STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

CITY OF SUPERIOR, Complainant, vs. LOCAL NO. 74, INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, Respondent.	:	Case XVIII No. 16258 MP-194 Decision No. 11446-B

Appearances:

Mr. Charles Ackerman, Labor Consultant, and Mr. William A. Hammann, City Attorney, for the Complainant.

Mr. Edward D. Durkin, International Vice President, for the Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Complaint of prohibited practices having been filed with the Wisconsin Employment Relations Commission in the above entitled matter, and the Commission having appointed Howard S. Bellman, a member of the Commission's staff to act as Examiner and to make and issue Findings of Fact, Conclusions of Law and Orders, as provided in Section 111.07(5), Wisconsin Statutes, and hearing on such complaint having been held at Superior, Wisconsin, on January 4, 1973, before the Examiner, and the Examiner having considered the evidence and arguments and being fully advised in the premises, makes and files the following Findings of Fact, Conclusion of Law and Orders.

FINDINGS OF FACT

1. That the City of Superior, referred to herein as the Complainant, is a Municipal Employer duly incorporated under the laws of the State of Wisconsin, which operates, inter alia, a fire department; that at all times material herein Charles C. Deneweth has been the Mayor and agent of the Respondent; and that at all times material herein Charles Ackerman has been the Labor Consultant to, and agent of the Respondent.

2. That Local No. 74, International Association of Firefighters, referred to herein as the Respondent, is a labor organization having offices at 1610 North 6th Street, Superior, Wisconsin, and at all times material herein has been the bargaining representative of certain employes of the fire department of the Complainant; that at all times material herein Leonard Rouse has been the President and agent of the Respondent.

3. That on approximately June 5, 1972, Complainant and Respondent concluded negotiations for a collective bargaining agreement covering the period of 1972 in the offices of the aforesaid Mayor Deneweth; and that such agreement was shortly thereafter enacted by the Complainant as an Ordinance and put into effect.

4. That on approximately July 6, 1972, Complainant and Respondent met and agreed to a schedule of meetings to be held on July 31, August 7, August 14, August 21, and August 28, 1972 for the purpose of negotiating a collective bargaining agreement for 1973.

5. That at the aforesaid July 31 meeting the Respondent stated that the Complainant, by Mayor Deneweth, at the above mentioned June 5, 1972 meeting, had agreed to execute a bilateral signed collective bargaining agreement for the period 1972, but had not, in fact, executed such a document, and suggested that further negotiations for a collective bargaining agreement to cover the period 1973 should be suspended until such an instrument was so executed; that Ackerman, on behalf of Complainant, replied that he agreed to such a suspension and would investigate the alleged failure by the Complainant to execute the aforesaid instrument; and that on August 3, 1972, Ackerman wrote to Mayor Deneweth as follows:

> "At the most recent negotiating session with the Superior Firemen's Union held at 7:30 p.m. on July 31, 1972 I was informed that there would be no further negotiations until the city authorities signed the present ordinance affecting the firemen. I would appreciate it if you would give this matter your consideration."

6. That until approximately November 11, 1972 when the Complainant and Respondent finally executed a bilateral collective bargaining agreement covering 1972, they engaged in a dispute over whether or not the Complainant had agreed to do so; that, however, the Respondent, by a letter dated September 12, 1972 requested the continuation of negotiations for a collective bargaining agreement to cover 1973; and that subsequent to said letter, but during the pendency of said dispute, several such negotiation meetings were held, without protest by the Complainant, on dates other than those to which the aforesaid parties had agreed on July 6, 1972.

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

CONCLUSION OF LAW

That the aforementioned suspension of collective bargaining for an agreement to cover the period 1973 was mutually agreed upon by the Complainant and Respondent and therefore, in that regard, the Respondent, by its role in that suspension, did not commit any prohibited practice within the meaning of the Municipal Employment Relations Act.

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

ORDER

IT IS ORDERED that the complaint of prohibited practices filed in the instant matter be, and the same hereby is, dismissed.

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

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Howard S. Bellman
Howard S. Bellman, Examiner

MEMORANDUM ACCOMPANYING
FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The instant complaint was initially filed on November 29, 1972. Pursuant to a motion by the Respondent and an Order to make the complaint more definite and certain (Decision No. 11446-A), the complaint was amended on December 19, 1972. Hearing was held on December 12, 1972 and the transcript thereof issued on February 5, 1973.

The amended complaint alleges that the Respondent Union committed prohibited practices under Section 111.70(3)(b)3, Wisconsin Statutes, "in that they collectively and through their bargaining representative refused to meet at reasonable times with the duly appointed representative of the Employer, City of Superior, to bargain collectively over the issues of wages and conditions of employment and have refused to bargain in good faith on such issues." Specifically, this allegation covers the period between July 31, 1972 and September 25, 1972.

The Respondent has been the representative of certain employes in the Complainant's fire department for some years. On approximately June 5, 1972, negotiations for a labor agreement to cover 1972 were concluded in the office of the Mayor of Complainant when certain officials of the Respondent signed a letter setting forth the agreement reached. At that time, according to testimony adduced by the Union, it was proposed to the Mayor by said Union officials that the entirety of the parties' labor agreement, including the newly negotiated terms, should be set forth in a bilateral document to be signed by both parties, and the Mayor replied that he could see no problem in achieving such an arrangement. The Mayor does not recall this exchange, but does not specifically deny it. Within a few days after this meeting the City Council effectuated the newly agreed to terms for 1972 by adopting them as an ordinance.

Later in June the Union submitted, to the City, proposals for the parties' 1973 labor agreement. On July 6, 1972, the parties met in this regard, and agreed to schedule negotiation meetings for July 31 and August 7, 14, 21, and 28, 1972. At the July 31 meeting the Union pointed out that the City was yet to enter the previously proposed bilateral agreement to cover 1972, and suggested that negotiations for 1973 should await completion of that arrangement. Charles Ackerman, the City's labor consultant, who had not been present at the Mayor's office on June 5, replied that he agreed to a suspension of bargaining for 1973 on that basis and that he would look into the matter of a signed bilateral agreement covering 1972.

On August 3, 1972 Ackerman wrote to the Mayor, sending a copy of his letter to the President of Respondent, stating as follows:

> "At the most recent negotiating session with the Superior Firemen's Union held at 7:30 p.m. on July 31, 1972, I was informed that there would be no further negotiations until the city authorities signed the present ordinance affecting the firemen. I would appreciate it if you would give this matter your consideration."

In response, the Mayor, on August 28, 1972, sent the following letter to Respondent's President, with a copy to Mr. Ackerman.

> "Reference is nereby made to a communication directed to me by Mr. Charles Ackerman under date of August 3, 1972 and your letter to the undersigned under date of August 18, 1972 concerning the firemen's request for signing the present ordinance effecting firemen.
>
> In connection with the above, I would hereby direct your attention to your Union's letter under date of June 5, 1972 to Mr. Charles Ackerman in which an agreement was reached that would provide the $20.00 per month increase to the members of the Fire Department and one additional one-half holiday, each of which would be retroactive to January 1, 1972.
>
> Concerning the agreement reached and settlement made identified above, nothing in your communication to Mr. Ackerman indicated that an agreement included signing an ordinance. The ordinance has been applied providing for the two items that you and our City Labor Negotiator agreed upon.
>
> Mr. Ackerman in his letter of August 3 indicates that your Union group has refused to further negotiate with the City for the 1973 contract. May I suggest in connection with the above that you proceed with negotiations by contacting Mr. Ackerman. A certified copy of the 1972 ordinance incorporating the agreement reached on June 5 above referred to is herewith enclosed."

On September 12, 1972, Respondent Union, by its secretary, wrote Mr. Ackerman requesting the continuation of negotiations for a 1973 contract.

A September 15 letter, from the Union attempted to remind the Mayor of the Union's verbal request for a bilateral document and set forth the Union's position with regard to the affect of the Municipal Employment Realtions Act on the matter, as well as its interpretation of the completeness of the letter that it signed in the Mayor's office on June 5.

The Mayor wrote the following letter to the Union on September 28, 1972:

> "This will acknowledge receipt of your letter under date of September 15, 1972 wherein you suggest to this office that a commitment was made that both the City and your organization would jointly sign the ordinance currently in effect for your group.
>
> This is to advise that I disagree with you that any commitment was made either on my part or our Labor Consultant with regard to the signing of the ordinance. Be that as it may, however, we certainly see no objection to applying joint signatures to that which was agreed to between the parties.

In connection with the above, I would suggest that our current ordinance be reduced to a simple contract so that signatures may be attached thereto. I would further suggest that this be the first order of business in your current negotiations with our Labor Consultant so that this part of our negotiations can be concluded immediately before proceeding to your 1973 demands.

I would suggest that you draft the contract from the certified copy of the ordinance that I submitted to you."

Following the Union's September 12 request for continued negotiations, the parties met to negotiate a 1973 agreement on six or seven occasions prior to the filing of the instant complaint. On November 11, 1972, the parties finally executed a bilateral agreement covering 1972.

The evidence as to whether or not the City agreed on June 5, 1972 to enter a signed bilateral labor agreement is ambiguous. As noted, a Union witness recalled certain statement by the Mayor, and others, to that effect, whereas the Mayor did not so recollect. Ackerman's letter of August 3, 1972 may be interpreted as simply notifying the Mayor of a Union tactic, or as a suggestion to him that he pursue his earlier commitment. The Mayor's letter of August 28 does not meet the issue squarely. Likewise, the third paragraph of the Mayor's September 28, 1972 letter, and the eventual execution of a conventional contract, may be construed as either an effort to resolve the dispute or as the honoring of an earlier agreement.

On the other hand, the Mayor, in his September 28 letter, at the second paragraph, apparently denies having agreed to "signing" the parties' agreement. But such a denial implies violation of the City's duty to bargain as defined at Section 111.70(1)(d) and 111.70(3)(a)4.

What is clear, however, is that Mr. Ackerman agreed to suspend negotiations for a 1973 agreement until the arrangements for 1972 were settled - the testimony to this effect is unrebutted; that the previously scheduled August meetings were missed due, at least in part, to the parties' dispute over finalizing their 1972 agreement; and that the resumption of meetings was caused, at least in part, by the Union's request for same of September 12, 1972.

On this basis, it cannot be concluded that the Union improperly refused to meet with the City as the complaint alleges.

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

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Howard S. Bellman
Howard S. Bellman, Examiner