

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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SOCIAL SERVICES EMPLOYEE ASSOCIATION OF :  
FLORENCE COUNTY, WISCONSIN, :

Complainant, .

vs. :

FLORENCE COUNTY BOARD OF SUPERVISORS :  
OF FLORENCE, WISCONSIN, :

Respondent. :

Case I  
No. 19408 MP-503  
Decision No. 13896-A

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Appearances:

Mr. David J. Herrick, Attorney at Law, appearing on behalf of  
the Complainant.

Mr. Walter Dallagrana, District Attorney, appearing on behalf of  
the Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

A complaint of prohibited practices having been filed with the Wisconsin Employment Relations Commission in the above-entitled matter, and the Commission having appointed Dennis P. McGilligan, 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 111.70(5) of the Wisconsin Statutes; and hearing on said complaint having been held at Florence, Wisconsin, on September 30, 1975 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, Conclusions of Law and Order.

FINDINGS OF FACT

1. That Social Services Employee Association of Florence County, Wisconsin, hereinafter referred to as the Complainant or the Association; is a labor organization within the meaning of Section 111.70, Wisconsin Statutes, and recognized by the Florence County Board of Supervisors as the collective bargaining representative for the employees of the Department of Social Services employed by Florence County.

2. That Florence County Board of Supervisors of Florence, Wisconsin, hereinafter referred to as the Respondent, is a Municipal Employer within the meaning of Wisconsin Statutes, 111.70, with offices at Florence County Courthouse, Florence, Wisconsin; and that Florence County Board of Supervisors is a public body charged under the laws of Wisconsin with the management, supervision and control of Florence County and of its offices, and in that capacity operates a Department of Social Services.

3. That at all times material herein, the Complainant carried on negotiations with the Respondent through a bargaining committee consisting of Richard Kallman, President of the Association, Charles Grabski and Judy Hillsberg.

4. That at all times pertinent hereto, the Personnel Committee of the Florence County Board of Supervisors was the duly authorized bargaining representative of the Respondent; that Mr. John Pipp was Chairman of said Personnel Committee; and that in addition to Chairman Pipp the Committee included Mr. Bryngelson, Mr. Lund, Mr. Nelson and Mr. Osterburg.

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5. That, during the month of August, 1974, the Complainant's bargaining committee submitted its proposals for a 1975 contract between the Association and the Respondent to Chairman Pipp of Respondent's Personnel Committee; that in said proposal the Complainant made demands for a grievance procedure, improved vacation schedule, additional sick leave, 100% of the health insurance, retirement benefits, automobile expenses and increased wages.

6. That on November 11, 1974, the bargaining committee of the Complainant and the Personnel Committee of the Respondent met for the purpose of negotiations for a 1975 contract between the parties; that during the course of said meeting Respondent's Personnel Committee made a counter offer to the bargaining committee of the Complainant; and that said counter offer by the Personnel Committee included a grievance procedure, accumulation of 90 days of sick leave, 100% payment of the health insurance, mileage at the rate of 14¢ per mile and a total wage package of ten percent which included a 8.8 per cent wage increase plus the 1.2 per cent remainder to be applied to the insurance.

7. That the bargaining committee of the Complainant took the Respondent's Personnel Committee's counter proposal of November 11, 1974, back to the Union membership where it was discussed and the members of the Association voted to accept it.

8. That, on December 16, 1974, the bargaining committee of the Complainant met with the Personnel Committee of the Respondent; that during the course of said meeting the Complainant's bargaining committee informed the Respondent's Personnel Committee that it accepted the Personnel Committee's counter proposal of November 11, 1974; that the representatives of the Complainant agreed to prepare a copy of the proposed 1975 collective bargaining agreement between the parties in accordance with the Personnel Committee's counter proposal of November 11, 1974, for final review by the parties.

9. That Kallman prepared a document in conformity with the Respondent's Personnel Committee's counter proposal of November 11, 1974, as accepted by the bargaining committee of the Complainant at the December 16, 1974 meeting between the parties; that said document was mailed to Chairman Pipp of the Personnel Committee and copies distributed to the members of said committee; that, thereafter, on January 13, 1975, the Complainant's bargaining committee and the Personnel Committee of the Respondent met to finalize the above document; that the parties discussed the proposed agreement and went over it, point by point, that, although the parties agreed to some minor changes in language, the basic agreement was not altered; that the four members of the Respondent's Personnel Committee present at said meeting (Lund was absent) did not voice any objections to the proposed 1975 collective bargaining agreement; that no other issues were raised, negotiated or left unresolved by the parties at the conclusion of the meeting on January 13, 1975,

10. That, at the conclusion of the meeting held on January 13, 1975, there was a meeting of the minds between the representatives of the parties, and a total tentative agreement reached over the wages, hours and working conditions for calendar year 1975; that it was the intention of the participants at said meeting to proceed forthwith with the ratification of a collective bargaining agreement to succeed the 1974 agreement with an agreement effective for 1975; that it was the practice of the parties that their bargaining committees could not bind their respective decision-making bodies but had to take tentative collective bargaining agreements back to their memberships for approval; that there was no indication that the parties decided to change said practice; and that it was understood by the representatives of the parties at said meeting that each side would recommend the proposed 1975 collective bargaining agreement to their respective membership bodies for final approval.

11. That the tentative agreement reached by the representatives of the parties at the January 13, 1975 meeting was ratified by the Association's membership at a meeting on January 14, 1975.

12. That on January 17, 1975, the Personnel Committee of the Respondent presented a report to the Florence County Board of Supervisors which included the proposed 1975 collective bargaining agreement between the Complainant and the Respondent, along with proposed contracts and wage settlements for other County employees; that at said meeting the Respondent Board discussed the proposed wage settlements with the various County employee groups, including the tentative wage agreement with the bargaining committee of the Association; that the Personnel Committee of the Respondent did not recommend for adoption the proposed 1975 collective bargaining agreement between the parties at said meeting or at all times relevant thereafter until July 18, 1975; that following the above discussion, the Respondent Board took the position that the wage offer contained in the tentative agreement between the representatives of the parties was out of line with the other proposed wage settlements; that the Respondent Board also decided that the wage settlements with the various county employee groups varied too greatly; that as a result thereof, the Respondent Board voted 9-0 to refer all proposed labor agreements (except the Sheriff's Department) back to the Personnel Committee in order to renegotiate the wages; that all members of the Respondent's Personnel Committee voted in favor of the above motion, with the exception of Chairman Pipp, who was absent from the meeting.

13. That, on February 14, 1975, the bargaining committee of the Complainant and the Personnel Committee of the Respondent met for negotiations concerning the proposed 1975 collective bargaining agreement; that at said meeting the Personnel Committee of the Respondent retracted its previous wage offer and submitted a new wage proposal consisting of an 8% salary increase up to \$7,000 and payment of 85% of the cost of the medical insurance; that the Complainant's bargaining committee rejected said offer and requested that the Personnel Committee take the previously agreed upon tentative agreement back to the Respondent Board for ratification.

14. That the Association's membership subsequently discussed the matter and voted to support the above position of its bargaining committee; that on March 26, 1976, the representatives of the parties met in an attempt to settle their differences over the proposed 1975 collective bargaining agreement, but without success; that the Respondent's Personnel Committee did not resubmit the proposed 1975 labor agreement to the Florence County Board of Supervisors from February through May in 1975; that on June 16, 1975, the bargaining committee of the Complainant and the Personnel Committee of the Respondent met, at which time the representatives of the Complainant asked the Personnel Committee to present the aforementioned tentative agreement to the Florence County Board of Supervisors at its next meeting on June 20, 1975; that on June 20, 1975, the Personnel Committee did not present said agreement to the Respondent Board for ratification; that in lieu thereof, the Respondent Board voted not to consider the proposed 1975 contract between the parties nor any other proposal for a salary increase for the employees represented by the Association until a new proposal was agreed upon by the bargaining committee for the Association and the Respondent's Personnel Committee.

15. That on July 18, 1975, in spite of the above action on June 20, 1975, the Respondent Board considered the aforementioned tentative agreement between the representatives of the parties pursuant to a motion by Chairman Pipp of Respondent's Personnel Committee for adoption; that at said meeting the Respondent, Florence County Board of Supervisors, voted 7 to 4 to reject said tentative agreement; that three of the five members of the Respondent's Personnel Committee voted to adopt the aforementioned tentative agreement; that since the July 18, 1975 Board meeting the representatives of the parties have not met in formal negotiations although, on an informal basis, said parties have discussed

settlement of their contract dispute, but without success; that to date the Complainant and Respondent have not agreed upon a 1975 collective bargaining agreement to succeed the 1974 labor contract between the parties.

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

#### CONCLUSIONS OF LAW

1. That the Respondent, Florence County Board of Supervisors, by the actions of its Personnel Committee on January 17, 1975, and at all times relevant thereafter, until July 18, 1975 wherein said Personnel Committee, after agreeing to do so, failed to recommend for adoption the tentative agreement reached between said Personnel Committee and the bargaining committee of the Complainant, Social Services Employee Association of Florence County, on January 13, 1975; and by the actions of a majority of its Personnel Committee at the January 17, 1975, County Board meeting in voting to refer back to the Personnel Committee the above tentative agreement in order to renegotiate the wage package, has acted in bad faith towards and has refused to bargain collectively with the Complainant and has committed prohibited practices in violation of Sections 111.70(3)(a)4 and 111.70(3)(a)1 of the Municipal Employment Relations Act.

2. That the Respondent, Florence County Board of Supervisors, by referring, on January 17, 1975, the tentative agreement reached by representatives of the parties on January 13, 1975, back to its Personnel Committee for further negotiations on the matter of wages; and by refusing to vote on the aforementioned tentative agreement until a new agreement was reached between the parties' bargaining committees; and by voting on July 18, 1975, at an open meeting pursuant to Section 66.77 of the Wisconsin Statutes to reject said tentative agreement, has not acted in bad faith towards and has not refused to bargain collectively with the Complainant and has not committed prohibited practices in violation of Sections 111.70(3)(a)4 and 111.70(3)(a)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 Florence County, its officers and agents, shall immediately:

1. Cease and desist from refusing to bargain collectively with Social Services Employee Association of Florence County, Wisconsin as the exclusive representative of all employees of the Florence County Social Services Department.
2. Take the following affirmative action which the Examiner finds will effectuate the policies of the Municipal Employment Relations Act:
  - (a) The Personnel Committee of the Respondent shall, upon request, bargain collectively with Social Services Employee Association of Florence County, Wisconsin, as the exclusive representative of all employees in the aforesaid appropriate unit with respect to wages, hours and conditions of employment for a 1975 collective bargaining agreement, and if an understanding is reached embody such understanding in a signed agreement and recommend same to the Florence County Board of Supervisors for approval.

- (b) Notify all employes, by posting in conspicuous places in its offices where employes are employed, copies of the notice attached hereto and marked "Appendix A" which 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 12th day of April, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Dennis P. McGilligan  
Dennis P. McGilligan Examiner

APPENDIX "A"

NOTICE TO ALL EMPLOYEES

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 employees that:

1. WE WILL BARGAIN COLLECTIVELY with Social Services Employee Association of Florence County, Wisconsin, as the exclusive representative of all employees of the Florence County Social Services Department.
2. WE WILL NOT in any other or related matter interfere with the rights of our employees, pursuant to the provisions of the Municipal Employment Relations Act.

By \_\_\_\_\_  
Florence County Board of Supervisors

Dated at Madison, Wisconsin this                      day of April, 1976.

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

The complaint alleges that the Respondent committed prohibited practices, by not bargaining in good faith, and by refusing to bargain collectively with representatives of the Association. The Examiner held a hearing on September 30, 1975. Both parties made oral argument at the close of the hearing. The transcript was issued on December 8, 1975.

POSITION OF THE COMPLAINANT:

On August 18, 1975, Complainant filed a complaint with the Commission alleging:

"That the respondent above has engaged in unfair labor practices in that respondent has not bargained in good faith and has refused to bargain collectively with the majority of the employees in the collective bargaining unit, . . ."

Complainant maintains that a binding agreement was reached between the Personnel Committee of the Respondent, as the designated bargaining agent for the Respondent Board of Supervisors, and the bargaining committee of the Complainant. Complainant contends that said Personnel Committee failed to present the above agreement to the Florence County Board of Supervisors for an unduly extended period of time; and that when the agreement was finally presented the Respondent Board refused to vote upon it until a new proposal was agreed upon between the representatives of the parties. Complainant points out that members of said Personnel Committee failed to support the contract which they previously negotiated and agreed to with the bargaining committee of the Association.

Based on the above the Complainant argues that there is a binding agreement in existence between the parties at this time. Complainant would have the Examiner enforce the contract in effect between the parties with retroactivity from January 1, 1975 through the date of decision.

POSITION OF THE RESPONDENT:

Respondent argues that it bargained in good faith with representatives of the Association.

In its answer, the Respondent conceded that its Personnel Committee reached a tentative agreement with the bargaining committee of the Complainant for a 1975 labor contract. However, at the hearing the Respondent amended its answer to contend that said Personnel Committee, because of the opposition of two of its members to the wage increases, never reached a tentative agreement with the representatives of the Association. In the alternative, Respondent also argued at the hearing that, assuming arguendo there was a tentative agreement between the representatives of the parties, the Personnel Committee had to present said agreement to the County Board of Supervisors for approval or rejection. The Respondent claims that the Board had the only authority to make a final decision in the matter. Respondent argues that the County Board of Supervisors initially referred the tentative agreement back to the Personnel Committee for renegotiations of the salary package on January 17, 1975, and eventually voted 7 to 4 to reject said tentative agreement on July 18, 1975. Respondent maintains that it took the above action due to the generally bad state of the economy and because of the disparity of salary increases between various county employee groups. Respondent feels the rejection of the tentative agreement was justifiable.

Respondent would have the Examiner deny and dismiss the complaint and order the parties to resume collective bargaining over the 1975 collective agreement.

REFUSAL TO BARGAIN COLLECTIVELY:

The duty to bargain is imposed on the municipal employers by Section 111.70(3)(a)(4) of MERA. The nature of the duty is found in the definition of collective bargaining:

"111.70 Municipal Employment. (1) DEFINITIONS. As used in this subchapter:

. . .

(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, or to resolve questions arising under such 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 constitutions of this state and of the United States and by this subchapter."

There are several issues of fact arising from the negotiations between the representatives of the parties which are pertinent to the determination as to whether the Municipal Employer bargained in good faith with the bargaining committee of the Complainant. The first issue relates to the nature of the agreement reached by the bargaining committees of the parties. The Complainant and the Respondent place considerable reliance on the expression "tentative agreement" and witnesses for both parties testified as to the meaning which they gave to that expression during negotiations. The Complainant argues that once an agreement was reached between the parties there was a "book" and that County Board approval was only a formality. The Respondent maintains that after an agreement is reached between the bargaining committees the Personnel Committee must present the proposed contract to the Board pursuant to Section 66.77 Wisconsin Statutes for approval or rejection. The Respondent contends that the County Board is not a rubber stamp for the action of its Personnel Committee but has the final authority to make a good faith determination as to the merits of the proposed contract.

The customary meaning which attaches to the use of the expression "tentative agreement" in collective bargaining is that agreement has been reached on a particular item or items by the representatives of the parties with a commitment to take said tentative agreement back to their respective membership bodies and to recommend such agreement for approval. One normal procedure is that the Union's membership must ratify the agreement in accordance with its internal procedures. Another condition which obtains in most public employment situations is the requirement that



the Municipal Employer hold an open meeting pursuant to Section 66.77 of the Wisconsin Statutes for the purpose of approving the contract tentatively agreed to 1/

The record indicates that in the past the parties herein did not bind themselves according to any tentative agreement reached by their bargaining committees at the bargaining tables, but always took any tentative agreement back to their respective memberships for adoption or rejection. The record shows that the Complainant and Respondent followed past practice in the instant case. Although witnesses for the parties differed at the hearing as to the exact date a "tentative agreement" was reached, the record indicates that said agreement was reached on January 13, 1975. Immediately thereafter, the bargaining committee of the Complainant presented the proposed 1975 labor agreement to its membership, and said membership voted to ratify the tentative agreement on January 14, 1975. On January 17, 1975, the Personnel Committee of the Respondent presented the aforementioned tentative agreement to the Respondent Board for its consideration.

The parties herein need to distinguish between a promise to recommend as a component of good faith bargaining and the authority to bind. The Examiner is satisfied that the parties reached agreement which was "tentative" in that it was subject to the customary limitations of collective bargaining in the public sector and consequently the Respondent Board's representatives were under an obligation, consistent with their duty to bargain in good faith, to recommend that the Respondent Board of Supervisors approve and adopt the tentative agreement reached by the representatives of the parties. 2/

As noted before, on January 17, 1975 the Personnel Committee of the Respondent presented the tentative agreement to the Respondent Board. At no time during said meeting or thereafter until July 18, 1975, did the Respondent's Personnel Committee recommend the proposed 1975 labor contract for adoption. After discussion regarding the generally bad state of the economy and the disparity of wage proposed settlements among the various employe groups, the Respondent Board voted unanimously to refer the aforementioned tentative agreement back to the Personnel Committee for further negotiations on the matter of wages. All members of the Personnel Committee voted to refer said agreement with the exception of Chairman Pipp who was absent.

As noted above, a municipal employer's bargaining committee must, in order to fulfill its obligations of good faith concerning a tentative agreement, carry through on its promises to sponsor and support ratification of a tentative agreement. By failing to recommend the tentative agreement previously reached with the bargaining committee of the Complainant until July 18, 1975, and by failing to support said tentative agreement by voting to refer it back to the Personnel Committee for renegotiations on the matter of wages, the Respondent's Personnel Committee has acted in bad faith towards and has refused to bargain collectively with the Complainant in violation of Sections 111.70(3)(a)4 and 111.70(3)(a)1 of the Municipal Employment Relations Act.

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1/ Hartford Union High School District (11002-A and 11002-B), 2/74 and 9/74.

2/ The Commission has previously held this to be the case. See Joint School District No. 5, City of Whitehall (10812-A and 10812-B) 9/73 and 12/73.

Having referred the tentative agreement back to the Personnel Committee with the direction to renegotiate on the matter of wages, the Respondent Board did not take up the matter again until its July 18, 1975 meeting. In the meantime, the Respondent's Personnel Committee met with the bargaining committee of the Complainant on February 14, 1975, and made a new wage offer which was rejected by the Complainant's representatives. The parties met several times thereafter in an attempt to settle their differences but without success. The Complainant maintains that the Respondent Board acted in bad faith by failing to vote on the aforementioned tentative agreement from January 17, 1975 to July 18, 1975. However, the Respondent Board, having referred the tentative agreement back to its Personnel Committee for further negotiations on the matter of wages, was under no obligation to vote on said tentative agreement until the representatives of the parties had completed negotiations on the matter of wages. It was not until June, 1975 that the Personnel Committee of the Respondent apparently gave up trying to reach a new accord on wages and agreed to resubmit the aforementioned tentative agreement to the Respondent Board. However, the Respondent Board, at its June 20, 1975 meeting voted not to consider said tentative agreement until representatives of the parties reached agreement on a new wage package. The Respondent Board, in spite of its action at the June 20 meeting, considered and voted to reject said tentative agreement by a 7 to 4 margin at its July 18, 1975 meeting. The vote to reject said tentative agreement should have come as no surprise to the Complainant as the Respondent Board had expressed its displeasure with the wage portion of the tentative agreement several times from January 17, 1975 onward. The Respondent Board rejected said agreement based on the generally bad state of the economy and the disparity of wage settlements with other employee groups which the undersigned finds to be a bona fide justification for the Board's action. Therefore, the Examiner finds that the Respondent Board, in regard to the above actions, has not acted in bad faith towards nor refused to bargain collectively with the Complainant in violation of Sections 111.70(3)(a)4 and 111.70(3)(a)1 of the Wisconsin Statutes.

#### REMEDY

The Association asks the Commission to remedy the prohibited practices alleged in its complaint by ordering the Respondent Board to enter into a written and signed collective bargaining agreement based on the tentative agreement reached by the representatives of the parties. The County requests that the Examiner dismiss the complaint and order the parties to bargain collectively regarding a 1975 labor agreement.

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. Based on the practice of the parties, the Association should have been aware of the limited authority of the Respondent's Personnel Committee. Since the Examiner did not agree with the Complainant's contention that a final agreement was reached by the parties, the more conventional remedies applicable where a refusal to bargain violation is found, apply in the instant case. However, from a practical point of view, this creates a problem. Normally, where it is found that the Municipal Employer's bargaining representative failed to recommend and support the tentative accord reached, said bargaining representative would be ordered to recommend ratification of said accord to the Municipal Employer. In the instant case this would be fruitless as the Personnel Committee of the Respondent, on July 18, 1975 did recommend, and three of its members vote in support of said tentative agreement; and the Respondent Board has clearly indicated its intent not to ratify the aforementioned tentative agreement reached by its bargaining representative. Therefore, the Examiner has ordered the Municipal Employer to bargain collectively regarding a 1975 labor agreement with the hope that the representatives of the parties can

reach agreement on same and proceed forthwith, and in good faith, with ratification. The Examiner has further ordered that if a tentative accord is reached, that the bargaining representative of the Respondent Board recommend ratification and support same to the Municipal Employer.

Dated at Madison, Wisconsin this 12th day of April, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By   
Dennis P. McGilligan, Examiner