

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

LINCOLN COUNTY COURTHOUSE
EMPLOYEES, LOCAL 332-A,
AFSCME, AFL-CIO,

Complainant,

vs.

LINCOLN COUNTY (COURTHOUSE),

Respondent.

Case 65
No. 36579 MP-1819
Decision No. 23671-A

Appearances:

Mr. Daniel J. Barrington, Staff Representative, and Mr. Philip Salamone, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, N-419 Birch Lane, Hatley, WI 54440, on behalf of the Complainant.

Mr. Charles A. Rude, Personnel Coordinator, Lincoln County, Lincoln County Courthouse, 1110 East Main Street, Merrill, WI 54452, on behalf of the Respondent.

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

The above-named Complainant having, on February 21, 1986, filed a complaint with the Wisconsin Employment Relations Commission alleging that the above-named Respondent had committed certain prohibited practices within the meaning of Sections 111.70(3)(a)4 and 111.70(3)(a)5 of the Municipal Employment Relations Act; and the Commission having appointed David E. Shaw, 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), Stats.; and hearing on said complaint having been held before the Examiner on June 17, 1986 in Merrill, Wisconsin; and the Examiner, having considered all of the evidence and the arguments of the parties, now makes and issues the following Findings of Fact, Conclusions of Law and Order. 1/

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- 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, 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 reserved 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.

FINDINGS OF FACT

1. That Lincoln County Courthouse Employees, Local 332-A, AFSCME, AFL-CIO, hereinafter Complainant, is a labor organization with its offices located at N-419 Birch Lane, Hatley, WI 54440; and that at all times material herein Complainant was, and currently is, the certified exclusive collective bargaining representative of all employees in the bargaining unit consisting of all regular full-time and regular part-time employees of Lincoln County, but excluding elected officials, managerial, supervisory, confidential and professional employees and employees in already existing bargaining units. 2/

2. That Lincoln County, hereinafter Respondent, is a municipal employer with its offices located at the Lincoln County Courthouse, 1110 East Main Street, Merrill, Wisconsin 54452.

3. That on February 21, 1985 representatives of Complainant and Respondent, respectively, met and exchanged initial proposals for a successor agreement to their expired agreement; that on February 28, 1985 representatives of Complainant and Respondent, respectively, met for the purpose of negotiations on a successor agreement; that said bargaining session lasted approximately two-and-a-quarter hours and was ended by Complainant; that Complainant's representative, Mr. Daniel Barrington, filed a petition for mediation-arbitration between Complainant and Respondent with the Commission dated April 8, 1985; that an informal investigation was held on June 3, 1985 with representatives of Complainant and Respondent, respectively, and an investigator from the Commission's staff present; that said investigation session ended when Complainant's bargaining committee left sometime shortly before midnight; that on June 24, 1985 the Investigator issued the Report to Commission and Notice of Close of Investigation, and an order requiring mediation-arbitration of the dispute between Complainant and Respondent was subsequently issued by the Commission; that on August 28, 1985 representatives of Complainant and Respondent met with the mediator-arbitrator the parties had selected for the purpose of mediation of the dispute; that present for Respondent at the August 28, 1985 mediation session were the following three members of the Respondent's Legislative and Personnel Committee: the Chairman of the Legislative and Personnel Committee, Eugene Schmit, Chairman of the Law Enforcement Committee, DeLyle Bohse, Chairman of the Public Property Committee, Harry Osness and the Personnel Director, Charles Rude; and that Complainant and Respondent reached a tentative agreement on a successor agreement at the August 28, 1985 mediation session, with the members of the Respondent's Legislative and Personnel Committee present approving the tentative agreement on a 2 to 1 vote.

4. That on September 4, 1985 the Respondent's Legislative and Personnel Committee met and among the business at that meeting was the consideration of the tentative agreement reached on August 28, 1985 with Complainant; that at said meeting a motion for members Katke and Osness to submit a resolution to Respondent's County Board for approval of said tentative agreement carried; that the members of the Committee present at the September 4, 1985 meeting were Katke, Griffin, Strassman, Osness, Schmidt, Schmit and Bohse, and the members absent were Magnus and Weaver; and that Rude was also present at said meeting.

5. That on September 10, 1985 Complainant's members met for the purpose of voting on the ratification of the tentative agreement reached with Respondent on August 28, 1985; and that at said meeting Complainant's members ratified said tentative agreement.

6. That on September 17, 1985, Resolution No. 43-85, to approve the tentative agreement between Complainant and Respondent, and detailing the elements of the tentative agreement reached between Complainant and Respondent, was presented to Respondent's County Board of Supervisors for approval; that Resolution 43-85 was dated September 17, 1985 and signed by the following seven members of Respondent's nine member Legislative and Personnel Committee: Katke,

2/ Complainant was the unit's bargaining representative when a decertification petition was filed. An election was conducted on January 8, 1985 and on January 21, 1985 Complainant was certified as the exclusive collective bargaining representative of all employees in said unit. Dec. No. 21962-B (WERC, 1/85).

Magnus, Griffin, Schmidt, Osness, Bohse and Strassman; that Resolution No. 43-85 read as follows:

Resolution #43 - 85

TITLE: To Approve 1985-86 Agreement Between Lincoln County and Local 332-A, AFSCME, Courthouse Employees

WHEREAS, several negotiating sessions have been held between representatives of Lincoln County and Lincoln County Courthouse Employees, Local 332-A, and

WHEREAS, at a mediation-arbitration hearing held by Arbitrator Sharon Imes on August 28, 1985, agreements were reached on the following changes in the labor agreement:

1. A two year agreement, to be effective from January 1, 1985 through December 31, 1986.
2. A wage increase, effective January 1, 1985 of 31 cents per hour across-the-board, except Meal Site Managers who are to receive 21 cents per hour.
3. A wage increase, effective January 1, 1986, of 27 cents per hour across-the-board, except Meal Site Managers who are to receive 21 cents per hour.
4. Effective January 1, 1986, the County will pay 6% of the employees gross earnings to the Wisconsin Retirement Fund, in addition to the employers required contribution.
5. The Cook-Matron in the Sheriff's Department will be paid time and one-half for hours worked on holidays.
6. Employees hired on or after January 1, 1986, who are subject to the provisions of the Agreement with Local 332-A, Courthouse Employees, will be required to pay "Fair Share" in lieu of union dues.

WHEREAS, the Legislative and Personnel Committee recommends the adoption of these changes:

NOW, THEREFORE, BE IT RESOLVED, this 17th day of September, 1985, that the Lincoln County Board of Supervisors hereby adopts the recommendation of the Legislative and Personnel Committee.

LEGISLATIVE AND PERSONNEL COMMITTEE

(aforesaid seven signatures affixed)

DRAFTED BY C. A. RUDE

that Respondent's Personnel Director , Rude, was in Milwaukee on September 17, 1985 and was not present at said meeting of Respondent's Board of Supervisors; that Katke moved for the adoption of Resolution 43-85 at said meeting and the motion was seconded by Bohse; that following Katke's motion to adopt Resolution 43-85 there was discussion among Respondent's Supervisors regarding the increase for Meal Site Managers and "fair-share" in lieu of union dues; that

Supervisor Garner moved to lay said resolution over until the Board of Supervisor's October 22, 1985 meeting and that motion was seconded by Magnus; and that the motion to lay Resolution 43-85 over until the October 22, 1985 meeting carried 13 to 8, with the following Supervisors voting against the motion: Bohse, Hommerding, Katke, Knospe, Krueger, Osness, Schimdt and Severt, and the following supervisors who had signed Resolution No. 43-85 voting in favor of the motion to lay the matter over: Magnus, Griffin and Strassman, absent was Supervisor Proft.

7. That on September 20, 1985 Barrington sent the following letter to Rude:

Dear Mr. Rude:

I have been informed that the County Board did not take action on September 17, 1985 with respect to ratification or rejection of their agreement with Local 332-A, Lincoln County Courthouse Employees. It is my understanding that this action has been tabled until the October board meeting.

This is to serve notice that Local 332-A hereby demands that the County Board meet in special session prior to October 2, 1985, and either reject or ratify the agreement. If such action is not accomplished by October 2, Local 332-A will consider the matter reopened and will request that Arbitrator Imes meet with the parties as soon as possible.

Please inform me as soon as possible as to the action the County will take to comply with these demands.

Very truly yours,

DANIEL J. BARRINGTON
Staff Representative

8. That on September 24, 1985 the Mediator-Arbitrator sent the following letter to Barrington and Rude:

Gentlemen:

It was my understanding at the end of mediation on August 28 that the parties had reached agreement and that neither party anticipated a problem in ratifying the agreement reached. Consequently, I notified the Commission that agreement had been reached and they issued an order of dismissal. Obviously, my action was premature. If I had felt that there would be a problem with ratification or that one of the parties would delay ratification, I would not have notified the Commission of settlement. Needless to say, I was quite surprised to discover ratification by the County has not yet taken place.

In my conversation with the Commission regarding this matter, it is my understanding that if the County failes (sic) to ratify this matter, it will reopen the matter at the request of one of the parties and Mr. Barrington has stated this intention in his letter of September 20. I would hope the County will take appropriate action to meet before its next regularly schedule board meeting, if they meet monthly, to ratify the tentative agreement since both parties agreed to consider ratification in September and delay serves neither party well. If a date for hearing is needed, following are dates when I am available: October 8 and 18. However, I hope this will not be necessary.

Please inform me of whatever action is taken.

Sincerely,

Sharon Imes
Mediator/Arbitrator

9. That on September 25, 1985 Rude sent the following letter to Barrington:

Dear Mr. Barrington:

At the Lincoln County Board's September meeting, the Board apparently had some questions about the proposed Agreement with Local 332-A, and, as noted in your letter, tabled it until the October meeting, without either accepting or rejecting it.

I know that the matter will be scheduled for further discussion and action at the County Board's October meeting.

Sincerely,

C. A. Rude
Personnel Coordinator

10. That by the following letter dated September 26, 1985 Barrington responded to Rude's September 25th letter:

RE: Local 332-A Labor Agreement
Arbitration Date

Dear Mr. Rude:

As I read your letter dated September 25, 1985, concerning the Lincoln County Board's failure to act on the tentative agreement on September 17, I can only draw the conclusion that the Board is not willing to comply with the requirements set forth in my letter of September 20 in which I indicated I expected Board action to either ratify or reject the agreement prior to October 2. I believe you have also received a correspondence from Arbitrator Sharon Imes dated September 24 wherein she indicates she is available to meet on October 8 and/or October 18 in order to resolve this matter. I have just concluded discussions with Mr. Oscar Wangen, President of Local 332, Highway Department Employees, in which he indicated to me that he and you have talked about resolving a grievance pending in the Highway Department on October 8 with a meeting with the Personnel and Legislative Committee of Lincoln County. I then draw the further conclusion that both you and members of your committee are available to meet on October 8 with Ms. Imes.

Therefore, I am requesting that you notify Ms. Imes and myself of the time you and your committee are available to meet on October 8 to resolve the issues pending in the Courthouse, as well as notifying myself and Mr. Wangen of the time we will be able to meet with the Personnel and Legislative Committee to resolve the Dan Whiting grievance.

I will await your response.

Very truly yours,

Daniel J. Barrington
District Representative

11. That on September 26, 1985, Barrington also sent the following letter to the Mediator-Arbitrator:

RE: Lincoln County (Courthouse)
Case 57, NO. 34851, MED?ARB-3238 (sic)

Dear Ms. Imes:

I have been informed that Mr. Rude and the personnel Committee of Lincoln County are available to meet with Local 332, Lincoln County Highway Employees, on a grievance matter on

October 8, 1985. This is one of the dates you indicate in your September 24 letter to Mr. Rude and myself that you are available to conduct the hearing in the above entitled matter.

I can only draw the conclusion that since Mr. Rude and the Committee are available for the grievance meeting on that date, they must also be available for the arbitration hearing on that day. I have, therefore, asked Mr. Rude to contact you and me with regard to a time for the hearing for Local 332-A.

I thank you for your prompt attention to my request of September 20 to reopen the matter and providing us with dates on which you are available.

Very truly yours,

Daniel J. Barrington
District Representative

12. That on October 1, 1985 the Mediator-Arbitrator sent the following letter to Barrington with a copy to Rude:

Re: Lincoln County (Courthouse)
Case 57, No. 34851, Med/Arb-3238

Dear Mr. Barrington:

Mr. Rude called me last week after my correspondence to him. He indicated he felt there would be no problem with ratification of the tentative agreement reached by the parties on August 28 but that ratification would not take place until the next County Board meeting. Since I knew this was not a preferable time for you and it violates the intent of the parties when tentative agreement was reached, I did ask that he at least make sure that retroactive payments be made ready to distribute as soon as ratification took place. He assured me that this would be done.

While I know that the unit represented by you would prefer action sooner, nothing will be resolved by going to hearing. While I am available October 8, you will need to request the Commission to re-open this matter in order to authorize me to hold a hearing in this matter. Further, even if the Commission reacts by the 8th of October and a hearing were held, time would have to be allowed for the filing of briefs and the writing of a decision. In all, the delay would probably be another three or four months after hearing. Further, there is the risk that the decision would not be in the Union's favor. Thus, since tentative agreement has been reached, both parties will be better served if the County Board is given time to ratify this matter. While it is a delay of a possible three weeks, it certainly is not a three or four month delay.

If the Board does not ratify the agreement at its next board meeting, however, please notify the Commission immediately and I will rearrange my schedule to accommodate you.

Sincerely,

Sharon Imes
Mediator/Arbitrator

13. That Barrington sent the following letter dated October 8, 1985 to the Chairman of the Commission:

RE: Lincoln County (Courthouse)
Case 57, NO. 34851, MED/ARB-3238

Dear Mr. Torosian:

On August 28, 1985, Local 332-A, Lincoln County Courthouse Employees, AFSCME, and Lincoln County met with arbitrator Sharon Imes for the purpose of resolving the impact in contract negotiations between the parties. Ms. Imes was able to secure a voluntary agreement between the parties on that date, thus avoiding the need for the arbitration hearing. One of the more significant terms of that voluntary agreement was the condition that each party seek gratification (sic) by its respective superior body before the end of September. The Union accomplished this on September 10, 1985. On September 17, 1985, the Lincoln County Board met and discussed the terms of the tentative agreement but refused to take any action as to ratification or rejection. Instead they tabled the matter until the October meeting which is scheduled for October 22, 1985.

The Union considers this a breach of the voluntary agreement reached between the parties and respectfully requests that the Commission reopen the matter. The Union is well aware of the fact that Arbitrator Imes has notified the Commission to dismiss the Petition for Mediation Arbitration on the basis of her belief that there was going to be no problems with the ratification process. In communications between the Union, the County and Arbitrator Imes, suggestions have been made that the Union wait until October 22 to determine whether or not such need for a reopening of the record is necessary. However, in that there are no guarantees that Lincoln County will, indeed, ratify the tentative agreement with the Union, it is respectfully requesting that the Commission take immediate action to reopen.

The Union has reason to believe, based on comments of various County Board Supervisors, that ratification of the tentative agreement is not guaranteed and, indeed, appears likely to suffer a possible defeat. On that basis, the Union feels it is being impressed with undue hardship by being required to wait until after October 22 to submit this request.

If the Commission does reopen the record, the parties can then make arrangements for contingency plans in order to complete the contract negotiations for the successor agreement. If the County Board does indeed ratify on October 22, those contingency plans can be dropped. If the County Board does not ratify, then the Union will not have had to suffer the additional five week delay between September 17 and October 22, as well as additional time caused by the need to reopen and reschedule (sic). The union seeks to avoid any further delay and respectfully requests that the Commission immediately reopen the record pending the action of the County Board on October 22. This will at least shorten the unreasonable delay caused unilaterally by the County by a minimum of three weeks, that being the three week period between the date of this request and the intended date of action by the County, October 22.

The Union further requests that the Commission direct Arbitrator Imes to immediately contact the Union and the County to arrange for a date between October 23 and November 1 to take evidence in the event the County does not ratify the agreement on October 22.

Your prompt attention to this matter is greatly appreciated.

Very truly yours,

Daniel J. Barrington
District Representative

14. That, by letter dated October 11, 1986, the Commission's General Counsel requested that Rude respond to Barrington's letter October 8, 1986; and that Rude sent the following letter, dated October 15, 1986, to Barrington in response to the Union's request to reopen the mediation-arbitration:

Dear Mr. Barrington:

I concur with you regarding the WERC reopening Case 57, No. 34851 MED/ARB-3238, as a contingency, so that in the event the Lincoln County Board does not ratify the agreement with Local 332-A, Courthouse Employees, at its October 22nd meeting, further activity can be scheduled as quickly as possible.

I don't know either your schedule, or that of Arbitrator Imes, but I am already scheduled for Taylor County negotiations of October 24 and 30, and there is a negotiating session scheduled with Lincoln County Deputies for the evening of October 29, 1985.

Sincerely,

C. A. Rude
Personnel Coordinator

15. That Respondent's Board of Supervisors met on October 22, 1985 and the business considered "included Resolution 43-85 "TO APPROVE 1985-86 AGREEMENT BETWEEN LINCOLN COUNTY AND LOCAL 332-A, AFSCME, COURTHOUSE EMPLOYEES"; that discussion of said resolution continued from the Board's September 17, 1985 meeting, with Supervisor Bohse asking Rude to relate to the Board all of the actions to date regarding the matter; that Rude explained to the Board how the tentative agreement was reached and the reasoning behind the increase for the Meal Site Managers and the "fair-share" provision; that Rude informed the Board that if the resolution was not adopted, the matter would go back to arbitration; that the motion to adopt Resolution 43-85 approving the tentative agreement lost with eight (8) supervisors voting in favor of adoption and eleven (11) voting against; that the eleven supervisors voting against adoption of Resolution 43-85 included the following members of Respondent's Legislation and Personnel Committee: Griffin, Strassman, Schmit and Magnus; that Supervisors Griffin, Strassman and Schmit were present at the September 4, 1985 meeting of Respondent's Legislative and Personnel Committee, but Supervisor Magnus was absent from that meeting; that Supervisors Griffin, Strassman and Magnus had signed the September 17, 1985 Resolution 43-85 to approve the tentative agreement; that had Supervisors Griffin, Strassman and Magnus voted in favor of adopting Resolution 43-85, said motion would have been approved; and that Supervisors Bohse and Osness voted to approve the tentative agreement.

16. That subsequent to the rejection of the parties' tentative agreement by Respondent's Board of Supervisors, the Commission ordered the parties' mediation-arbitration reopened for further proceedings before the Mediator-Arbitrator; that representative of Complainant and Respondent met with the Mediator-Arbitrator on November 8, 1985, whereupon it was agreed that the Mediator-Arbitrator would issue a consent award based on the terms reached at the August 28, 1985 mediation session; that the Mediator-Arbitrator issued the requested consent award dated November 8, 1985 and sent it to the parties under cover letter dated November 11, 1985, along with the Mediator-Arbitrator's bill for her services; and that said consent award contained the same terms as the parties' tentative agreement reached at the August 28, 1985 mediation session and read, in relevant part, as follows:

CONSENT AWARD

1. The collective bargaining agreement is two years in duration, effective January 1, 1985 through December 31, 1986.
2. The Employer will pay 6% of the employees gross earnings to the Wisconsin Retirement Fund in addition to the Employer's required contribution, effective January 1, 1986.
3. The cook matron will be paid at time and one-half for work performed on holidays.
4. Article 4 of the collective bargaining agreement will be changed as follows:

ARTICLE 4 - UNION DUES/FAIR SHARE

Effective January 1, 1986, the County agrees to deduct from the pay of the employees in this bargaining unit, an amount certified by the Union, to pay their proportionate share of the cost of collective bargaining process and contract administration. Employees hired before that date who are not members of the Union as of that date, shall not be required to pay the fair share service fee. Any employee hired before that date, who has been a member of the Union or after that date joins the Union and later resigns from the Union, shall be required to pay the fair share fee. All employees hired after that date shall be covered under the terms of this fair-share agreement and shall pay the fee.

5. Wages will be paid as follows:
 - 1985: 3¢ per hour across the board for all bargaining unit employees except meal site managers who will be paid 2¢ per hours.
 - 1986: 27¢ per hour across the board for all bargaining unit employees except meal site managers who will be paid 2¢ per hour.

In addition, the collective bargaining agreement shall incorporate those provisions of the predecessor agreement which remained unchanged as well as the stipulations of the parties which reflects prior agreements in bargaining.

Dated this 8th day of November, 1985 at La Crosse, Wisconsin.

Sharon K. Imes
Mediator/Arbitrator

SKI:mls

17. That on November 19, 1985 Respondent's Board of Supervisors met and the business considered at that meeting included Resolution No. 65-85 acknowledging said consent award and its receipt by Respondent and providing that the terms of the award be implemented pursuant to Sec. 111.70, Stats.; and that the motion to adopt Resolution No. 65-85 carried with those supervisors present voting eleven (11) in favor and seven (7) against.

18. That the Mediator-Arbitrator charged the parties a total of Five Hundred Thirty-three and 31/100 Dollars (\$533.31) for the November 8, 1985 mediation, preparation of the consent award and mileage and meals for the November 8th mediation; that Complainant and Respondent were billed Two Hundred Sixty-six and 65/100 Dollars (\$266.65) each as their respective share of the bill; and that the

parties incurred said additional expense as a result of the rejection of the parties' original tentative agreement by Respondent's Board of Supervisors on October 22, 1985.

19. That Supervisors Bohse and Osness were present at the August 28, 1985 mediation session as representatives of Respondent when the tentative agreement was reached between Complainant and Respondent; that Bohse and Osness subsequently supported said tentative agreement at the September 4, 1985 meeting of Respondent's Legislative and Personnel Committee; that Bohse and Osness voted against the motion to lay Resolution No. 43-85 over at the September 17, 1985 meeting of Respondent's Board of Supervisors; and that Bohse and Osness voted in favor of a motion to adopt Resolution No. 43-85, approving said tentative agreement, at the October 22, 1985 meeting of Respondent's Board of Supervisors.

20. That at all times material herein Supervisors Katke, Magnus, Griffin, Schmidt and Strassman were members of Respondent's Board of Supervisors and Respondent's Legislative and Personnel Committee; that the aforesaid individuals were not present at the August 28, 1985 mediation session at which tentative agreement was reached between the Complainant and Respondent; that the aforesaid individuals signed Resolution No. 43-85, a resolution to approve said tentative agreement reached on August 28, 1985; that by signing said Resolution No. 43-85 those aforesaid individuals did not agree or promise to support said tentative agreement; and that Magnus, Griffin and Strassman did not subsequently support and vote in favor of ratifying said tentative agreement.

That upon the basis of the foregoing Findings of Fact, the Examiner makes the following

CONCLUSION OF LAW

That the mere act of signing Resolution No. 43-85 by those members of Respondent Lincoln County's Legislative and Personnel Committee who were not present at the August 28, 1985 mediation session at which tentative agreement was reached between Complainant Local 332-A, AFSCME, AFL-CIO, and who did not at that meeting agree to support and recommend said tentative agreement, did not constitute an agreement or a promise to subsequently support, and to vote in favor of ratification of, said tentative agreement, and, therefore, the subsequent failure of those individuals to support said tentative agreement did not constitute a refusal or failure to bargain in good faith within the meaning of Sec. 111.70(3)(a)4, Stats., nor did the conduct complained of constitute a violation of a collective bargaining agreement within the meaning of Sec. 111.70(3)(a)5, Stats.

Based upon the foregoing Findings of Fact and Conclusion of Law, the Examiner makes and issues the following

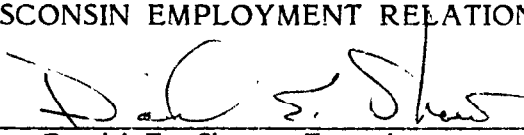
ORDER

That the Complaint be, and same hereby is, dismissed in its entirety.

Dated at Madison, Wisconsin this 5th day of December, 1986.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


David E. Shaw, Examiner

LINCOLN COUNTY (COURTHOUSE)

MEMORANDUM ACCOMPANYING FINDING OF FACT,
CONCLUSION OF LAW AND ORDER

Position of the Parties

Complainant asserts that Respondent's Legislative and Personnel Committee met on September 4, 1985 and signed Resolution No. 43-85, which document "clearly indicates that the seven members of the employer's committee agreed to support the tentative agreement with Local 332-A." Complainant notes that Resolution No. 43-85 was tabled at the September 17, 1985 meeting of Respondent's Board of Supervisors and subsequently rejected at that Board's October 22, 1985 meeting by an 11 to 8 vote. It is asserted that it is apparent from the roll call on the vote that Magnus, Griffin and Strassman had altered their positions. Those members of the Legislative and Personnel Committee signed Resolution No. 43-85, "yet voted on October 22 to reject the very same agreement they had previously promised to support." Meanwhile, Complainant, acting in good faith, ratified the agreement at its September 10, 1985 membership meeting. Complainant cites Florence County 3/ in support of its position that Respondent, by its actions, committed prohibited practices in violation of MERA, and alleges that the facts in this case closely parallel the facts in that case.

Respondent alleges that, with one exception, its representatives at the August 28, 1985 mediation session, at which the tentative agreement with Complainant was reached, recommended acceptance of the proposed agreement to the full Legislative and Personnel Committee at its September 4th meeting. That Committee, in turn, recommended acceptance of the proposed agreement by the full Board. Respondent then notes the chronology of events leading up to, and including, the Respondent's acceptance of the consent award one month after the Board's initial rejection of the agreement. It is also contended that the Legislative and Personnel Committee did not unanimously recommend approval of the agreement. Rather, one of the members of Respondent's three person negotiating committee, the Chair of the Legislative and Personnel Committee, opposed the tentative agreement from the outset and consistently voted against the agreement. Respondent also asserts that Complainant is responsible for a substantial part of the time that passed before the 1985-86 agreement was finalized, reiterating the parties' bargaining prior to the involvement of the Mediator-Arbitrator. It is asserted that had Complainant's negotiating team not left the investigation session without notifying either Respondent's team or the mediator, negotiations could have resulted in an agreement and further delay and expense for both parties could have been avoided.

Discussion

Complainants have asserted that the actions of the seven members of Respondent's Legislative and Personnel Committee in voting to table Resolution No. 43-85 on September 17th and voting against the resolution on October 22nd, violated Secs. 111.70(3)(a)4 and 5, Stats. Section 111.70(3)(a)4, Stats., provides in relevant part, that it is a prohibited practice for a municipal employer:

4. To refuse to bargain collectively with a representative of a majority of its employees in an appropriate collective bargaining unit.

. . . .

3/ Dec. No. 13896-A (McGilligan, 4/76) aff'd by operation of law, Dec. No. 13896-B (WERC, 5/76).

The violation shall include, though not be limited thereby, to the refusal to execute a collective bargaining agreement previously agreed upon. The term of any collective bargaining agreement shall not exceed 3 years.

"Collective bargaining" is defined in Sec. 111.70(1)(a), Stats., as:

. . .

the performance of the mutual obligation of a municipal employer, through its officers and agents, and the representatives of its employes, to meet and confer at reasonable times, in good faith, with respect to wages, hours and conditions of employment, except as provided in s. 40.81(3), with the intention of reaching an agreement, or to resolve questions arising under such an agreement. The duty to bargain, however, does not compel either party to agree to a proposal or require the making of a concession. Collective bargaining includes the reduction of any agreement reached to a written and signed document. The employer shall not be required to bargain on subjects reserved to management and direction of the governmental unit except insofar as the manner of exercise of such functions affects the wages, hours and conditions of employment of the employes. In creating this subchapter the legislature recognizes that the public employer must exercise its powers and responsibilities to act for the government and good order of the municipality, its commercial benefit and the health, safety and welfare of the public to assure orderly operations and functions within its jurisdiction, subject to those rights secured to public employes by the constitutions of this state and of the United States and by this subchapter.

The obligation to bargain in good faith has consistently been held to include the obligation of the parties' representatives who reached tentative agreement to recommend and support approval and adoption of the tentative agreement by their respective principals. 4/

The Complainant would extend that obligation on the employer's part to those members of intervening bodies who subsequently vote in favor of presenting a resolution approving the tentative agreement for a vote by the entire governing body. The Examiner has reviewed the case law in this area and has found no precedent supporting Complainant's position. The case cited by Complainants, Florence County, is not dispositive here, as that case was premised on the obligation of the municipal employer's representatives at the table to support and recommend the tentative agreement reached at the bargaining table.

It is further noted that the fact that members of the Legislative and Personnel Committee voted to present a resolution approving the tentative agreement with the Complainant is not a sufficient basis for finding that those same members had effectively promised to support that tentative agreement. There is no evidence in the record upon which a motive can be ascribed to those Committee members for voting to submit the resolution other than to put the matter before the Respondent's full Board for a vote.


It is also noted that the two of the three members of the Committee present at the August 28th mediation session, who agreed to the tentative agreement and to submit the tentative agreement for approval, Bohse and Osness, voted against laying the resolution over at the September 17 Board meeting.

4/ 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); City of Green Bay, Dec. No. 21785-A (Roberts, 10/84).

The Examiner is unable, on the basis of the foregoing, to conclude that the actions of the members of the Respondent's Legislative and Personnel Committee constitutes bad faith bargaining in violation of MERA. The Examiner is also unable to find any evidence in the record of a violation of a collective bargaining agreement within the meaning of Sec. 111.70(3)(a)5, Stats.

Dated at Madison, Wisconsin this 5th day of December, 1986.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
David E. Shaw, Examiner