STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

GREEN BAY MUNICIPAL EMPLOYEES (PUBLIC HEALTH REGISTERED NURSES) LOCAL 1672-A, AFSCME, AFL-CIO, Complainant, vs. CITY OF GREEN BAY, Respondent.	Case 131 No. 33255 MP-1596 Decision No. 21785-A

Appearances:

Lawton & Cates, Attorneys at Law, by Mr. Bruce Ehlke, 110 East Main Street, Madison, Wisconsin 53703, appearing on behalf of the Green Bay Municipal Employees (Public Health Registered Nurses) Local 1672-A, AFSCME, AFL-CIO.

Mr. Mark A. Warpinski, Assistant City Attorney, City of Green Bay, 100 North Jefferson Street, Green Bay, Wisconsin 54301, appearing on behalf of the City of Green Bay.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Green Bay Municipal Employees (Public Health Registered Nurses) Local 1672-A, AFSCME, AFL-CIO, having filed a complaint with the Wisconsin Employment Relations Commission on May 3, 1984, wherein it alleged that the City of Green Bay had committed prohibited practices within the meaning of Sec. 111.70, Stats.; and the Wisconsin Employment Relations Commission having appointed Andrew Roberts, 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 Sec. 111.07(5), Stats.; and hearing on said complaint having been held at Green Bay, Wisconsin, on July 13, 1984, before the Examiner; and both parties having filed initial briefs by August 27, 1984; and the Green Bay Municipal Employees (Public Health Registered Nurses) Local 1672-A, AFSCME, AFL-CIO, having filed a reply brief by September 7, 1984, and the City of Green Bay having chosen not to file a reply brief; and the Examiner having considered all 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 the Green Bay Municipal Employees (Public Health Registered Nurses) Local 1672-A, AFSCME, AFL-CIO, hereinafter referred to as the Union, is a labor organization having its offices located at 2785 Whippoorwill Drive, Green Bay, Wisconsin; and that James Miller is the representative of said Union.

2. That the City of Green Bay, hereinafter referred to as the City, is a municipal employer which operates a health department in the City of Green Bay.

3. That the Union and City were parties to a 1981 collective bargaining agreement; that on or about June 28, 1981, the parties began negotiations for a successor agreement; that the Union subsequently petitioned for mediation-arbitration pursuant to Sec. 111.70, Stats.; that Joseph Kerkman was subsequently appointed by the Wisconsin Employment Relations Commission to function as a Mediator-Arbitrator; that on December 22, 1983, the parties convened with Mediator-Arbitrator Kerkman; that a tentative agreement was reached by the parties for a successor collective bargaining agreement on that day and was transcribed at hearing before Mediator-Arbitrator Kerkman; and that said transcript states in relevant part as follows:

ARBITRATOR:

. . .

I will enumerate the settlement of the dispute and seek the concurrence of the parties at the end of that enumeration.

. . .

Second, the parties have agreed that there will be a three-year collective bargaining agreement for the years '82, '83, and '84 and that the following wage rates will be paid:

Effective January 1, 1982, the rate will be $1,538 for Community Health Nurse One and $1,713 for Community Health Nurse Two.

Effective June 27, 1982, the rate will be $1,569 for Community Health Nurse One and $1,747 for Community Health Nurse Two.

Effective January 1, 1983, the rate will be $1,674 for Community Health Nurse One and $1,852 for Community Health Nurse Two.

Effective February 1, 1983, the rate will be $1,857 for Community Health Nurse One and $1,970 for Community Health Nurse Two.

All of the foregoing rates are monthly rates of pay.

Effective January 1, 1984, the Community Health Nurses shall receive the same base rate as sanitarians, but not less than a $90 per month increase on the base rate.

. . .

ARBITRATOR: All right. Additionally, in 1984, the agreement will provide for one additional personal leave day, and the parties further agree that they will meet to discuss and agree on mileage reimbursement as an extra contractual matter.

I believe that is the totality of the understanding as reached. If not, I'd like to hear from the parties.

. . .

ARBITRATOR: Mr. Vanderkelen will enumerate further understandings between the parties as it pertains to the instant collective bargaining agreement.

MR. VANDERKELEN: For the year 1982, the amendment in Article 15, Funeral Leave; Article 26, Wisconsin Retirement Fund; Grievance Procedure, Article 24; and Article 21, additional employee-paid life insurance shall be added to the agreement.

In addition for the year 1983, Article 13 shall be amended to allow 28 vacation days in the 25th year of employment.

Article 15 shall be amended effective January 1, 1984 to increase the employer-paid life insurance to $30,000; to increase the amount of optional insurance for employee to $20,000; and add the language: Additional life insurance for spouse and dependent children shall be made available as an option in the amounts of $5,000 for spouse and $2,500 for each dependent and add the word "optional" after the word "additional" in line 350 of the City Hall Agreement with the intent

that all language changes regarding Article 15 shall conform to the settlement of March 8, 1983 to the City Hall.

In addition, the parties agree that the pension contribution for 1982 shall be increased by $10 a month, $6 a month in 1983, and $6 a month in 1984.

MR. MILLER: The clothing allowance increase would be 10 percent each year rounded off to the nearest $5, I believe it was.

ARBITRATOR: Does that constitute the entire understanding between the parties for the '82, '83, '84 collective bargaining agreement?

. . .

MR. MILLER: This would seem to me if we use the '83 City Hall Agreement to pattern the agreement for the nurses, we ought to have everything pretty well covered.

ARBITRATOR: The Union concurs, is that right?

MR. MILLER: Yes.

MR. WARPINSKI: And subject to the modification made by Mr. Vanderkelen, the City agrees that this represents the stipulation agreement of the parties. I assume that Mr. Ehlke could make a statement on their behalf.

ARBITRATOR: So stated, Mr. Ehlke?

MR. EHLKE: Yes.

ARBITRATOR: Now, does that fully represent the understandings of settlement from both parties?

MR. WARPINSKI: Mr. Kerkman, I must concur with all of this, but add that I believe everyone understands that the settlement of this agreement is subject to approval by the Personnel Committee and the Common Council.

ARBITRATOR: And radification (sic).

MR. WARPINSKI: And that our labor negotiator will recommend this to the Personnel Committee.

ARBITRATOR: But it does properly represent your understanding of the settlement?

MR. WARPINSKI: Yes, it does.

MR. VANDERKELEN: I assume, Jim, you're going to recommend it to the employees?

MR. MILLER: Yes.

MR. VANDERKELEN: And I will recommend it to the Personnel Committee and appear at the Council's meeting and make any recommendation that may be necessary.

ARBITRATOR: Mr. Ehlke, does this represent the Union's understanding of the settlement?

MR. EHLKE: Mr. Miller's indicated he's going to recommend it to the employees, and on that basis, it would certainly seem to be our agreement.

. . .

> ARBITRATOR: It's my understanding that the parties-- The Union will meet prior to the time the City meets to adopt subject to Union radification (sic) of this agreement. The City will meet to radify (sic) this agreement in its council proceedings on January 17th, 1984.
>
> . . .

4. That shortly thereafter Miller recommended the above-stated tentative agreement to the employes in the Union; that Community Health Nurse Bonnie Sorenson is on the negotiating team for the Union; that on December 22, 1984, Sorenson took an informal poll among employes in the instant bargaining unit with respect to ratification of the tentative 1982-1984 collective bargaining agreement; that said tentative bargaining agreement was informally ratified by the Union at that time; that the employes again voted on and ratified said tentative collective bargaining agreement on January 3, 1984, and Sorenson then informed Miller of same; that Miller then wrote the following January 6, 1984, letter to the City's representative, Donald VanderKelen:

> Please be advised that the Community Health Nurses have agreed to the settlement as worked out with Arbitrator Joseph Kerkman for the years 1982, 83, and 84.
>
> I have received the rough draft of the proposed settlement and it would seem to me the testing section of Article 8 would not apply to professional nurses.
>
> Please advise.

that after informing Miller of the Union's ratification of the tentative collective bargaining agreement, Sorenson received a copy of a December 29, 1984, Memorandum from VanderKelen to the City's Personnel Committee which states as follows:

> The Labor Negotiator recommends a three year working agreement effective January 1, 1982 through December 31, 1984 between the City of Green Bay and the Community Health Nurses represented by AFSCME Local 1672-A, by amending the 1981 City Hall labor agreement in the following manner. These changes apply to those Community Health Nurses employed by the Green Bay Health Department on December 22, 1983.

that attached to said Memorandum was a draft of the proposed amendments as above-noted, which states in pertinent part as follows:

> . . .
>
> 4. Appendix A, Salary Schedule:
>
> > The Community Health Nurses will receive the same base rate as the Sanitarians but not less than a $90 per month increase. The base rate does not include any premium for regulatory and/or enforcement duties.
>
> . . .

that Sorenson then contacted Miller again to notify him of the Union's concern over the statement in VanderKelen's Memorandum with respect to application of the agreement "to those Community Health Nurses employed by the Green Bay Health Department on December 22, 1983;" that shortly thereafter Miller then contacted VanderKelen; that VanderKelen suggested Miller talk with the employes, which Miller did; that as a result Miller wrote a January 23, 1984, letter to VanderKelen which states in pertinent part as follows:

> . . .
>
> 3. I have gone over the transcript of the Community Health Nurses hearing and can find no agreement to exclude nurses who have left employment from getting their back pay. I have

spoken to the Nurses and they believe those nurses that left are also entitled for their back pay.

Please advise me when the settlement will be presented to the Council.

and that VanderKelen responded with a January 25, 1984, letter which states in pertinent part as follows:

. . .

As to item #3, if you go over the transcript again you will find no agreement to include nurses who have left employment to get back pay. You conclude that paragraph by saying you have spoken to the nurses and have indicated their belief which is hardly germane to this issue. The agreement reached on December 22, 1983 was not calculated with any back pay to former employees.

In reference to your final paragraph I cannot advise you, as you suggest, as no settlement exists.

. . .

5. That on or about March 22, 1984, Miller advised VanderKelen that he had not received a copy of the tentative collective bargaining agreement; that shortly thereafter Miller was furnished a proposed draft of the parties' 1982-1984 collective bargaining agreement; that said proposed draft states in relevant part as follows:

. . .

The changes incorporated in this agreement from the 1981 labor agreement apply to those Community Health Nurses employed by the Green Bay Health Department on December 22, 1983.

. . .

APPENDIX A

SALARY SCHEDULE-COMMUNITY HEALTH NURSES

All wage adjustment (sic) apply to those Community Health Nurses employed by the Green Bay Health Department on December 22, 1983.

. . .

*Community Health Nurse II employees shall receive the same base rate as the Sanitarians but not less than a $90.00 per month increase. The base rate does not include any premium for regulatory and/or enforcement duties.

and that no tentative 1982-1984 bargaining agreement has yet been recommended to the City's Council or Personnel Committee.

6. That the City refused, and continues to refuse, to act on the ratification of the collective bargaining agreement previously tentatively agreed upon; and that the City continued, and continues, to condition its ratification of and implementation of said agreement on the making of further concessions by the Union.

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

CONCLUSIONS OF LAW

1. That at the conclusion of the December 22, 1983, mediation-arbitration hearing, the parties reached a tentative collective bargaining agreement covering the wages, hours and conditions of employment for employes in the aforesaid

bargaining unit; and that said tentative agreement included the complete resolution of all issues which had been raised by the parties in collective bargaining for a contract for 1982 through 1984.

2. That the City of Green Bay, by refusing to act on the ratification of and implementation of the tentative collective bargaining agreement reached between the Green Bay Municipal Employees (Public Health Registered Nurses) Local 1672-A, AFSCME, AFL-CIO and the City of Green Bay, and by conditioning its ratification of said agreement on the agreement to additional issues, has acted, and continues to act, in bad faith towards and has refused, and continues to refuse, to bargain collectively with the Union within the meaning of Sec. 111.70(1)(d), Stats., and has committed, and is committing, prohibited practices in violation of Secs. 111.70(3)(a)1 and 4, Stats.

3. That by failing to act on the ratification of or implementation of the tentative collective bargaining agreement reached on December 22, 1983, the City of Green Bay did not violate Sec. 111.70(3)(a)5.

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

ORDER 1/

IT IS ORDERED that the City of Green Bay, its officers and agents shall immediately:

1. Cease and desist from:

a) Refusing to bargain collectively, within the meaning of Secs. 111.70(1)(d) and 111.70(3)(a)4, Stats., by the untimely introduction of issues in bargaining between said parties following the adoption of a tentative agreement by the negotiators for said parties.

b) Refusing to bargain collectively, within the meaning of Secs. 111.70(1)(d) and 111.70(3)(a)4, Stats., with the Green Bay Municipal Employees (Public Health Registered Nurses)

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.

Local 1672-A, AFSCME, AFL-CIO, by refusing to act on the ratification of the tentative agreement reached between said Union and representatives of the City of Green Bay or conditioning such action on the making of concessions by the Union on issues covered by (a), above, and by refusing to take all necessary steps to have said tentative agreement approved and adopted.

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

a) That the City's Common Council shall schedule and hold a meeting on the ratification of the tentative collective bargaining agreement reached on December 22, 1983.

b) At such meeting, the City shall act on the ratification of the aforesaid tentative agreement in conformance with the obligations imposed by the Municipal Employment Relations Act and this Order.

c) Notify the Wisconsin Employment Relations Commission within twenty (20) days of the date of this Order as to what action has been taken to comply herewith.

3. FURTHER, IT IS ORDERED that the additional allegation of a violation of Sec. 111.70(3)(a)5 is herewith dismissed.

Dated at Madison, Wisconsin this 24th day of October, 1984.

WISCONSIN EMPLOYMENT RELATIONS COMMMISSION

By Andrew Roberts
Andrew Roberts, Examiner

CITY OF GREEN BAY

MEMORANDUM ACCOMPANYING
FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

The Union brought a complaint claiming that the City's representatives have refused to recommend the tentative 1982-1984 collective bargaining agreement to the City's Common Council. Instead, according to the complaint, the City's representatives are now claiming there are additional terms to the tentative agreement, all of which such action by the City is in violation of Secs. 111.70(3)(a)1, 4, and 5.

PARTIES' POSITIONS

The Union maintains the City is now attempting to interject two additional issues which are clearly not part of the tentative collective bargaining agreement reached on December 22, 1983. The Union argues the City must hold the appropriate meetings and vote on ratification of, and must execute, the parties' 1982-1984 collective bargaining agreement that was reached on that date.

The City argues that there is a legitimate misunderstanding between the parties of what the agreement included. With respect to employes not employed on December 22, 1983, the City notes no mention of same was made in the December 22, 1983, settlement, and the City therefore may include language in the collective bargaining agreement clarifying which employes are entitled to the settlement. However, because there was no meeting of the minds, then the Union's allegation cannot be upheld and the complaint must therefore be dismissed.

DISCUSSION

When a tentative collective bargaining agreement has been reached, the parties' representatives are then obligated to recommend it to their respective parties. 2/ The parties' representatives met on December 22, 1983, and reached agreement on a successor labor contract, effective January 1, 1982, through December 31, 1984. The agreement was clearly set out in a transcribed record of the mediation-arbitration hearing on that day. At that hearing both representatives indicated the recited agreement was conclusive, including nothing else. Shortly after the tentative agreement was reached, the City claimed the collective bargaining agreement should also include provisions indicating the wage adjustments only cover employes who were employed on December 22, 1983; however, that is an item distinct from and additional to what was agreed to on or before December 22, 1984.

The agreement reached on December 22, 1983, also is clear with respect to the base rate of Community Health Nurses. The parties' transcription of the hearing on that date states, "Effective January 1, 1984, the Community Health Nurses shall receive the same base rate as Sanitarians, but not less than a $90 per month increase on the base rate." 3/ Accordingly, the proposed draft by the City incorrectly characterized that part of the agreement as applying only to "Community Health Nurse II employes," which City Labor Negotiator VanderKelen also noted as being in error on that draft. 4/

2/ Adams County, Dec. No. 11307-A (Schurke, 4/73); Jt. School District No. 5, City of Whitehall, Dec. No. 10812-A (Torosian, 9/73); Hartford Union High School District, Dec. No. 11002-A (Fleischli, 2/74); Florence County, Dec. No. 13896-A (McGilligan, 4/76); and cf., City of Marinette, Dec. Nos. 20591-A, 20592-A (WERC, 10/83).

3/ Joint Exhibit No. 1 at p.4.

4/ Tr. p.151.

In Vocational, Technical and Adult Education District #13 5/ the employer attempted to introduce an additional issue regarding subcontracting, after tentative agreement was reached. The Examiner there stated:

. . .

> There is no question that the Respondent would have been entitled to raise the issue of subcontracting with the Union on a timely basis, up to the time that tentative agreement was reached between the parties on all issues existing between them. The refusal to ratify the tentative agreement was, and is, tied directly to the new issue tardily introduced into the process. The duty to bargain includes specifically and inherently the intention of reaching agreement and resolving issues. To permit the Respondent to inject the subcontracting issue into the process, after tentative agreement had been reached, would be counter-productive and contrary to the statutory purpose for narrowing issues and reaching agreements.

. . .

Such reasoning is applicable here as well, and the agreement reached as stated on December 22, 1983, must now be recommended to the City's Council.

In that regard the City responds that "there is an existing practice which requires no negotiated settlement can be approved by the Common Council . . . until such time as the Union presents to the Council a signed agreement which is also signed by the City of Green Bay." 6/ However, at the December 22, 1983, hearing before Mediator-Arbitrator Kerkman both Miller and VanderKelen indicated that each would recommend ratification to his respective party. VanderKelen's recommendation was not contingent upon the Union's signature on the 1982-1984 collective bargaining agreement. Therefore, the City failed in its duty to bargain when VanderKelen did not recommend the tentative agreement reached on December 22, 1983, as above-discussed, to the City's Council, and thus violated Sec. 111.70(3)(a)1 and 4, Stats.

The Union also claims such actions by the City violated Sec. 111.70(3)(a)5, Stats. However, the record does not reflect any violation of a collective bargaining agreement and that portion of the complaint has been dismissed.

Dated at Madison, Wisconsin this 24th day of October, 1984.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Andrew Roberts
Andrew Roberts, Examiner

5/ Dec. No. 11352 (Schurke, 9/73).

6/ Union's brief at p.2.