

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

GENERAL TEAMSTERS UNION
LOCAL 662,

Complainant,

vs.

CHIPPEWA COUNTY

Respondent.

Case 141
No. 37717 MP-1864
Decision No. 23907-A

Case 142
No. 37178 MP-1865
Decision No. 23908-A

Appearances:

Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., Attorneys at Law, by Mr. Frederick Perillo, 788 North Jefferson Street, P.O. Box 92099, Milwaukee, Wisconsin 53202, appearing on behalf of the Complainant.

Mulcahy & Wherry, S.C., Attorneys at Law, by Mr. Stephen L. Weld, 21 South Barstow Street, P.O. Box 1030, Eau Claire, Wisconsin 54702-1030 appearing on behalf of the Respondent.

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER

General Teamsters Union Local 662, having, on June 26, 1986, filed two complaints with the Wisconsin Employment Relations Commission alleging that Chippewa County had committed prohibited practices within the meaning of Secs. 111.70(3)(a) 4 and 5 of the Municipal Employment Relations Act, herein MERA; and the Commission having, on August 20, 1986, appointed Lionel L. Crowley, 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 complaints having been held in Chippewa Falls, Wisconsin on October 27 and December 12, 1986; and the parties having filed briefs in the matter which were exchanged on April 29, 1987; and the Examiner having considered the evidence and arguments of counsel, and being fully advised in the premises, makes and issues the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. That General Teamsters Union Local 662, hereinafter referred to as the Union, is a labor organization within the meaning of Sec. 111.70(1)(h), Wis. Stats.; that its offices are located at 119 West Madison Street, P.O. Box 86, Eau Claire, Wisconsin 54702-0086; and that Merle Baker is its Business Representative and has acted on its behalf.

2. That Chippewa County, hereinafter referred to as the County, is a municipal employer within the meaning of Sec. 111.70(1)(j), Wis. Stats.; that its offices are located at 711 North Bridge Street, P.O. Box 550, Chippewa Falls, Wisconsin 54729; and that Melvin O. Bollom is its Personnel Director and has acted on its behalf.

3. That at all times material herein, the Union has been the recognized exclusive bargaining representative of a bargaining unit consisting of all regular full-time and regular part-time employees of the Social Services Department, Unified Services and Institutions, hereinafter referred to as the social worker unit, and another bargaining unit consisting of all regular full-time and regular part-time employees in the courthouse and all clericals in the Institutions, hereinafter referred to as the clerical unit.

4. That the Union and the County were parties to collective bargaining agreements for the above units which expired on December 31, 1985; that the parties first met in negotiations for successor agreements on August 13, 1985; and that the County sought concessions in bargaining to continue operation at its health care center and in late October or early November, the parties reached tentative agreement which provided, among other items, a reduction of one hour per day for social workers at the health care center and the County reimbursement for the first \$50.00 of medical bills for all employees.

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5. That another union which represented the majority of employees at the health care center refused to agree to concessions and the County decided to sell the health care center; and that the County and the Union returned to negotiations for successor agreements with meetings in late 1985 and January 1986 but did not reach tentative agreement.

6. That on or about March 10, 1986, the parties met with Wisconsin Employment Relations Commission mediator Daniel Bernstone in a mediation session which resulted in tentative agreements; that by a letter dated March 28, 1986, Baker informed Bollom that both social worker and clerical units had ratified their respective tentative agreements and included a draft of the tentative agreements which included a \$50.00 reimbursement for all employees; that by a letter dated April 1, 1986, Bollom informed Baker that there were a number of disagreements with his write-up of the tentative agreements including the \$50.00 reimbursement which Bollom insisted applied only to single employees; and that after April 1 but before April 15, 1986, Baker met with Bollom in the courthouse law library and resolved all the issues raised in the April 1, 1986 letter including the \$50.00 reimbursement which was agreed would apply to all employees.

7. That on April 16, 1986, the County's Board by Resolution Nos. 25-86 and 26-86 approved the social workers and clerical tentative agreements respectively; and that thereafter the County signed and implemented the clerical agreement which included the \$50.00 reimbursement for all employees.

8. That Bollom sent Baker a letter dated April 29, 1986 which contained the following paragraph:

. . .

2. The Committee's position is that contracts/T.A.'s as developed with mediator Bernstone, clearly included cost out factors/data that resulted in 1986-87 settlements of less than four percent. The County will forward resolutions and copies of its notes from the mediation session to Mr. Bernstone and request that he communicate with you on this subject. If his notes/recollection do not confirm the County position, please have him indicate such in correspondence to the County. As explained at the mediation session, the budgeted 4% salary/fringe is the limit the Committee can obligate/offer as there is no available reserve funds.

3. Your emphatic proposal to accept the entire October 23, 1985 document listing tentative agreements, except those as developed with the mediator, was reviewed carefully. The Committee assumes your proposal was serious as was theirs on October 12, 1985 WHEN the Committee was trying to achieve Health Care Center concessions. The following clarifications would seemingly eliminate the contract differences and result in the 1986-88 contract as prepared by you, being ready for implementation; (a) Article 1 and Article 17 (Section 3) were T.A.'s in the October 23, 1985 letter that you did not include in your prepared contract (and were not discussed in mediation). (b) You also expanded Article 17 beyond that listed in the October 23rd document (which was not discussed in mediation). (c) While you apparently decided which of the T.A.'s you would selectively add or not add to the contract you proposed, the Committee WILL accept the contract as you prepared it. This includes Article 22 and 25 (the items you indicate are problem areas) as you presented them to your membership when you voted on the contract as opposed to those presented by the County (and understood by the County to be accepted) is post concessionary bargaining documents. All the items/changes you made were discussed in post concessionary bargaining as were the insurance and emergency leave changes. (d) The Committee will accept the 208 hours and \$1803.00 per employee of concessionary cutbacks for the remaining 10 H.C.C. employees rather than try to arrive at the listed \$23,444.10

that was generated when there were 13 employees (as per the October 23, 1985 document).

In summary, your proposal and your modifications will be accepted even though the Committee is not enthusiastic about the H.C.C. employee cutbacks and is emphatic to their experiencing the loss of hours/income. However, cutbacks even with L.T.E. replacement costs, will allow the settlement to be below the budgetary 4% maximum;

that Bollom sent Baker a letter dated June 3, 1986 which stated, in part, as follows:

For the record, Chippewa County is in agreement with all negotiated/mediated contract clauses (the whole contract) as revised/typed by you. . .except the \$50.00 family (employee) reimbursement which causes the contract to exceed 4%. The Committee position, throughout negotiations and mediation, was a 4% maximum figure.;

and that in a letter dated June 13, 1986, Bollom informed Baker, in part as follows:

The costs exceeding 4% related to the new definition applied to the lay-off clause and the new on-call comp time costs are the only factors I know of causing lack of settlement of the Social Workers contract. Salaries as per the Fair Labor Standards Act will have to be listed as annual salaries rather than per hour salaries. . .unless you have information to the contrary? (See enclosure). Rooms have been reserved for the August 11, 1986 med/arb session.

9. That the parties reached a tentative agreement on March 10, 1986, which resolved all the issues raised in negotiations; that a subsequent meeting between Baker and Bollom resolved the express terms of this agreement; that both the Union and the County ratified this agreement on or prior to April 16, 1986; that this agreement provided among its provisions, a \$50.00 reimbursement for medical expenses to all employees; and that the County refused and continues to refuse to execute the collective bargaining agreement previously agreed upon.

10. That as noted above, in late 1985 or early 1986, the County decided to sell its health care center; that by a letter dated March 11, 1986, from Bollom to Baker, the County offered to bargain the impact of the sale of the health care center; and that Baker accepted Bollom's offer in a letter dated March 28, 1986.

11. That the parties met for impact bargaining on April 18, 1986; that Bollom made certain proposals for employees who terminated as the result of the sale of the health care center including 5/12 of the longevity, a sick leave payout and 50% of health insurance premiums for 6 months for those unemployed; that Baker indicated acceptance of this proposal; that the parties then discussed bumping in the two units with a view to avoiding multiple bumping and wage protection; that the Union took the position that the social worker contract provided wage protection for bumping employees and the County strongly disputed this position; and that this meeting ended abruptly when Baker left and there were issues left unresolved when this meeting ended.

12. That by a letter dated April 29, 1986, Bollom made two impact offers with respect to bumping in the clerical unit and indicated confusion with respect to the Union's position on the social workers unit wage protection on bumping; that on May 13, 1986, Baker and Bollom executed an agreement in the clerical unit which provided a pool of \$8,000.00 (an average of \$1000.00 per employee) to maintain current classification salary after bumping; and that the record fails to establish that any laid off clerical employee received any of the longevity, sick leave or health insurance payments offered by Bollom at the April 18, 1986 session.

13. That the parties did not reach a total tentative agreement on the impact bargaining for the social worker unit on April 18, 1986; that the evidence presented herein fails to establish that after the April 18, 1986 bargaining session, the Union ever made a demand for further bargaining on impact items for the social worker unit or that the parties ever met again or that an agreement was subsequently reached.

14. That on or about June 1, 1986, the new owner took possession of the health care center and two social workers left their employment with the County and began work for the new owner; that these employees applied for longevity and sick leave as offered on April 18, 1986; and that the County refused to make these payments and on June 9 and 11, 1986 respectively, grievances were filed over the denial.

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

CONCLUSIONS OF LAW

1. That Chippewa County, by its refusal to execute and implement the collective bargaining agreement reached on March 10, 1986 which resolved all outstanding issues between them and which was ratified by both parties on or before April 16, 1986, has refused, and continues to refuse, to bargain collectively with the Union within the meaning of Sec. 111.70(1)(a) Stats. and has committed and is committing, prohibited practices in violation of Secs. 111.70(3)(a)4 and 1, Stats.

2. That the Union and the County did not reach a total tentative agreement on impact bargaining for social workers on or about April 18, 1986, and thus the County has not refused to bargain collectively with the Union within the meaning of Sec. 111.70(1)(a) Stats. on impact bargaining for the social worker unit by its failure to implement part of the impact items agreed to and has not committed any prohibited practices within the meaning of Sec. 111.70(3)(a) of the Municipal Employment Relations Act.

Based on the above and foregoing Findings of Fact and Conclusions of Law, the Examiner makes the following

ORDER 1/

IT IS ORDERED that Chippewa County, its officers and agents shall immediately:

1. Cease and desist from refusing to bargain collectively, within the meaning of Sec. 111.70(1)(a) and 111.70(3)(a)4 of the Municipal Employment Relations Act, with General Teamsters Union, Local 662, by refusing to execute and implement the tentative agreement reached on March 10, 1986.

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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(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

(Footnote 1 continued on Page 5)

2. Take the following affirmative action which the Examiner finds will effectuate the policies of the Municipal Employment Relations Act:
 - (a) That the County shall execute and implement the tentative agreement reached on March 10, 1986 and make employees whole by reimbursing them up to \$50.00 for medical costs together with interest at the rate of 12% per annum. 2/
 - (b) Post in conspicuous places on its premises, where notices to its employees are usually posted, a copy of the notice attached to this Order and marked "APPENDIX A." This copy shall be signed by an authorized representative of the County, shall be posted as soon as possible after receipt of a copy of this Order, and shall remain posted for a period of thirty days. Reasonable steps shall be taken to insure that this notice is not altered, defaced or covered by other material.
 - (c) Notify the Wisconsin Employment Relations Commission in writing within twenty days of the date of service of this Order as to what steps have been taken to comply with this Order.
3. IT IS FURTHER ORDERED that the Complaint in Case 141 with respect to impact bargaining for the social worker unit be, and the same hereby is, dismissed.

Dated at Madison, Wisconsin this 22nd day of June, 1987.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Lionel L. Crowley
Lionel L. Crowley, Examiner

(Footnote 1 continued)

- 1/ 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.
- 2/ The applicable interest rate is the Sec. 814.04(4), Stats., rate in effect at the time the complaint was initially filed with the agency. The instant complaint was filed on June 26, 1986 when the Sec. 814.04(4) rate was "12 percent per year." Section 814.04(4), Wis. Stats. ann. (1986) See generally, Wilnot Union High School District, Dec. No. 18820-B (WERC, 12/83) citing Anderson v. LIRC, 111 Wis.2d 245, 258-9 (1983) and Madison Teachers Inc. v. WERC, 115 Wis.2d 623 (CtApp IV, 1983).

APPENDIX A

NOTICE TO ALL EMPLOYEES

As ordered by the Wisconsin Employment Relations Commission, and in order to fulfill the policies of the Municipal Employment Relations Act, we notify our employees that:

We will not refuse to bargain collectively with the General Teamsters Union, Local 662 and we will execute the tentative agreement reached between the parties in a signed collective bargaining agreement.

Dated at Chippewa Falls, Wisconsin, this _____ day of _____, 1987.

By _____
On behalf of Chippewa County

THIS NOTICE MUST REMAIN POSTED FOR THIRTY DAYS FROM THE DATE HEREOF AND MUST NOT BE ALTERED, DEFACED OR COVERED BY ANY OTHER MATERIAL.

CHIPPEWA COUNTY

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

BACKGROUND

In its complaints initiating these proceedings, the Union alleged that the County committed prohibited practices in violation of Secs. 111.70(3)(a)4 and 5, Stats. by its refusal to sign and implement the terms of a tentative agreement reached on March 10, 1986 and ratified by both parties on or before April 16, 1986 and by failing to bargain in good faith and repudiating an agreement reached on April 18, 1986 with respect to the impact of its sale of the County's health care center on employees of the social worker bargaining unit. The County denied that it had committed any prohibited practices and asserted that the parties ratified different interpretations of the tentative agreement and thus there was a failure to reach a meeting of the minds on an agreement. The County denied that it had made any offers in impact bargaining and that, if any were made, none were accepted by the Union so no agreement was reached on impact items.

UNION'S POSITION

The Union contends that the County has bargained in bad faith by its refusal to sign the agreed upon contract for 1986-1988. It submits that a refusal to execute an agreed upon contract is a refusal to bargain proscribed by Sec. 111.70(3)(a)4, Stats. The Union points out that the County had agreed to the \$50.00 reimbursement in the fall of 1985 and again in mediation. It notes that Bollom confirmed that the \$50.00 reimbursement for all employees was agreed to in several written documents. It argues that Bollom is attempting to upset the agreement because the County's self-imposed 4% limit on the cost increase of the agreement might not be met. It maintains that the Union did not agree to bind itself to the 4% limit. The Union claims that the County's costing is entirely phoney because the reimbursement cost is only .0006 which is so small that this cannot justify the County's position. The Union stresses that as the deductible reimbursement is the only issue separating the parties, it is clear that the parties have an entire agreement. It submits that the clerical contract was signed with this identical provision. It alleges that as this provision cannot make the social worker agreement exceed 4%, the County's bad faith is the only impediment to signing the agreement. It contends that the County agreed to the tentative agreement which was ratified by both parties and the County cannot now refuse to sign it whether it exceeds 4% or not as the law does not permit a party to renege on an agreement simply because it miscalculated or failed to cost out the agreement properly. It requests a remedy compelling the County to sign the agreement and to make employees whole for their losses.

The Union contends that the County refused to implement the agreement reached in impact bargaining with the social worker unit. It claims that the parties met on April 18, 1986 on impact bargaining and an agreement was reached whereby the Union accepted the County's offer as outlined in a County resolution. It argues that the mere fact that no handshakes or initialing of proposals took place was no different than what has occurred in the past. The Union submits that the subsequent discussions on bumping had no effect on the impact settlements because these discussions took place after and were separate from the impact discussions. It maintains that while both groups were involved, the agreement on bumping affected only the clerical unit. The Union further notes that the impact items were not concerned with bumping and the evidence fails to establish that bumping was part of the impact bargaining. It notes that the social worker and clerical unit employees made up a small fraction of the health care center staff and the Union had no leverage, so it is inconceivable that the Union would reject the County's offer. It submits that the social worker contract already covered bumping and rate protection. It asserts that while it proposed to clarify this in contract negotiations, it always maintained the position that this language provided for both bumping and rate protection, and if the parties got into a dispute on the application, it would go to arbitration under the contract in normal course. It points out that bumping rights and the impact settlement were

separate items because those who bumped kept their sick leave and longevity and only those terminating would get the impact items. It admits that the clerical unit had no rate protection and the settlement on bumping was for rate protection as a quid pro quo for a waiver of chain bumping, and had nothing to do with the impact settlement. It submits that these items were separate and different. It contends that the evidence establishes Union acceptance of the County's offer and this constitutes a valid collective bargaining agreement which the County refuses to honor. It asks for an order that the two social workers who terminated be made whole in accordance with this impact settlement agreement.

COUNTY'S POSITION

The County contends that there was "no meeting of the minds" on the tentative agreement in the social workers unit on the issue of health insurance reimbursement and thus no overall agreement was reached. It submits that the County had made it clear that it had budgeted constraints allowing a cap of 4% for wage and benefit increases which was reiterated at the March 10, 1986 mediation session. It notes that the parties agreed to a \$50.00 reimbursement but the scope of the payments was misunderstood. It points out that the Union was under the impression that the agreement reached in concessionary bargaining in the fall of 1985 was what the County was agreeing to in mediation, whereas the County thought its initial proposal and not its later concession was accepted in mediation. It concludes that although the parties' thought they had a tentative agreement at the end of the mediation on March 10, 1986, there was a basic disagreement on the scope of the insurance reimbursement and hence no agreement was reached. It maintains that the existence of the tentative agreement was based on a mutual misunderstanding of the other party's position. It submits that the County immediately advised the Union of this dispute by its letter of April 1, 1986 in response to the Union's letter of March 28, 1986. It claims that the Union's filing a second mediation-arbitration petition, later withdrawn, supports the conclusion that no agreement was reached and the County is not obligated to implement a non-existing agreement. It suggests the parties be directed to return to the negotiating table.

With respect to the results of impact bargaining for the social workers, the County insists that no agreement was ever reached. It states that there was only one bargaining session on the impact of the closing of the health care center on professional employees and that was on April 18, 1986. It points out that the testimony of the negotiators differ sharply on whether a specific offer was made and accepted. It notes that nothing was signed indicating an agreement, there was no ratification by either side and the County in later correspondence, specifically stated that no agreement had been reached at the April 18, 1986 session. It further refers to the subsequent signed impact agreement for the clerical employees which did not contain the terms of the County's April 16, 1986 resolution. It alleges that the Union was not concerned about the impact on the professional employees as it thought the present collective bargaining agreement protected the employees who were at the health care center and these employees would elect to bump rather than leave the County. The County contends that it disagreed with the Union's interpretation of the agreement and made its position clear at the April 18, 1986 session, thus establishing that there was no agreement on impact at that time. It asserts that the Union waived any further right to bargain impact and when two social workers chose not to bump but leave the County in June, 1986, the Union then made a demand, not to bargain, but for the implementation of the April 16, 1986 resolution. It maintains that no agreement was reached and the Union has waived its right to bargain the impact of the closing and it asks that the complaints be dismissed.

DISCUSSION

Section 111.70(3)(a)4, Stats. provides that it is a prohibited practice for an employer to refuse "to execute a collective bargaining agreement previously agreed upon." The issue presented here is whether the parties had a "meeting of the minds" on the social worker agreement for 1986-88 such that the County was obligated to sign this agreement. The undersigned concludes that, based on the evidence presented, there was in fact a meeting of the minds on the collective bargaining agreement. Both parties agree that a tentative agreement was reached on all proposals at a March 10, 1986 mediation session. The County has asserted that no agreement was reached on the scope of the \$50.00 reimbursement provision because the Union understood it applied to all employees and the County understood

it applied only to single employees, and this misunderstanding meant no contract was reached. The record is not clear as to the exact discussion of this issue on March 10, 1986, but the costing of the parties' positions was discussed with the Union indicating that credit had to be given for the concession it made from a refund of \$50.00 under the prior agreement to reimbursement up to \$50.00 as well as other cost savings features. The County had indicated that it would not agree to a new contract which exceeded 4% in increased cost. It must be noted that the Union did not agree, that any tentative agreement would not exceed the 4% figure. Apparently, the County determined that the package cost was less than 4% and reached a tentative agreement on March 10, 1986. How it calculated the cost of the health insurance reimbursement is unknown as it did not get the exact figures until sometime between June 3 and 5, 1986. 3/ After the tentative agreement was reached, Baker sent Bollom his write-up of the tentative agreement by the March 28, 1986 letter. 4/ Bollom immediately responded to this write-up in a letter dated April 1, 1986 listing a number of disagreements with the Union's position including the scope of the \$50.00 reimbursement. 5/ After the exchange of letters, Bollom and Baker met in the law library of the Courthouse and resolved all the language items and other areas of disagreement. 6/ Baker testified that the \$50.00 reimbursement was discussed and it was his understanding that it would apply to all employees. 7/ Thereafter, on April 16, 1986, the County Board met and ratified both the social workers agreement and the clerical agreement. 8/ The language of both resolutions on the \$50.00 reimbursement is identical and it is undisputed that the \$50.00 reimbursement applies to all employees under the clerical contract.

Subsequent to ratification by the County, Bollom sent Baker a letter dated April 29, 1986 which primarily related to impact bargaining items but also discussed the parties' tentative agreement in the social worker contract including acceptance of Articles 22 and 25 and reiterated its position of reaching a settlement at a cost not exceeding 4%. 9/ On June 3, 1986, Bollom sent Baker another letter indicating that the \$50.00 reimbursement caused the contract to exceed 4%. 10/ Bollom also indicated that the cost out of this item was about \$920.00. 11/ This number was erroneous because the \$50.00 refund for all employees amounted to \$1000.00 the prior year and by a letter of June 13, 1986, Bollom informed Baker of the actual costs but asserted that the layoff clause and on-call comp time costs were the only factors causing the lack of settlement in the social worker contract. 12/ Bollom testified that these two factors were noted because the County had been led to believe through mediation that on-call was a no cost factor and that the Union had dropped its bumping language, which he viewed as appearing back on the table on April 18, 1986 at impact bargaining. 13/ If these two factors with a combined cost of \$3300 are eliminated from the County's cost out of the 1986 contract, the result is a less than 4% cost for the 1986 settlement. 14/ The undersigned finds that there was no mutual mistake and the

3/ Tr. 2 - 85.

4/ Ex. - 8.

5/ Ex. - 13.

6/ Tr. 2 - 139, 140, 214, 215.

7/ Tr. 2 - 215.

8/ Exs. 6 & 12.

9/ Ex. - 14.

10/ Ex. - 15.

11/ Id.

12/ Ex. - 10.

13/ Tr. 2 - 99.

14/ Ex. - 10.

health reimbursement proposal as understood by the Union was agreed to by the County prior to its ratifying the agreement. Assuming arguendo that a mistake was made on March 10, 1986 as to the coverage of this proposal, Baker and Bollom met prior to April 15, 1986 and resolved all the issues including the \$50.00 health insurance reimbursement. Baker and Bollom are experienced negotiators and Bollom had raised the disagreement on this issue in his April 1, 1986 letter and thereafter they met before April 16, 1986 and resolved all these issues. It is just not conceivable that they would make the same mistake again given their extensive experience. It appears quite clear that agreement was reached to reimburse all employees up to \$50.00 and that this was ratified by the County on April 16, 1986. The subsequent negotiations on impact items and other factors may have lead the County to later conclude that the cost might exceed 4%, however the agreement reached by the parties was over specific proposals on which there was no misunderstanding. The County's later conclusion that the cost of this agreement might exceed 4% cannot be a basis for refusing to sign the agreement. There was an agreement on the specific proposals and not an agreement that the contract would be limited to 4%. If the County miscalculated the cost, it cannot later refuse to implement all the provisions it agreed to in negotiations which it presumably costed and was satisfied met its own guidelines. The County's vacillation from acceptance of the reimbursement for all employees to single employees only throughout the post settlement period was merely an attempt to keep within its 4% limit. The County was not concerned with the exact provision. Any item that would reduce the cost below 4% as its later calculations indicated would resolve the matter. The undersigned finds that a tentative agreement was reached which included the \$50.00 reimbursement for all employees in the social worker unit and there was a meeting of the minds on this issue and this agreement was ratified by the Union prior to April 16, 1986 and was ratified by the County on April 16, 1986. The ratified agreement resolved all outstanding issues between the parties and the County's subsequent refusal to execute the agreement simply because it calculated the costs to exceed 4% clearly violated Sec. 111.70(3)(a)4, Stats. and derivatively Sec. 111.70(3)(a)1, Stats. The undersigned has therefore directed the County to execute the agreement and to post appropriate notices.

With respect to the impact bargaining the record indicates that certain proposals with respect to employees who terminated or were terminated due to the closure were made by the County on April 18, 1986. These proposals were in line with the County's Resolution 29-86 adopted on April 16, 1986. 15/ Additionally, Baker testified that he accepted these proposals and the undersigned credits this testimony. 16/ However, contrary to the Union's arguments that these were the only impact items and that subsequent discussions on bumping were separate and not related, the undersigned finds that these proposals were only part of the total impact bargaining and the tentative agreement on the impact for employees who terminated was only one side of the coin and not the complete resolution of impact bargaining. In other words, the parties had reached agreement on one area of impact bargaining but not on the entire impact bargaining. The other side of the coin involved the employees who did not terminate but had the right to bump. The Union took the position that the contractual language for social workers provided for rate protection and it need not make any impact agreement with respect to rate after bumping. 17/ The record establishes that the County did not share the Union's opinion as to the language of the agreement and wished to get an impact agreement. 18/ There was also a dispute as to rate protection for clerical employees and it was conceded that they did not have rate protection and no agreement was reached on the bumping for either clerical or social workers on April 18, 1986. The Union's argument that the County wanted to reach agreement to avoid multiple or chain bumping and was offering rate protection to get it is well taken but where no agreement was reached on this issue for the social workers it fails to explain why the County, which was not shown to be particularly generous,

15/ Ex. 5 & 6.

16/ Tr. 1 - 21.

17/ Tr. 2 - 24.

18/ Tr. 2 - 25.

would give impact items to the social worker unit without any quid pro quo. Bollom's letter to Baker on April 29, 1986 makes it clear that no overall agreement had been reached and offers certain proposals. 19/ On May 13, 1986, Baker and Bollom made an agreement with respect to the clerical unit. 20/ This agreement provided rate protection to a maximum of \$1000 for each bumping employee to a maximum of \$8000 for the group. No mention is made of the impact offers for terminated employees and the record failed to establish that any laid off clerical employee got any of the benefits of the County's impact offer made at the April 18, 1986 session. 21/ No similar agreement was ever consummated for the social workers. It thus appears that while part of the County's offer was accepted, total agreement was not reached as no agreement was reached on bumping. Clearly, the County was interested in getting such an agreement and the lack of agreement meant the parties did not reach an overall impact agreement. In other words, because the bumping issue remained open, there was no total agreement on impact items. As there was no complete agreement, the Union cannot seek to enforce the terms of its agreement to some items when there was no total agreement. While the Union may have been correct that the agreement covered the rate protection issue for social workers, the County wanted its position on both multiple bumping and rate protection and was willing to make concessions in the impact area. No agreement to the bumping issue meant there was not a total agreement and the denial of payment to the two social workers in accordance with the initial proposal did not constitute a prohibited practice as no total agreement had been reached. Thus the complaint on this issue has been dismissed. The undersigned does not find that the Union has waived its right to bargain on the impact as it appears it erroneously thought it had reached agreement so no further request for bargaining was required. Thus, the Union may request further impact bargaining for the social workers unit.

Dated at Madison, Wisconsin this 22nd day of June, 1987.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Lionel L. Crowley

Lionel L. Crowley, Examiner

19/ Ex. - 14.

20/ Ex. - 23.

21/ Tri - 68-69.