STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

| | | |
|---|---|---|
| LOCAL 2477, IAFF, AFL-CIO, Complainant, vs. TOWN OF ALLOUEZ, Respondent. | : | Case XVII<br>No. 29867 MP-1342<br>Decision No. 19711-A |

Appearances:

Lawton & Cates, Law Offices, 110 East Main Street, Madison, Wisconsin 53703-3354, by Mr. Richard V. Graylow, appearing on behalf of the Complainant.

Condon, Hanaway, Wickert, Fenwick & Strong, Ltd., Attorneys at Law, 801 East Walnut, P. O. Box 1126, Green Bay, Wisconsin 54305, by Mr. David J. Condon, appearing on behalf of the Respondent.

## FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

A complaint of prohibited practices having been filed with the Wisconsin Employment Relations Commission in the above-entitled matter, and the Commission having appointed Dennis P. McGilligan, a member of the Commission's staff to act as Examiner and to make and issue Findings of Fact, Conclusions of Law and Order as provided in Section 111.07(5) of the Wisconsin Statutes; and hearing on said complaint having been held at Town of Allouez, Wisconsin, on October 28, 1982 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 Local 2477, IAFF, AFL-CIO, hereinafter referred to as the Complainant, is a labor organization and the exclusive collective bargaining representative for certain fire fighters in the employ of the Respondent; and that James Lambert is President of Complainant.

2. That Town of Allouez, hereinafter referred to as the Respondent, is a municipal employer which operates a fire department in the Town of Allouez, Wisconsin; and that Clarence Matuszek is the Respondent's Administrator.

3. That at all times material herein the Complainant and Respondent are signators to a collective bargaining agreement which commenced on January 1, 1981; that said agreement covers wages, hours and conditions of employment of the employes in the aforementioned unit; and that said agreement contains the following provisions:

> ARTICLE 8. SALARIES AND WAGES
>
> A. The Town shall pay employees a salary in accordance with job classification and length of service, for the calendar year or years covered by this agreement as set forth on the attached "Schedule I".
>
> B. In the event that this agreement shall cover a period which shall exceed one calendar year, the base rate set forth on Schedule I shall be adjusted for the second and each subsequent year, or part thereof, of the contract period so as to continue to provide the equivalent in dollars of the purchasing power of the initial base rate. The base rate for the second and each subsequent year shall be determined by dividing the initial base rate by the U.S. Department of Labor Consumer Price Index - U.S. City Average, Urban Wage Earners and Clerical Workers (base year 1967=100) for the month of November of the year immediately preceding the beginning of the contract term, and then multiplying that amount by the

index number from the same index for the month of November of the year immediately preceding the contract year to be adjusted. This cost of living adjustment shall be in addition to any other wage adjustment which may be specified in said Schedule I. The base rate set forth in Schedule I includes the cost of living adjustment for the first year of this contract.

. . .

ARTICLE 23. GRIEVANCE PROCEDURE

A. A grievance is defined as any complaint involving the interpretation, application or alleged violation of the terms of this agreement. A grievant may be an employee. Upon the mutual agreement of the parties hereto, grievances involving the same issue may be consolidated in one proceeding.

B. The Chief of the Fire Department, or the Town Board or members thereof, may confer with the Union and such employees or other persons they deem appropriate before making their determination.

. . .

Step 3.
Grievances not resolved at Step 2 may be appealed to the Wisconsin Employment Relations Commission for arbitration. The Commission shall designate a member of its staff as arbitrator. The decision of the arbitrator shall be final and binding.

. . .

ARTICLE 31. DURATION

This agreement shall become effective as of January 1, 1981, and shall remain in full force and effect to and including December 31, 1981. The contract shall renew itself automatically under the same terms and conditions until renewal thereof, by the authorized signatures of the parties to the agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement this 6th day of October, 1981.

| LOCAL #2477, IAFF | TOWN OF ALLOUEZ |
|---|---|
| James Lambert /s/<br>President | Richard W. Westring /s/<br>Richard W. Westring, Chairman |
| Mark Plate /s/ | Attest: Barbara A. Froelich /s/<br>Barbara Froelich, Town Clerk |

4. That on November 2, 1981, the Respondent received the Complainant's 1982-83 contract proposal; that thereafter the Complainant and Respondent met in negotiations for a successor agreement on December 3, 1981, January 5, 1982 and February 9, 1982; that at the February 9th negotiating session the Respondent made a contract proposal which the Complainant rejected; and that based on same, the Respondent terminated negotiations on the aforesaid date until such time as it received a response from the Complainant to the above proposal.

5. That by letter dated February 11, 1982, the Complainant filed with the Respondent its "Final Contract Proposal 1982-83"; that on or about February 12, 1982, the Complainant filed a grievance concerning the Cost-of-Living Adjustment (C.O.L.A.) contained in Article 8 of the aforesaid agreement; that in said grievance the Complainant alleged that the Respondent failed to pay the fire fighters a wage increase in January of 1982 in violation of the C.O.L.A. provision noted above; and that for relief the Complainant requested in said grievance that the Respondent "make C.O.L.A. to fire fighter salaries for 1982 and annually in

January for each subsequent year."

6. That by letter dated February 24, 1982 the Respondent made the following response to Complainant's grievance noted above:

> We are in receipt of your letter of February 12, 1982, by which you claim a "grievance" and wish immediate wage adjustments be made based on the cost of living adjustment provided in the labor agreement which ended last December 31st.
>
> You previously have submitted proposals for changes in the labor agreement, thus by implication indicating that you did not wish to renew the prior agreement. Further, last year's agreement provides that it is renewed by the parties signing a renewal, which has not been done. Accordingly, it appears that the agreement has not been renewed, there is no entitlement to wage adjustment, and there is no foundation for a grievance.
>
> However, we may be misunderstanding the nature of your request, and wish to be fair in responding to it. Your letter of February 12th was dated and received after you submitted your other labor agreement proposals and therefore we are interpreting it to be your last proposal to renew last year's labor agreement for one year with the sole change being the wage adjustment according to the formula set forth in the cost of living clause. We accept such a contract proposal by you.
>
> Unless we hear to the contrary from you by noon on Monday, March 1, 1982, we will assume we are agreed on the renewal of the labor agreement for 1982 and will so prepare the contract, and we will be making arrangements for paying the back-pay.

7. That having failed to receive any response from the Complainant, the Respondent next prepared a new contract on or about March 5, 1982; that shortly thereafter the Complainant orally advised the Respondent not to prepare said contract; and that by letter dated March 11, 1982 the Complainant confirmed this position in writing to the Respondent as follows:

> To confirm my verbal reply regarding your letter of February 24, 1982, we do not wish that you prepare a contract agreement at this time.
>
> We are awaiting a legal opinion before proceeding with possible alternatives.
>
> Your refusal to negotiate not only violates Wisconsin statutes, it ultimately forces us to arbitration by creating a dead-lock. We hesitate to take that position pending any action to clarify the intent of our C.O.L.A. clause.
>
> With a few minor exceptions, we do not consider your offer unfair; however, we do want an interpretation of our cost of living language and renewal in relationship to additional changes.
>
> We have two legal opinions of which only one can be correct. Resolving this problem, regardless of the outcome, would eliminate much controversy during negotiations.
>
> I will keep you informed of any decisions made by the union.

8. That on or about April 13, 1982, the Complainant filed a request to initiate grievance arbitration with the Commission concerning the above grievance; that by letter dated April 16, 1982, the Respondent refused to proceed to arbitration over the aforesaid dispute; that in said letter, the Respondent took the position that the Commission did not have jurisdiction over the dispute due to the expiration of the 1981 contract; that in addition to its claim that it was under no contractual obligation to arbitrate the dispute, the Respondent also took the position in said letter that it was at all times willing to continue

collective bargaining over a successor contract but that the Complainant was unwilling to bargain over same; that based on the Respondent's failure to concur in the Complainant's request for grievance arbitration in the aforesaid dispute the Commission refused to take any further action in the matter; and that the Commission's decision not to process the Complainant's request for grievance arbitration over the aforesaid dispute was not based on any evidentiary hearing or on any conclusions with respect to the procedural or substantive claims concerning the grievance but rather said decision was based solely on Respondent's failure to concur in proceeding to arbitration over same.

9. That on June 3, 1982, the Complainant filed a complaint of prohibited practice with the Commission alleging that the Respondent's refusal to proceed to arbitration on the grievance matter and the Respondent's refusal to apply the C.O.L.A. clause of the aforesaid agreement in January of 1982 constituted violations of Section 111.70(3)(a)1, 4 and 5, Wisconsin Statutes; and that on July 2, 1982 the Respondent filed an answer with the Commission denying that it had committed any prohibited practices in the matter and alleging in a cross-complaint that the Complainant had committed a prohibited practice by failing to bargain collectively with the Respondent over a successor agreement.

10. That between February 9 and August 19, 1982, the Complainant and Respondent had some discussions related to the aforesaid grievance and negotiations over a successor agreement; that on August 19, 1982, the parties met in negotiations concerning a new contract but without success; and that again on August 31 and September 29, 1982, the parties met in negotiations over a successor contract without reaching agreement over same.

11. That at all times material herein the Complainant was willing to meet in negotiations over a successor agreement and did in fact meet with the Respondent regarding same during the period of time in question; that, however, the Complainant always took the position that it wanted an interpretation of the C.O.L.A. and renewal clauses contained in the aforesaid agreement as a part of those negotiations; that at all times pertinent hereto, the Respondent was willing to negotiate with the Complainant over a new labor contract; and that at no time material herein did the Respondent condition its willingness to negotiate as noted above on the Complainant withdrawing the aforesaid grievance.

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

## CONCLUSIONS OF LAW

1. That the collective bargaining agreement executed by the Complainant, Local 2477, IAFF, AFL-CIO and the Respondent, Town of Allouez, on October 6, 1981 remains in full force and effect at all times material herein.

2. That Respondent, Town of Allouez, has violated, and continues to violate, the terms of the collective bargaining agreement existing between it and the Complainant, Local 2477, IAFF, AFL-CIO, by refusing to submit the grievance relating to the C.O.L.A. clause of the aforesaid agreement to arbitration and, by refusing to arbitrate said grievance has committed a prohibited practice within the meaning of Section 111.70(3)(a)5 of the Municipal Employment Relations Act (herein MERA).

3. That inasmuch as the aforesaid grievance arose under and during the term of a collective bargaining agreement which provides for the submission of such disputes to final and binding arbitration, and inasmuch as the issues raised by said grievance have not been determined by arbitration under such collective bargaining agreement, the Commission will not assert its jurisdiction to determine whether the Respondent, Town of Allouez, has violated said agreement by failing to make C.O.L.A. payments contained therein; and therefore, said Respondent has not committed a prohibited practice within the meaning of Section 111.70(3)(a)5 of MERA.

4. That by the actions noted in Conclusions of Law Numbers 2 and 3 above, the Respondent, Town of Allouez, did not commit any prohibited practices in violation of Section 111.70(3)(a)1 and 4 of MERA.

5. That by its actions herein, the Complainant, Local 2477, IAFF, AFL-CIO, did not refuse to bargain collectively with the Respondent, Town of Allouez, over a successor collective bargaining agreement; and therefore did not commit any prohibited practices in violation of Section 111.70(3)(b)3 and (c) of MERA.

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 Respondent, Town of Allouez, its officers and agents, shall immediately:

1. Cease and desist from failing to proceed to arbitration over the aforesaid dispute involving C.O.L.A. payments.

2. Take the following affirmative action which the Examiner finds will effectuate the policies of MERA:

   a. Immediately proceed to arbitration, upon request, on the grievance filed by the Complainant, Local 2477, IAFF, AFL-CIO, on February 12, 1982 concerning the C.O.L.A. contained in Article 8 of the aforesaid agreement by notifying the Complainant and the Commission of its willingness to so proceed regarding same.

   b. 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 and cross-complaint be dismissed as to all violations of MERA alleged, but not found herein. 1/

Dated at Madison, Wisconsin this 9th day of February, 1983.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Dennis P. McGilligan
Dennis P. McGilligan, Examiner

---

1/ Any party may file a petition for review with the Commission by following the procedures set forth in Sec. 111.07(5), Stats.

Section 111.07(5), Stats.

(5) The commission may authorize a commissioner or examiner to make findings and orders. Any party in interest who is dissatisfied with the findings or order of a commissioner or examiner may file a written petition with the commission as a body to review the findings or order. If no petition is filed within 20 days from the date that a copy of the findings or order of the commissioner or examiner was mailed to the last known address of the parties in interest, such findings or order shall be considered the findings or order of the commission as a body unless set aside, reversed or modified by such commissioner or examiner within such time. If the findings or order are set aside by the commissioner or examiner the status shall be the same as prior to the findings or order set aside. If the findings or order are reversed or modified by the commissioner or examiner the time for filing petition with the commission shall run from the time that notice of such reversal or modification is mailed to the last known address of the parties in interest. Within 45 days after the filing of such petition with the commission, the commission shall either affirm, reverse, set aside or modify such findings or order, in whole or in part, or direct the taking of additional testimony. Such action shall be based on a review of the evidence submitted. If the commission is satisfied that a party in interest has been prejudiced because of exceptional delay in the receipt of a copy of any findings or order it may extend the time another 20 days for filing a petition with the commission.

## MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

### Introduction:

The instant complaint was filed on June 3, 1982. The Examiner scheduled a hearing for July 13, 1982 which was subsequently postponed to October 28, 1982. The Respondent filed an Answer and cross-complaint on July 2, 1982. A transcript was issued in the matter on December 2, 1982. The parties completed their briefing schedule on December 20, 1982.

### Parties' Positions:

The Complainant argues that the agreement signed by the parties on October 6, 1981 remains in full force and effect. The Complainant relies on contract language and bargaining history in support thereof. Since the aforesaid agreement still exists, the Complainant maintains that the Respondent violated Section 111.70(3)(a)5 of MERA by refusing to proceed to arbitration on the aforementioned grievance.

In its complaint the Complainant also alleges that the Respondent violated Section 111.70(3)(a)5 of MERA by failing to make certain C.O.L.A. payments in January of 1982. The Complainant further alleges that the Respondent violated Section 111.70(3)(a)1 and 4 by all its actions noted above. However, the Complainant makes no arguments in its briefs in support of these complaint allegations.

For relief the Complainant requests that the Examiner direct the Respondent to proceed to arbitration over the aforesaid dispute.

Contrary to the above contention, the Respondent maintains that there is no written agreement between the parties to arbitrate any grievance after December 31, 1981. The Respondent concludes therefore that it did not refuse to arbitrate the matter but that the Commission had no jurisdiction regarding same.

The Respondent also put forward a number of other arguments as to why it was under no obligation to arbitrate herein. In this regard the Respondent first argues that Section 111.77(1)(f) is not applicable to the instant dispute. The Respondent next argues that the purpose of grievance arbitration is to deal with individual problems and since the aforesaid grievance was presented by the Union it was not technically a grievance or properly before the Commission. (Emphasis Supplied) The Respondent concludes that by "dismissing" the grievance, the Commission decided it did not have jurisdiction in the matter thus confirming that the Respondent acted within its legal rights in the present case. Finally, the Respondent argues that the aforesaid agreement does not provide for automatic arbitration of any grievance.

With respect to the second complaint allegation, the Respondent argues that it did not commit a prohibited practice by refusing to grant a C.O.L.A. payment in January of 1982 because there was no labor agreement in effect requiring same.

Based on all of the above, the Respondent feels it did not commit any prohibited practices in violation of Sections 111.70(3)(a)1, 4 and 5 of MERA. Therefore, the Respondent requests that the instant complaint be dismissed. On the other hand, the Respondent argues that the Complainant violated Section 111.70(3)(b)3 and (c) of MERA by refusing to bargain collectively with the Town. The Respondent cites bargaining history in support thereof. The Respondent asks that the Commission impose appropriate sanctions regarding same.

### Existence of a Contract:

The first issue before the Examiner is whether the agreement signed by the parties on October 6, 1981 remains in full force and effect.

A primary rule in construing a written instrument is to determine, not alone from a single word or phrase, but from the instrument as a whole, the true intent of the parties and to interpret the meaning of a questioned word or part with

regard to the connection in which it is used, the subject matter and its relation to all other parts or provisions.

Similarly, sections or portions cannot be isolated from the rest of the agreement and given construction independently of the purpose and agreement of the parties as evidenced by the entire document. The meaning of each paragraph and each sentence must be determined in relation to the contract as a whole. 2/

Applying this standard requiring the agreement to be construed as a whole to the present case, the undersigned first turns his attention to Article 31 of the agreement. This section sets forth the "Duration" of the contract. As noted above the section states that the aforesaid agreement "shall remain in full force and effect to and including December 31, 1981." Said provision also provides that the "contract shall renew itself automatically under the same terms and conditions until renewal thereof, by the authorized signatures of the parties to the agreement." (Emphasis Added.) That the parties intended the aforesaid agreement to continue in full force and effect until a successor agreement was agreed to and signed by the parties is further evidenced by the language of Article 8, Section B which states "In the event that this agreement shall cover a period which shall exceed one calendar year, ..." (Emphasis Added.)

An interpretation of the disputed contract language in this manner by the undersigned is supported by what little evidence there exists of bargaining history. In this regard James Lambert testified that the parties had not agreed to or signed a contract to succeed the aforesaid agreement as required by the language of Article 31. 3/ In addition, Clarence Matuszek indicated that the intent of the disputed contract language was to make it clear that there would be no new contract or agreement unless and until it was signed by all parties. 4/ The importance of this contractual requirement that the old agreement remain in effect until a successor agreement is agreed to and signed by the parties is further emphasized by the fact that the signatures to the aforesaid agreement were "attested" to.

It is undisputed that the parties have been unsuccessful in negotiating a successor agreement. Nor have they put their signatures to a new agreement. Therefore, based on all of the above, and absent any persuasive evidence to the contrary, the Examiner finds it reasonable to conclude that the aforesaid agreement signed by the parties on October 6, 1981 continues in full force and effect.

Refusal to Proceed to Arbitration:

The Complainant argues that the Respondent failed to proceed to arbitration over the aforesaid grievance concerning C.O.L.A. payments in January of 1982 in violation of MERA. For the reasons listed below, the Examiner would agree.

First, Article 23, Step 3 of the grievance procedure provides that grievances "may" be appealed to the Commission for arbitration. In interpreting contract language, words are to be given their ordinary and popularly accepted meaning, except where one or the other party proves that they were used in a different sense or that the parties intended some special colloquial meaning. 5/ Herein, there was no showing by Respondent that anything other than a normal meaning attaches to "may" as that term is used in the above-mentioned contract provision.

"May" means to be able. 6/ In the instant case this means that a party using the grievance procedure has the option to appeal a grievance to arbitration if said party so desires. There is nothing specific in the contract which provides

---

2/ See How Arbitration Works, Elkouri and Elkouri, page 307-308, 1973, for more discussion of this standard.

3/ T. 12, 15 and 16.

4/ T. 38.

5/ Supra, at page 305.

6/ See Webster's New World Dictionary of the American Language, Second College Edition, page 877 (1974).

that the other party can refuse to proceed to arbitration once the moving party requests same. In addition, there is nothing in the contract which prevents the Union from filing a grievance as argued by the Respondent. To the contrary, by inference Article 23 noted above contemplates Union grievances.

The Respondent, however, argues that there is no agreement and therefore no obligation to proceed to arbitration over the aforesaid dispute. As noted above, the Examiner has found that the aforesaid agreement remains in effect. Consequently, the Examiner rejects this argument of the Respondent.

Finally, contrary to the Respondent's assertion, the Complainant made no claims with respect to a violation of Section 111.77(1)(f) of MERA. The Complainant did allege that the Respondent violated Section 111.70(3)(a)5 of MERA. Section 111.70(3)(a)5 makes it a prohibited practice for a Municipal Employer "to violate any collective bargaining agreement agreed upon by the parties . . . including an agreement to arbitrate questions arising as to the meaning or application of the terms of a collective bargaining agreement . . . ." When interpreting said provision with respect to questions of procedural and substantive arbitrability the Commission has followed the federal substantive law set forth in the Trilogy cases 7/ and John Wiley and Sons, Inc. vs. Livingston, 376 U.S. 543, 55 LRRM 2769 (1964). Thus in actions seeking enforcement of arbitration provisions contained in collective bargaining agreements the Commission will give such clauses their fullest meaning and restrict itself to a determination of whether the party seeking arbitration makes a claim which, on its face, is covered by the bargaining agreement. 8/

The aforesaid grievance alleges that the Respondent failed to make certain C.O.L.A. payments in January of 1982 in violation of Article 8 of the parties' agreement. As such, it makes a claim which, on its face, is covered by the bargaining agreement. It is undisputed that the Complainant filed the grievance; processed same through the grievance procedure without resolution; and requested arbitration of the dispute from the Commission. Contrary to the Respondent's contention that the Commission made a determination that it was without jurisdiction in the matter, the Commission merely failed to proceed with said request based on the Respondent's failure to concur in same.

In view of all of the above, the Examiner finds that by failing to proceed to arbitration on the aforesaid grievance noted in Finding of Fact Number 5, the Respondent violated Section 111.70(3)(a)5 of MERA.

Contract Violation:

Although listed as a complaint allegation, the Complainant does not argue in its briefs that the Respondent committed a prohibited practice by failing to make C.O.L.A. payments pursuant to Article 8 of the agreement. To the contrary, as stated in its first reply brief dated November 16, 1982, the Complainant only asks that the Examiner find that the Respondent "refused and continues to refuse to proceed to arbitration" and enter a remedial Order directing "the Town to proceed to arbitration" concerning the aforesaid grievance.

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. 9/

---

7/ Steelworkers vs. American Mfg. Co., 353 U.S. 564 (1960); Steelworkers vs. Warrior and Gulf Navigation Co., 353 U.S. 574 (1970); Steelworkers vs. Enterprise Wheel & Car Corp., 363 U.S. 593 (1960).

8/ Oosting Jt. School Dist., (1196-A) 10-72; Monona Grove Jt. School Dist. (11614-A) 7/73; Weyerhaeuser Jt. School Dist. (12984) 8/74.

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

In the instant case, the Respondent refused to proceed to arbitration on the aforesaid dispute based on the mistaken belief that the Commission lacked jurisdiction over same due to the expiration of the parties' labor agreement. However, there is no indication in the record that the Respondent would refuse to arbitrate the dispute if so ordered by the Commission.

Based on all of the foregoing, the Examiner will not assert the jurisdiction of the Commission to determine whether the Respondent, by failing to make certain C.O.L.A. payments in January of 1982, violated Article 8 of the aforesaid agreement. Therefore, the Examiner finds that the Respondent did not violate Section 111.70(3)(a)5 of MERA regarding same.

Section 111.70(3)(a)1 and 4 Violations:

The Complainant further alleged in its complaint that the Respondent violated Section 111.70(3)(a)1 and 4 of MERA by its actions noted above. However, the Examiner can find no evidence to support said allegations in the record nor did the Complainant argue same in its briefs. For these reasons the Examiner rejects the above claims of the Complainant.

Refusal to Bargain:

In its cross-complaint the Respondent alleges that the Complainant failed to bargain collectively with it over a successor agreement in violation of Section 111.70(3)(b)3 and (c) of MERA. However, the record does not support a finding regarding same. To the contrary, the record indicates that the parties met a number of times during the period of time in question but without success. In particular, the record indicates that even after the Respondent broke off negotiations on February 9, 1982 the Complainant gave the Respondent a final offer for its consideration. The record also indicates that following the filing of its grievance the Complainant engaged in discussions with the Respondent over the status of negotiations. In addition, the record shows that the Complainant met unsuccessfully with the Respondent on three separate occasions after the filing of a complaint in the matter to negotiate a new contract. Finally, the record reveals that both parties took various positions during the course of the above negotiations which presented obstacles towards reaching agreement over a successor contract but that neither party refused to meet and bargain over same. Therefore, based on the above, the Examiner rejects this claim of the Respondent.

For the foregoing reasons the Examiner has found that the Respondent violated Section 111.70(3)(a)5 of MERA by its action in refusing to proceed to arbitration over the aforesaid dispute involving C.O.L.A. payments 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 violation and to take appropriate remedial action. As noted previously, the Examiner has also dismissed allegations that the Complainant violated MERA by the actions complained of herein.

Dated at Madison, Wisconsin, this 9th day of February, 1983.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Dennis P. McGilligan
Dennis P. McGilligan, Examiner