STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

SHEBOYGAN COUNTY LAW ENFORCEMENT EMPLOYEES, LOCAL NO. 2481, WISCONSIN COUNCIL OF COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO, Complainant, vs. SHEBOYGAN COUNTY, Respondent.	Case XXX No. 21406 MP-728 Decision No. 15380-A

Appearances:
Lawton and Cates, Attorneys at Law, by Mr. Richard V. Graylow, Esq., appearing on behalf of the Complainant.
Mr. Alexander Hopp, Esq., Corporation Counsel, appearing on behalf of the Respondent.

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

AMEDEO GRECO, Hearing Examiner: This case was initiated by a complaint filed by the Sheboygan County Law Enforcement Employees, Local No. 2481, Wisconsin Council of County and Municipal Employees, AFL-CIO, which alleged that Sheboygan County had committed a prohibited practice by refusing to sign and execute an agreed upon contract, in violation of Section 111.70(3)(a)4 of the Municipal Employment Relations Act, herein referred to as MERA. Respondent's answer, in turn, denied that Respondent has acted unlawfully in this matter. Hearing was held on May 5, 1977 at Sheboygan, Wisconsin. Following the conclusion of the hearing both parties filed briefs.

Upon the entire record in this case, and after consideration of the briefs, the Examiner makes and files the following Findings of Fact, Conclusion of Law and Order.

FINDINGS OF FACT

1. Sheboygan County Law Enforcement Employees, Local No. 2481, Wisconsin Council of County and Municipal Employees, AFL-CIO, herein Complainant, is a labor organization which is the certified bargaining agent for all law enforcement personnel having the power of arrest employed by Sheboygan County, excluding the sheriff, inspectors, supervisory and managerial employes.

2. The County of Sheboygan, herein Respondent, is a municipal employer within the meaning of Section 111.70(1)(a) of MERA and it maintains a sheriff's department.

3. The Complainant was certified to represent Respondent's employes in 1975. Thereafter, the parties engaged in collective bargaining negotiations for an initial contract. During those negotiations, Respondent was represented at the bargaining table by its Personnel Committee. Although the parties were able to reach agreement on certain items, they were unable to resolve certain other issues. There is no

evidence that during the course of those negotiations Respondent ever indicated that its agreement on certain proposals was contingent upon the parties reaching agreement at the bargaining table, as opposed to submitting the matter to municipal interest arbitration.

4. Since the parties were unable to resolve all their differences, Complainant on or about May 24, 1975 petitioned the Wisconsin Employment Relations Commission, hereinafter referred to as WERC, for final and binding arbitration. Subsequently, Dennis McGilligan of the WERC staff, conducted an informal investigation on July 22, 1976. As the parties were then unable to resolve their differences, they submitted written final offers on the matters in dispute. In doing so, Respondent never indicated that the items previously agreed to were then in dispute. Additionally, Respondent's Personnel Committee never reported back to the full County Board for the purpose of having the Board ratify or reject the tentative agreements which the parties had previously agreed to. 1/ Following said informal investigation, the Commission on August 24, 1976, certified 2/ that the parties were at impasse and ordered the parties to submit the issues in dispute to final and binding arbitration. In so ruling, the Commission noted that the previously agreed to items did not have to be submitted to the arbitrator.

5. The parties appeared before Arbitrator Gordon Haferbecker on October 15, 1976, at which time the parties presented their respective cases. Thereafter, Arbitrator Haferbecker on November 24, 1976, issued his award wherein he found that:

> "The arbitrator directs that the Union's last offer be incorporated into the 1976-77 contract between Sheboygan County and the Sheboygan Law Enforcement Employees, Local 2481, AFSCME, AFL-CIO."

6. By letter dated December 7, 1976, Attorney Hopp, on behalf of Respondent, advised the Commission that:

> "On August 24, 1976 the Commission, in the above mentioned matter, entered Findings, Conclusions and an Order for Compulsory Arbitration. Sheboygan County, in that proceeding, asked that the items 'not in dispute' be included in the referral to the arbitrator so that the arbitration award could constitute a complete document. The Commission's Findings determined that that procedure was not necessary.
>
> As you know, Section 111.77(4)(b) provides '. . . the arbitrator shall select the final offer of one of the parties and shall issue an award incorporating that offer without modification'. A review of the record in the above file will indicate that Sheboygan County's final offer was referred to the arbitrator in its complete text. Under date of August 24, 1976 the Commission found that Appendix 'A' Final offer of Municipal Employer, as attached to the Advice to Commission, dated August 3, 1976, does accurately set forth the final offer of the Municipal Employer as to the matters in dispute between the parties with respect to wages, hours and conditions of employment of law enforcement personnel for the years 1976 and 1977.

1/ Although the County Board was advised as to the status of negotiations in about May 1976, the parties have stipulated by post-hearing letters that "No action on such reports was requested or taken."

2/ Sheboygan County, XXVI, Dec. No. 14859, (1976).

Under date of November 24, 1976 the appointed arbitrator, Gordon Haferbecker, issued his determination which concluded with an award which reads as follows:

> 'The arbitrator directs that the Union's last offer be incorporated into the 1976-77 contract between Sheboygan County and the Sheboygan Law Enforcement Employees, Local 2481, AFSCME, AFL-CIO.'

In my view Sheboygan County is bound by the finding of the arbitrator under the provisions of the Wisconsin Statutes and therefore the labor agreement between the parties is what the arbitrator awarded. Except your finding of 'final award' deals only with six or seven paragraphs. These limited paragraphs cannot constitute the total agreement between the parties. If his award only encompasses the disputing items then the County Board still has the full authority to vote down the undisputed items because your commission found that they were not part of the 'final offer'.

On behalf of Sheboygan County we would like an advisory opinion as to the authority of the County Board with regard to the items listed as 'not being in dispute'. These items contained many concessions on behalf of Sheboygan County. The Personnel Committee, which made the concessions, is not authorized to bind the County Board and therefore the County Board has not yet voted on the 'items not in dispute'. Inasmuch as they were not included in the arbitrator's award it is my tentative opinion that the County Board can still exercise its option to vote on granting the items not in dispute or rejecting them. If this is not the case then shouldn't the arbitrator's award require a complete listing of all of the benefits and that award stand as the contract between the parties and the County Board have no further involvement in the matter?"

7. In response, George R. Fleischli, the Commission's General Counsel, by letter dated December 17, 1976, advised Hopp that:

> "The Commission has referred your letter of December 7, 1976 to me for reply. As I understand the question posed by your letter, you would like to know what should be included in the agreement between Sheboygan County and Local 2481 as a result of the arbitrator's award of November 24, 1976 wherein he directed that Local 2481's last offer be incorporated into the 1976-1977 agreement.
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> I would refer you to the Commission's memorandum in the order certifying impasse and requiring arbitration as to the Commission's interpretation of the intent of the language contained in Section 111.77(3)(b) of the MERA. The party that does not prevail in arbitration under 111.77(3)(b) is expected to incorporate the final offer of the agreement consisting of (1) the disputed items and (2) those matters about which there was no dispute. The matters about which there was no dispute would normally consist of the provisions of the old agreement (if any) which both parties agreed should remain unchanged and all other items that the parties agreed to during the negotiations." (Emphasis added.)

8. In the meantime, by letter dated December 3, 1976, Hopp advised Stephen Berg, Respondent's Data Processing Manager, that:

> "Please be advised that at its meeting on Wednesday, December 1st, the Personnel Committee, by unanimous vote, directed me to instruct you to implement all of the provisions of the arbitration award as made by Gordon Haferbecker in the Sheriff's Department labor contract matter.

As these employees have already waited since January 1st for resolution of this matter, I trust that you will expedite your office procedures to accomplish the same at your earliest convenience."

9. Thereafter, Respondent implemented all of the terms of the arbitration award. Additionally, Respondent implemented all items which were agreed to between the parties in the negotiations which preceded the submission of the disputed items to arbitration. Furthermore, the parties have stipulated by post hearing letters that the Personnel Committee "never reported back to the full County Board for the purpose of having the Board either accept or reject the arbitration award as well as other items previously agreed upon . . . ."

10. By letter dated January 20, 1977, Michael Wilson, Complainant's Business Representative, advised Respondent's representatives that:

"Please be advised that Local 2481 and its representatives are of the opinion that Sheboygan County must execute the above contract and that failure or refusal to do so is contrary to applicable State Statutes. It is our hope and expectation that the same shall be accomplished no later than the February County Board session."

11. It is undisputed that at all times material hereto, Respondent has refused to sign and execute a collective bargaining agreement (Exhibit 1) which contains the items agreed to by the parties in their negotiations, as well as the disputed items which were submitted to arbitration.

Based upon the foregoing Findings of Fact, the Examiner makes and renders the following

CONCLUSION OF LAW

Respondent has violated Section 111.70(3)(a)4 of MERA by refusing to sign and execute the collective bargaining agreement (Exhibit 1) which contains the items agreed to by the parties in their negotiations, as well as the disputed items which were submitted to arbitration.

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

ORDER

IT IS ORDERED that Respondent, its officers and agents, shall immediately

(1) Cease and desist from refusing to sign and execute the contract agreed to by the parties.

(2) Take the following affirmative action which the Examiner finds will effectuate the policies of the Municipal Employment Relations Act:

(a) Sign and execute the collective bargaining agreement (Exhibit 1) which contains the items agreed to by the parties in their negotiations, as well as the disputed items which were submitted to arbitration.

(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". That notice shall be signed by the 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 ensure 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 from the date of this Order as to what steps it has taken to comply herewith.

Dated at Madison, Wisconsin this 21st day of November, 1977.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Amedeo Greco
Amedeo Greco, 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 employes that:

1. WE WILL sign and execute the collective bargaining agreement which contains the items agreed to by the parties in our negotiations, as well as the disputed items which were submitted to arbitration.

2. WE WILL not refuse to sign and execute the above noted agreement.

By _____
Sheboygan County

Dated this _____ day of _____, 1977.

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, CONCLUSION OF LAW AND ORDER

Complainant asserts that Respondent violated Section 111.70 (3)(a)4 of MERA by refusing to sign and execute an agreed upon contract. While admitting that it has refused to sign a contract, Respondent primarily 3/ denies that it has acted unlawfully and it defends its actions on the ground that the parties have not agreed to a finalized contract.

In this connection, Section 111.70(3)(a)4 of MERA provides that it is a prohibited practice for an employer to refuse "to execute a collective bargaining agreement previously agreed upon." 4/ Pursuant to this requirement, the Commission has held that an employe must sign and execute a contract previously agreed to. 5/

This statutory requirement that contracts must be signed is consistent with a similar requirement under federal law. For, in construing the National Labor Relations Act, as amended, the United States Supreme Court held in H.J. Heinz Co. v. NLRB, 311 U.S. 514, (1941) that:

> ". . . We think that Congress, in thus incorporating in the new legislation the collective bargaining requirement of the earlier statutes included as a part of it, the signed agreement long recognized under the earlier acts as the final step in the bargaining process.
> . . . The freedom of the employer to refuse to make an agreement relates to its terms in matters of substance and not, once it is reached, to its expression in a signed contract, the absence of which, as experience has shown, tends to frustrate the end sought by the requirement for collective bargaining. A business man who entered into negotiations with another for an agreement having numerous provisions, with the reservation that he would not reduce it to writing or sign it, could hardly be thought to have bargained in good faith. This is even more so in the case of an employer who, by his refusal to honor, with his signature, the agreement which he has made with a labor organization, discredits the organization, impairs the bargaining process and tends to frustrate the aim of the

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3/ Respondent also alleges that its December 7, 1976 letter to the Commission, supra, constituted a request for a declaratory ruling, that the Commission has never disposed of said matter, and that, as a result, the proceedings herein are "premature". In fact, said letter was not a request for a declaratory ruling, as it failed to comply with the requirements needed for the filing of such a petition under ERB rule 18 of the Commission's Rules and Regulations and Section 227.06 of the Wisconsin Statutes. Moreover, the fact remains that Respondent's inquiry was subsequently answered. Accordingly, this claim is without merit.

4/ Section 111.70(3)(b)3 likewise makes it a prohibited practice for a union to refuse to "execute a collective bargaining agreement previously agreed upon."

5/ See, for example, City of Whitehall, Decision 10812-B (12/73).

statute to secure industrial peace through collective bargaining".

Indeed, it is far to say that the obligation to sign an agreed upon contract is one of the most fundamental concepts in labor relations, as a signed contract is the focal point of the respective rights and obligations which parties have in a collective bargaining relationship.

Here, as noted in the Findings of Fact, it is undisputed that the parties were unable to reach agreement on certain items, that those matters were subsequently submitted to interest arbitration, that the Arbitrator thereafter accepted the Union's offer, and that the Arbitrator ordered that such items be "incorporated into the 1976-77 contract between" the parties. Accordingly, there is no question but that those items must be part of the finalized contract, as that is what the Arbitrator ordered.

However, Respondent in effect argues that since the Arbitrator did not deal with those items previously agreed to, that no agreement has been reached regarding them, and that, as a result, Respondent is not required to incorporate such times in a contract. This assertion misconstrues the nature of the interest arbitration process.

Thus, the Commission has already ruled in this matter 6/ that the agreed upon items did not have to be submitted to the Arbitrator because, in its words:

> "the Municipal Employer concludes, the investigator's Advice To The Commission is in error because it includes only the Municipal Employer's final offer with respect to items in dispute and excludes the remaining provisions, over which there is no dispute, to be included in the collective bargaining agreement.
>
> The Municipal Employer incorrectly construes 'final offer' in the second sentence of Sec. 111.77(4)(b) as referring to items over which there is no dispute as well as to items over which there is a dispute. The Commission must reject this construction for two reasons:
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> First, the legislature sought to provide a method of resolving disputes. This overriding intent is evidenced by the following underscored words within the subdivision:
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> > '* * * The commission shall appoint an investigator to determine the nature of the impasse. The commission's investigator shall advise the commission in writing, transmitting copies of such advice to the parties of each issue which is known to be in dispute. Such advice shall also set forth the final offer of each party as it is known to the investigator . . . . Neither party may amend its final offer thereafter, except with the written agreement of the other party. The arbitrator shall select the final offer of one of the parties and shall issue an award incorporating that final offer without modification.' (Emphasis in original decision).
>
> To construe 'final offer' as relating to undisputed items severs those words from their context with disputed items. Furthermore, it strains the natural meaning of 'offer', as customarily used in labor relations, to refer to an accepted offer.

6/ Sheboygan County, supra.

Second, the Municipal Employer's construction is contrary to the past practical application of sec. 111.77(4)(b) and its predecessors. Prior awards issued thereunder indicate that it is common practice for the parties to refer only to those issues which they are unable to resolve in their negotiations. None of the awards issued by arbitrators indicates that either party submitted its 'final offer' in the form of a completed collective bargaining agreement, as the Municipal Employer has done in this matter. However, there is implicit or explicit recognition in all of said cases that the issue or issues determined in the award constitute only a portion of the provisions which ultimately will be incorporated into the collective bargaining agreement after the award is issued, and consideration is often given by the arbitrator to other provisions already in the agreement and other concessions the parties have made in choosing between their 'final offers.'

There is no evidence that the practice under the statute was intended to be changed by the amendment which became effective on May 21, 1976. The Commission is convinced that to read such a change into the amendment would require the parties to submit offers incorporating matters previously agreed upon and also would burden the arbitrator with matters not in issue.

Based on the above, the Commission finds that Appendix 'A' Final Offer of Municipal Employer, as attached to the Advice to Commission, dated August 3, 1976, does accurately set forth the final offer of the Municipal Employer as to the matters in dispute between the parties with respect to wages, hours and conditions of employment of law enforcement personnel for the years 1976 and 1977."

In light of the foregoing, it is clear that the Commission has already ruled that agreed upon items need not be submitted to an Arbitrator in an interest arbitration proceeding, as those items are <u>not</u> in dispute.

By the same token, it is also clear that, following the issuance of an interest arbitration award, and absent special circumstances not here present, the parties must sign and execute a contract which contains the items in dispute <u>and</u> those items which were previously agreed to in negotiations. This is so because the statutory provisions relating to interest arbitration provide for an orderly resolution of collective bargaining differences, differences which may have to be resolved in interest arbitration. Accordingly, the issuance of such an arbitration award does not end the matter, as the parties must thereafter codify the contractual items in a signed and executed contract, pursuant to the requirement of Section 111.70(3)(a)4 and 111.70(3)(b)3 which, as noted above state that it is a prohibited practice for either an employer or a union to refuse "to execute a collective bargaining agreement previously agreed to." Additionally, the facts in this case show that the arbitrator expressly ordered that "the Union's last offer be incorporated into the 1976-1977 contract" between the parties. Here, by refusing to sign and execute a 1976-1977 contract, it is clear that Respondent has failed to comply with this part of the Award.

In so finding, the Examiner is well aware that the parties agreed to certain matters in their negotiations and that those matters were never submitted to arbitration. However, for the reasons noted below, that fact is immaterial. Thus, there is no evidence that Respondent ever indicated at the outset of the negotiations that its approval of certain items was contingent upon certain other eventualities, eventualities which did not come to pass. Secondly, it is undisputed that Respondent never revoked its prior approval of such items before this matter was submitted to arbitration. Additionally, it is also

undisputed that Respondent's Personnel Committee never reported back to Respondent's Board for the purpose of having the Board either accept or reject the items in dispute either before or after the matter was submitted to arbitration. In such circumstances, Respondent is now estopped from claiming that the items previously agreed to are now in dispute, as such an assertion, if accepted, would make a mockery of the finality provided for in the interest arbitration statutory scheme. 7/ That is especially so where, as here, Respondent has agreed that it has implemented all of the items tentatively agreed to in negotations, as well as those items submitted to interest arbitration, and that such combined items constitute "the active agreement between the County and the Union . . . ." 8/

Accordingly, based on these facts, it must be concluded that the parties have agreed upon a finalized contract (Exhibit 1) and Respondent's refusal to sign and execute said contract is violative of Section 111.70(3)(a)4 of MERA. To rectify said conduct, Respondent shall take the remedial action noted above.

Dated at Madison, Wisconsin this 21st day of November, 1977.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Amedeo Greco
Amedeo Greco, Examiner

7/ For the same reason, Respondent cannot now allege that there is no agreement on the ground that the full County Board never ratified the tentative agreements previously agreed to by its Personnel Committee, as the time for such acceptance or rejection by the Board has long passed once the matter was submitted to arbitration.

8/ Transcript, p. 8.