STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

CHIPPEWA FALLS BOARD OF EDUCATION SCHOOL LUNCH PROGRAM EMPLOYEES, LOCAL 1241, AFSCME, AFL-CIO, Complainant, vs. JOINT SCHOOL DISTRICT NO. 1, CHIPPEWA FALLS, Respondent.	Case XL No. 20316 MP-604 Decision No. 14517-A

Appearances:
Mr. Guido Cecchini, Representative, appearing on behalf of the Complainant.
Losby, Riley & Farr, S.C., Attorneys at Law, by Mr. Stevens L. Riley, 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 Thomas L. Yaeger, 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) of the Wisconsin Statutes and hearing on said complaint having been held at Chippewa Falls, Wisconsin, on April 29, 1976, 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 Chippewa Falls Board of Education School Lunch Program Employees, Local 1241, AFSCME, AFL-CIO, herein Complainant, is a Labor Organization and exclusive bargaining agent for all regular full-time and regular part-time school lunch program employes excluding the School Food Supervisor; and that at all times relevant herein, Guido Cecchini was the principal representative of said Labor Organization.

2. That Chippewa Falls Joint School District No. 1, herein Respondent or District, is a Municipal Employer having offices at 1130 Miles Street, Chippewa Falls, Wisconsin; and that at all times relevant herein, James Sinette was a District School Board member and principal representative of said Board in collective bargaining negotiations with Complainant.

3. That Complainant was certified by the Wisconsin Employment Relations Commission on April 23, 1975, as the exclusive bargaining agent of employes in the above described unit; 1/ that Complainant

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1/ The Examiner has taken administrative notice of the Commission file pertaining to the conduct and certification of election in said unit.

on July 31, 1975 presented Respondent's Superintendent with a proposed collective bargaining agreement for the newly certified unit; that representatives of Complainant and Respondent met jointly for the first time to negotiate a collective bargaining agreement on August 28, 1975; that no agreements were reached at said negotiation session; that Respondent's representatives, Sinette and Mackie, School Business Manager, stated at said meeting that they had no authority to negotiate; and that Complainant threatened Respondent with unfair labor practice charges if Respondent did not send someone to the meeting scheduled for September 18, 1975, who had authority to negotiate.

4. That Sinette and Cecchini et. al met again on September 18, 1975; that at this meeting Sinette had authority to negotiate and reach tentative agreements subject to ratification by the District's School Board and he communicated this information to Cecchini; that tentative agreement was reached on some items during said bargaining session.

5. That the negotiating teams met again on October 2, 1975; that tentative agreement was reached on a vacation plan and said plan provided

"ARTICLE 13 - VACATIONS

SECTION 1. Employees shall be eligible for paid vacation during the school vacation period.

. . .

Vacation allowances shall be earned annually based on the following schedule:

5/6 of a working day per each fiftenn (15) days of work for all employees having less than three hundred and sixty (360) days of service.

SECTION 2. Employees terminating their services with the Board shall receive, in cash, any earned and unused vacation.";

and that said item was never again discussed in bargaining.

6. That the negotiating teams met again on November 11, 1975, and reached tentative agreement on additional items for inclusion in the negotiated agreement; that the parties met again on December 29, 1975; and that because the District was experiencing economic difficulties the Union did not press for another meeting and none was scheduled until February 19, 1976.

7. That in the interim between the December 29, 1975, meeting and February 19, 1976, Sinette, Cecchini, and Hoag, District Superintendent, met and discussed different options for settlement on a contract; that as a consequence of this meeting Sinette met with some District Board members to discuss their support for the inclusion of a "fair share" provision in the contract; that on February 19, 1976, the negotiating teams met and Sinette made a "final offer" which contained only proposals on "fair share", duration of agreement and, wages, the remaining unresolved issues; that then Cecchini asked for a recess in the session and presented and recommended said final offer to the membership who had gathered for the meeting in anticipation of a final offer; that Complainant's membership ratified said final offer; and that Cecchini so advised Sinnette immediately thereafter.

8. That on the evening of February 19, 1976, after being advised of Complainant's ratification, Sinette and Cecchini agreed that Cecchini would prepare the final draft of the proposed collective bargaining

agreement, that Cecchini prepared said draft which included the language of Article 13 quoted herein; and that said draft was presented to District Board members for review.

9. That Sinette presented the draft contract to the District Board for ratification at its March, 1976, general meeting; that Sinette recommended ratification of the entire contract as presented; that the Board voted not to ratify said contract; that the Board's only objection to said contract was the inclusion of Article 13 - Vacations; and that the Board decision not to ratify said agreement was thereafter made known to Cecchini by Complainant members who attended said Board meeting.

10. That Complainant and Respondent representatives have not bargained on said agreement since the Board decision not to ratify same.

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

CONCLUSIONS OF LAW

1. That at all times relevant herein, James Sinette was acting as an agent of Respondent Municipal Employer with actual and apparent authority to negotiate with Complainant and enter into tentative agreements subject to final approval by Respondent Board of Education.

2. That, Respondent Chippewa Falls Joint School District No. 1, by not ratifying a tentative collective bargaining agreement negotiated by its agent, Sinette, and Complainant's representatives, did not refuse to bargain collectively within the meaning of Section 111.70(1)(d) of the Municipal Employment Relations Act and has not committed prohibited practices within the meaning of Section 111.70(3)(a)(4) of the Municipal Employment Relations Act.

3. That Respondent Chippewa Falls Joint School District No. 1 has not refused to execute an agreement and, therefore, has not refused to bargain collectively within the meaning of 111.70(1)(d) of the Municipal Employment Relations Act; and, has not committed prohibited practices within the meaning of Section 111.70(3)(a)(4) of said Act.

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

ORDER

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

Dated at Madison, Wisconsin this 31st day of August, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Thomas L. Yaeger
Thomas L. Yaeger, Examiner

CHIPPEWA FALLS JOINT SCHOOL DISTRICT NO. 1, Case XL, Decision No. 14517-A

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The instant complaint was filed on March 23, 1976 and hearing thereon was held on April 29, 1976. The parties filed their briefs without benefit of transcript and they were received by June 16, 1976. The Examiner received the transcript on July 13, 1976.

The complaint herein alleges that Complainant accepted Respondent's final contract "offer" made on February 19, 1976, and, thereafter, prepared and delivered to Respondent, a written agreement embodying Respondent's final offer which Respondent has refused to execute. Respondent's answer 1/ admits the allegations contained in the complaint but, affirmatively avers that the "final offer" required ratification by its Board of Education. In its brief Respondent argues that the Commission has previously held that either party to bargaining can reserve the right to have agreements reached at the bargaining table reviewed by higher authority prior to final agreement, provided such reservation is made known to the other party in advance of reaching preliminary or tentative agreement. In the instant case Respondent contends Sinette advised Cecchini he had authority to act on behalf of the District to the extent that he could enter into "tentative" agreements with final approval resting with the District's Board of Education.

Complainant, on the other hand, contends that Sinette and Mackie, School Business Manager, presented themselves at the bargaining table with "what they expressed as authority to reach agreements with the Union and proceeded to do so". Further, the Union claims that during bargaining, discussion on several items was suspended in order to allow Sinette to "clear" matters with Board members. Complainant also argues that no mention of ratification was made by either party prior to Respondent's final offer and, "it was generally assumed that the Board had been consulted and its authority attained". Complainant concludes that by failing to execute the agreement merely because it contained an objectionable provision that was agreed upon five months earlier is evidence of Respondent's bad faith, and, therefore, Respondent should be ordered to execute the agreement reached at the bargaining table.

Duty to Bargain

The Municipal Employment Relations Act at Section 111.70(1)(d) defines the duty to bargain as follows:

> "'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

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1/ The Respondent did not file an answer prior to hearing but, did answer the complaint on the record upon being requested to do so by the Examiner.

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." (emphasis added).

A part of the duty to bargain is an obligation to execute a written document (contract) which embodies the agreements reached between the parties in negotiations on wages, hours and conditions of employment. 2/ The failure of either party to the agreement to do so constitutes a per se refusal to bargain in good faith. 3/

Before the duty to reduce the agreement to writing and execute same becomes binding upon the parties there must necessarily be an agreement. There are several factors that are unique to the public sector that bear upon the question of when such an agreement has been reached. The first consideration is concerned with the authority of the municipal employer's representatives at the bargaining table to bind said employer. The Wisconsin Supreme Court in Board of School Directors of Milwaukee v. WERC 42, Wis. 2d 637 said:

. . .

"Sec. 14.90, Stats. (the Anti-Secrecy Act) provides that no formal action of any kind shall be introduced, deliberated upon or adopted at any closed executive session or closed meeting of any state and local governing and administrative bodies. Certain exceptions are provided to that act.

An attorney general's opinion (54 Op. Atty. Gen. (1965), Introduction, vi) found one of the exceptions sufficiently broad to cover the negotiations between a municipality and a labor organization. However, it is clear that the formal introduction, deliberation and adoption by the elected body of the bargaining recommendations must be at open meetings.

'Whether the teacher salary proposals submitted by the teachers' committee and the counter proposals made by the school board are preliminary in nature and for bargaining reasons need to be discussed in a closed session is basically a question of fact to be decided by the school board. If the board finds that the bargaining process can best be carried on in private, the meeting may be closed. If the board finds no necessity for bargaining in private, the meeting should be open to the public. In any event, when the bargaining period is past, no final action should be taken on the teachers' salary schedule until they are made public and discussed in an open public meeting. 54 Op. Atty. Gen. (1965), Introduction, vi. (Emphasis supplied.)'

The open meeting is the necessary and final step in the 'negotiation' process between the school board and the majority teachers' union.

2/ City of Beloit (School Board), 72 Wis. 2d, 43 (Wis. Sup. Ct.); Village of Shorewood (School Dist. #4) (11410-C) 1/74.

3/ Eriks Studio (11643) 3/73; Obenauf - Geneva Service, Inc., (11335-B) 7/73.

The proposed agreement submitted by the school board's bargaining committee does not have to be accepted by the school board. If the recommendations of the committee automatically were approved by the school board, then the anti-secrecy law has been violated and the open meeting is nothing but a sham." (emphasis added).

The Examiner believes that a fair reading of said decision mandates a finding that Section 14.90 Stats. as ammended 4/ precludes a municipal employer from conferring authority in its bargaining representative to enter into binding agreements with the employes' bargaining representative(s) at the bargaining table. The municipal employer's bargaining representative, at most, only has authority to enter into tentative collective bargaining agreements 5/ that are ultimately subject to ratification in the instant case, by the County Board at an open meeting. Moreover, a municipal employer is not obligated to reduce mere "tentative" agreements on wages, hours and conditions of employment to writing and execute same, as it is in the case of final agreements or, in other words, collective bargaining agreements that have been ratified or adopted by the appropriate governing body in an open meeting.

Although the municipal employer's bargaining representative can only enter into tentative agreements, he/she must nonetheless, consistant with the duty to bargain in good faith, recommend that the municipal employer's governing body, in the instant case the County Board, ratify the tentative accord he/she has reached with the Union. 6/ Furthermore, where, as herein, the municipal employer representative(s) at the bargaining table are also members of the governing body, e.g., County Board, and have reached tentative agreement which the Union cannot, without a bona fide reason, thereafter refuse to vote in favor of ratification of the tentative accord. 7/

In the instant case, Sinette, County Board member and Respondent's principal representative in bargaining with Complainant, testified he advised Cecchini that although he was authorized to reach agreement at the bargaining table said agreement had to be submitted to the County Board for approval. Further, after finally reaching a tentative accord on February 19, 1976, Sinette recommended said accord be approved by the County Board. 8/ The Union adduced no evidence rebutting Sinette's claim that he advised Cecchini and others early in negotiations that agreements reached at the table, in order to become final, had to be adopted by the County Board. Indeed, Complainant's brief states that it "assumed" the Board had given its prior approval to the "final offer".

While there is, however, evidence that Sinette advised Cecchini he would consult "some" Board members on the question of fair share there is no evidence upon which to conclude that the Board had given its prior approval to the contract. Indeed, the final offer encompassed only a few items, not all accords that had been previously reached. Thus, even if the Union had been told the Board approved the final offer, it would

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4/ The Anti Secrecy Act was amended subsequent to the aforequoted Wisconsin Supreme Court Decision but the Examiner believes said amendments do not affect those aspects of the Court's decision being relied upon herein.

5/ Hartford Union High School District (11002-A,B) 9/74; Florence County Board of Supervisors (13896-A,B) 4/76.

6/ Joint School District N.S. City of Whitehall (10812-A,B) 9/73; Hartford, Supra. note 5; Florence, Supra note 5.

7/ Hartford, Supra. note 5.

8/ The record does not establish whether Sinette voted for adoption of the tentative agreement or whether he voted at all.

not carry over to the prior accords that had never been presented to Board members by February 19, 1976. Clearly then, Cecchini must be held to the knowledge that state law requires such agreements, prior to becoming final, to be adopted by the County Board in an open meeting. Even were he ignorant of this requirement, which is difficult to believe in light of his position, such ignorance cannot foot a claim that Sinette had implied authority to finally bind Respondent.

The Board, at its March, 1976 general meeting, rejected the tentative accord. The rejection was based soley upon the inclusion in the agreement of Article 13, pertaining to vacations. This provision was tentatively agreed to at the October 2, 1975, bargaining session. It was not formally presented to the Board until sometime after February 19, 1976, and prior to its March general meeting. Moreover, there is no evidence that the Union was ever told that the Board had agreed to or was in favor of any of the tentative agreements reached on specific contract clauses prior to February 19, 1976. Thus, the Board's objection to the inclusion of said provision was not in bad faith.

In view of the foregoing, there is no basis upon which to conclude the parties ever reached a "final" agreement which both would be obligated to reduce to writing and execute. Therefore, Respondent is not obligated to execute the "tentative" agreement that was presented to it in its March 1976 general meeting.

Dated at Madison, Wisconsin this 31st day of August, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Thomas L. Yaeger
Thomas L. Yaeger, Examiner