STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

SHEBOYGAN COUNTY INSTITUTION EMPLOYEES, LOCAL 2427, AFSCME, AFL-CIO, Complainant, vs. COUNTY OF SHEBOYGAN, Respondent.	Case 89 No. 36316 MP-1809 Decision No. 23277-B

Appearances:
Lawton & Cates, Attorneys at Law, by Mr. Richard V. Graylow, 214 West Mifflin Street, Madison, Wisconsin 53703-2594, appearing on behalf of the Complainant.
Mr. Alexander Hopp, Corporation Counsel, Sheboygan County, 601 North Fifth Street, P.O. Box 128, Sheboygan, Wisconsin 53081

ORDER MODIFYING EXAMINER'S FINDINGS OF FACT AND CONCLUSIONS OF LAW AND ORDER

Examiner Edmond J. Bielarczyk, Jr., having, on October 16, 1986, issued Findings of Fact, Conclusions of Law and Order with Accompanying Memorandum in the above entitled proceeding wherein he concluded that the Respondent had committed a prohibited practice within the meaning of Sec. 111.70(3)(a)5, Stats.; and the Respondent having, on October 28, 1986, timely filed a petition for Commission review of said decision; and the Respondent having filed a letter brief on November 21, 1986 and the Complainant having informed the Commission on December 8, 1986 that it would not be filing a brief on appeal; and the Commission, having reviewed the record in the matter including the decision of the Examiner, the petition for review, Respondent's letter brief, and the prior briefs filed in the matter with the Examiner, hereby modifies the Examiner's Findings of Fact and Conclusions of Law and Order.

NOW, THEREFORE, it is

ORDERED 1/

A. That the Examiner's Findings of Fact are modified to read as follows:

FINDINGS OF FACT

1. That Sheboygan County Institution Employees, Local 2427, AFSCME, AFL-CIO, hereinafter referred to as the Complainant, is a labor organization which has its offices located at 2323 North 29th Street, Sheboygan, Wisconsin 53081.

2. That Sheboygan County, hereinafter referred to as the Respondent, is a municipal employer which has its offices located at 601 North Fifth Street, P.O. Box 128, Sheboygan, Wisconsin 53081.

3. That at all times material hereto, Complainant and Respondent were parties to a collective bargaining agreement, effective January 1, 1983 through December 31, 1984; that said agreement provided for the final and binding

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1/ Pursuant to Sec. 227.48(2), Stats., the Commission hereby notifies the parties that a petition for rehearing may be filed with the Commission by following the procedures set forth in Sec. 227.49 and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.53, Stats.

(Footnote 1 continued on Page 2)

(Footnote 1 continued)

227.49 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025(3)(e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

227.53 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefor personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.49, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.48. If a rehearing is requested under s. 227.49, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 77.59(6)(b), 182.70(6) and 182.71(5)(g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.57 upon which petitioner contends that the decision should be reversed or modified.

. . .

(c) Copies of the petition shall be served, personally or by certified mail, or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon all parties who appeared before the agency in the proceeding in which the order sought to be reviewed was made.

Note: For purposes of the above-noted statutory time-limits, the date of Commission service of this decision is the date it is placed in the mail (in this case the date appearing immediately above the signatures); the date of filing of a rehearing petition is the date of actual receipt by the Commission; and the service date of a judicial review petition is the date of actual receipt by the Court and placement in the mail to the Commission.

arbitration of grievances; and that said agreement contained the following pertinent provisions:

III

MANAGEMENT RIGHTS RESERVED

Unless otherwise herein provided, the management of the work and the direction of the working forces, including the right to hire, promote, transfer, demote or suspend, or otherwise discharge for proper cause, and the right to relieve employees from duty because of lack of work or other legitimate reason is vested exclusively in the Employer. If any action taken by the Employer is proven not to be justified, the employee shall receive all wages and benefits due him/her for such period of time involved in the matter.

Sheboygan County shall have the sole right to contract for any work it chooses and to direct its employees to perform such work wherever located subject only to the restrictions imposed by this Agreement and the Wisconsin Statutes. But in the event the Employer desires to subcontract any work which will result in the layoff of any county employees, said matter shall first be reviewed with the Union.

Unless otherwise herein provided, the Employer shall have the explicit right to determine the specific hours of employment and the length of work week and to make such changes in the details of employment of the various employees as it from time to time deems necessary for the effective operation of its institutions. The Union agrees at all times as far as it has within its powers to preserve and maintain the best care and all humanitarian consideration of the patients at said institutions and otherwise further the public interests of Sheboygan County.

In keeping with the above, the Employer may adopt reasonable rules and amend the same from time to time, and the Employer and the Union will cooperate in the enforcement thereof.

IV

RECOGNITION AND BARGAINING UNIT

The Employer recognizes the Union as the exclusive bargaining agent for all Sheboyan County Institutions (Sheboygan County Comprehensive Health Center, Rocky Knoll Health Care Facility and Sunny Ridge Home) employees but excluding Superintendents, Assistant Superintendent and Medical Director, Assistant Administrators, Administrative Assistant, Director of Nursing Services, Registered Nurses, Inservice Co-ordinator, Supervisor - Building Services, Supervisor - Food Services, Supervisor - Cleaning Services, Supervisor - O.T. Crafts, Director of Social Services, Social Worker Graduate, Bookkeepers, Social Services Secretary, Medical Technologists, Registered Occupational Therapist and Supervisors as defined by act, as certified by the Wisconsin Employment Relations Board (dated September 23, 1966.)

. . .

XII

LONGEVITY PAY

In addition to the above base pay all employees who have been employed in continuous service for the following period of years shall be paid the additional percentage of base pay as hereinafter set forth, all on a monthly basis:

a. After five (5) years - 2 1/2% of the monthly base pay
b. After ten (10) years - 5% of the monthly base pay
c. After fifteen (15) years - 7 1/2% of the monthly base pay
d. After twenty (20) years - 10% of the monthly base pay
e. After twenty-five (25) years - 12 1/2% of the monthly base pay

The continuous years of service shall be calculated from the last date of hire.

. . .

XXVI

SENIORITY

. . .

2. Promotions. Whenever any vacancy occurs due to a retirement, quit, new position or for whatever reason, the job vacancy shall be posted. The vacancy shall be posted on one (1) bulletin board designated for that purpose at each institution for a minimum of five (5) work days. The job requirements and the qualifications shall be a part of the posting and sufficient space provided for interested parties to sign said posting. Opportunity for promotion or transfer shall be first for employees working at the institution where the vacancy exists. If no qualified employee with seniority applies at the institution where the vacancy exists, applications of employees at the other two (2) institutions shall be accepted with the most senior employee qualifying receiving the job. If no regular employee makes application for this job by signing the posting, it shall be given to the temporary employee applying (signing) who has the most seniority, subject to the right of the employer to determine whether the employee applying for said position has the proper qualifications to perform the job.

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APPENDIX "A"

SHEBOYGAN COUNTY INSTITUTIONS CLASSIFICATIONS/WAGES

JOB TITLES	WAGE RATES		
	. . .		
	1-1-83	7-01-83	1-01-84
	. . .		
Attendant	6.12	6.22	6.52
Nurses Aide	5.95	6.05	6.35

. . .

When an employee is assigned to work on a job different from his/her usual classification, the employee shall receive the higher of pay of the two (2) jobs

that on October 25, 1983, the Respondent adopted Ordinance No. 19

	Present		Proposed	
	Full Time	Part Time	Full Time	Part Time
	. . .			
Attendant*	45	47	0	0
Aides	0	0	45	47
	. . .			

* These are temporary positions which will be filled by Nurses Aides, Food Service Worker I, and Housekeeper I through attrition and termination.

NOW, THEREFORE, THE COUNTY BOARD OF SUPERVISORS DO ORDAIN AS FOLLOWS:

Section 1. Amending T.O. The provisions of Section 40.02(c) of the Sheboygan County Code of General Ordinances be amended to read as follows:

"(c) COMPREHENSIVE HEALTH CENTER
(County Hospital)

. . .

Nursing Services	Full Time	Part Time
Aides	45	47
	. . .	

Section 2. Effective Date. The herein ordinance shall take effect on the first day of the month after its adoption.

5. That a grievance was submitted to final and binding arbitration pursuant to the parties' collective bargaining agreement; that Arbitrator Stanley H. Michelstetter II issued an award under the date of September 26, 1985 which described the grievance as follows:

> On March 23, 1984, the Union filed the grievance which is the subject of this action. The grievance states: "Positions for nurse's (sic) aide are being posted & (sic) and filled at the Comprehensive Health Center, and all articles that may apply. . . . adjustment required; do not post for or hire nurse's (sic) aide at the Comprehensive Health Center, and those hired at nurse's (sic) aide should be made whole for wages and benefit." This grievance was properly processed through all the steps of the grievance procedure;

that Arbitrator Michelstetter in rendering his award noted:

> The Employer operates the County Institutions; Rocky Knoll, Sunny Ridge and Comprehensive Health Center. For as long as anyone can remember, at least sixteen years, the fundamental nature of these institutions has been the same. Rocky Knoll provides primarily skilled nursing care, Sunny Ridge provides skilled nursing care for bedridden patients, and the Comprehensive Health Center deals primarily with mentally ill patients.
>
> In broad terms the duties of the classifications of attendant and nurse's (sic) aide have always been virtually the same. Attendants have always been paid slightly more than nurse's (sic) aides and only nurse's (sic) aides have been employed in large numbers at both Rocky Knoll and Sunny Ridge, while attendants, and only attendants, have been employed in large numbers at the Comprehensive Health Center.

. . .

Nurse's (sic) aides at the other two institutions are primarily concerned with physical care aspects of their duties: Changing bedding, providing oxygen, tube feeding, lifting and moving patients, assisting in toileting, feeding and bathing. In the course of these functions they interact with their patients and help with their emotional needs surrounding infirmity and death. On the rare occassions (sic) that patients in these two institutions "act out" they apply the procedures listed below. Attendant's (sic) and now, nurse's (sic) aides at the Comprehensive Health Center serve 174 patients. None of these are bed-ridden. Of these only 33 need direct assistance with functions such as toileting and dressing. A primary function of these employees is to interact with patients as therapy or to discourage aggressive behavior. When patients "act out", attendants: 1) Notify attending physchiatrist (sic) and ask for orders. 2) Patients are place (sic) under restraints. 3) In (sic) necessary, they notify the sheriff for emergency detention under Chap. 51, Wis. Stats. 4) An ambulance is called to transfer the patient to Sheboygan Memorial Hospital. As a result of these differences there is far more stress on employees at Comprehensive Health Center than else where (sic).

. . .

By ordinance #19 (1983-1984) adopted by the County Board of Supervisor (sic) of Sheboygan County on October 25, 1983, the Board amended the table of organization of the Comprehensive Health Center by deleteing (sic) the 45 full-time and 47 part-time attendant positions and substituting 45 full-time and 47 part-time nurse's (sic) aides positions and recommending the conversion by attrition from the attendant positions.

. . .

The ordinance states it was to take effect on the first day of the month following adoption, which would have been November 1, 1983. Thereafter, the Employer posted vacancies as they occurred by attrition among the attendants at the Comprehensive Health Center. It started its first Nurse's (sic) aide there on January 3, 1985, (sic) and, thereafter, it replaced attendants with nurse's (sic) aides by attrition. Approximately, 18 were replaced in this way as of the date of hearing. /3/ (Footnote omitted) It is undisputed that nurse's (sic) aides and attendants in the Comprehensive Health Center had been interchangable (sic) with respect to their duties.

. . .

The facts of this case make it clear that the Employer is intentionally substituting nurse's (sic) aides for attendants and is intentionally assigning the nurse's (sic) aides at Comprehensive to the duties of the higher rated attendant classification. For, at least, the past sixteen years the Employer and Union have recognized that, although attendants and nurse's (sic) aides share the same laundry list of duties, attendants work under more severe and dangerous conditions by virtue of being assigned to Comprehensive. Further, attendants must exercise a great deal more judgment and tact in dealing with the more volatile mentally ill who predominate at Comprehensive. Ultimately, attendants must deal with "acting out" incidents with a far greater degree of irregularity. These circumstances have not materially changed and are not likely to. Further, attendants and nurse's (sic) aide work interchangeably under these conditions. Finally, the ordinance adopted and implemented by the Employer indicates that the nurse's (sic) aides now assigned to Comprehensive are regularly assigned there.

. . .

Appendix A establishes the contractual wage rate for employees. It does so by providing different wage rates for different classifications of employees. These classifications correspond to the Employer's job classifications. The purpose of this provision is to provide employees performing certain duties with agreed upon pay. It provides that employees temporarily performing work of a higher rated classification will receive the higher pay. Thus, it tends to assume that an employee regularly (permantenly, (sic) as that term is used in labor relations) will be assigned to the higher classification. Similarly, the administration of other provisions is dependent upon employees being properly classified under Appendix A. For example, employees regularly assigned to higher rated work, even if paid under the temporary provision, will not receive the correct longevity pay under Article XII, because this is paid at 2.5% of base pay. Thus, when the Employer regularly assigns an employee to the duties of a higher rated classification, it violates Appendix A. 5/ (Footnote omitted)

. . .

Remedy

The Employer has violated Appendix A, by regularly assigning employees in the classification of nurse's (sic) aide to perform the higher paid duties of attendant. The evidence indicates that all of the nurse's (sic) aides assigned to the Comprehensive Health Center since January 1, 1984, regularly performed the duties of the higher classification of attendant as long as they were assigned to, and working at the Comprehensive Health Center. Pursuant to Article III the Employer is, therefore, ordered to make all such affected employees whole for all lost wages and benefits. The Employer necessarily violated XXVI, Sec. 2 of the agreement when it posted positions of nurses aides at the Comprehensive Health Center when, in fact, the positions were regularly assigned to perform the duties of attendant. The Employer is also ordered to cease and desist from violating the agreement by assigning a lower classification to positions when, in fact, it intends to regularly assign them to higher rated duties.;

and that Arbitrator made the following award:

AWARD

1. That the Employer violated Appendix A and Article XXVI of the current collective bargaining agreement when it posted positions of nurse's (sic) aide at the Comprehensive Health Center on and after January 1, 1984, when, in fact, these positions were regularly assigned the duties of the position of attendant.

2. That the Employer make each person employed on or after January 1, 1984, in the position of nurse's (sic) aide at the Comprehensive Health Center whole for all lost wages and benefits.

3. That the Undersigned reserves jurisdiction over the determination of which employees are in the affected class and the calculation of back pay, if either party requests in writing, copy of opposing party, that such a determination shall be made within 60 days of the date of this award. If no such request is made, this award shall become final.

4. The Employer shall cease and desist from violating Appendix A and, or Article XXVI, by regularly assigning a lower rated position to the duties of a higher rated position, or otherwise violating said provisions.

5. The parties may, by mutual agreement, amend this award to provide that persons already appointed as nurse's (sic) aides at Comprehensive may be direcly (sic) appointed to the positions of attendant.

Dated at Milwaukee, Wisconsin, this 26th day of September, 1985.

6. That at all times material herein, the Respondent has failed and continues to refuse to comply with the terms of the September 26, 1985 arbitration award.

7. That Complainant did not introduce any evidence in support of its allegation that Respondent violated Secs. 111.70(3)(a)1-5, Stats., by failing to bargain over the decision to adopt Ordinance 19 or over the impact of said adoption.

B. That the Examiner's Conclusions of Law are modified to read as follows:

1. That Respondent Sheboygan County did not commit any prohibited practices within the meaning of Secs. 111.70(3)(a)1, 2, 3, 4 or 5, Stats., relative to the adoption of Ordinance 19.

2. That the September 26, 1985 award of Arbitrator Stanley H. Michelstetter II draws its essence from the parties' agreement, was not in excess of his authority, and was not in violation of the law, and therefore Respondent Sheboygan County, by its refusal to accept the terms of the Michelstetter award, has committed and continues to commit prohibited practices within the meaning of Secs. 111.70(3)(a)1 and 5, Stats.

3. That Respondent Sheboygan County, by its refusal to accept the terms of the Michelstetter award, has not committed and is not committing a prohibited practice within the meaning of Sec. 111.70(3)(a)4, Stats.

C. That paragraphs 1(a)(c)(d) and 2 of the Examiner's Order are hereby affirmed and that paragraph 1(b) of the Examiner's Order is modified to read as follows:

b. Immediately make all employes covered by the Michelstetter award whole pursuant to said award for all lost wages and benefits with interest 2/ calculated from the date the Respondent received the award.

Given under our hands and seal at the City of Madison, Wisconsin this 10th day of April, 1987.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Stephen Schoenfeld, Chairman

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Herman Torosian, Commissioner

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Danae Davis Gordon, Commissioner

2/ The applicable interest rate is the Sec. 814.04(4), Stats., rate in effect at the time the complaint was intially filed with the agency. Wilmot Union High School District, Dec. No. 18820-B (WERC, 12/83), citing Anderson v. LIRC 111 Wis.2d 245, 258-59 (1983) and Madison Teachers Inc. v. WERC, 115 Wis.2d 623 (CtApp IV, 10/83). The instant complaint was filed on January 6, 1986, at a time when the Sec. 814.04(4), Stats., rate in effect was "12% per year."

MEMORANDUM ACCOMPANYING ORDER MODIFYING EXAMINER'S FINDINGS OF FACT AND CONCLUSIONS OF LAW AND ORDER

The Pleadings

In its complaint initiating the instant proceeding, the Complainant alleged that the Respondent committed certain prohibited practices within the meaning of Secs. 111.70(3)(a)1, 2, 3, 4 and 5, Stats. by refusing to implement the terms of an arbitration award dated September 26, 1985 and by unilaterally creating and implementing a change in its Table of Organization through a County ordinance. The Respondent answered the complaint admitting that it intentionally failed to implement the Arbitrator's award on the grounds the award was not valid under Wisconsin law as the Arbitrator exceeded his authority and denied that it had committed any prohibited practice.

Examiner's Decision

In his decision, based upon an absence of any supportive evidence, the Examiner dismissed the allegation that Respondent had violated Secs. 111.70(3)(a)1, 2, 3, 4 or 5, Stats. by unilaterally creating and implementing a change in the Table of Organization. Additionally, the Examiner dismissed the allegations that the Respondent's refusal to implement the Arbitrator's award violated Secs. 111.70(3)1 and 4, Stats.

The Examiner did find that the Arbitrator confined himself to the interpretation and application of the parties' agreement and did not exceed his authority, and that the Arbitrator's award was not in violation of any law and was not a perverse misconstruction of the agreement. The Examiner then found Respondent's failure to comply with the award to be a violation of Sec. 111.70(3)(a)5, Stats. The Examiner ordered the Respondent to comply with the award, make employes whole with interest, and post a standard notice.

Petition for Review

The Respondent timely filed a petition requesting the Commission to review the Examiner's decision. The Respondent in its letter brief objected to the Examiner's Finding of Fact 4 as not supported in the record and relied on its brief to the Examiner in support of its position on the legal issues. The Complainant did not file a brief on appeal but relied on its briefs filed with the Examiner for its position on the legal issues.

Discussion

The Respondent has objected to a portion of the Examiner's Finding of Fact 4 as being unsupported by the record which consisted solely of the parties' collective bargaining agreement, the Arbitrator's decision dated September 26, 1985 and Ordinance 19. 3/ While it is apparent that the Examiner based this Finding on the Arbitrator's decision and not independent record evidence, we have modified the Examiner's Findings of Fact to reflect that it was the Arbitrator who made this and other pertinent Findings.

With respect to the legal issues, the Respondent presents the same arguments to us as were presented to the Examiner. It is unnecessary to repeat the legal standards for our review of an Arbitrator's award as the Examiner has correctly stated the law applicable to the instant case. Our review of an arbitration award is supervisory in nature. We must uphold the arbitrator's decision as long as it comports with Sec. 788.10, Stats. regardless of whether we might have reached a different result. 4/ The Respondent herein challenges the Examiner's application

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3/ The objectionable portion of the Finding stated: that following the adoption of said ordinance the Respondent began posting vacant attendant positions as aide positions;. . .

4/ School District of West Allis-West Milwaukee, Dec. No. 15504-B (WERC 8/78); Arbitration Between West Salem & Fortney, 108 Wis. 2d 167, 179 (1982).

of the accepted legal standards to the Arbitrator's award. The Respondent insists that the Arbitrator exceeded his authority as his decision was a perverse misconstruction of the agreement and it violated the law. We concur with the Examiner that the Arbitrator's award draws its essence from the agreement, that the Arbitrator acted within his authority and that his interpretation of the agreement was not in violation of any law. 5/

The Respondent argues that the Arbitrator was setting staffing requirements and establishing the number and classification of employes hired. We disagree. The Arbitrator found that the Respondent hired employes classified as nurses aides and regularly assigned them duties which had been and were assigned to employes classified as attendants. Attendants are in a higher paid class than nurses' aides. The Arbitrator found that Respondent was violating Appendix A because it provides that an employe assigned to work on a job different from his/her usual classification must be paid at the higher of the pay of the two jobs and the Respondent had failed to pay at the higher rate. The Arbitrator noted that the regular assignment of the duties of the higher classification to nurses' aides would result in their not receiving the correct longevity pay. He also determined that the listing of job classifications and pay rates in Appendix A reflected an understanding that employes regularly assigned the duties of the higher rate would be properly classified at the higher rate. Clearly this is not a perverse misconstruction of the terms of the agreement. Arbitrators have held that an employe should not regularly and continually be required to perform duties outside his/her classification. 6/ Where the parties agree to different classifications and corresponding rates with a proviso that employes who perform the work of the higher rate get the higher rate, it is not a perverse misconstruction of these provisions to conclude that those assigned duties of the higher classification on a regular basis would be properly classified at the higher rate. We are not indicating agreement with the Arbitrator but merely that his decision was within his authority and draws its essence from the agreement. Furthermore it is apparent that the Arbitrator was interpreting and enforcing the terms of the agreement in making his findings and award wherein he directed Respondent to properly post positions according to the duties regularly assigned to them and to make whole employes who regularly perform the duties of the higher classification. The Arbitrator's decision and award did not run counter to any statutorily reserved management rights. While a municipal employer cannot collectively bargain a contractual provision that violates a specific statute, it can relinquish discretion given it by statute through collective bargaining. 7/ There is no statutory prohibition on the County's agreeing that it will not assign employes the duties of a higher paying position on a regular basis without payment of the higher rate and that it will properly classify employes according to the duties performed on a regular basis. Therefore, the arbitration award does not contravene any specific statute. 8/ Thus, we concur in the Examiner's conclusion that the Respondent has violated Sec. 111.70(3)(a)5, Stats. by its refusal to

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5/ While we do not agree with the rationale used by the Arbitrator and the Examiner to respond to the County's argument regarding the impact of WERC v. Teamsters Local 563, 75 Wis.2d 602 (1976), we do concur with the ultimate conclusion reached by both the Arbitrator and the Examiner that the County ordinance did not supercede the parties' collective bargaining agreement.

6/ Linde Air Products Co., 20 LA 861 (Shister, 1953); Elkouri & Elkouri, How Arbitration Works (4th Ed. 1985) at 504.

7/ Madison v. AFSCME, AFL-CIO, Local 60, 124 Wis. 2d 298 (Ct. App. 1985).

8/ Ibid.

comply with the terms of the arbitration award. However, we have modified his Conclusions of Law to reflect that Respondent's conduct also constitutes a derivative violation of Sec. 111.70(3)(a)1, Stats., and we have modified his Order to correctly state the date on which Respondent's interest obligation commences.

Dated at Madison, Wisconsin this 10th day of April, 1987.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Stephen Schoenfeld, Chairman

_____
Herman Torosian, Commissioner

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Danae Davis Gordon, Commissioner