STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS BOARD

LaCROSSE COUNTY INSTITUTION EMPLOYEES LOCAL 750, AFSCME, AFL-CIO, Complainant, vs. LaCROSSE COUNTY, Respondent.	Case V No. 11000 MP-30 Decision No. 7707-A

Appearances: Lawton & Cates, Attorneys at Law, by Mr. David Loeffler, and Mr. Robert J. Oberbeck, District Director, for the Complainant.
Mr. Ray A. Sundet, Corporation Counsel, and Mr. Robert Adman, Co-Counsel, for the Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above entitled matter having come on for hearing before the Wisconsin Employment Relations Board on September 8, 9, 21 and 22, 1966, at LaCrosse, Wisconsin, Chairman Morris Slavney and Commissioners Arvid Anderson and Zel S. Rice II being present; and the Board having considered the evidence and arguments, and briefs of counsel, and being fully advised in the premises, makes and files the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. That LaCrosse County Institution Employees Local 750, hereinafter referred to as the Complainant, is a labor organization affiliated with the Wisconsin Council of County and Municipal Employees, and has its offices at LaCrosse, Wisconsin.

2. That LaCrosse County, hereinafter referred to as the Respondent, is a municipal employer having its principal office at LaCrosse County Court House, LaCrosse, Wisconsin.

3. That on January 10, 1963, the Wisconsin Employment Relations Board, hereinafter referred to as the Board, after an election conducted by it, certified the Complainant as the exclusive collective bargaining representative of all employes of the Respondent, employed by it at the Hillview Home and Infirmary, excluding the superintendent, supervisory personnel and confidential and clerical personnel; that following said certification, the parties entered into successive

collective bargaining agreements, the last of such agreements covering wages, hours and conditions of employment of said Hillview employes for the year 1965; and that the latter agreement, by its terms, expired on December 31, 1965.

4. That in the latter part of May, 1965, Eugene Doyle, Complainant's District Representative, by letter to the Respondent, suggested the date for commencing negotiations for the 1966 collective bargaining agreement covering said Hillview employes; that after an exchange of correspondence and telephone conversations between Doyle and the Respondent's Corporation Counsel, representatives of the Complainant and Respondent met in negotiations on September 10, October 1 and 23, 1965; that prior to said meetings, and on June 26, 1965, Doyle, by letter to Respondent's Corporation Counsel, indicated that the Complainant desired to negotiate an $18.00 per month wage increase, increases in insurance benefits, emergency leave, every other weekend off, the hiring of additional help during vacation periods, wage adjustments for laundry personnel, a general wage negotiation clause, and "any other item that may be brought up by the Union prior to the execution of an agreement".

5. That during the course of said meetings, representatives of the parties were unable to reach an agreement on all issues, including wages, although there was agreement on some of the matters being negotiated; that at the meeting of October 23, 1965, representatives of the Respondent offered a final proposal to representatives of the Complainant which was rejected by the Complainant.

6. That on October 28, 1965, in a general membership meeting, the Complainant determined to file a petition with the Wisconsin Employment Relations Board to initiate fact finding with respect to the matter; that such a petition was filed with the Board on November 4, 1965, wherein the Complainant alleged, as a basis for the petition, that the parties were deadlocked after a reasonable period of negotiations; that on November 15, 1965, the Board, by Commissioner Zel S. Rice II, conducted an informal investigation to determine whether the conditions for fact finding existed as alleged in the petition for fact finding; that during the course of said investigation, Commissioner Rice attempted to mediate the dispute; that during such effort, the Respondent's Negotiating Committee proposed an increase of $5.00 "across-the-board" to all Hillview employes in an effort to resolve the dispute; that such offer was conditioned on the acceptance thereof by the Respondent's Finance Committee and the latter's recommendation of such a proposal to the full County Board for the latter's formal action;

that subsequently and on November 23, 1965, the Respondent's Finance Committee, in one of its meetings, refused to approve the offer as proposed by the Respondent's Negotiating Committee; that prior to December 8, 1965, upon being apprised of the action of the Respondent's Finance Committee, the Complainant advised the Board of said action, and as a result, the Board, on the latter date, issued and served upon the parties its order initiating fact finding, and in said order, the Board concluded that a deadlock existed after a reasonable period of negotiations, and Robert J. Mueller, Madison, Wisconsin, was appointed as the fact finder.

7. That on December 16, 1965, the Respondent's County Board adopted a resolution not to implement any wage increases to any Hillview employes until the negotiations were completed.

8. That on February 2, 1966, the fact finder conducted his hearing in the matter, where the only issue presented for his recommendation involved the wage increase for the year 1966; that on April 8, 1966, the fact finder issued and served copies of his recommendation upon the parties, wherein the fact finder recommended that the rate range for the Nurse's Aides be extended two additional steps from a high of $290 per month to $310 per month, and further, that all Hillview employes receive an increase across-the-board of $5.00 per month and that the schedule of rate ranges incorporate and reflect such increases.

9. That during the months of April and May, 1966, the Respondent's County Board was reorganized as a result of reapportionment, which resulted in changes in former County Board committees; that the former Labor Negotiations Committee, whose members had previously met in negotiations with representatives of the Complainant, was eliminated, as was the Salary and Personnel Committee; and that the newly formed Finance Committee assumed the functions previously formed by the Labor Negotiations Committee and the Salary and Personnel Committee.

10. That on June 9, 1966, the members of the Respondent's Finance Committee considered the fact finder's recommendations and on said date unanimously rejected the recommendations; that said Finance Committee intended to present its recommendation of rejection to the full County Board at the next County Board meeting, which was scheduled for June 16, 1966; that on June 15, 1966, 69 Hillview employes affixed their signatures to a document addressed to the Respondent's County Board, to the Board of Trustees of Hillview, and to its Superintendent, wherein they indicated that "We the undersigned employees of Hillview home submit our resignation to become effective June 16, 1966, at

7:00 a.m."; that on June 16, 1966, Robert Oberbeck, Director, Wisconsin Council of County and Municipal Employees, appeared at the opening of the County Board meeting, accompanied by approximately 69 employes who had executed the resignation statement, including those employes who normally would have been on duty but who did not report for work as normally scheduled; that as the first order of business of said meeting, Oberbeck was given the opportunity to speak; that he advised the County Board members that the 69 Hillview employes had resigned and he urged that Respondent's representatives resume negotiations and resolve the dispute; that during the course of said meeting, Oberbeck submitted the statement of resignation signed by the 69 Hillview employes to the County Board, and indicated that said persons would not return to employment until an agreement was reached between the Complainant and Respondent; that during the discussion on a resolution with respect to whether the Respondent should continue negotiations, Oberbeck indicated that he could not advise the employes to return to employment pending negotiations; and that thereupon the County Board, by a vote of 21 to 11, rejected a resolution to continue negotiations.

11. That representatives of the Complainant and Respondent met on June 20 and July 11, 1966; that on said dates representatives of the Complainant indicated that the Complainant would not continue in negotiations if the Respondent refused to negotiate with respect to employes who had resigned; that Respondent's representatives indicated that they were willing to negotiate with the Complainant with respect to only those employes who were then actively employed at Hillview; and that as a result of such attitudes, no further negotiations were held.

12. That some of the Hillview employes who resigned had not, prior to the hearing herein, received holiday pay for unused credited time worked during said holidays, or pay for vacation not taken but accrued in the year 1965; and that following the resignations, the Respondent did not remit to the resigned employes insurance premiums deducted from said employes' pay and which had not been forwarded to the insurance carrier by the Respondent.

13. That the denial of vacation and holiday payments to resigned Hillview employes was not motivated by any intention of the Respondent to interfere, restrain or coerce any of said employes because of their concerted activity and membership on and in behalf of the Complainant, but rather, resulted from a good faith doubt as to whether the Respondent was legally obligated to make such payments.

14. That the failure of the Respondent to remit insurance premiums withheld from the pay of resigned Hillview employes was not motivated by any intention of the Respondent to interfere, restrain or coerce any of said employes because of their concerted activity and membership on and in behalf of the Complainant, but rather, resulted from a good faith doubt that the return of said sums of money to the resigned employes might affect the insurance coverage of those employes who chose to subsequently return to active employment.

Upon the basis of the above and foregoing Findings of Fact, the Board makes the following

CONCLUSIONS OF LAW

1. That the Respondent, LaCrosse County, by the manner in which its representatives engaged in negotiations with representatives of the Complainant, LaCrosse County Institution Employees Local 750, with respect to wages, hours and working conditions governing employes of the Hillview Home for the year 1966, did not and has not engaged in any prohibited practice within the meaning of Section 111.70 of the Wisconsin Statutes.

2. That the Respondent, LaCrosse County, by failing to pay employes, who had resigned from employment at the Hillview Home, vacation and holiday pay, as found in the above and foregoing Findings of Fact, did not and has not committed any prohibited practice within the meaning of Section 111.70 of the Wisconsin Statutes.

3. That the Respondent, LaCrosse County, by failing to remit insurance premiums to employes who had resigned from employment at the Hillview Home, did not and has not committed any prohibited practice within the meaning of Section 111.70 of the Wisconsin Statutes.

Upon the basis of the above and foregoing Findings of Fact and Conclusions of Law, the Board makes the following

ORDER

IT IS ORDERED that the Complaint filed in the instant matter be, and the same hereby is, dismissed.

Given under our hands and seal at the City of Madison, Wisconsin, this 7th day of June, 1967.

By Morris Slavney, Chairman

Zel S. Rice II, Commissioner

I concur for reasons stated in the attached memorandum.

Arvid Anderson, Commissioner

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MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

In its complaint, the Union alleged that the County committed prohibited practices within the meaning of Section 111.70(3)(a)1 and 2 of the Wisconsin Statutes by refusing to bargain in good faith with the Union as the representative of the employes involved, by denying sums of money accrued under a previous collective bargaining agreement, and by failing to return insurance premiums deducted from the pay of resigned employes. The County denies the commission of any prohibited practice.

In City of New Berlin[1/] and Milwaukee Board of School Directors[2/] the Board held that Section 111.70 does not impose any statutory duty, which is enforceable in a prohibited practice proceeding, upon a municipal employer to bargain in good faith with the representative of its employes over wages, hours and conditions of employment. Counsel for the Union urges the Board to overrule said decisions and deem that the refusal to bargain in good faith be considered a prohibited practice act of unlawful interference, restraint and coercion, which is a violation of Section 111.70(3)(a)1. We see no reason to overrule our conclusion as set forth in the two aforementioned decisions. We have made no finding as to whether the manner of negotiating by representatives of the County constituted a lack of good faith bargaining since it is not necessary for the determination of the issues over which the Board has jurisdiction in this proceeding.

1/ Decision No. 7293, 3/66.

2/ Decision No. 6883-A, 3/66.

We wish to comment on the argument posed by Counsel for the Union that the failure of the County to formally act upon the fact finder's recommendations constituted a prohibited practice as part of its strategy to eliminate the Union. The Statute imposes no duty enforceable in a prohibited practice proceeding upon either party to take any action with respect to the recommendations of a fact finder. However, the fact finding process contemplates that parties advise each other of their acceptance or rejection, in whole or in part, of fact finding recommendations. The County Board failed and neglected to do so. However, such failure and neglect does not constitute a prohibited practice under Section 111.70 of the Wisconsin Statutes. We are convinced that members of the County Board, in failing and neglecting to take any formal action with respect to the fact finder's recommendations, did not exercise the responsibility expected from public officials, and we are further convinced that such failure contributed to the action by the representatives and members of the Union in the mass resignation,[3/] which in itself displayed a lack of responsibility to the public and the patients of the Hillview Home.

With respect to the holiday and vacation payments withheld from certain of the resigned employes, we are satisfied that the failure of the County to make such payments was not motivated to interfere with the rights of the employes, but rather resulted from a good faith doubt as to the legal obligation to make such payments. The vacation claims accrued from vacation earned during the 1965 employment were covered by the collective bargaining agreement. The record did not establish the holidays involved in the holiday pay claim. There certainly was no obligation on the County to pay for any holiday pay earned after January 1, 1966, because there was no collective bargaining agreement in existence for that period, and if the holiday pay involved 1965 holidays, the County had a good faith doubt as to its liability for same to resigned employes.

The failure to remit insurance premiums deducted from resigned employes' pay resulted from the fact that information with regard to same was sought from the insurance carrier. As a practical matter, the

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3/ There was neither an allegation nor contention that the mass resignation constituted a strike within the meaning of s. 111.70(4)(b) and therefore, since that matter was not litigated, we have made no finding nor legal conclusion with regard thereto.

County was concerned with the fact of cancelling insurance for employes who resigned, and then if some of those employes returned to work, whether those employes could obtain coverage immediately upon return to work. In any event, there was no unlawful intent established with respect to the insurance premium matter.

Dated at Madison, Wisconsin, this 7th day of June, 1967.

WISCONSIN EMPLOYMENT RELATIONS BOARD

By ______________________
Morris Slavney, Chairman

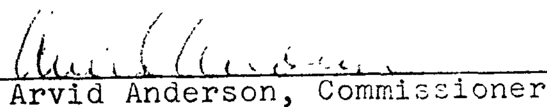
____
Zel S. Rice II, Commissioner

CONCURRING OPINION BY COMMISSIONER ANDERSON

I concur in the result herein, but would find that the representatives of the LaCrosse County Board failed and refused to bargain in good faith within the meaning of Section 111.70(3)(a)1 of the Wisconsin Statutes. The reasons for such legal consideration are fully set forth in my dissenting memorandum in City of New Berlin and the Milwaukee Board of School Directors, and will not be repeated here. I would base such finding on the total course and manner of negotiation by the representatives of the County, and in particular on the County's failure and refusal to formally consider the fact finder's recommendations during the period from its date of issuance on April 8, 1966, until the rejection thereof by the Finance Committee on June 9, 1966. The Finance Committee's recommendation to reject was to be presented to the full County Board on June 16, 1966. I do not accept the County's argument that the reorganization of the County Board at the time prevented a consideration of the fact finder's report prior to the June meeting. The functions of County Government did not come to a halt during the two-month period in question. The record discloses that the key representatives on the Labor Negotiations Committee and Salary and Personnel Committee continued to serve on the Finance Committee. No communications were made by the County representatives with the Union, which requested or suggested the need for delay in consideration of the recommendations because of the reorganization of the County Board. The whole history of this prolonged dispute indicates that the County's representatives had no intention of giving good faith consideration to the fact finder's recommendations. I agree with the majority's statement that while the statute places no express legal duty upon either party to take any action with respect to the recommendations of a fact finder, the fact finding process contemplates that the parties will advise each other of their acceptance in whole or in part of such recommendations. Fact finders' recommendations are suggestions for resolving a labor dispute. It necessarily follows that the parties should meet and consider such recommendations. The refusal to consider same or to meet regarding them, in my view, evidences a lack of good faith.

The lack of good faith on the part of the County undoubtedly provoked the concerted mass resignations by 69 employes of the Home. The concerted mass resignations placed in the hands of the Union representative were subject to being withdrawn if the County resumed negotiations and reached an agreement. Faced with such demand, the

County Board representatives expressed a willingness to negotiate, but only on condition that the employes return to work. I would equate such concerted refusal to work with a strike in violation of Section 111.70(4)(b) of the Wisconsin Statutes. The action of the County did not justify the Union's strike action which placed the health and lives of the patients of Hillview Home in jeopardy. For these reasons I concur in the dismissal of the complaint.



Arvid Anderson, Commissioner