STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

ADAMS COUNTY HIGHWAY EMPLOYEES' LOCAL 323, WCCME, AFSCME, AFL-CIO, Complainant, vs. ADAMS COUNTY, WISCONSIN BOARD OF SUPERVISORS, Respondent.	Case VI No. 16016 MP-171 Decision No. 11307-A

Appearances:
Mr. Walter J. Klopp, District Representative, WCCME, AFSCME, AFL-CIO, for the Complainant.
Mr. Charles A. Pollex, District Attorney, Adams County, for the Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Adams County Highway Employees' Local 323, WCCME, AFSCME, AFL-CIO having, on September 13, 1972, filed a complaint with the Wisconsin Employment Relations Commission wherein it alleged that Adams County 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 September 22, 1972, hearing on said complaint having been held at Friendship, Wisconsin, on October 24, 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 Adams County Highway Employees' Local 323, WCCME, AFSCME, AFL-CIO, hereinafter referred to as the Complainant, is a labor organization having its principal offices at 4646 Frey Street, Madison, Wisconsin; and that at all times material hereto Walter J. Klopp has been a representative of the Complainant.

2. That Adams County, hereinafter referred to as the Respondent, is a municipal employer having its principal offices at the Adams County Courthouse, Friendship, Wisconsin; that Adams County operates a Highway Department; and that the Adams County Board of Supervisors is a public body charged under the laws of Wisconsin with the management, supervision and control of Adams County and of its affairs.

3. That, at all times material herein, the Respondent has recognized the Complainant as the exclusive collective bargaining repre-

sentative of all employes of the Adams County Highway Department, except the Highway Commissioner, Superintendent and office clerical personnel.

4. That prior to November 11, 1971, the Complainant and the Respondent commenced negotiations for a collective bargaining agreement for the calendar year 1972; that the Complainant made demands for the inclusion of certain new provisions in the collective bargaining agreement between the parties, including life insurance coverage for employes under the Group Life Insurance for Employees of Wisconsin Municipalities plan; that the Complainant carried on negotiations with the Respondent through a committee consisting of Klopp and certain employes of the Respondent; and that the Respondent carried on negotiations with the Complainant through the Personnel Committee of the Adams County Board of Supervisors, which committee was composed of five members of the Adams County Board of Supervisors.

5. That, prior to November 11, 1971, an agreement was reached between the bargaining committee of the Complainant and the Personnel Committee of the Respondent, whereby the issue of life insurance was to be separated from other issues existing between the parties in collective bargaining and submitted to the Adams County Board of Supervisors for approval at its meeting in November, 1971; that Section 66.919(15)(c), Wisconsin Statutes, establishes a deadline of November 15 for municipalities to pass a resolution enabling group life insurance coverage for employes in the following year; that the November, 1971 meeting of the Adams County Board of Supervisors was originally scheduled for November 9, 1971; that, subsequent to said agreement but prior to November 9, 1971, said meeting was postponed to November 16, 1971; that representatives of the Complainant and representatives of the Respondent attempted to obtain waiver of said statutory deadline, but were denied such waiver; and that the Adams County Board of Supervisors failed to timely adopt a resolution enabling coverage for employes during 1972 under the aforementioned group life insurance plan.

6. That, on December 1, 1971, the Complainant herein filed with the Wisconsin Employment Relations Commission a petition for fact finding involving the aforesaid collective bargaining unit, alleging that the Complainant herein and the Respondent herein were deadlocked after a reasonable period of negotiations; that an informal investigation on said petition was conducted on December 13, 1971 by a member of the Commission's staff, at which time the parties made known the facts concerning the impasse alleged in said petition; that during the course of said informal investigation the Respondent's Personnel Committee withdrew its previous approval of the Complainant's proposal concerning life insurance coverage for employes, and thereafter took the position that life insurance coverage had not been agreed upon by the parties; that, on December 21, 1971, the Commission issued its Findings of Fact, Conclusion of Law, Certification of Results of Investigation and Order Initiating Fact Finding and Appointing Fact Finder, 1/ wherein Gordon Haferbecker of Stevens Point, Wisconsin was appointed as Fact Finder; that a hearing was held before the Fact Finder on January 8, 1972; that the Fact Finder issued his findings and recommendations on March 6, 1972; that on March 14, 1972 the Complainant herein requested clarification from the Fact Finder concerning said fact finding recommendations; that on March 17, 1972 the Fact Finder issued a revision of his original fact finding recommendations; that the fact

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1/ Decision No. 10869, 12/71.

finding recommendations included, inter alia, a recommendation that the parties establish a life insurance program for employes; and that, subsequently, the Complainant accepted the recommendations issued by the Fact Finder, as amended, and the Respondent rejected said recommendations, as amended.

7. That the Complainant and the Respondent were unable to reach an agreement on the issues remaining in dispute; that on May 2, 1972 the bargaining committee of the Complainant met with the Personnel Committee of the Respondent under the auspices of a mediator from the Commission's staff; that during the course of said meeting a tentative agreement was reached between said committees on the terms of a collective bargaining agreement for 1972, subject to ratification by the membership of the Complainant and by the Adams County Board of Supervisors; that the Respondent's Personnel Committee agreed to present to the Adams County Board of Supervisors a resolution approving said tentative agreement; and that the Complainant prepared and submitted to the Respondent copies of a proposed collective bargaining agreement in conformity with the aforesaid tentative agreement.

8. That the Adams County Board of Supervisors met on May 16, 1972; that during the course of said meeting the Complainant's proposed collective bargaining agreement was displayed to the members of the Adams County Board of Supervisors, by means of slide projection, and was the subject of debate; that during the course of said meeting a motion was made and seconded by members of the Adams County Board of Supervisors who were not members of the Personnel Committee, to bring out the insurance issue for separate action and not to adopt; that three members of the Personnel Committee voted not to adopt said insurance resolution, and said insurance resolution was defeated; that members of the Adams County Board of Supervisors proposed and debated certain changes in the proposed collective bargaining agreement; and that the Adams County Board of Supervisors voted to approve a collective bargaining agreement which included certain changes from the draft submitted by the Complainant.

9. That, by letter dated May 17, 1972, the Respondent advised the Complainant of the rejection of the life insurance resolution by the Adams County Board of Supervisors and of the changes made in the proposed collective bargaining agreement by the Adams County Board of Supervisors; that the Complainant refused to accept said rejection and changes as a basis for settlement on a new collective bargaining agreement; and that the Complainant requested further negotiations for the purpose of resolving the dispute existing between the parties.

10. That, on July 11, 1972, the bargaining committee of the Complainant met with the Personnel Committee of the Respondent under the auspices of a mediator from the Commission's staff; that only four members of the Personnel Committee were present during said meeting; that, during the course of said meeting, members of the Personnel Committee voted in separate caucus and at such time a deadlock existed among them as to what action should be taken; that, during a joint meeting of the parties' committees, the Complainant made a proposal to the effect that: If the Respondent's Personnel Committee would take the Complainant's life insurance demand to the Adams County Board of Supervisors with a 100 per cent recommendation favoring adoption and vote in favor of adoption, the Complainant would accept the resulting vote of the Adams County Board of Supervisors as conclusive on the insurance issue; and that, after discussion, the Personnel Committee

of the Respondent indicated their assent to the Complainant's proposal.

11. That the Adams County Board of Supervisors met on August 16, 1972; that during the course of said meeting a resolution concerning the group life insurance plan was brought out for separate action and was defeated; that two members of the Personnel Committee, one of whom had been present during the negotiations held on July 11, 1972, voted against the insurance resolution; that the proposed collective bargaining agreement, exclusive of said insurance plan, was re-submitted for a ratification vote, and was defeated; and that the Complainant refused to accept said actions as a basis for settlement on a new collective bargaining agreement.

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

CONCLUSIONS OF LAW

1. That prior to November 11, 1971 Section 111.70, Wisconsin Statutes did not regulate refusal to bargain collectively as a prohibited practice in municipal employment and that no conduct occurring prior to November 11, 1971 may be taken into consideration directly or as a part of a course of conduct relating to any allegation that the Respondent, Adams County, has refused to bargain collectively in violation of Section 111.70(3)(a)(4) of the Municipal Employment Relations Act.

2. That "all employes of the Adams County Highway Department, except the Highway Commissioner, Superintendent and office clerical personnel" constitutes a unit appropriate for collective bargaining within the meaning of Sections 111.70(1)(e) and 111.70(4)(d)(a)(2) of the Municipal Employment Relations Act; and that at all times material herein, the Complainant, Adams County Highway Employees' Local 323, WCCME, AFSCME, AFL-CIO, has been, and is, the exclusive representative of the employes in said unit for the purposes of collective bargaining within the meaning of Sections 111.70(1)(d) and 111.70(4)(d)(1) of the Municipal Employment Relations Act. 2/

3. That the Respondent, Adams County, by the actions of its Personnel Committee on May 16, 1972, wherein said Personnel Committee failed to introduce a resolution to obtain ratification of the tentative agreement reached between said Personnel Committee and the Complainant, Adams County Highway Employees' Local 323, WCCME, AFSCME, AFL-CIO; by the actions of the Adams County Board of Supervisors on May 16, 1972, wherein said Board severed portions of the tentative agreement reached between its Personnel Committee and the Complainant for separate action; by the actions of its Personnel Committee on May 16, 1972, wherein a majority of the members of said Personnel Committee voted in opposition to a portion of the tentative agreement previously reached by said Committee with the Complainant; and by the actions of its Personnel Committee on August 16, 1972, wherein a member of said Committee failed to recommend and vote in favor of granting group life insurance to employes in the aforesaid collective bargaining unit, after having participated in agreement with other members of said Committee and the Complainant for the unanimous recommendation and support of said Committee on the issue of group life insurance, all at a time when the Complainant was the exclusive collective bargaining representative of employes in the aforesaid

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2/ Adams County, Case V, (10869) 12/71.

appropriate collective bargaining unit, has acted in bad faith towards and has refused to bargain collectively with the Complainant and has committed prohibited practices in violation of Section 111.70(3)(a)(4) and (1) of the Municipal Employment Relations Act.

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

ORDER

IT IS ORDERED that Adams County, its officers and agents, shall immediately:

1. Cease and desist from refusing to bargain collectively with Adams County Highway Employees' Local 323, WCCME, AFSCME, AFL-CIO as the exclusive collective bargaining representative of all employes of the Adams County Highway Department, except the Highway Commissioner, Superintendent and office clerical personnel, or any other labor organization said employes may select as their exclusive collective bargaining representative.

2. Take the following affirmative action which the Examiner finds will effectuate the policies of the Municipal Employment Relations Act:

   (a) Upon request, bargain collectively with Adams County Highway Employees' Local 323, WCCME, AFSCME, AFL-CIO, as the exclusive representative of all employes in the aforesaid appropriate unit with respect to wages, hours and conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement.

   (b) Notify the Wisconsin Employment Relations Commission, in writing, within twenty (20) days following the date of this Order, as to what steps have been taken to comply herewith.

Dated at Madison, Wisconsin, this 6th day of April, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Marvin L. Schurke, Examiner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The Union has filed a complaint with the Commission alleging that the County has violated its statutory duty to bargain in good faith with the Union. In its prayer for relief, the Union asks the Commission to order the County to enter into a formal agreement with the Union based on the agreement drafted by the Union and submitted to the County in May, 1972. The County filed an answer in which it denies having committed any prohibited practices. Hearing was held at Friendship, Wisconsin, on October 24, 1972. Both parties made oral argument at the close of the hearing. The transcript was issued on January 31, 1973.

CONDUCT OCCURRING PRIOR TO NOVEMBER 11, 1971

The allegations of the complaint filed in the instant case include certain events and conduct occurring prior to November 11, 1971. The Complainant adduced, without objection from the Respondent, some evidence concerning such events and conduct. It appears that the parties opened their negotiations, bargained over the issues, and came to some preliminary agreements which later were not fulfilled. However, the evidence concerning events occurring prior to November 11, 1971 must be excluded from consideration in the decision of this case. Section 111.70, Wisconsin Statutes, was amended by Chapter 124, Laws of 1971, effective November 11, 1971, creating the Municipal Employment Relations Act, referred to herein as M.E.R.A. Refusals to bargain were not subject to remedy as prohibited practices under the previous statute. 3/ It is also established that bargaining table conduct and correspondence between the parties prior to the enactment of the Municipal Employment Relations Act 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 on and after November 11, 1971. 4/

REFUSAL TO ACCEPT RECOMMENDATION OF FACT FINDER

The Union's complaint alleges, as the second point in a course of conduct claimed to be evidentiary of refusal to bargain by the County, that the County rejected the fact finding recommendations issued by Fact Finder Haferbecker. The County's answer denies that its rejection of the Fact Finder's recommendations constitutes a prohibited practice. In a case decided prior to the enactment of the Municipal Employment Relations Act 5/ the Commission held that fact finding recommendations are not binding upon the parties, and the failure to adopt them is not a prohibited practice. Fact finding continues to be an advisory process under M.E.R.A., and the County's position in this regard must be sustained.

REFUSAL TO BARGAIN COLLECTIVELY

The remaining allegations of the complaint are divided, by date of occurrence, into two separate transactions. Following their

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3/ See e.g. City of New Berlin (7293) 3/66.

4/ Cudahy Board of Education (10699-A) 7/72.

5/ City of Portage (8378) 1/68.

failure to settle their dispute through the fact finding process and bilateral negotiations, the parties enlisted the services of a mediator. The results of mediated negotiations held on May 2, 1972 were rejected by the County Board on May 16, 1972, and the results of mediated negotiations held on July 11, 1972 were rejected by the County Board on August 16, 1972. The duty to bargain is imposed on municipal employers by Section 111.70(3)(a)(4) of M.E.R.A. The nature of the duty is found in the definition of collective bargaining:

> "111.70 Municipal Employment. (1) DEFINITIONS. As used in this subchapter:
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> . . .
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> (d) "Collective bargaining" means the performance of the mutual obligation of a municipal employer, through its officers and agents, and the representatives of its employes, to meet and confer at reasonable times, in good faith, with respect to wages, hours and conditions of employment with the intention of reaching an agreement. The duty to bargain, however, does not compel either party to agree to a proposal or require the making of a concession. Collective bargaining includes the reduction of any agreement reached to a written and signed document. The employer shall not be required to bargain on subjects reserved to management and direction of the governmental unit except insofar as the manner of exercise of such functions affects the wages, hours and conditions of employment of the employes. In creating this subchapter the legislature recognizes that the public employer must exercise its powers and responsibilities to act for the government and good order of the municipality, its commercial benefit and the health, safety and welfare of the public to assure orderly operations and functions within its jurisdiction, subject to those rights secured to public employes by the constitution of this state and of the United States and by this subchapter."

Determinations concerning the good faith aspect of the bargaining obligation are, of necessity, subjective in nature. The Commission has looked in the past to totality of employer conduct in making such determinations, and it would not be without precedent to dismiss allegations as being isolated incidents. 6/ The argument has not been raised by the County here, but the Examiner has nevertheless considered the question of whether the allegations of the instant complaint should be dismissed as isolated incidents. The collective bargaining process has succumbed here to frustration and delay, even after the conduct occurring prior to November 11, 1971 and the rejection of the fact finding recommendations are excluded from consideration. Both parties recognize that the continuation of negotiations, without resolution, for more than seven months following the intended effective date of the agreement is somewhat unusual. The County attributes fault for the delay to the Union for its unwillingness to concede on certain of its demands, and it would seem that the corresponding opposite argument would be available to the Union. This alone proves nothing. The Union goes further and attributes some of the delay to bad faith on the part of the County. Due to the recent enactment of the refusal to bargain prohibited practice, we do not have an extensive body of

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6/ Price County Telephone Co., (7755) 10/66.

decisional law outlining the perimeters of the good faith obligation. The dismissal of these allegations as isolated incidents would only enlarge the existing vacuum.

The principal issue of fact arising from the May, 1972 negotiations relates to the extent of the agreement reached between the bargaining committees. The Union's witnesses testified that they understood that a full agreement had been reached on all issues. The County takes the position that two separate agreements were reached: one calling for the Personnel Committee to take the insurance issue to the County Board for a separate vote, and a second calling for the Personnel Committee to take a tentative agreement on all other issues to the County Board for ratification. The Union provided a draft agreement incorporating the insurance plan and all other negotiated agreements. The County received the draft agreement several days prior to the meeting of the County Board, and slides were made from the draft provided by the Union, but no objection was raised by the County prior to the meeting of the County Board. There can be little doubt that the intended result of the collective bargaining process, as established by M.E.R.A., is a voluntary collective bargaining agreement between the parties. Negotiations here began as early as August, 1971. The negotiations continued for eight or more months up to the session involved, by which time the impasse procedures of fact finding had already been exhausted. The issues were well defined. As the parties approached and apparently crossed the threshold of agreement, the County had a clear obligation to contra-indicate the appearance of agreement if such was its intent. The Examiner is persuaded that the issue concerning the extent of the tentative agreement reached on May 2, 1972 should be decided in favor of the Union, and finds that one complete agreement was reached on all issues.

The manner of presentation of the tentative agreement to the County Board gives rise to certain of the allegations of prohibited practices. It appears that, when the bargaining committees of the parties reached their tentative agreement on May 2, 1972, each party indicated to the other that its committee would seek and support ratification of the tentative agreement. The Union fulfilled on its promise, obtaining ratification from its membership, but the County's Personnel Committee clearly failed to fulfill its promise in this regard. An enabling resolution concerning the group life insurance plan was brought before the County Board on May 16, 1972 in negative form by members of the County Board who were not members of the Personnel Committee. The vote on this resolution, which was, in retrospect, the key vote of the day, was against the implementation of the insurance plan, and the Union contends that the failure of the Personnel Committee to lead its tentative agreement through the legislative process of the County Board was in bad faith and contributed to the defeat. While some parliamentary difficulties must be anticipated in the context of municipal employment which would not be encountered in private employment, the Examiner nevertheless finds merit in the Union's contention that a municipal employer's bargaining committee must, in order to fulfill its obligation of good faith concerning a tentative agreement, carry through on its promises to sponsor and support ratification of the tentative agreement.

The group life insurance plan sought by the Union in negotiations with the County is a plan administered by the State of Wisconsin. The State imposes an annual admission deadline, which became a factor earlier in these negotiations, and also provides a printed form outlining the form of enabling resolution prescribed for adoption by the municipal employer pursuant to Section 66.919(15)(c), Wisconsin Statutes. The Union stipulates that the County was required to

adopt a separate enabling resolution concerning the life insurance, but contends that the County Board acted in bad faith when it brought out the enabling resolution for separate action before acting on ratification of the tentative agreement, thereby approaching ratification on a piecemeal basis. The County defends its action principally on the basis that the statute requires that the municipal employer adopt a separate enabling resolution in the form required by the State. The question resolves itself to an issue not unlike the age-old question: "Which came first, the chicken or the egg?" The Examiner concurs with the Union's argument that: "It is obvious to anyone that is familiar with labor-management relations that it would be impossible to ever reach an agreement if each party could pick and choose what they wanted in a contract. There would never be any resolution of issues." In October, 1971 the Union and the County agreed to handle the insurance issue as a separate matter, the evident purpose then being compliance with the time limits imposed by the statute governing the insurance plan. However, no such agreement or time pressure existed as of May 16, 1972. The County Board acted improperly when it considered the insurance issue separately, and thereby considered the tentative agreement reached by the bargaining committees on a piecemeal basis.

The final blow to the Union's hopes came with the roll call vote on the insurance resolution, wherein a majority of the members of the Personnel Committee voted against the resolution enabling implementation of the group life insurance plan. Here, again, the action of the County Personnel Committee is completely inconsistent with its obligation of good faith towards the Union. While a divided vote among the committee members might be anticipated, surely a majority of the committee members should have stood by the tentative agreement which they reached with the Union.

Following the defeat of the insurance resolution, the insurance plan was deleted from the draft agreement. Debate occurred concerning the proposed collective bargaining agreement, although no vote is indicated in the record on the contract as proposed by the Union. Instead, members of the County Board proposed certain changes to the draft agreement, and these changes were adopted by the County Board. The County Board eventually adopted a proposed agreement consistent with the changes just mentioned. The Union alleged that the changes were made by the Personnel Committee and that such changes were an additional incident of refusal to bargain. However, the evidence indicates that the changes were not made at the Personnel Committee level but were made during the County Board's general meeting. As such, the action of the County Board is interpreted by the Examiner as a rejection of the tentative agreement and the creation of a counter proposal to be transmitted back to the Union. Said counter proposal was in fact transmitted to the Union on May 17, 1972.

The parties were unable to settle their differences on the basis of the County Board's action of May 16. They again met in mediated negotiations on July 11, 1972, when, in the absence of its Chairman, the Personnel Committee was deadlocked in caucus with two members in favor of adopting the position requested by the Union and two members opposed thereto. This deadlocked occurred outside of the presence of the Union representatives, and the Union's representatives were not, and could not be, aware of the existence of the deadlock or of its nature. Thereafter, the mediator brought the parties together for a joint meeting. During that meeting the Union made a specific proposal to the Personnel Committee, wherein it requested the Personnel Committee

to take the insurance proposal to the County Board with unanimous support and recommendation. The consideration for the new proposal was a contingent concession on the part of the Union, whereby the Union agreed to drop the insurance issue in bargaining if the insurance plan was again rejected by the County Board. It is apparent from the testimony that the Union had analyzed the previous vote tallies of the County Board on the insurance issue and had concluded that unanimous support by the Personnel Committee would bring the issue to a tie vote. The Union pinned its hopes on the ability of the Personnel Committee to convince one other member of the County Board to switch their vote on the insurance issue. Following the new proposal made by the Union, the Personnel Committee engaged in some debate. At the outset of that debate at least one member of the Personnel Committee was opposed to any agreement whereby she would be required to actually support and vote in favor of the life insurance plan. However, at the conclusion of the meeting, the Personnel Committee took a vote and was unanimous in its vote. The Union's witnesses testified, without exception, that they understood the Personnel Committee's vote to be a unanimous acceptance of the above-mentioned contingent proposal made by the Union. Witnesses for the County testified that Mrs. Hardin, a member of the Personnel Committee, agreed only to take the issue back to the County Board, without a recommendation, and that a "counter proposal" was made to the Union in this regard. Upon review of the entire record, the Examiner concludes that, if a counter proposal was intended, the Union was required to receive it by osmosis. By its vote, taken after some discussion and disagreement, wherein all members of the Personnel Committee indicated their assent to unanimity, the Personnel Committee gave the Union indication of agreement on the Union's proposal.

The County Board considered the collective bargaining issues again on August 16, 1972. At that time the life insurance issue was again brought out for separate action. In this instance the separate action was taken pursuant to agreement with the Union, and no impropriety is found here. However, one member of the Personnel Committee, who had been present during the negotiations on July 11, failed to support and recommend the insurance plan and, in fact, voted against the insurance plan. Here, again, the Personnel Committee acted in bad faith by failing to carry out its agreement. The Union cannot be bound by its contingent agreement to drop the insurance plan, since the County Board's Personnel Committee has failed to fulfill its part of the bargain.

The Chairman of the Personnel Committee was not present during the negotiations on July 11 and was not a participant in the vote on the unanimity proposal then offered by the Union. He voted against the insurance resolution on August 16, 1972. There has been no showing that the other members of the Personnel Committee were empowered to bind the Chairman, and no impropriety is found deriving from his vote at the August 16 meeting.

The County Board considered and voted on the collective bargaining agreement, apart from the insurance issue, during the August 16 meeting. Two members of the Personnel Committee opposed ratification of the collective bargaining agreement at that time. The record does not support a conclusion that all of the remaining issues other than insurance were to be resubmitted to the County Board under the same contingent agreement as the insurance. It merely appears that a tentative agreement was reached between the bargaining committees, subject to ratification by the County Board. In this instance, a majority of the members of the Personnel Committee did vote in favor

of ratification of the collective bargaining agreement and no impropriety is found.

REMEDY

The Union asks the Commission to remedy the prohibited practices alleged in its complaint by ordering the County to enter into a written and signed collective bargaining agreement based on the draft provided by the Union to the County in May, 1972, when a tentative agreement was reached between the bargaining committees of the parties. The County did not address itself in argument to the question of remedy.

The definition of collective bargaining contained in Section 111.70 (1)(d) of M.E.R.A. includes the obligation to reduce any agreement reached to a written and signed document, and Section 111.70(3)(a)(4) of M.E.R.A. clearly indicates that the refusal to bargain violation includes the refusal to execute a collective bargaining agreement previously agreed upon. The Commission has not, as yet, determined what remedies should be imposed in cases where violations of the cited provisions of M.E.R.A. are found. However, substantial questions have been raised elsewhere concerning the requirement for municipal employers to ratify collective bargaining agreements in open meetings, and concerning the extent of authority to bind required of or permitted to negotiators for municipal employers. 7/

It is clear in the instant case that both parties carried on negotiations through bargaining committees which were obligated to submit any agreement reached for ratification. The Union was fully aware of the limited authority of the County's Personnel Committee. This is indicated particularly by the position assumed by the Union in its final offer during the negotiations conducted on July 11, 1972, when the Union recognized, and in fact bargained on the basis of, the ultimate authority of the County Board. Under these circumstances, the Examiner finds that no final agreement was reached between the parties, and does not reach the questions of what limits of authority are placed on negotiators for municipal employers or what ratification procedures are appropriate. The more conventional remedies applied in cases where a refusal to bargain violation is found are applicable in this case.

Dated at Madison, Wisconsin, this 6th day of April, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Marvin L. Schurke
Marvin L. Schurke, Examiner

7/ Milwaukee Board of School Directors v. W.E.R.C., 42 Wis. 2d 637 (1968).