STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

WISCONSIN FEDERATION OF TEACHERS, AFT, AFL-CIO AND CHIPPEWA FALLS FEDERATION OF TEACHERS, Complainants, vs. CHIPPEWA FALLS JOINT SCHOOL DISTRICT NO. 1, LAWRENCE WILLCOM, JOHN KLINGER, REG CONLEY, JAMES SINETTE, GEORGE WEIMER, WILLIAM PICKERING, AND BRUNO RAHN, Respondents.	Case XLII No. 20395 MP-611 Decision No. 14574-A

Appearances:

Goldberg, Previant and Uelmen, S.C., Attorneys at Law, by Mr. John S. Williamson, Jr., appearing on behalf of the Complainants.

Losby, Riley and Farr, S.C., Attorneys at Law, by Mr. Stevens L. Riley, appearing on behalf of the Respondents.

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 111.07(5) of the Wisconsin Statutes; and hearing on said complaint having been held at Chippewa Falls, Wisconsin, on May 27, 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 Wisconsin Federation of Teachers, AFT, AFL-CIO, hereinafter referred to as the Complainant Federation, is a labor organization within the meaning of Section 111.70, Wisconsin Statutes; that William Kalin is the executive director of the Complainant Federation; and that Fred Skarich is a representative of said organization.

2. That Chippewa Falls Federation of Teachers, affiliated with the Complainant Federation and hereinafter referred to as the Complainant Union, is a labor organization within the meaning of Section 111.70, Wisconsin Statutes, recognized by the Chippewa Falls Joint School District No. 1 as the collective bargaining representative for the teachers employed by the Chippewa Falls Joint School District No. 1.

3. That Chippewa Falls Joint School District No. 1, hereinafter referred to as the Respondent, is a Municipal Employer within the meaning of Wisconsin Statutes, 111.70, with offices at 1130 Miles Street, Chippewa Falls, Wisconsin; and that Respondent is engaged in the provision of public education in a district which includes Chippewa Falls, Wisconsin.

4. That Complainant Union and Respondent commenced negotiations in 1975 over the wages, hours and working conditions of teaching personnel in the employ of Respondent district for a term commencing January 1, 1976 and continuing through June 30, 1977 to succeed the previous agreement which expired on December 31, 1975.

5. That at all times pertinent hereto, Robert D. Houg, has been the Superintendent of Schools and Warren Smith has been Assistant Superintendent of Schools for Respondent District.

6. That at all times material herein, Harold Roethel was a membership consultant with the Wisconsin Association of School Boards and in that capacity assisted the Respondent District in negotiations with the Complainant Union.

7. That at all times pertinent hereto, Virginia Metzdorf was the president of the Complainant Union.

8. That at the commencement of a negotiations session on February 17, 1976 the Chippewa Falls School Board was comprised of the following School Board members: Reg Conley, John Klinger, William Pickering, Bruno Rahn, James Sinette, George Weimer and Lawrence Willcom.

9. That at all times material herein, Complainant Union's negotiating team consisted in part of the following persons: William Kalin, Joseph Korte who is a mathematics teacher, Virginia Metzdorf and Fred Skarich.

10. That at all times pertinent hereto, the bargaining committee of the Respondent District consisted of the Chippewa Falls School Board acting as a Committee of the Whole; that the Committee of the Whole was assisted by Harold Roethel, Superintendent of Schools Houg and Assistant Superintendent of Schools Smith; that the Committee of the Whole had the authority to reach tentative agreements with the bargaining committee of the Complainant Union and recommend same to the School Board for approval or rejection.

11. That on February 17, 1976 at approximately 7:00 p.m., representatives of the Complainant Union and Respondent District met for the purpose of bargaining on the length of the contract and salary schedule; that the parties met in joint session first with mediator Karl Monson of the Wisconsin Employment Relations Commission; that present for the Respondent District was Mr. Conley, Mr. Houg, Mr. Klinger, Mr. Roethel, Mr. Smith, Mr. Weimer and Mr. Willcom; that Mr. Pickering arrived at the meeting sometime between 8:00 p.m. and 8:30 p.m.; that Mr. Sinette arrived at the negotiation session at approximately 10:00 p.m.; that shortly after the negotiating session began the bargaining committee of the Respondent District indicated that it would be willing to increase the total cost of the economic package by $300,000 more than in the previous agreement for a contract to extend for an 18 month period; that the representatives of the Respondent District indicated to the representatives of the Complainant Union that the Board considered $255,000 to be a "ball park" figure for salary increases and $45,000 to be a "ball park" figure for additional fringe benefits.

12. That at 7:30 p.m., the parties split into separate caucuses; that the bargaining committee of the Respondent District assigned the task of breaking down the $300,000 lump sum into specific categories to Harold Roethel and Warren Smith; that the latter two individuals proposed the Complainant Union be given the $300,000 increase split up as follows: (1) $45,000 for fringe benefits, (2) $85,000 for a cost of living adjustment under the collective bargaining agreement then in force, and (3) $170,000 as a two-stage increase in the salary schedules for the 1976-1977 school year, one schedule to be effective on the first day of school and a new, higher schedule to be effective on January 1, 1977;

that at 8:25 p.m., the parties met again in joint session; that Roethel and Smith presented this rough breakdown to the bargaining committee of the Complainant Union; that shortly thereafter the bargaining committee of the Respondent District and the bargaining committee of the Complainant Union broke into separate caucuses; that thereafter the representatives of the Complainant Union responded to the above offer of the Respondent District with a demand of $481,000 for an 18-month agreement including a cost-of-living adjustment after July 1, 1976; that subsequently the bargaining committee of the Complainant Union modified its proposal to include a $400,000 salary package in exchange for agreeing to an 18-month agreement.

13. That in the Respondent District bargaining committee's caucus, it was agreed in order to hasten settlement on the economic issues, the Board would put the money into actual salary schedules so that the teachers could see what they would be getting; that such schedules would reflect the remuneration to be received by the teachers at each particular step along the salary ladder; that again this task was assigned to Roethel and Smith; that Roethel and Smith spent the next three to four hours in this task; that the first effort by Roethel and Smith to construct the appropriate salary schedules failed; that on their second effort Roethel and Smith came up with two salary schedules; one, a base salary increase to $8,850 on the first day of the 1976-1977 school year and two, a base salary increase to $9,380 on January 1, 1977; that Roethel and Smith next attempted to complete the salary schedules by filling in each salary step along the salary ladder; that completion of this task would show the salary increase of a teacher at any particular increment; that Roethel and Smith experienced difficulty in completing these calculations; that as a result thereof and in order to speed the process up, Superintendent Houg and mediator Monson asked William Kalin and Joseph Korte, as representatives of the Complainant Union, to assist Roethel and Smith in completing the full salary schedules by plugging figures into each step along the salary ladder; that Kalin and Korte, for all practical purposes, took over from Roethel and Smith the task of making these computations midway through the increments of the salary schedule beginning with the $8,850 figure.

14. That just prior to this time, board member William Pickering had expressed doubt that the total cost to the District would be held under $300,000; that Pickering's doubts were not specifically based on the salary schedules that were being experimented with; that instead Pickering thought, regardless of the actual figures plugged into each slot of the salary schedules, an $85,000 total salary increase for the first half of the 1976-1977 school year plus an additional $85,000 increase for the second half of the year would not produce the $170,000 total salary increase contemplated by the Board but rather would be $85,000 higher since the increase from the first half of the school year would necessarily be carried over into the second half of the school year; that when the $85,000 cost-of-living adjustment was also figured in, the total package, less fringes, would consist of four units of $85,000 rather than three such units; that adding these four units, plus fringes, Pickering came to a total figure in excess of $300,000 and approaching $400,000.

15. That Pickering stated his belief that the total cost of the salary package contemplated by the Board would exceed the $300,000 figure to the other members of the Respondent District's negotiating committee; that no other representative of the Respondent District accepted Pickering's assertion that the amount in question exceeded $300,000; that instead, the Board members felt they were talking about a $300,000 figure based on three units of $85,000 ($170,000 increase in the salary schedule for the 1976-1977 school year plus an $85,000 cost-of-living adjustment effective under the contract then in force) and $45,000 for fringe benefits; that the various Board members were

given assurances to this effect: at approximately 2:30 a.m. to 3:00 a.m. while Smith and Pickering were attempting to cost out the salary schedules Kalin and Korte came into the room and assured them that the salary package cost $300,000; that as a result thereof, Roethel and Smith informed the other Board members that the total wage package would not exceed $300,000; that Virginia Metzdorf, President of the Chippewa Falls Federation of Teachers, told Board members Sinette and Weimer that the package was not in excess of $300,000; that mediator Monson likewise assured Board members Sinette and Conley as to the $300,000 cost; that Superintendent Houg also assured the Board members regarding the $300,000 figure; that the Board members believed the handwritten portion of the document signed by the representatives of the parties on February 18, 1976 equaled the $300,000 package as they had offered it.

16. That although such assurances were insufficient to sway Pickering, four Board members, including Conley, Klinger, Sinette and Weimer along with Virginia Metzdorf on behalf of the Complainant Union, ultimately signed the following document in the early hours of the morning on February 18, 1976:

> "The Negotiating committees of the Board and the Federation agree to the following salary provisions and will recommend adoption to their respective bodies:
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> 1. On July 1, 1976, each teacher who was employed under provisions of the collective bargaining agreement shall receive a cost-of-living adjustment check equal to 6.3% of the total salary earned between January 1, 1976, and June 30, 1976, as determined by extending the salary provision of the 1975 agreement, which shall be extended until June 30, 1976.
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> 2. Effective on the first day of employment for the 1976-77 school year and until December 31, 1976, the salary schedule shall be based upon a B.A. base of $8,850 as shown on the accompanying salary schedule labeled August - December 31, 1976.
>
> 3. Effective on January 1, 1977, and until June 30, 1977, the salary schedule shall be based upon a B.A. base of $9,380 as shown on the accompanying schedule labeled January 1, 1977 - June 30, 1977.
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> The increase in the salary schedule for 1976 plus the cost-of-living adjustment in July, 1976, is approximately $170,000. The additional salary schedule increase effective January 1, 1977, will cost approximately $85,000 between January 1, 1977, and June 30, 1977.
>
> 4. The only unresolved issues for the contract running from January 1, 1976, to June 30, 1977, are the school calendar and the extra-curricular salary schedule which are subject to continuing negotiations pending study by both parties."

that Conley signed the above document at approximately 4:15 a.m. in response to a request from Kalin to show his intent as a representative of the Board; that Conley signed despite being confused and concerned regarding Pickering's statements; that Conley signed it only after receiving assurances from mediator Monson that the package would not cost the Board more than $300,000; that Sinette reluctantly signed the alleged agreement only after Superintendent Houg assured him that the Board would not be bound to comply with the document if such compliance would result in a total cost increase of greater than $300,000; that Weimer only signed the document immediately after being told by Metzdorf

that the package represented $300,000; that thereafter in a memo to Board members, principals and administrators, Superintendent Houg summarized the above mediation session and reported a settlement as proposed by the Board in the amount of $300,000; that said memo broke the $300,000 sum down further into $255,000 available for distribution on the salary schedule and $45,000 to be divided among the various fringe benefits; that said memo divided the $255,000 salary figure into three packages of $85,000 each; that the first package of $85,000 was to be used as a cost-of-living adjustment sometime after July 1, 1976; that the second package of $85,000 would reflect the salary schedule with a base of $8,850 effective between August 23, 1976 and December 31, 1976; that the third package of $85,000 available for salary increases for the last half of the 1976-77 school year would reflect the salary schedule with an increase in the base to $9,380 effective January 1, 1977 to July 1, 1977; that likewise two newspaper accounts of the agreement reached between the representatives of the parties spoke of a settlement in terms of the above figures.

17. That the four Board members thought they were agreeing, when they signed the document in question, to a package costing no more than $300,000 over 18 months; that in reference to the $45,000 sum available for fringe benefits, the parties were not in agreement at the time as to how to divide it among such items as teachers' retirement, social security, hospitalization, life insurance and credit reimbursement; that later representatives of the School Board recomputed the total cost increase that would result under the terms of the aforementioned document; that they estimated the total cost of the package reflected in the signed document was $509,000 rather than the $300,000 figure they thought they had agreed to; that as a result thereof, the four School Board members - Conley, Klinger, Sinette and Weimer - who form a majority number on the Respondent District's School Board - failed to submit the document to the entire School Board or recommend it for adoption or vote for and thereby ratify same.

18. 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 collective bargaining agreement to their respective memberships for final approval; that, however, at the conclusion of the meeting held on the evening of February 27, 1976 and into the early hours in the morning of February 18, 1976 there was no meeting of the minds between the representatives of the Complainant Union and the Respondent District regarding the total cost of the agreement covering the period from January 1, 1976 through June 30, 1977.

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

CONCLUSIONS OF LAW

1. That the Respondent, Chippewa Falls Joint School District No. 1, by the actions of its School Board and its bargaining committee, and by the actions in particular of four of its members - Respondents Reginald D. Conley, John Klinger, James Sinette and George Weimer - who constitute a majority of the members of the Chippewa Falls School Board and who at all times relevant herein failed to submit for adoption the document signed by said representatives of the parties on the morning of February 18, 1976 to the full School Board, and who failed to recommend same for adoption, and who failed to vote for and thereby ratify the aforementioned document as a collective bargaining agreement, have not acted in bad faith towards and have not refused to bargain collectively with the Complainant Union and therefore have 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.

2. That since the Respondents have not acted in bad faith towards and have not refused to bargain collectively with the representatives of the Complainant Union and therefore have 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 by refusing to submit or recommend for adoption the aforementioned document or vote for and thereby ratify same; said Respondents have not interfered with, restrained or coerced the employes represented by the Complainant Union in the exercise of their rights guaranteed in Section 111.70(2) 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 the complaint be, and the same hereby is, dismissed in its entirety.

Dated at Madison, Wisconsin this 30th day of November, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Dennis P. McGilligan
Dennis P. McGilligan, Examiner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The complaint alleges that the Respondent District and the members of its School Board committed prohibited practices, by not bargaining in good faith, and by refusing to submit to the entire School Board, to recommend and ratify the collective bargaining agreement which four members of the School Board agreed to with representatives of the Complainant Union on February 18, 1976. The Examiner held a hearing on May 27, 1976. The transcript was issued on June 21, 1976. The Respondent District filed a brief on July 8, 1976. The Complainant Union filed its brief on August 3, 1976.

POSITION OF THE COMPLAINANT UNION:

On April 20, 1976, Complainant Union filed a complaint with the Commission alleging:

> "11. At all relevant times herein, the Complainant has been the exclusive bargaining representative for the teachers employed by Respondent and was a party to a collective agreement which expired on December 31, 1975.
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> 12. In 1975 the parties entered into negotiations for a collective bargaining agreement to commence on or about January 1, 1976 and to continue to and including June 30, 1977.
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> 13. On or about February 18, 1976, the negotiations for the parties reached agreement to provide for certain changes. This agreement was reduced to writing and signed by four of the above members of the Board of Education, and by the President of Complainant, Chippewa Falls Federation of Teachers, to-wit, Respondents Klinger, Weimer, Conley, and Sinette. A copy of this agreement is attached hereto and made a part hereof as Exhibit A.
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> 14. The four members of the Board of Education of Respondent constitute a majority of said Board.
>
> 15. Despite their agreement to the collective bargaining agreement, the four members of the School Board refused to submit the contract they agreed to to the full Board of School Directors or to vote for and thereby ratify the collective bargaining contract.
>
> 16. By the actions alleged through Paragraphs 11 through 15, inclusive, the Respondent has violated Sections 111.70(3)(a)1 and 3."

Complainant Union maintains that a binding agreement was reached between the bargaining committee of the Respondent District, and the bargaining committee of the Complainant Union. Complainant Union contends that despite their agreement to the collective bargaining agreement, the four members of the School Board refused to submit the contract they agreed to to the full Board or to vote for and thereby ratify the collective bargaining agreement (the four members constitute a majority of the full School Board).

Complainant Union argues that it is virtually impossible to believe the four School Board members signed a document and did not understand its clear and unequivocal language. Complainant Union maintains that it is almost a self-evident fact that if you increase the salary $85,000 for one period and then add a second $85,000 increase on top of this increase, that the cost of the second increase over the starting figure is $170,000. Therefore, the Complainant Union contends it was clear to the Board that the salary increase exceeded $300,000.

In sum, the Complainant Union argues that for the School Board's defense to prevail, it must show by clear and convincing evidence: (a) it did not understand the offer it made; (b) the lack of understanding of this clear and unequivocal language was not the result of negligence on its part; and (c) its lack of understanding was the result of Union misrepresentation. The Complainant Union feels the evidence is to the contrary.

Based on the above, the Complainant Union argues that there is a binding agreement in existence between the parties, and that the School Board, having violated its duty to bargain in good faith, should be ordered to take steps to have the agreement reached by a majority of its members approved and adopted.

POSITION OF THE RESPONDENT:

The Respondent District maintains that there was no violation of the applicable provisions of Wis. Stats. 111.70 when its School Board refused to execute a written collective bargaining agreement incorporating the terms of a document which had previously been signed by a majority of its members.

In its Answer, the Respondent District denied that the aforementioned document constituted an agreement or contract between the parties. At the hearing, the Respondent District admitted that the above document incorporating proposed new salary schedules and the cost-of-living adjustment was signed by a majority (four) of the School Board members as a result of negotiations on February 17 and February 18, 1976; that afterwards no recommendation or submittal of the document was made to the entire School Board by these four members; and that they did not vote for ratification of or implement the document. However, the Respondent District states that its bargaining committee did not have the authority to reach an agreement over a labor contract with the representatives of the Complainant Union but rather had only the authority to reach tentative agreement over same. In this regard the Respondent District contends that there was no meeting of the minds hence no tentative agreement was reached between the parties.

The Respondent District argues that the four School Board members who signed the document in question did so in the good faith, but mistaken, belief that the resultant total cost increase to the School District would not exceed the agreed-upon $300,000 figure, and they would not have signed had they known the actual cost thereof. The Respondent District contends that the mistake on the part of the four members goes to the very essence of the agreement purportedly reached. Because there was a mistake as to the actual total cost increase that would result from implementing the terms of the document, the Respondent District argues that the School Board's subsequent refusal to execute a collective bargaining agreement incorporating the terms of that document was not in violation of the applicable provisions of Wis. Stats. 111.70.

The Respondent District cautions that in all of the cases decided by the Commission where a Municipal Employer's failure to ratify a tentative agreement reached at the bargaining table by incorporating same in a written agreement has been held to be a prohibited practice, the tentative agreement, unlike that in the instant case, reflected the actual intent of the parties thereto. Moreover, the Respondent District notes that automatic approval of a tentative agreement by a municipal employer is not required; situations may arise where there is a bona fide basis for a change of attitute toward a tentative agreement. The Respondent District contends that the subsequent discovery by the Chippewa Falls School Board that the terms of the document would actually produce a total cost increase far in excess of the $300,000 figure constitutes a situation where there is indeed such a bona fide basis for a change of attitute toward a tentative agreement.

Respondent District would have the Examiner deny and dismiss the complaint.

REFUSAL TO BARGAIN COLLECTIVELY:

The duty to bargain is imposed on 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:
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> . . .
>
> (d) 'Collective bargaining' means the performance of the mutual obligation of a municipal employer, through its officers and agents, and the representatives of its employes, to meet and confer at reasonable times, in good faith, with respect to wages, hours and conditions of employment with the intention of reaching an agreement, 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."

Determinations concerning the good faith aspect of the bargaining obligation are, of necessity, subjective in nature. The Commission has looked in the past to totality of employer conduct in making such determinations, and dismissed certain allegations as being isolated incidents. 1/

In the instant case the Examiner has attempted to recount the events which took place between the parties on February 17, 1976 and February 18, 1976. Based on the transcript and the parties' briefs it is possible that there may be minor discrepancies in the exact sequence of events. However, the Examiner is satisfied that the basic actions which go to the merits of the instant dispute are fully covered in the Findings of Fact section. Therefore, the Examiner turns his attention to the totality of the Municipal Employer's conduct as contained in the Findings of Fact section in order to determine whether it bargained in good faith.

The record indicates that throughout the course of the mediation session on the aforementioned dates the representatives of the Respondent District spoke in terms of a $300,000 total salary package. This sum was further divided into approximately $255,000 for salary increases and approximately $45,000 to be allocated among various fringe benefits.

1/ Price County Telephone Co., (7755) 10/66, Adams County (11307-A) 4/73.

The bargaining committee of the Respondent District made this offer as an initial proposal. Their representatives used it as a reference point when computing the two salary schedules. There is no convincing evidence in the record that the representatives of the Respondent District at any time considered or intended a higher figure. It is true that one Board member, Willian Pickering, attempted to show the other Board members that an $85,000 total salary increase for the first half of the 1976-77 school year plus an additional $85,000 increase for the second half of the year would not produce the $170,000 total salary increase contemplated by the Board but instead would be $85,000 higher since the increase from the first half of the school year would necessarily be carried over into the second half. Although Pickering's assertion regarding the total cost of the package contemplated by the Board (that it would exceed the $300,000 figure) caused the other Board members concern, it ultimately was accepted by no one else present at the negotiating session. Instead, the Board members present relied on a number of assurances to the contrary. Both Harold Roethel and Warren Smith, who the Board relied upon to do its computations, assured the other Board members that the total package would not exceed $300,000. Superintendent of Schools Robert Houg and mediator Karl Monson also provided assurances as to the $300,000 figure. Virginia Metzdorf, the President of the Chippewa Falls Federation of Teachers, confirmed the $300,000 figure to several members of the School Board, 2/ as did other Union representatives.

Although such assurances were insufficient to sway Pickering, four other Board members then signed the document which they thought would cost the School District $300,000. However, later representatives of the Board recomputed the total cost increase that would result under the terms of that document, and found that the figure was much higher than the $300,000 originally contemplated. Because of these new computations, the Board discovered the additional $85,000 unit that existed as a result of carrying the increase from the first half of the school year over into the second half. As a result thereof, the bargaining committee of the Respondent District failed to submit the agreement signed by the representatives of the parties on February 18, 1976 to the entire Board for approval; failed to recommend same for adoption and failed to vote for and thereby ratify same. The record is devoid of any evidence regarding the subsequent conduct of the representatives of the Respondent District, when in recomputing the total cost of the salary package it discovered that the total cost of the aforementioned agreement signed by the parties greatly exceeded $300,000, to indicate that the Board's actions at any time were in bad faith or a subterfuge of the negotiation process.

Based on the above, it is clear that the representatives of the parties reached tentative agreement on a salary package, and reduced same to writing on February 18, 1976. However, it is also clear that said agreement was reached only as the result of a substantial misunderstanding on the part of the four Board members who signed that agreement as to the total cost of the package to the School District.

2/ Although Virginia Metzdorf denied giving such assurances on the record, the Examiner credits the Municipal Employer's testimony based on the consistent adherence to the $300,000 figure by the representatives of the Respondent District, the corroboration of several witnesses, and an absence of a showing by the Complainant Union of bad faith conduct or subterfuge by the bargaining committee of the Respondent District. Likewise, it is reasonable for the Examiner to credit the testimony of the Municipal Employer regarding the assurances as to the $300,000 figure, given by the other representatives of the Complainant Union.

In addition, because the Board members raised the issue as to the total cost of the salary package on numerous occasions during the negotiations session, and because the representatives of the Complainant Union were aware of Board members' concern regarding the total cost to the School District and reinforced their misconception concerning the $300,000 salary figure, it is reasonable to conclude that the representatives of the Complainant Union understood there was no meeting of the minds involving the total cost of the agreement signed by representatives of the parties on the date in question. Since there was no meeting of the minds on the part of the representatives of the parties as to the total cost of the agreement signed by said representatives, the bargaining committee of the Respondent District was under no obligation to proceed and submit, recommend and ratify the aforementioned agreement. Based on the above, and absent a showing by the Complainant Union that the misunderstanding by the representatives of the Respondent District as to the cost of the signed agreement exceeding the $300,000 figure resulted from bad faith or subterfuge the Respondent District bargaining committee's actions did not constitute bad faith bargaining within the meaning of the Municipal Employment Relations Act.

The Complainant Union also argues that the document signed by representatives of the parties in the early hours of February 18, 1976 is a collective bargaining agreement which the School Board must adopt and implement. To the contrary, the Respondent District argues that the document does not constitute an agreement or labor contract.

The Complainant Union herein needs to distinguish between a tentative agreement and a final collective bargaining agreement. The record indicates that it was the practice of the parties that their bargaining committees could not bind their respective decision-making bodies but had to take any tentative agreement back to their memberships for approval. There is no indication that the parties intended to change said practice in the instant case. To the contrary, the written document in dispute makes it clear that the parties intended to recommend a tentative agreement to their respective bodies for adoption. Therefore, the Complainant Union's frequent references in argument to a collective bargaining agreement, and the alleged responsibilities of the Respondent District as a result thereof, are incorrect.

Finally, the Complainant Union argues that as a result of the Respondents' actions it has interfered with, restrained or coerced the employes of the Chippewa Falls School Board represented by the Complainants in the exercise of their rights guaranteed in Section 111.70(2) of the Municipal Employment Relations Act. However, since the Examiner has found against the Complainant on the other allegations, it follows that the undersigned must dismiss this part of the complaint as well.

As noted above, the representatives of the parties did not reach a meeting of the minds regarding the tentative agreement over the salary package for the contract period in question. Furthermore, the Examiner found that the actions of the Respondent District's representatives during the entire course of the negotiations sessions on the dates in question did not constitute bad faith bargaining. In addition, the record indicates that the Municipal Employer came to a good faith conclusion as to the total cost of the salary package based on its recomputations. Because there was a substantial misunderstanding as to the total cost of the agreement by the representatives of the Respondent District, which it is reasonable to conclude the representatives of the Complainant Union were aware of and because there was no meeting of the minds, the Examiner finds the Respondents are not bound by the terms of said agreement in any

respect. Therefore, by failing to submit and recommend the tentative agreement for adoption to the entire School Board, and by failing to vote for and thereby ratify the agreement, the Respondents have not acted in bad faith towards and have not refused to implement a collective bargaining agreement in violation of Sections 111.70(3)(a)4 and 111.70(3)(a)1 of the Municipal Employment Relations Act.

Dated at Madison, Wisconsin this 30th day of November, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Dennis P. McGilligan
Dennis P. McGilligan, Examiner