pay an increment to employees on September 1, 1996. The Board of Education claims that any issue regarding the 1996 increment was extinguished by the 1996-2000 collective bargaining agreement which retroactively paid the increment to employees. The Board of Education also argues that the Union has failed to prove contract repudiation.

We do not find repudiation of the contract. The Board of Education has presented a plausible interpretation of the 1993-1996 contract supporting its right to not pay an increment in September, 1996. In this regard, it is well established that contract repudiation may only be found in certain limited circumstances. The first is where the respondent party has taken an action based upon an interpretation of the contract and that interpretation is asserted in subjective bad faith. The second is where the respondent party has taken an action based upon an interpretation of the contract and that interpretation is wholly frivolous or implausible. The third type of repudiation does not involve assertion of an interpretation of the contract by the respondent, but instead, the respondent either admits or does not challenge the complainant's interpretation of the contract and seeks to defend its actions on some collateral ground, e.g., financial hardship, administrative difficulties, etc. If the respondent's defense does not excuse its actions, we will find repudiation if the respondent's action was contrary to its clear contractual obligation. Hartford Board of Education, Decision No. 2141 (1982).

Here the parties dispute the interpretation of Article XIV of the 1993-1996 collective bargaining agreement. The Board of Education interprets that Article to require it to only pay the increments for the specific school years listed in the contract. It rests this interpretation on
the fact that the contract mandated specific amounts to be paid in each of the years listed; no
general percentage increase was set forth which might, theoretically, be applied to years after the
contract expired in the absence of a new agreement. The Board of Education also aptly points
out that its interpretation of the contract language is in keeping with the past practice of the
parties under similar language in previous collective bargaining agreements.

Under the circumstances, we find that the Board of Education’s interpretation of the
contractual language is plausible and therefore, defeats the Union’s claim of contract repudiation.
It is reasonable, given the language of the contract which tied specific increment amounts to
specific contract years as well as the past practice of the parties under similar circumstances, for
the Board of Education to consider itself under no obligation to give post-contract increments
until the issue was resolved in collective bargaining for a successor agreement.

The Union also claims that the Board of Education unlawfully unilaterally changed a
condition of employment established by past practice by failing to pay the increments. We do
not agree.

As discussed above, the increments in the contract were tied to specific school years.
There is nothing in the contract that would indicate that an increment is expected or required in
the absence of a contract clause indicating a specific amount for a specific year. Further, under
similar circumstances in the past, the Board of Education has not granted increments to
employees during contract negotiations. Thus, there is no pattern of behavior by the parties upon
which to base a finding that there exists a past practice obligating the employer to pay post-
contract increments. In somewhat similar circumstances in City of New Haven, Decision No.
3651 (1998), we recently came to the same conclusion. As such, we dismiss the Union’s
complaint.
ORDER

By virtue of and pursuant to the powers vested in the Connecticut State Board of Labor Relations by the Municipal Employee Relations Act, it is hereby

ORDERED that the complaint filed herein be, and the same hereby is, DISMISSED.

CONNECTICUT STATE BOARD OF LABOR RELATIONS

Wendella A. Battey
Wendella A. Battey
Chairman

David C. Anderson
David C. Anderson
Alternate Board Member

Paul Abercrombie
Paul Abercrombie
Alternate Board Member
CERTIFICATION

I hereby certify that a copy of the foregoing was mailed postage prepaid this 10th day of March, 1999 to the following:

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