

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

TEAMSTERS UNION LOCAL NO. 695,

Complainant,

vs.

COUNTY OF SAUK,

Respondent.

:
:
:
: Case XXVI
: No. 25806 MP-1077
: Decision No. 17657-C
:
:
:

Appearances:

Goldberg, Previant, Uelmen, Gratz, Miller, Levy & Brueggeman,
S.C., Law Offices, 788 North Jefferson Street, P. O. Box
92099, Milwaukee, Wisconsin 53202, by Ms. Marianne
Goldstein Robbins, appearing on behalf of the Complainant.
DeWitt, Sundby, Huggett & Schumacher, S.C., Law Offices,
121 South Pinckney Street, Madison, Wisconsin 53703,
by Mr. Robert M. Hesslink, Jr., appearing on behalf of
the Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Complaint of prohibited practices having been filed with the Wisconsin Employment Relations Commission in the above entitled matter; and the Commission on March 13, 1980, having issued an Order appointing Ellen J. Henningsen, a member of its 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), Wisconsin Statutes; and Ellen J. Henningsen having on May 27, 1980, conducted hearing in the matter; and prior to any further action in the matter Ellen J. Henningsen having resigned her employment with the Commission; and the Commission on October 7, 1980, having substituted the undersigned as Examiner; and the Examiner having considered the evidence, briefs 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 Teamsters Union Local No. 695, hereinafter referred to as the Complainant or Union, is a labor organization having offices at 1314 North Stoughton Road, Madison, Wisconsin; that Merle Baker is a Business Representative for the Complainant; that Dan Hiller was Chief Steward for the Complainant and that Merle Alt is a Steward for the Complainant.

2. That Sauk County, hereinafter referred to as the Respondent or County, is a Municipal Employer having its principal offices at Baraboo, Wisconsin; that, among other county services, the Respondent maintains and operates a Sheriff's Department and that Alan B. Shanks is Sheriff of Sauk County.

3. That, at all times material herein, Eugene Dumas was the Corporation Counsel for the Respondent; that Robert M. Hesslink, Jr., was special legal counsel for the Respondent; that Dudley Newsom was Chairman of the Respondent's Personnel Committee; that

No. 17657-C

Thomas Johnson was the Chief Negotiator for the Respondent for the Sheriff's Department contracts in 1975 and 1976 and that Lyle Dunse and Burr Green were members of the Respondent's bargaining team in 1975 for the negotiation of the 1976 contract.

4. That at all times pertinent hereto, the Respondent has recognized the Complainant as the exclusive collective bargaining representative of certain deputized law enforcement personnel in the Sheriff's Department.

5. That Complainant and Respondent were signators to a collective bargaining agreement effective on January 1, 1978, covering wages, hours and conditions of employment of the employees in the aforesaid unit; and that said agreement contained the following provisions:

ARTICLE III - UNION SECURITY

. . .

Section 3. The Employer agrees to deduct the amount of dues certified by the Union as the amount uniformly required of its members from the earnings of the employees affected by this Agreement and pay the amount deducted to the Union on or before the end of the month in which such deduction is made.

ARTICLE XI - LEAVE FOR ILLNESS OR FUNERAL

A. Sick Leave

. . .

Section 3. Use of Sick Leave Credits. If an employee is absent from work for any reasons set forth under (1) of this Article, and at such time has accumulated insufficient sick leave to cover the time lost, the amount of the time lost shall be deducted from current earnings of said employees, provided, however, that for each month worked during such calendar year by said employee during which no sick leave is taken, said employee shall be reimbursed for the time he had lost as a consequence of the insufficient accumulation of sick leave. Whenever possible, an employee who must be absent shall notify his duty officer of that fact by the employee's normal starting time. Failure to notify the officer will result in the loss of paid sick leave.

Section 4. Sick Leave Extension by Overtime and Vacation. Accumulated overtime may be used as a matter of right by an employee who is entitled to sick leave and has at that time accumulated insufficient sick leave to cover the period of illness or disability. In such cases an employee may also elect to use accumulated vacation credits.

. . .

ARTICLE XVII - TERMINATION

Section 1. This Agreement shall become effective as of January 1, 1978, and shall remain in full force and effect until and including December 31, 1979,

and shall be automatically renewed from year to year thereafter, unless negotiations are initiated by either party prior to August 1, 1979, or any first day of August of an effective year of this Agreement thereafter.

and that the above mentioned labor agreement contains a provision for the final and binding resolution of disputes concerning its interpretation or application.

6. That on June 15, 1979, Merle Baker, on behalf of the Complainant, sent the following notice to the County of the Union's desire to modify the aforementioned agreement:

In accordance with 111.77 (1) (a), we are hereby serving notice of our desire to modify our existing Contract to become effective following the expiration of said Contract.

We are prepared to meet and negotiate, upon requested changes, with your designated representative at the earliest possible date convenient to both parties.

7. That subsequent to the above notification, the Complainant and the Respondent met on several occasions to negotiate a new agreement but without success and that by letter dated December 28, 1979, Robert Hesslink notified the Union of the County's intent to terminate the agreement as follows:

The purpose of this letter is to advise you that Sauk County intends to terminate the collective bargaining agreement now in effect between the parties upon its expiration date of December 31, 1979. The County will, of course, continue in effect those portions of the contract which are intimately concerned with the employer-employee relationship until a successor agreement has been ratified. See Kenosha Vocational, Technical, and Adult Education District (Gateway), Decision No. 14142-A (1/27/77).

If you have any questions or comments concerning this matter, please do not hesitate to contact me.

8. That following receipt of the December 28, 1979, letter noted above Merle Baker discussed the County's position with respect to the termination of certain contractual matters with the County's counsel, Robert Hesslink; that in addition to the arbitration provision Hesslink informed Baker that the grievance procedure was not in effect; that based on the aforesaid December 28th letter and his conversations with Hesslink Baker understood that the County would not grieve or arbitrate any dispute as long as there was no collective bargaining agreement in effect between the parties and that at no time material herein did the County indicate a willingness to comply with the grievance-arbitration provision contained in the aforementioned "expired" agreement.

9. That thereafter the Union discovered that the County was not deducting fair share amounts from employees' paychecks and forwarding same to the Union; that on January 22, 1980, Merle Baker mailed a grievance to Chairman of the Personnel Committee Dudley Newsom regarding the County's failure to collect Union dues; that on January 24, 1980, Newsom denied the grievance in a letter to Baker as follows:

I am in receipt of your letter dated January 12, 1980 with regard to this matter. Although your letter does bear this date, it was not postmarked until January 22, 1980. You were informed by Mr. Hesslink's letter dated December 28, 1979, of Sauk County's intent to terminate the collective bargaining agreements with the Courthouse employees and Sheriff's Department. The time between your knowledge of our intent and your response does not meet the 14 day time limit set forth in Article VI, Sec. 2 (Courthouse agreement) and Article IV, Sec 2 (Sheriff's Department agreement).

We have been advised that check off provisions do not survive the expiration of a contract, and have therefore discontinued collecting union dues from unit members.

that thereafter Baker sought arbitration of the above dispute from the County but without success and that the County has failed to deduct Union dues in compliance with the dues check off provision of the parties labor agreement at any time material herein since on or about January 20, 1980.

10. That prior to February of 1980 there existed a policy and practice by which an employe could transfer earned sick leave to another employe if an authorization of the transfer was signed by the donor, the Union Steward, and the Sheriff or Chief Deputy; that on or about February 14, 1980, Merle Baker received a copy of a letter dated February 8, 1980, to Sheriff Alan B. Shanks from Dudley Newsom stating inter alia:

By official action of the Personnel Committee, I am hereby informing you that the donation of sick leave credits to any employee by other employees from their accumulated sick leave earned pursuant to Article XI of the Collective Bargaining Agreement is contrary to the explicit language of that Agreement between Sauk County and Local No. 695, representing employees of the Sauk County Sheriff's Department, and any payments made on this basis are unauthorized, illegal, and shall be terminated forthwith.

that on February 15, 1980, Newsom confirmed the change in the above practice in a conversation with Baker.

11. That there was no oral agreement reached between the Union and the County in negotiations for the 1976 collective bargaining agreement concerning the transfer of sick leave; that, however, there was a policy and practice regarding the transfer of sick leave as noted in Finding of Fact 10, above, in effect from 1976 until the February, 1980, letter of Dudley Newsom noted above; that on more than forty occasions bargaining unit employes donated sick leave to another employe and obtained the approval of the Sheriff or Chief Deputy; that on several occasions the Sheriff himself was involved in the transfer of sick leave; that the aforementioned transfers of sick leave between employes occurred on several occasions without a Union Steward's signature and that on each occasion until February of 1980 where an individual had received the donor's approval for the transfer of sick leave it had been approved by the Sheriff or his representative and made.

12. That by letter dated February 14, 1980, Merle Baker filed the following grievance on behalf of the Union with Dudley Newsom regarding the County's change in the sick leave transfer policy:

I am in receipt of a letter dated February 8, 1980, to Ms. Opal Cohlmeier and Sheriff Alan B. Shanks. You ask that anyone with any information concerning this matter please communicate the information to Ms. Bassett.

Consider the following:

1) On September 17, 1975, Teamsters Local 695 presented a proposal to the County adding to the Leave for Illness and Funeral Article a section 3 amendment which stated: "Any employee may, at his option, transfer sick leave credits to a fellow employee who is off with illness and has deleted his sick leave credits".

2) On October 23, 1975, after much discussion, the County proposed the following: In order to transfer sick leave credits it must be with the approval of the steward and the sheriff, but the County did not desire this to be a part of the Contract, but a department policy. Any donation of sick leave time to another employee would require the donor's signature.

3) On November 11, 1975, the Union agreed to accept the County's proposal.

4) On December 9, 1975, the Union ratified the 1976 Agreement with the understanding that this provision be applied as the County had proposed.

The County Committee that year was Thomas Johnson, Ray Schoephorster, Niel Thompson, Burr Green, Lawrence Brecht, Al Shanks and Paul Newcomb.

I hope this clears up any question on this matter. If there are any further questions, please do not hesitate to contact me. In the event you do decide to discontinue this policy as indicated in your letter let this letter stand as a grievance by the Union on this matter.

that on February 15, 1980, Sauk County Corporation Counsel Eugene Dumas in a hand delivered letter asked Baker to provide additional information on the dispute for the County's Personnel Committee to consider in making a decision; that at no time material herein has the Union responded to the County's request for additional information; that sometime between February 15 and March 1, 1980, Baker asked Hesslink over the phone about arbitrating the dispute over the termination of the sick leave policy; that at that time and throughout this period Baker was given the understanding from the County that there would be no arbitration of the sick leave policy dispute or any other dispute as long as the County considered the agreement terminated and that at no time material herein did the County, or any of its representatives, indicate a willingness to arbitrate the sick leave transfer dispute.

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

CONCLUSIONS OF LAW

1. That since the Complainant filed grievances over the Respondent's failure to make fair share deductions and change in the sick leave transfer policy and made a request of the County to arbitrate same and that since the Respondent took the position at all times material herein

that the arbitration provision had expired when the parties' collective bargaining agreement terminated and refused to proceed to same, the Examiner will assert the jurisdiction of the Wisconsin Employment Relations Commission for the purpose of determining whether or not the Respondent has committed any prohibited practices within the meaning of Section 111.70(3)(a)5 of the Municipal Employment Relations Act.

2. That the Respondent did not commit prohibited practices within the meaning of Section 111.70(3)(a)1, 4 or 5 nor any other section of MERA, when, at the termination of the contract, it ceased to check off dues in compliance with the dues checkoff provision of the parties' collective bargaining agreement.

3. That the Respondent did not commit prohibited practices within the meaning of Section 111.70(3)(a)1 or 5, nor any other section of MERA, when following the termination of the contract, it refused to arbitrate a grievance filed by the Complainant on August 2, 1979, in accordance with the grievance-arbitration provisions of the parties' labor agreement.

4. That the Respondent committed prohibited practices within the meaning of Sections 111.70(3)(a)1 and 4 of MERA by unilaterally changing the sick leave transfer policy in the Sheriff's Department without first bargaining over same.

5. That the Respondent's unilateral change in the aforementioned sick leave transfer policy did not violate the contract and therefore the Respondent did not violate Section 111.70(3)(a)5 of MERA.

On 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 Respondent, its officers and agents, shall immediately:

1. Cease and desist from failing to bargain with the Complainant over its elimination of the sick leave transfer policy in the Sheriff's Department.
2. Take the following affirmative action which the Examiner finds will effectuate the policies of MERA:
 - a. Immediately re-establish the prior practice of allowing sick leave transfers in the Sheriff's Department.
 - b. Before instituting future changes in the sick leave transfer policy in the Sheriff's Department offer to bargain with the Complainant regarding the proposed change and, if requested, bargain to impasse with Complainant regarding said change.
 - c. Notify all Sheriff's Department employees represented by Complainant of its intent to comply with the Order herein by posting in conspicuous places in its offices where said employees 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 insure that said notices are not altered, defaced or covered by other material.

- d. 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.

IT IS FURTHER ORDERED that the complaint be dismissed as to all violations of MERA alleged, but not found herein.

Dated at Madison, Wisconsin this 24th day of March, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Dennis P. McGilligan
Dennis P. McGilligan, Examiner

APPENDIX A

NOTICE TO ALL SHERIFF'S DEPARTMENT EMPLOYEES
REPRESENTED BY TEAMSTERS UNION LOCAL NO. 695

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 re-establish the prior practice in the Sheriff's Department of allowing an employe to transfer earned sick leave to another employe if an authorization of the transfer is approved by the donor, Union Steward and the Sheriff or Chief Deputy.
2. We Will Not institute changes in the sick leave transfer policy noted above without first notifying Teamsters Union Local No. 695 of the proposed change and offering to bargain and, if requested, bargain to impasse with Teamsters Union Local No. 695.

Dated at _____, Wisconsin, this _____ day of _____, 1981.

By _____, Sauk County

MEMORANDUM ACCOMPANYING
FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

The Union filed an amended complaint on April 17, 1980. The Respondent filed an Answer on May 21, 1980. Hearing on said amended complaint was held on May 27, 1980, in Baraboo, Wisconsin. The transcript was issued on June 19, 1980. The parties completed their briefing schedule on September 30, 1980.

Both parties made extensive written arguments in support of their position. Some of these arguments are discussed within the context of the Examiner's rationale in support of the Findings of Fact and Conclusions of Law. All other arguments and contentions, although not specifically detailed or discussed, have been considered in reaching the Examiner's decision.

JURISDICTION:

Respondent argues that the Complainant has not exhausted the procedural requirements for pursuing an action in the instant case. In support thereof the Respondent cites numerous cases where the Commission has ruled that it will not entertain an action when the Union has not exhausted the contractual grievance procedure. Respondent's argument is apparently addressed to the Complainant's Section 111.70(3)(a) 5 claims.

It is true that the Commission will not normally assert jurisdiction to determine violations of a collective bargaining agreement where such agreement contains a provision for the final disposition and resolution of the dispute. However, an exception to this policy exists where one party to the agreement completely ignores and rejects the grievance-arbitration provisions in the agreement. 1/ For the reasons noted below the Examiner finds that such an exception exists in the present case.

The record indicates that the Complainant filed grievances on both the fair share and sick leave transfer issues. The record also indicates that the Respondent in essence refused to process said grievances through the grievance procedure. The record further indicates that the Respondent took the position that the arbitration provision had expired when the agreement terminated and refused to arbitrate the aforementioned disputes despite request from the Complainant to do same. Finally, the record shows that the Respondent did not indicate a willingness to arbitrate the aforesaid disputes at any time material herein.

Respondent argues that the Complainant had a duty to pursue the grievances through the grievance procedure pursuant to the terms of the contract even though it believed the County would refuse to

1/ See Melrose Joint School District No. 1 (11627) 2/73 citing
Mews Ready-Mix Corp., 29 Wis 2d 44 (1965).

arbitrate same. Respondent cites Waunakee Joint School District (14749-B) 2/78 in support thereof. However, the Commission in Waunakee expressly noted the existence of certain exceptions to the deferral to arbitration policy. As noted above the Commission will not defer a dispute to arbitration where, as here, the Respondent has repudiated the grievance-arbitration procedure and rendered futile any attempt by the Complainant to utilize same.

FAIR SHARE:

The Complainant argues that the Respondent violated Sections 111.70(3)(a)1, 4 and 5 when the County withheld fair share amounts from January 20, 1980 and subsequent Sheriff's Department paychecks.

In this regard the Complainant first maintains that the collective bargaining agreement did not terminate but continued in effect and that the Respondent therefore could not alter the fair share arrangement except by mutual agreement. However, the record does not support a finding regarding same. To the contrary the plain language of Article XVII taken together with the Union's letter dated June 15, 1979, from Baker to the County relating the Union's intention to modify the contract "to become effective following the expiration of said contract" indicate that the labor agreement terminated herein. Therefore, the Examiner rejects the above argument of the Complainant.

The Complainant argues in the alternative that since a fair share clause is a mandatory subject of bargaining it must be continued during a contract hiatus relying on City of Greenfield (14027-B) 11/77. However, the Greenfield case does not stand for the proposition for which it is cited. Specifically, the Commission in Greenfield found that the Respondent (School District) violated Sections 111.70(3)(a)1 and 4 of MERA by establishing a new grievance procedure without first negotiating same with the Association either until an agreement thereon or until the parties reached impasse. The only subject of bargaining identified by the Commission in said case was the grievance procedure. Nowhere in the decision were dues checkoff or union security provisions mentioned. The Commission held narrowly that "the violation consists in the District's unilateral rejection of the previous procedure and institution of a new procedure respecting grievances over mandatory subjects of bargaining, and it is on this basis that we affirm the Examiner."

Contrary to the Complainant's position, Gateway Vocational, Technical and Adult Education District (14142-A,B) 2/78 is controlling herein. In Gateway the Commission did not find any violation of MERA where the contract had expired and the School District refused to deduct dues from Association members' paychecks. The Commission noted that the question of dues deduction inures to the benefit of the Association as a labor organization and does not deal primarily with the employer-employee relationship. Citing the National Labor Relations Board's ruling that such a contractual provision does not survive a contract's expiration, irrespective of whether the parties have reached an impasse on the issue, 2/ the Commission found that such a provision lapses when the contract expires and the employer is not thereafter required to honor such a term of an expired contract.

2/ Bethlehem Steel Co. (Shipbuilding Division) 133 NLRB 1347 (1961).

Consequently the Commission held that the District was relieved from honoring the dues deduction provision following expiration of the contract. The Complainant attempted to distinguish Gateway based on the representation issue present therein. However, in Gateway it is clear that the Commission reached its decision regarding the dues deduction issue independent of the representation issue raised therein.

Fair share, like dues deduction, directly benefits the Union and it does not directly affect the employer-employee relationship. Therefore, the Examiner is of the opinion that the above rationale is applicable in the instant case even though the issue is fair share not dues deduction.

Based on all of the above, the Complainant's allegations regarding the Respondent's failure to make proper fair share deductions are dismissed.

SICK LEAVE POLICY:

The Complainant argues that the Respondent violated Sections 111.70(3)(a)1, 4 and 5 when it unilaterally abolished the transfer of sick leave policy for Sheriff's Department employees.

The parties agree that sick leave is a mandatory subject of bargaining. The Complainant goes on to argue that since sick leave is a mandatory subject of bargaining the County cannot alter the policy regardless of the existence of a collective bargaining agreement without first negotiating with the Union citing the aforementioned Greenfield case. However, as noted previously Greenfield does not stand for the broad proposition for which it is cited. Therefore the Examiner rejects this argument of the Complainant.

The Complainant also cites Town of Caledonia (16237-A,B) 10/78 in support of its position that the County had a duty to negotiate concerning the termination of the sick leave transfer policy regardless of whether there was a negotiated agreement with respect to the matter. For the reasons noted below, the Examiner would agree.

In Town of Caledonia the employer followed a policy of providing rubber wear or turnout gear to its full-time firefighters upon their request, irrespective of whether said firefighters had utilized all of their contractually mandated uniform allowance. The Commission held that the furnishing of such equipment constituted a condition of employment which could not be unilaterally abolished unless the employer first bargained about such a proposed change with the collective bargaining representative of the employees. The Commission found that the fact the agreement did not refer to the supplying of such equipment immaterial, "as a condition of employment is one which need not necessarily be reflected in a collective bargaining agreement."

The Respondent argues that the instant case is distinguishable from Caledonia. In this regard the Respondent maintains that the applicable contract language covers the subject of sick leave "borrowing". However, an examination of Article XI, Section A of the Agreement does not support the Respondent's position. To the contrary said contractual provision is narrowly drawn; limited to certain situations and fails to address in a clear and express manner the practice of sick leave transfer which is the subject of the instant complaint. Nor does said contract language prohibit the sick leave transfer policy which is the subject of the instant dispute. Therefore, the Examiner rejects this argument of the Respondent.

The Respondent also maintains that in Caledonia there was no issue concerning the authority of the management representative to establish the "past practice" in the first case. The Respondent argues that in the instant case the Sheriff had no power to implement a transfer of sick leave policy or bind the County to same. Respondent relies on the language of Article VI, Section 4 of the Wisconsin Constitution and several cases including Bank of California v. Hoffman, 255 Wis. 165, 38 NW 2d 506 (1949) - to support its position.

Article VI, §4 of the Wisconsin Constitution provides in material part:

The Sheriff . . . shall be chosen by the electors of the respective counties once every two years . . .
(T)he County shall never be made responsible for the acts of the sheriff . . . (Emphasis supplied.)

The above section cited by the Respondent was meant to prevent the County from being a surety and to spare the County treasury from liability to third parties damaged by the acts of the sheriff. 3/ It in no way precludes the sheriff from administering a collective bargaining agreement as an agent of the County.

In this regard the Examiner notes that powers granted the Sheriff by Article VI, Section 4 of the Constitution can be limited by MERA. 4/ The Commission has concluded that the Sheriff is an agent of the County and is responsible for activity prohibited by MERA. 5/ In reaching this conclusion the Commission noted the unique status of the Sheriff:

While the Sheriff is elected, he serves the County, and is paid by the County. The Sheriff is responsible for the operation of the Sheriff's Department, and in that regard the Sheriff is not only a managerial employee, but also a supervisor in his relationship to the remaining employees in his department.

It is clear from the above that the Sheriff has the authority as an agent of the County to implement a practice or policy in his administration of the Department unless specifically prohibited from same by the County. It also follows that the Sheriff since he is acting as an agent of the County binds the County to said practice. To such a limited extent the above underlined language in Article VI, Section 4 is modified by MERA.

Likewise, the Examiner rejects the Respondent's reliance on the Hoffman case noted above. In this regard the Examiner distinguishes the Hoffman case from the present dispute. In that case an action was begun by the Bank of California as administrator of an estate to recover a sum of money allegedly owed that estate. The Court concluded that a signer of notes who was the managing member of an insurance agency, and was also agent for the deceased payee of the certain notes under a power of attorney as well as a director of a bank which held said notes acted in bad faith toward the payee when he failed to disclose his interest in the matter and any financial

3/ Bablitch & Bablitch v. Lincoln County, 82 Wis. 2d 574, 579 (1977).

4/ Chippewa County (17328-B) 5/80

5/ Id.

gains that he may have realized as a result thereto. In the instant case unlike Hoffman there is no evidence that the Sheriff acted in bad faith toward the County with respect to the aforesaid practice or withheld any information from the County with respect to the practice. In addition, while it is true that the Sheriff participated in the sick leave transfer practice to a limited degree and thereby gained some benefit as a result thereto, there is no evidence that the Sheriff had a direct and substantial financial interest in the matter the like of which was present in the Hoffman case.

The record is clear that there was a consistent past practice which amounts to a condition of employment wherein Sheriff's Department employees could transfer sick leave to another employee if the transfer was approved by the Sheriff or Chief Deputy and Union Steward. The record is also clear that the Respondent unilaterally changed said practice without first bargaining to impasse with the Union over same.

Therefore, based on all of the above, and absent any persuasive evidence to the contrary, the Examiner finds that the Respondent violated Sections 111.70(3)(a)1 and 4 of MERA by unilaterally changing the sick leave transfer policy in the Sheriff's Department without first bargaining over same.

The Complainant also argues that the Respondent violated an oral agreement reached by the parties during negotiations for the 1976 labor agreement. However, the record does not support a finding regarding same. To the contrary, the record is inconsistent and inconclusive on the matter. Several witnesses testified on behalf of the Complainant regarding the existence of such an agreement. One of the witnesses, Dan Hiller, produced bargaining notes purporting to establish the existence of such an agreement. However, said witness wasn't sure who made the proposal and admitted the notes could have been minutes of a Union meeting, rather than of a negotiation session. In any event the Union's witness admitted that the notes did not indicate whether the Respondent approved such an oral agreement on the transfer of sick leave.

The Respondent, on the other hand, offered the testimony of three witnesses who emphatically denied the existence of an oral agreement concerning the transfer of sick leave. The Examiner was unable to find anything in the record to negate the credibility of said witnesses. Therefore, based on all of the above, the Examiner finds it reasonable to conclude that the Complainant did not sustain its burden of proof regarding the existence of an oral agreement on the matter. Consequently, the Respondent did not violate Section 111.70(3)(a)5 of MERA by terminating said alleged oral agreement.

The Complainant further alleged in its complaint that the Respondent violated MERA by failing to arbitrate a grievance first filed on August 2, 1979. However, the Examiner can find no evidence to support said allegation in the record nor did the Complainant argue same in its briefs. For these reasons the Examiner rejects this claim of the Union.

For the foregoing reasons the Examiner has found that the Respondent violated Sections 111.70(3)(a)1 and 4 of MERA by its actions in unilaterally terminating the sick leave transfer policy in the Sheriff's Department without first bargaining to impasse over same and has dismissed all other allegations that the Respondent violated

MERA by its other actions complained of herein and the Examiner has ordered the Respondent to cease and desist from the above violations and to take appropriate remedial action.

Dated at Madison, Wisconsin, this 24th day of March, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Dennis P. McGilligan
Dennis P. McGilligan, Examiner