STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

GENERAL DRIVERS AND DAIRY EMPLOYEES UNION LOCAL NO. 563, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,

Complainant,

.

vs.

CITY OF APPLETON, ROBERT ROEMER and LEONA BODMER.

Respondents.

Case XXXIV No. 14498 MP-93 Decision No. 10242-B

ORDER AFFIRMING EXAMINER'S FINDINGS OF FACT, MODIFYING CONCLUSIONS OF LAW AND AFFIRMING ORDER

Examiner Herman Torosian, a member of the staff of the Wisconsin Employment Relations Commission, having heretofore and on December 21, 1971, issued Findings of Fact, Conclusions of Law and Order in the above entitled matter, and on January 31, 1972, the above named Complainant, by its Counsel, having timely filed exceptions to the Examiner's decision; and the Commission having reviewed the entire record, the Examiner's decision and the exceptions thereto and the brief filed in support thereof, and being satisfied that the Examiner's Findings of Fact and his Order should be affirmed, but that the Conclusions of Law should be modified;

NOW, THEREFORE, it is

ORDERED

- 1. That the Findings of Fact and Order as issued by the Examiner in the instant matter on December 21, 1971, be, and the same hereby are, affirmed.
 - 2. That paragraph 2 of the Conclusions of Law be modified to read:

"That Respondent City of Appleton did not refuse to recognize Complainant labor organization as the exclusive collective bargaining representative of the crossing guards employed by Respondent City, nor did Respondent City and Respondent Roemer enter into individual negotiations with Respondent Bodmer and therefore Respondent City of Appleton did not violate Section 111.70(3)(a)1 of the Wisconsin Statutes";

and further, that the remaining paragraphs of the Examiner's Conclusions of Law be, and the same hereby are, affirmed.

City of Madison, Wisconsin, this 21st day of March, 1972.
WISCONSIN EMPLOYMENT RELATIONS COMMISSION
By

Given under our hands and seal at the

Zel S. Mice II, Commissioner

Jos. B. Kerkman, Commissioner

No. 10242-B

STATE OF WISCONSIN

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GENERAL DRIVERS AND DAIRY EMPLOYEES UNION LOCAL NO. 563, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,

Complainant,

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MEMORANDUM ACCOMPANYING
ORDER AFFIRMING EXAMINER'S FINDINGS OF
FACT, MODIFYING CONCLUSIONS OF LAW AND AFFIRMING ORDER

The Commission, after reviewing the entire record and the exceptions filed to the Examiner's decision, has affirmed the Examiner's decision with the exception that it has modified paragraph 2 of the Conclusions of Law in that it has deleted from said paragraph the conclusion with respect that the Respondent did not refuse to "negotiate with Complainant labor organization." At the time of the occurrence of the acts involved and at the time of filing the complaint, March 16, 1971, the refusal of either a municipal employer or a union to negotiate with each other on the questions of wages, hours and working conditions was not a prohibited practice within the meaning of Section 111.70. We have modified the Conclusion of Law involved so as not to create the inference that had the Examiner found that the Respondent had failed to negotiate with the Complainant that a prohibited practice would have been committed within the meaning of Section 111.70(3)(a)1 or any other section of 111.70. 1/

Dated at Madison, Wisconsin, this 21st day of March, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Morris Slavney, Chairman

Zel E. Rice II, Commissioner

Jos. B. Kerkman, Commissioner

 $[\]frac{1}{2}$ LaCrosse County 52 Wis. 2d 295, 1971.