STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

CITY OF GREENFIELD, Complainant, vs. GREENFIELD PROFESSIONAL POLICEMEN'S ASSOCIATION, CHARLES SALBASHIAN, DAVID NESS, JOHN HICKMAN, and LEO ALONGE, Respondents.	Case XXVII No. 18333 MP-398 Decision No. 13051-A

Appearances:
Mulcahy & Wherry, S.C., Attorneys at Law, by Mr. Mark F. Vetter, Esq., on behalf of Complainant.
Goldberg, Previant & Uelmen, Attorneys at Law, by Mr. Thomas J. Kennedy, Esq., on behalf of Respondents.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

City of Greenfield having on September 19, 1974, 1/ filed a complaint with the Wisconsin Employment Relations Commission, herein Commission, wherein it alleged that Greenfield Policemen's Association, Charles Salbashian, David Ness, John Hickman, and Leo Alonge, had committed prohibited practices within the meaning of the Municipal Employment Relations Act; and the Commission having appointed staff member Amedeo Greco 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 hearing on said complaint having been held at Milwaukee, Wisconsin, on October 30, at which time the parties were accorded opportunity to present witnesses and to adduce evidence; and the parties thereafter having filed briefs which were received by January 22, 1975, and the Examiner having considered the evidence and arguments, makes and files the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. That the City of Greenfield, herein Complainant, is a Municipal Employer having its principal offices at City Hall, Greenfield, Wisconsin; that among other municipal services, Complainant maintains and operates a Police Department; that Robert Tardiff is the Mayor of the City of Greenfield; that Werner Schulte was for part of the time herein Complainant's labor negotiator; and that Tardiff and Schulte were members of Complainant's collective bargaining team.

2. That the Greenfield Professional Policemen's Association, herein Respondent, is a labor organization which represents for collective bargaining purposes certain police officers employed in Complainant's Police Department; that Charles Salbashian is Respondent's President; and that

1/ Unless otherwise noted, all dates hereinafter refer to 1974.

David Ness, John Hickman, and Leo Alonge, along with Salbashian, were at all times material hereto members of Respondent's collective bargaining team.

3. That Complainant and Respondent commenced negotiations for a collective bargaining agreement on or about August 14, 1973; that the parties thereafter met on a number of times for the purpose of collective bargaining negotiations; that by January, 1974, the parties had agreed to almost all of the contract items in issue; and that the only unresolved items in dispute by that time were vacations, a cost of living clause (COLA), and the duration of the contract.

4. That with respect to the COLA, the Complainant insisted that it would not agree to such a provision unless Respondent agreed to a two-year contract; that Complainant also proposed that any COLA agreed to would be applied only to an employe's base pay; that computing the COLA in this manner meant that the fifty percent premium paid for overtime work, herein compounding, would be excluded in determining the COLA; that Respondent, on the other hand, initially proposed a one-year contract and a COLA which included compounding; and that the monetary difference between these two proposed computations of the COLA totaled about two hundred (200) or two hundred and fifty (250) dollars over a two-year period for the entire bargaining unit.

5. That prior to these January meetings with Respondent, Complainant had previously orally agreed to a collective bargaining agreement with its firefighters on or about December 29, 1973; that said agreement contained a COLA formula which excluded compounding; that this COLA provision for the firefighters was repeatedly mentioned in the negotiations between Complainant and Respondent, with Complainant insisting that Respondent would have to agree to this same provision in their contract; that for several years prior to the commencement of the Police negotiations herein, Complainant had previously signed a collective bargaining agreement with its highway employes, wherein Complainant agreed to a COLA and which included compounding; and that Respondent initially advised Complainant in their negotiations that it wanted this same COLA language in their contract.

6. That the parties met for collective bargaining purposes on two unidentified dates in January; that the parties then discussed the remaining unresolved issues pertaining to vacations, duration of contract, and computation of COLA; that at their second meeting, the parties met with mediator Marshall Gratz, from the Commission's staff; that the parties there engaged in extensive discussions as to whether the COLA should include or exclude compounding; that the COLA provision in the firemen's contract was specifically mentioned; that Respondent finally acceded to Complainant's demand that the COLA would exclude compounding; that the parties agreed to a COLA which provided for a one cent (1¢) per hour increase for each four-tenth's percent (.4%) increase in the Milwaukee Consumer Price Index; and that the parties then agreed to all other items for a two-year contract.

7. That Respondent thereafter presented this tentative contract to its members in late January and that Respondent's membership there ratified the contract.

8. That thereafter, by letter dated January 30, Schulte, Complainant's chief negotiator, advised Complainant's City Clerk of the agreement reached; that Salbashian received a copy of said letter from Schulte; and that that letter provided:

"We have concluded negotiations with the Police Department subject to membership ratification. Terms and conditions of the settlement are as follows:

1. TERM OF THE AGREEMENT

   Two (2) years, January 1, 1974 thru December 31, 1975;

2. WAGE INCREASE

   Four (4%) percent of base wage effective January 1, 1974, and Four (4%) percent increase on base wage January 1, 1975;

3. <u>C.O.L.A.</u>

   <u>Effective January 1, 1974, on exact same basis as Fire Department;</u>

4. Checkoff of Police Association dues to be implemented A.S.A.P.;

5. Letter on Dental reopener for collective bargaining during 1975;

6. Letter on insurance coverage while driving City owned vehicles;

7. Letter on Hospital and Surgical coverage for involuntary retirees and dependents until eligible for medicare;

8. Contract language modification on seniority;

Will you please implement the wage changes outlined above at the earliest opportunity. I will forward the completed labor agreements to you upon completion within the next few weeks." (Emphasis added)

9. That upon receiving said letter, neither Salbashian nor any other Respondent representative objected to Complainant regarding any of its contents, including that part which provided that the COLA was "Effective January 1, 1974, on exact same basis as Fire Department."

10. That Complainant on or about February 19 and February 28 approved and accepted the foregoing collective bargaining contract agreed to with Respondent; that said contract provided for a COLA which excluded compounding and which was similar to the COLA clause contained in the firefighters' contract; that in late February or early March, Complainant forwarded to Respondent the typed collective bargaining agreement previously orally agreed to by the parties; and that said agreement included a COLA which excluded compounding.

11. That on March 27, Respondent's membership voted on and rejected this typed contract, supposedly because the contract did not include compounding in the computation of the COLA; that Respondent thereafter so advised Complainant; and that by letter dated April 17, Salbashian informed Mayor Tardiff that:

> "In view of the fact that the Greenfield Professional Policemans [sic] Association and the City of Greenfield have not reached an agreement for our contract settlement for the 1974 calendar year, our acceptance of the forthcoming payroll checks could present a problem.

The City has chosen by passing an ordinance to give Police Department employees a four percent (.04%) wage increase over 1973 wages and a cost of living adjustment computed quarterly by the Cost of Living Council. On March 27, 1974, the members of the Greenfield Professional Policemans [sic] Association voted to reject the proposed 1974-1975 contract as offered by the City, and you were so advised by myself.

On the advice of our legal counsel, the Police Department employees will accept their payroll checks so issued; but, be it understood that this will in no way constitute our approval or acceptance of the 1974-1975 contract as proposed by the City.

We will continue our negotiations with the City until such time that a contract has been ratified by the proper authorities on the part of the City and the Association. At that time, any differences in wages paid to Police Department employees, whether more or less, will be corrected."

12. That Salbashian subsequently advised labor negotiator Schulte in a letter dated June 13 that:

"The Bargaining Committee for the Greenfield Professional Policemen's Association requests a meeting with you for the purpose of negotiating a contract settlement for the 1974 calendar year.

It is the opinion of the Bargaining Committee that the one point in our negotiations that needs clarification is the manner in which the Cost of Living is computed. It is our contention that the Cost of Living is to be paid on ALL hours of pay received, including the overtime hours. That was the computation formula we originally discussed.

If the City of Greenfield is not in agreement with this formula, the Association feels it necessary to disregard all past negotiations for a 1974-1975 Contract and begin anew--with negotiations for a one (1) year contract for the year 1974 between the City of Greenfield and the Greenfield Professional Policemen's Association.

Please advise at your earliest convenience."

13. That Schulte responded on June 18 wherein he told Salbashian by letter that the Respondent had previously agreed to the COLA formula contained in the firefighters' contract, but that in any event he would be willing to meet with Respondent's representatives to discuss this matter.

14. That by letter dated June 27, Salbashian informed Schulte that:

"With respect to your letter of June 18, 1974, it will be impossible to meet with you on July 5th or 6th, 1974, as Officer Hickman and I will both be on vacation and out of town.

In my letter of June 13, 1974, I stated to you that unless the City were to change its position on the method of computation of Cost of Living adjustment, we would find it necessary to disregard all past negotiations for a 1974-1975 Contract with the City. I further stated we would begin negotiations for a one-year 1974 Contract with the City. In your reply, you stated the City's position 'Remains Unchanged'.

I discussed your letter with Mayor Robert Tardiff; he, too, stated that the City's position remains unchanged. I advised him this would terminate our negotiations for a 1974-1975 Contract with the City.

We will be happy to meet with you in an attempt to reach an agreement for a 1974 Contract with the City. Please contact me at your earliest convenience, that we may be able to arrive at a mutually agreeable date and time to begin negotiations."

15. That some of Respondent's members at about this time became interested in having the Teamsters Union represent them for collective bargaining purposes; and that the Teamsters Union filed a representation petition with the Commission on July 19, 1974, wherein it sought to represent certain employes in Complainant's Police Department.

16. That Complainant's representatives met with Respondent's representatives on or about September 3 for the purpose of discussing the status of the contract; that Mayor Tardiff and Attorney Dennis McNally, Complainant's newly hired labor negotiator, represented Complainant at this meeting; that Salbashian, Hickman, Ness and Alonge represented Respondent; that the parties discussed the status of the negotiations; that Respondent's representatives there said they would agree to a contract which contained Complainant's COLA formula which excluded compounding, but that such contract could only be for one year's duration; that Respondent's insistence on a one-year contract was partly based on the fact that some of Respondent's members wanted the Teamsters to negotiate another contract for them as soon as possible; that Respondent never stated that it would agree to a two-year contract; and that labor negotiator McNally there stated that he would look into the matter and thereafter contact Respondent regarding the status of the negotiations.

17. That by letter dated September 13, McNally advised Salbashian, _inter alia_, that:

"This letter shall serve to confirm our telephone discussion today in which I outlined to you that the City of Greenfield is willing to modify what it believes to be the agreement between the City and your Association for the cost of living adjustment provision of the 1974-1975 labor agreement.

Upon recommendations by Mayor Robert A. Tardif and me, the Personnel Committee has agreed to extend to the Greenfield Professional Policemen's Association the cost of living adjustment provision that the Greenfield Professional Policemen's Association bargaining team expressed as what they believe was originally agreed to during January of 1974. These expressions were confirmed during a meeting held in the Greenfield City Hall with Mayor Robert A. Tardif and me representing the City of Greenfield and Messrs. David Ness, John W. Hickman, Leo Alonge and you representing the Greenfield Professional Policemen's Association. It was the understanding of the City of Greenfield that your Association would accept the present status quo in regard to the cost of living adjustment on a one-year basis and would agree to a contract terminating on January 31, 1974. It was further the understanding of the City of Greenfield that the only bar to a two year labor agreement which would terminate on December 31, 1975 was the dispute relating to the application of the cost of living allowance.

Attached to this letter you will find a new APPENDIX 'A' entitled COST OF LIVING ESCALATOR CLAUSE which would be substituted for the similar provision given to you with the original draft of what

was believed to be the labor agreement between the parties for 1974-1975. This Appendix should be attached to the draft in your possession without further changes to constitute our agreement.

Since this provision is identical to what your Association has claimed for more than eight months it bargained for during the negotiations leading to the tentative agreement on the 1974-1975 labor agreement between the City of Greenfield and the Greenfield Professional Policemen's Association, and since you have previously indicated that the Greenfield Professional Policemen's Association ratified the tentative agreement with the understanding that it contained a cost of living adjustment clause such as that attached, I presume that you and the members of your bargaining team will now execute the 1974-1975 labor agreement.

. . ."

18. That Salbashian replied, by letter dated September 18, that:

"This letter shall confirm our telephone conversation and your letter of September 13, 1974. As I had discussed with you, the Greenfield Professional Policemen's Association will not enter into a two-year (2) Contract with the City of Greenfield. From your letter, it would appear you misunderstood the Association's position.

Since receipt of your letter, I have conferred with the members of the Bargaining Committee; the Association's position remains unchanged, in that it will not enter into a two-year (2), 1974-1975 Contract Agreement with the City of Greenfield.

The Committee further stated they would meet with you in hopes of reaching a mutually agreeable settlement for a one-year (1) 1974 Contract between the Greenfield Professional Policemen's Association and the City of Greenfield."

19. That Complainant thereafter filed the instant complaint on September 19, wherein it alleged that Respondent had violated Section 111.70(3)(b)3 of the Municipal Employment Relations Act, herein MERA, by refusing to bargain in good faith and by refusing to execute a previously agreed to collective bargaining agreement.

20. That as of the date of the instant hearing, Respondent has not executed the collective bargaining agreement it had agreed to and ratified in January.

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

CONCLUSIONS OF LAW

That Respondent has refused, and is refusing, to execute a previously agreed to collective bargaining agreement and that, therefore, Respondent has committed a prohibited practice within the meaning of Section 111.70 (3)(b)3 of MERA.

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

ORDER

1. IT IS ORDERED that the complaint allegation referring to a general refusal to bargain in good faith be, and the same hereby is, dismissed.

2. IT IS FURTHER ORDERED that the Greenfield Professional Policemen's Association, its officers and agents, shall immediately:

A. Cease and desist from:

(a) Refusing to execute the collective bargaining agreement it agreed to and ratified in January, 1974.

B. Take the following affirmative action which the Examiner finds will effectuate the policies of the MERA:

(a) Immediately sign and execute the collective bargaining agreement which it agreed to and ratified in January, 1974.

(b) Post in its offices, meeting halls and all places where notices to its members are customarily posted, copies of the notice attached hereto and marked "Appendix A". That notice shall be signed by Respondent, and shall be posted immediately upon receipt of a copy of this Order and shall remain posted for thirty (30) days thereafter. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced or covered by other material.

(c) 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 14th day of April, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Amedeo Greco
Amedeo Greco, Examiner

APPENDIX "A"

Notice To All Members

Pursuant to an Order of the Wisconsin Employment Relations Commission and in order to effectuate the policies of the Municipal Employment Relations Act, we hereby notify our members that:

1. WE WILL immediately sign and execute the collective bargaining agreement which we agreed to in January, 1974.

2. WE WILL NOT in any other or related manner violate the provisions of the Municipal Employment Relations Act.

Dated this _______ day of April, 1975.

By ______________________________
Charles Salbashian
Greenfield Policemen's Association

THIS NOTICE MUST BE POSTED FOR THIRTY (30) DAYS FROM THE DATE HEREOF AND MUST NOT BE ALTERED, DEFACED OR COVERED BY ANY MATERIAL.

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Complainant primarily alleges that Respondent agreed in January to all of the terms of a new two-year collective bargaining agreement, including a provision which excluded compounding in computing the COLA, and that, therefore, Respondent's subsequent refusal to sign said contract is violative of Section 111.70(3)(b)3 of MERA. Alternatively, Complainant contends that even if there was a misunderstanding over compounding which precluded full agreement in January, Respondent nonetheless subsequently engaged in bad faith bargaining in September when Respondent refused at that time to accept a modified contractual offer which comported to Respondent's understanding of what the parties had earlier agreed to in January, i.e., one which included compounding in computing the COLA. As a remedy, Complainant requests that Respondent be ordered to sign the January agreement which excluded compounding, or, alternatively, that Respondent sign and execute Complainant's modified September offer which included compounding.

Respondent, on the other hand, claims that it never reached a finalized contract in January because it then agreed to a COLA provision which included compounding, whereas Complainant's typed contract draft submitted to it in March provided for a COLA which excluded compounding. Going on, Respondent alleges that this was a material contractual difference and that, absent agreement on this particular provision, it cannot be said that the parties reached a complete agreement at that time. As a result, Respondent asserts that it was not legally bound to sign Complainant's proposed contract which excluded compounding. With respect to the subsequent September events, Respondent contends that it could lawfully reject Complainant's modified two-year contract which included compounding on the ground that collective bargaining is a "dynamic process", one which permits Respondent to reject the same provisions which it itself had sought eight months earlier.

In resolving these issues, the undersigned has been presented with some conflicting testimony regarding certain material facts. Accordingly, it has been necessary to make credibility findings, based in part on such factors as the demeanor of the witnesses, material inconsistencies, and inherent probability of testimony, as well as the totality of the evidence. In this regard, it should be noted that any failure to completely detail all conflicts in the evidence does not mean that such conflicting evidence has not been considered: it has.

1. Respondent's Alleged Failure To Sign And Execute The January Agreement.

As to this issue, the record establishes, via Tardiff's credible testimony, that the parties at the second January meeting had extensive discussions over the problem of compounding, that Complainant there insisted that it would not agree to a COLA which included compounding, that Complainant told Respondent that Respondent would have to agree to exclude compounding, just as the firefighters had recently done in their contract, and that the firefighters' contract was specially mentioned. Further, Tardiff stated that during this meeting, which lasted about three and a half hours, Salbashian finally agreed to contract language similar to that agreed to by the firemen, i.e., one which excluded compounding. Tardiff added that Schulte 2/ at that point then said "it was fine. We

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2/ Schulte did not testify at the hearing. Although an adverse inference might otherwise be drawn regarding Schulte's failure to so testify, such an inference here is unwarranted since Schulte apparently resides outside the State of Wisconsin and he no longer represents Complainant for collective bargaining purposes.

got a contract. I will write it up." Tardiff's testimony relating to this meeting is credited in its entirety.

The same cannot be said of Salbashian's testimony. Thus, Salbashian initially claimed that he would not "recall" either Schulte or Tardiff mentioning the COLA provision provided for in the firemen's contract in this second January meeting. Salbashian then categorically said, "We never discussed the firemen's contract" or the COLA "concept" contained therein. In fact, the record establishes that the firemen's contract was discussed, as testified by Tardiff, and as acknowledged by Respondent's own bargaining team members, Hickman and Ness. Indeed, Ness specifically testified that, "The City at that time said we're going to give you that identical to the Fire Department."

Further, Salbashian gave similarly conflicting testimony on another key piece of evidence, Schulte's January 30 letter, a copy of which he received. That letter provided, inter alia:

"3. C.O.L.A.

Effective January 1, 1974, on exact same basis as Fire Department;" (Emphasis added)

When asked whether he knew what the cost of living language was for the Fire Department upon receipt of this letter, Salbashian replied, "no". Salbashian contradicted himself when he was asked whether he then disagreed with Complainant's understanding of the COLA provision. Salbashian replied that "I would have to say yes" and that he then voiced his disagreement "with our bargaining committee." If that is true, Salbashian must have known what the firemen's contract provided for, or else he would not have been able to so disagree. Upon further questioning, Salbashian reverted to his prior testimony and said that no, he did not then voice any disagreement to his bargaining team. Rather, he claimed that "When we got the written contract I disagreed," i.e., in March.

Particularly because of these material inconsistencies and inaccuracies in his own testimony, and for the reasons noted above, the undersigned finds that Salbashian's testimony relating to these January events must be discounted, as it simply is not credible.

Further, inasmuch as the parties had extensively discussed the COLA provision agreed to by the firefighters prior to January 30, it follows that Salbashian had full knowledge of that provision 3/ when he received Schulte's January 30 letter which said that the COLA was to be computed "on exact same basis as Fire Department". That knowledge aside, Salbashian willingly chose to do nothing to challenge Schulte's understanding regarding the terms of the recently concluded agreement until almost two months later, after Complainant had ratified the contract, and after Respondent's members started to reap the benefits of the contractual provisions. Salbashian's inaction during that period gives rise to two possible inferences.

3/ The fact that that provision had not then been reduced to writing and shown to Salbashian is immaterial since the parties fully understood by then what that general concept provided for, i.e., the exclusion of compounding in the COLA formula.

The first is that there was a misunderstanding as to what the parties had agreed to, and that Respondent in fact had not agreed to accept the COLA provision found in the firemen's contract. Yet, if that were true, it is obvious that Respondent deliberately chose to perpetuate that misunderstanding, until such time as Complainant first started implementing the terms of the new contract. After that was done, Respondent then knew that it would be very difficult for Complainant to revert back to the provisions of the old contract, once Respondent belatedly informed Complainant that there was no new contract. If that were the case, Respondent's deliberate delay in clearing up the alleged misunderstanding, until such time as it first reaped the benefits of the new contract, was the very antithesis of good faith bargaining and in fact could well constitute an unlawful refusal to bargain. 4/

The second, and more likely, inference to be drawn from Salbashian's silence after he received the January 30 letter, is that that letter accurately reflected the agreement of the parties and that, therefore, there was no need for Salbashian to do anything. For, as noted above, it is clear that the parties did discuss the firemen's contract in their second January meeting. Since compounding was then an issue, it follows that the parties must have resolved that problem one way or the other. Tardiff credibly testified that Respondent then specifically agreed to exclude compounding, just as the firefighters had done earlier. Respondent's witnesses, on the other hand, were unable to recall just what Respondent had agreed to, as Salbashian, Ness, Hickman, and Alonge all in effect testified that they could not specifically recall either Schulte or Tardiff tell them at the second January meeting that the COLA provision agreed to would be the same as the one contained in the highway department contract, i.e., one which included compounding. Rather, they all testified that they were under the impression that such was the case.

Upon the basis of the facts presented here, the undersigned finds that the latter testimony must be disregarded, since the totality of the evidence establishes that Respondent specifically did agree to a COLA provision which excluded compounding. Thus, Tardiff credibly testified that Respondent had agreed to the firefighters' COLA which excluded compounding. Further, Schulte's January 30 letter, which was immediately written after the second January meeting, fully corroborates Tardiff's account of what the parties had agreed to. When these factors are coupled with the fact that Salbashian did not respond to the purported misstatement of fact regarding the agreed upon COLA provision noted in the January 30 letter, it can be inferred, and I so find, that that letter accurately depicted the agreement of the parties, an agreement under which Respondent accepted a COLA "on exact same basis as Fire Department."

That being so, the record establishes that the parties in January agreed to all of the terms of a new collective bargaining agreement and that both parties thereafter ratified that agreement. 5/ As a result, Respondent was therefore required under Section 111.70(3)(b)3 of MERA

4/ In light of the ultimate disposition herein, the undersigned does not rule on this point.

5/ Since Respondent's membership voted on the tentative contract shortly after it was agreed to, it is reasonable to assume that the membership was presented with all of those contract terms, including the one which excluded compounding. If that were not the case, Salbashian certainly would have advised Complainant upon receipt of the January 30 letter that Respondent's membership had ratified a contract which included compounding and that the letter's characterization of what had been previously agreed to on this issue was incorrect.

to execute the "collective bargaining agreement previously agreed upon." It's subsequent failure to do so was violative of that provision. To rectify that unlawful conduct, Respondent is therefore required to execute that agreement, a copy of which Complainant has already forwarded to Respondent in March, 1974.

2. Respondent's Alleged Independent Refusal To Bargain In Good Faith In September.

As noted above, Complainant has alternatively alleged that, even if no agreement was reached in January, Respondent nonetheless subsequently engaged in bad faith bargaining in September when Respondent then refused to accept Complainant's modified contract offer, which fully comported to Respondent's purported understanding of what the parties had earlier agreed to in January, i.e., a two-year contract which included compounding. In support of this position, Complainant asserts that Respondent on September 3 specifically said that it would accept a two-year contract which included compounding.

Based upon the credible testimony of Respondent's witnesses, however, the undersigned finds that Respondent at that time never indicated that it would accept a two-year contract. To the contrary, the record here clearly establishes that Respondent at that time would not accept a two-year contract under any circumstances, since some of Respondent's members wanted only a one-year contract so that the Teamsters Union would immediately commence collective bargaining negotiations for a new contract at the end of 1974. In order to achieve that end, Respondent was willing to forego the very item which supposedly precluded agreement for the past eight months, i.e., the inclusion or exclusion of compounding in computing the COLA. Since compounding involved but at most two hundred and fifty (250) dollars over a two-year period for the entire bargaining unit, which consists of about twenty-eight (28) employes, it is not surprising that Respondent reversed itself and was then willing to pay that small price for a hoped-for better contract. Further, Respondent at that time in effect claimed that Complainant's alleged prior failure to accept compounding was sufficient to warrant reversal of Respondent's original acceptance of a two-year contract. In fact, however, the record establishes that Respondent's prior acceptance of a two-year contract was not made contingent upon receiving compounding, but rather, that Respondent agreed to such a two-year contract in exchange for receiving, for the first time, a COLA clause. Accordingly, for these reasons, it can hardly be said that the issue of compounding was the *quid pro quo* for the contract's duration.

Complainant maintains that Respondent's reversal and its refusal to accept Complainant's modified contract offer which included compounding constituted bad faith bargaining. In support of this view, Respondent has cited a number of cases 6/ which have arisen under the National Labor Relations Act, as amended.

The undersigned, however, finds it unnecessary to pass upon this issue, since, as noted above, Respondent had already committed a prohibited practice by refusing to sign the contract which it had agreed to earlier in January. In light of that fact, there is no point in passing upon whether Respondent's subsequent conduct was also unlawful. Accordingly, this complaint allegation shall be dismissed without passing upon its merits.

Dated at Madison, Wisconsin, this 14th day of April, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Amedeo Greco
Amedeo Greco, Examiner

6/ Eq. Ramona's Mexican Food Products, Inc., 83 LRRM 1705; Rice Lake Creamery Co., 48 LRRM 1251; and Franklin Equipment, Inc., 79 LRRM 1112.