

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

LOCAL 742, AFFILIATED WITH DISTRICT
COUNCIL 48, AFSCME, AFL-CIO,

Complainant,

vs.

BOARD OF EDUCATION, CUDAHY PUBLIC
SCHOOLS,

Respondent.

Case VII
No. 15149 MP-104
Decision No. 10699-A

Appearances:

Goldberg, Previant & Uelmen, Attorneys at Law, by Mr. John S. Williamson, Jr., appearing on behalf of the Complainant.
Spacek, Miller & Rinzel, Attorneys at Law, by Mr. Fredrick A. Miller, appearing on behalf of the Respondent.

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

Local 742, affiliated with District Council 48, AFSCME, AFL-CIO having on December 17, 1971 filed a complaint with the Wisconsin Employment Relations Commission wherein it alleged that the Board of Education, Cudahy Public Schools, had committed prohibited practices within the meaning of the Wisconsin Municipal Employment Relations Act; and the Commission having appointed Marvin L. Schurke, a member of the Commission's staff to act as Examiner and to make and issue Findings of Fact, Conclusions of Law and Order as provided in Section 111.07(5) of the Wisconsin Employment Peace Act, and pursuant to notice issued by the Examiner on December 28, 1971, hearing on said complaint having been held in Milwaukee, Wisconsin, on January 21, 1972, before the Examiner; and the Examiner having considered the evidence, arguments 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 Local 742, affiliated with District Council 48, AFSCME, AFL-CIO, referred to herein as the Complainant, is a labor organization having its principal office at 3427 West St. Paul Avenue, Milwaukee, Wisconsin.
2. That the Board of Education, Cudahy Public Schools, referred to herein as the Respondent, is a municipal employer engaged in the operation of a public school system and has its principal offices at 3744 East Ramsey Avenue, Cudahy, Wisconsin.
3. That at all times material herein the Respondent has recognized the Complainant as the exclusive collective bargaining representative in a bargaining unit consisting of custodial and janitorial employes of the Respondent; and that the Complainant and Respondent were parties to a collective bargaining agreement which contained an expiration date of December 31, 1971.

4. That on July 21, 1971 the Complainant submitted to the Respondent a list of approximately twenty-seven demands and proposals for incorporation into a new collective bargaining agreement to become effective on January 1, 1972; and that certain of the demands and proposals of the Complainant concerned wages and economic benefits.

5. That on August 15, 1971, the President of the United States issued Executive Order No. 11615 providing for a freeze on prices, rents, wages and salaries for a period of 90 days from the date of such Order; and that, by subsequent Executive Orders and administrative regulations, the federal government has imposed and continues to impose certain wage and price controls.

6. That, by letter dated September 17, 1971, the Respondent submitted to the Complainant a set of four specific proposals for incorporation into a new collective bargaining agreement, and advised the Complainant that the Respondent had a number of additional requests for modifications of the collective bargaining agreement then in existence, which were not enumerated in such letter inasmuch as they involved a response to the Complainant's demands and proposals.

7. That the Complainant and Respondent held a meeting on September 22, 1971 for the purpose of negotiations for a new collective bargaining agreement; that Earl Gregory, Staff Representative of District Council 48 and employes Gordon Kottke, Bob Knoll, Erv Janik and Irk Potts were present on behalf of the Complainant; that Attorney Frederick A. Miller, Business Manager Leighton Millar and Maintenance Supervisor Clifford Furdek were present on behalf of the Respondent; that during the course of such meeting Gregory inquired as to whether the individuals attending on behalf of the Respondent had full authority to negotiate with the Complainant; that the representatives of the Respondent advised the Complainant during the course of such meeting that they were authorized to negotiate on behalf of the Respondent; and that on September 29, 1971 the Respondent advised the Complainant by letter that the Respondent had directed that all preliminary negotiations with the Complainant be conducted on behalf of the Respondent by Attorney Miller, Mr. Millar and Mr. Furdek.

8. That on October 6, 1971 the Complainant and the Respondent held a meeting for the purpose of negotiations for a new collective bargaining agreement, during which the parties exchanged counter-proposals; and that during the course of such meeting certain issues existing between the parties were resolved.

9. That a meeting between the Complainant and Respondent was scheduled for October 21, 1971; that prior to such meeting the Complainant was notified of the Respondent's desire to cancel such meeting, based on the unavailability of guidelines under the federal wage and price stabilization program; and that such meeting was cancelled.

10. That on November 11, 1971 the Complainant and Respondent held a meeting for the purpose of negotiations for a new collective bargaining agreement; and that during the course of such meeting the Respondent claimed that it was unable to negotiate on economic issues because it had not received information as to guidelines under the federal wage and price stabilization program.

11. That a meeting between the Complainant and Respondent was scheduled for November 19, 1971; that prior to such meeting

the Complainant was notified of the Respondent's desire to cancel such meeting, based on the unavailability of guidelines under the federal wage and price stabilization program; and that such meeting was cancelled.

12. That on December 1, 1971 the Complainant and the Respondent held a meeting for the purpose of negotiations for a new collective bargaining agreement; and that during the course of such meeting the parties discussed certain issues which had arisen under their then-existing collective bargaining agreement.

13. That on December 8, 1971 the Complainant and the Respondent held a meeting for the purpose of negotiations for a new collective bargaining agreement; that during the course of such meeting the parties exchanged proposals; and that, by letter dated December 9, 1971, the Respondent confirmed to the Complainant the proposal made by the Respondent to the Complainant during the meeting held on December 8, 1971.

14. That on December 15, 1971 the Complainant and the Respondent held a meeting for the purpose of negotiations for a new collective bargaining agreement; that, in addition to the representatives which had attended all previous meetings on behalf of the Respondent, four members of the Board of Education were also present at such meeting; that the parties engaged in a discussion of their respective proposals; that the parties exchanged proposals concerning issues remaining unresolved between them; that at 10:30 p.m., after such meeting had continued for approximately three and one-half hours, the Respondent asked to terminate the meeting; that the Complainant requested that another meeting be scheduled prior to December 31, 1971; that the Complainant offered to meet on any date between December 16, 1971 and December 31, 1971; that the Respondent refused to schedule such a meeting, and stated that the representatives of the Respondent could not find a mutually agreeable date for meeting during the coming holiday season; that Gregory indicated to the Respondent an intent to request mediation and to initiate the instant proceedings; and that the Respondent did not oppose the Complainant's request for mediation and indicated that the initiation of the instant proceedings was the prerogative of the Complainant.

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

CONCLUSIONS OF LAW

1. That any conduct occurring prior to November 11, 1971 occurred at a time when a refusal to bargain was not subject to remedy by the Wisconsin Employment Relations Commission as a prohibited practice in municipal employment.

2. That, under the facts and circumstances of this case the refusal of the Respondent, Board of Education, Cudahy Public Schools, to schedule a meeting with Local 742, affiliated with District Council 48, AFSCME, AFL-CIO subsequent to December 15, 1971 and prior to December 31, 1971 for the purpose of further negotiations for a new collective bargaining agreement was not motivated by bad faith and was not a refusal to meet and confer with the Complainant at a reasonable time.

3. That the Respondent, Board of Education, Cudahy Public Schools, has not committed and is not committing prohibited

practices within the meaning of the Municipal Employment Relations Act, Section 111.70, Wisconsin Statutes.

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

ORDER

That the complaint filed in the instant matter be, and the same hereby is, dismissed.

Dated at Madison, Wisconsin, this *5th* day of July, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By *Marvin L. Schurke*
Marvin L. Schurke, Examiner

BOARD OF EDUCATION, CUDAHY
PUBLIC SCHOOLS

Case VII Decision No. 10699-A

MEMORANDUM ACCOMPANYING
FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

On December 17, 1971 the Union filed a complaint with the Commission alleging that the Board of Education had stopped negotiations and refused to schedule any future negotiating sessions prior to the expiration date of its contract with the Union and charging that such action constituted a failure to bargain in good faith. On January 12, 1971 the Board of Education filed an answer in which it admitted that it had refused to meet with the Union between December 16, 1971 and December 31, 1971, but alleged that the Respondent was unable to select a mutually agreeable date for the purposes of a meeting during that period. By way of answer the Respondent further alleged that it had entered into mediation with a member of the Commission's staff and had met with the Union and the Mediator on January 5, 1972 in an effort to resolve their differences. Hearing was held on January 21, 1972 at Milwaukee, Wisconsin. Counsel for the Complainant made an oral argument during the course of the hearing and Counsel for the Respondent filed a post-hearing brief.

Existence of a Dispute

The Commission's records indicate the mediation case involving the parties to the instant dispute has been closed, and the contract negotiations between the parties are noted as having been settled. Those records are confirmed by the post-hearing brief filed by the Respondent. On the basis of such information, the instant case could be dismissed as being moot. However, the Respondent has requested that the Commission not regard the case as moot and has urged the Commission to address itself to the legal issue involved, as such decision would provide guidance for the parties, and other parties so situated, in the conduct of future negotiations.

Statutory Obligations

Section 111.70, Wisconsin Statutes, was amended by Chapter 124, Laws of 1971, effective November 11, 1971. It is clear from a long line of decisions ^{1/} that refusals to bargain were not subject to remedy under the prior statute as prohibited practices. The remedy provided by state law prior to November 11, 1971 was limited to fact finding proceedings. Much of the testimony introduced by the Complainant during the course of the hearing is directed toward correspondence and bargaining table conduct which occurred between the parties prior to the enactment of the Municipal Employment Relations Act. Such bargaining table conduct and correspondence cannot be considered as part of any course of conduct forming the basis for a finding of refusal to bargain, even though the negotiations continued into the period covered by the Municipal Employment Relations Act. The decision of this case must be, and is, based on the conduct of the parties on and after November 11, 1971.

^{1/} City of New Berlin (7293) 3/66.

Refusal to Bargain Collectively

The Complainant has shown that the Respondent caused the cancellation of one scheduled bargaining session subsequent to November 11, 1971 and refused to schedule a meeting during the last sixteen days of 1971. The circumstances affecting negotiations in 1971 are unique, if for no other reason than the existence of a 90 day wage-price freeze and federally imposed wage and price guidelines during the period relevant to this case. Although certain wage and price guidelines may have been promulgated prior to November 19, 1971, the orders and regulations which preceded and followed that date are voluminous and were subject to continuing modifications throughout the period relevant to this proceeding and even to the present time. It is clear from the testimony that the bargaining between these parties did not follow a normal course in 1971, that negotiations began later than ordinary, and that at least one previous meeting was cancelled because of the unavailability of federal wage guideline information. There is no evidence in the record to refute the Respondent's claim that it did not have, or did not understand, the federal wage and price guidelines existing on November 19, 1971. Under the circumstances, the Examiner is satisfied that the Respondent did not act in bad faith and did not commit a refusal to bargain with regard to the cancellation of the meeting scheduled for November 19, 1971.

The preliminary negotiations between the parties were carried on for the Board of Education by its attorney, its business manager and its maintenance supervisor. The Complainant has not succeeded in its attempt to show that the Respondent's three member "preliminary negotiations" committee lacked authority to negotiate with the Union. The initial claim in this regard goes back to a period prior to the enactment of the Municipal Employment Relations Act and it is clear that the Board of Education had no enforceable duty to bargain with the Union during such period.

The meeting held on December 15, 1971 is characterized in the record as being a meeting at which the parties anticipated getting things done. This is further evidenced by the fact that four members of the Board of Education attended that meeting in addition to the usual committee. The parties did meet, discuss proposals, and exchange proposals on December 15, 1971 and apparently made some progress in their negotiations. After several hours of meeting the Board sought to break off the meeting and refused to schedule another meeting during the remainder of the calendar year, giving rise to the main issue in this proceeding. There is undisputed testimony in the record that the members of the Board of Education and its bargaining committee members who were present at the December 15 meeting did discuss the possibility of another meeting during 1971, and were unable to arrive at a mutually acceptable date for such a meeting. The last two weeks of December present particular problems because of the Christmas and New Years Holidays, and the customary social and family activities which accompany those holidays. Conflicting previous business engagements are also mentioned in the record as being part of the cause for the Respondent's inability to find a date for another meeting in December. Taking that testimony into consideration together with the several meetings held by the parties prior to that date, the Examiner finds that, under the circumstances existing herein, the refusal of the Board of Education to schedule

an additional meeting during 1971 was not made in bad faith and did not constitute a refusal to meet at a reasonable time.

Dated at Madison, Wisconsin, this 5th day of July, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Marvin L. Schurke
Marvin L. Schurke, Examiner