STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

LOCAL 1756, AFSCME, AFL-CIO, Complainant, vs. WAUPACA COUNTY (HIGHWAY DEPARTMENT), Respondent.	Case 41 No. 38584 MP-1951 Decision No. 24764-A

Appearances:

Mr. Bruce Ehlke, Lawton & Cates, Attorneys at Law, 214 West Mifflin Street, Madison, Wisconsin 53703-2594, appearing on behalf of Local 1756, AFSCME, AFL-CIO.

Mr Howard T. Healy, Di Renzo and Bomier, Attorneys at Law, 231 East Wisconsin Avenue, P.O. Box 788, Neenah, Wisconsin 54956-0788, appearing on behalf of Waupaca County (Highway Department).

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Local 1756, AFSCME, AFL-CIO, filed a complaint with the Wisconsin Employment Relations Commission on March 26, 1987, and an amended complaint on May 22, 1987, in which it alleged that Waupaca County (Highway Department) had committed prohibited pratices with the meaning of Sec. 111.70 (3) (a) 1, 4 and 5, Stats. On August 13, 1987, the Commission appointed Richard B. McLaughlin, a member of its staff, to act as an Examiner to make and issue Findings of Fact, Conclusions of Law and Order, as provided in Sec. 111.70 (4) (a), and Sec. 111.07, Stats. The Waupaca County (Highway Department) filed an answer to the complaint on April 7, 1987, and an answer to the amended complaint on June 5, 1987. Hearing on the matter was conducted in Waupaca, Wisconsin, on October 14, 15 and 16, 1987. A transcript of each day of hearing was provided to the Commission by November 30, 1987. The parties filed briefs, the last of which was received by the Commission on May 5, 1988.

FINDINGS OF FACT

1. Local 1756, AFSCME, AFL-CIO, referred to below as the Union, is a labor organization which, as of June 5, 1987, maintained its offices in care of 909 Fifth Avenue, Stevens Point, Wisconsin 54481.

2. Waupaca County, referred to below as the County, is a municipal employer which, as of June 5, 1987, maintained its offices in care of P.O. Box 401, Waupaca, Wisconsin 54981.

3. Among the various departments utilized by the County to effect the services it offers is a Highway Department. The Union serves as the exclusive collective bargaining representative for certain Highway Department employes. The County and the Union have been parties to a number of collective bargaining agreements, including an agreement in effect by its terms from January 1, 1986, through December 31, 1987. Included among the provisions of that agreement are the following:

Article II - Management Rights

2.01 The Waupaca County Board of Supervisors, through its duly elected Highway Commissioner, possesses the sole right to operate the Highway Department and all management rights repose in it, except as otherwise specifically provided in this Agreement and applicable law. These rights include, but are not limited to the following:

. . .

D) To suspend, demote, transfer, discharge and take other disciplinary action against employees for just cause;

E) To layoff employees because of lack of work or other legitimate reasons;

. . .

Article IV - Cooperation

4.01 The Employer and the Union agree that they will cooperate in every way possible to promote harmony and efficiency among all employees. (The Employer agrees to maintain certain conditions of work, primarily related to wages, hours and conditions of employment not specifically referred to in this Agreement in accord with previous practice.)

. . .

Article VIII - Job Posting & Seniority

. . .

8.09 Seniority Rights, Layoffs, Rehiring: The Employer recognizes the following seniority rights:

. . .

8.12 When laying off seasonal employees, the oldest in point of service shall be retained if qualified to perform the available work. When laying off full-time employees, the oldest in point of service shall be retained if the remaining employees are qualified to perform the work available. The rehiring of employees that have been laid off shall be in reverse order to that of laying off.

8.13 An employee who is on layoff or unable to work due to illness shall retain recall rights for a period of three (3) years. In such cases, the employee shall continue to accrue seniority, however, other benefits shall cease to accrue during the period of time the employee is off payroll.

. . .

Article XIV - Normal Work Week & Work Day

14.01 The normal work week and the normal work day of the Waupaca County Highway Department shall be as follows:

14.02 The normal work week shall be forty (40) hours per week to be worked in five (5) consecutive eight (8) hour days, Monday through Friday. The normal hours of work shall be from 7:00 a.m. to 12:00 noon, and 12:30 p.m. to 3:30 p.m. daily.

14.03 Should there be any necessity to reduce the number of hours of work per day and/or per week, the Highway Committee shall meet with the Bargaining Committee of the Union to work out a mutually satisfactory solution to the matter. In the event a satisfactory solution cannot be worked out, then the Employer shall layoff the requisite number of employees consistent with the collective bargaining agreement.

. . .

14.07 Employees are entitled to a fifteen (15) minute midshift break in the morning.

. . .

Article XVI - Authorized Absence

16.01 Vacations: All regular employees shall be entitled to vacation leaves based upon the following schedule. A week's vacation shall be based upon forty (40) hours pay.

. . .

16.05 Subject to the staffing requirements of the Employer, the employee shall be given his/her choice of the time of vacation, except that if there is a conflict in the choice of vacation between employees, the employee with the greatest seniority shall be granted the first choice of vacation time.

. . .

Article XVII - Insurance

17.01 The Employer shall provide payment of the premium for the present Wisconsin Group Insurance coverages. All regular employees shall be eligible for such coverage including family plan coverage. An employee, at the employee's option, shall be allowed to carry the Greater Health Plan (GHP) in addition to the above coverages, however, the employee shall pay the difference in cost between the above coverages and the GHP plan.

. . .

The agreement also contains, at Article XI, a grievance procedure which culminates in final and binding arbitration.

4. The collective bargaining agreement covering 1980 contained the first sentence to Section 14.03, as set forth in Finding of Fact 3, but not the second sentence. At some time during the winter of 1980-81, the County proposed to reduce the normal work week of Highway Department employes to four days per week. The Union objected to this proposal, and requested a meeting on the point as provided by the then existing provisions of Section 14.03. The County ultimately did implement a four day work week in that winter. From these events, the Union concluded that the first sentence afforded the County greater authority than the Union deemed appropriate, and the Union raised an issue regarding that section in the collective bargaining which eventually produced an agreement covering 1981. The Union expressed to the County, during that round of collective bargaining, that it would prefer a lay off, by seniority, of twenty percent of bargaining unit members to a reduction of one day from the normal work week of all bargaining unit members. During a mediation session conducted in April of 1981, the parties agreed upon the language which appears as the second sentence of Section 14.03, as set forth in Finding of Fact 3. The Union concluded, as a result of this mediation, that the County would effect future reductions by a lay off of the necessary number of the least senior employes and not by a reduction in the normal work week of all unit employes. Other than the reduction in hours noted in this Finding of Fact, a lay off which occurred in the winter of 1957-58, and the lay off which prompted the filing of the complaint in this matter, the County has not laid off, or reduced the hours of, Highway Department employes at any time relevant to this matter. The circumstances surrounding the 1957-58 lay off can not be discerned on the present record.

5. The County budgets for its Highway Department on a calendar year basis, from January 1 through December 31 of a given year. The Highway Department realizes revenue from a number of sources including the County itself, Townships and Cities within the County, and the State of Wisconsin (State). The Highway Department performs a number of services attendant to road maintenance and construction to obtain these revenues, including snow removal, culvert installation, shoulder maintenance, brush cutting, as well as road construction and patching. The County bills Townships about every two payroll periods for the work it performs on Township roads. The County bills Townships for the full cost of certain work it performs, but charges Townships sixty percent of the cost of brush cutting on Township roads. The County itself assumes the remaining forty percent of the cost of such work. The Highway Department also services County

roadways. The County assumes the full cost of such work. Revenue received from the State can include federal funds. For example, the federal government assumes fifty percent of the cost of certain bridge maintenance performed by the Highway Department. In addition, certain special projects can incorporate federal funding. For example, the rebuilding and resurfacing of County Trunk Highway X, which is projected for 1987 and possibly 1988, rely on federal funding. The State does not have a staff to maintain highways, but contracts with counties and with private contractors to perform such work. Starting in January of 1987, the State issued separate written contracts to the County for routine maintenance and for special maintenance. Routine maintenance refers to the year around work necessary to keep State highways in a condition the State's Department of Transportation deems appropriate. Special maintenance refers to site specific work to be performed within a particular time on a particular portion of a roadway. The agreements by which the State authorizes payment to the County for routine and special maintenance are known as "Authority for Expenditure," or AFE, agreements. The County prepares its budget for a given year in the fall of the year preceding that given year. The State does not budget on a calendar year running from January 1, as the County does. The State does supply the County with information on anticipated State spending during the County's budget deliberations. In early December of 1986, the County submitted its proposal to the State for routine maintenance work for 1987. The State did not formally approve the AFE agreements for such routine maintenance until late December of 1986, and sent the County the approved AFE agreements on February 13, 1987. Those routine maintenance agreements totalled approximately $719,400. The State does not require the items of routine maintenance to be performed at any particular time, provided the quality of the work meets State standards. The State and County also entered AFE agreements for special maintenance. Throughout March of 1987, the County requested authorization for a number of special maintenance projects. By April 3, 1987, the State authorized payment to the County for various special projects totalling approximately $421,330. The State sent the County the approved AFE agreements for special maintenance projects on April 27, 1987. The County also can realize revenue from the State by performing work under construction contracts. In late April of 1987, the County sought approval for one such a contract, which the State approved on May 27, 1987. The work involved site clearance on State Highways 22 and 54, in the amount of $4,460.32. The project regarding County Trunk X mentioned above was part of a six-year program of road maintenance for which federal funds may be obtained. The project involved a construction contract which was finalized on August 5, 1987, and involved $273,453.99 worth of labor and materials.

6. The winter of 1986-87 was a mild one, which, according to the County's records, produced the least accumulation of snow for at least the preceding five winters. As a result of the mild weather, the County's typical regimen of work proved impossible. In any winter, the County must provide for the clearing of ice and snow from roadways, and will attend to other items of work as possible. For example, the County typically crushes limestone during the winter months to assure itself of an inventory sufficient to cover its needs for shouldering and road construction projects requiring lime rock. The County also crushes gravel, but can not typically do so in the winter because the frozen ground prevents the County from obtaining the proper design mix for the gravel. Certain road patching work is also typically performed in the winter months, when the weather permits. The cold weather causes road cracks to open wider, and certain of the petroleum based patching compounds require cold temperatures to perform properly. Brush cutting is also typically performed in winter months because the trees and bushes to be trimmed are dormant. Such work is also assisted by a lack of snow cover, for the plants to be trimmed are easier to get to, and can be trimmed to ground level. The absence of paving work in winter also allows the County to transport crushed stone to the job sites which will require the stone when weather permits. The absence of snow in the winter of 1986-87 caused the County to depart from its typical regimen of work. In January of 1987, the County was performing more brush cutting than it typically would be able to. The brush cutting was being performed on Township, State and County roads.

7. The State regarded the mild weather as an oppurtunity to obtain certain work from the Counties that snow and ice removal had, in prior years, made impossible. Ted Stephenson, the State Maintenance Engineer for Highways, summarized the State's view in a letter to "ALL COUNTY HIGHWAY COMMISSIONERS," dated February 9, 1987, which reads as follows:

> Because of the mild winter, to date, the cost for winter maintenance of STH's will probably be less than you planned.

This correspondence has been written to remind you that we revised the budgeting method for 1987 Routine Maintenance.

The revised budgeting method guarantees a "level of service" from each County for routine maintenance. The state wants the total labor, machinery, and material services listed in the "routine" A.F.E. for 1987 which all counties have approved. To accomplish this objective, the task at hand is to revise the traditional routine maintenance scheduling of activities to reduce the state's back log of work in areas other than winter maintenance.

The labor side of the equation for early CY 1987 should remain be (sic) fairly constant except for overtime costs. The normal overtime can be used for any salary costs under the 1987 A.F.E. for "routine" maintenance. If your state labor costs are below average, other routine work should be scheduled. This year, the state has placed emphasis on clearing and brushing of STH's during January, February and March because a 5-year backlog of work to be done. This activity is labor extensive with low machinery and materials costs. The use of any county employee that provides clearing and brushing services on S.T.H. is an acceptable cost.

The state furnished materials side of the equation might be below average. Any state material cost savings will be available for allocation to the counties for routine maintenance activities.

The equipment side of the equation will be below average for certain classes of equipment. A low rate patrol truck is certainly different than a high rate patrol truck with plow, wing and sander. This mild 1986-87 winter will reduce county revenue below expectations unless other equipment is used.

We know that the S.T.H. system has a backlog of routine maintenance work that needs to be done. Activities that utilize equipment need to be advanced and/or scheduled for the months of March, April and May. It is important that this scheduling be done. First, to provide the counties with much needed machinery revenue. Second, to utilize the state money available. (Remember the state fiscal year ends with your May invoices.)

For example, we have a shouldering backlog in routine maintenance. This activity can utilize the big trucks, graders, rollers, etc. On the wide shoulders, this activity can start early in the spring.

I am asking that you work with your District Chief Maintenance Engineer to advance and/or schedule work for the months of March, April and May that will utilize your equipment.

The state winter maintenance expenditure data for 6-years (1981-86) is presented in 1986 constant dollars for your review. (The state fiscal year data includes the June thru May county highway invoices.) By deleting the high and low cost years, a 4-year average winter is $23,334,300.

FY	Winter Maintenance (1986 $)		
1981	$17,124,000	1984	$22,380,700
1982	27,089,100	1985	22,477,200
1983	21,390,100	1986	30,672,000

Based on the partial winter maintenance costs available, the FY 1986-87 winter will probably cost about $20,000,000. This

estimate assumes average February and March winter maintenance costs. Based on this information, about $2.3 million must be advanced and/or rescheduled.

. . .

Throughout January of 1987, Arden Bonnell, the County Highway Department Commissioner, discussed with James Bernhagen, the Highway Department's Office Manager and Accountant, that the Highway Department's income had dropped from the level of prior years, while expenses had risen. This rise in expenses and drop in income was due, in significant part, to the mildness of the winter. The County was performing less work on snow removal for Townships and the State, and was performing more brush cutting work on its own roadways than was typically the case for the winter months. Bonnell and Bernhagen regarded this as a significant problem for the Highway Department's budget.

8. The County Board of Supervisors oversees the operation of its Highway Department through a Highway Committee composed of certain Board members, and chaired, at all times relevant to this matter, by Earl Christenson. The Committee meets regularly and keeps minutes from its meetings. The minutes for a meeting of January 2, 1987, read, in relevant part, as follows: "Committee talked about possible 4 day work week if we don't have enough work." On January 13, 1987, Bonnell issued a letter to Cindy Fenton, then the Union's Staff Representative, which reads as follows:

> Due to the unusually mild winter, resulting in the lack of work, Waupaca County is anticipating a reduction in the number of days of work per week, to four (4) eight (8) hour days per week.
>
> However we would reserve the option to resume a full five (5) eight (8) hour day work week if and when the work load increases.

Bonnell issued a document dated "January 16th., 1987" and entitled "NOTICE TO ALL EMPLOYEE'S" which reads as follows:

> Due to the unusually mild winter, resulting in the lack of work, commencing 1/19/87 we will be working four (4) consecutive (8) hour days each week, with no work on Fridays.
>
> However if and when the work load increases or conditions require we will resume the normal work week.
>
> As an option you may desire to use vacation time in place of Fridays off without pay.
>
> We also ask that in case of adverse weather you would be readily available to work if required.

The Highway Committee met on January 16, 1987. The minutes from that meeting read, in relevant part, as follows:

> Committee talked about 4 day work week because of lack of work. Office people and Engineer might have to work because of work load.
>
> Motion by Egan and seconded by Nottleson to go to 4 day work week with 1st., day off to be 1/23/87 and be off each Friday until changed by Committee action. Each day to be 8 hours - 32 hour week.
>
> If work load calls for 5 day week it will be determined by Highway Commissioner. All voted aye.

On January 19, 1987, Fenton was meeting with County representatives regarding various grievances involving the Union. At some point during that meeting, County

representatives gave Fenton a letter signed by Bonnell and dated January 19, 1987, which reads as follows:

> The County notified the union on January 13th, 1987 of a proposed reduced work week of four eight hour days. The first day of the proposed lay off has been tentatively scheduled for Friday, January 23rd, 1987.
>
> The current contract (Article XIV Section 14:03) provides for a meeting to work out a mutually satisfactory solution to the matter in the event it is necessary to reduce hours.
>
> If you desire to meet concerning the above, please advise. If the County receives no response it will assume that the union accepts the 4 day work week as a satisfactory solution.

Fenton responded by demanding that County representatives bargain the issue. The Union and the County arranged that night to meet on January 21, 1987, to discuss the County's proposal.

9. The Union and the County met at the shop of the Highway Department. Bonnell and the Highway Committee were among those present for the County, and the Union was represented by Fenton, the Union's officers and its bargaining committee. Christenson served as the County's spokesman. Christenson informed the Union that the County intended to implement a four day work week for an indefinite amount of time, and that the the affected employes could use vacation time to avoid a loss in pay. The Union and the County discussed the matter for about two hours, at least part of which involved the bargaining teams for the County and the Union meeting separately. The Union proposed that the four day week would be acceptable if the County set a date certain for the reduced week to end. The Union proposed two different end dates for the reduced work week, one in late February and one in mid March. The Union also proposed that any work done on a Friday of the reduced work week be subject to a minimum of two hours for "call time." The Union ultimately reduced the proposal to one hour of call time. The County's bargaining team did go into caucus regarding the various Union proposals, but did not agree to any of those proposals. At least twice during the meeting Christenson informed the Union that if the County's position was not accepted, there would be a general lay off of unit employes. The Highway Committee's minutes for that meeting refer to this offer as "Committee final offer." At no point during the meeting of January 21, 1987, did the County offer a counter proposal to the Union regarding an end date for the reduced work week, or regarding call time for work on a Friday of a reduced work week. The County did not offer the Union any guarantee of any level of work. At the close of the January 21, 1987, meeting the Union advised the County that it would hold a Union meeting on the matter on January 24, 1987, and would advise the County of the results.

10. The Union did hold a meeting on January 24, 1987. Fenton advised Christenson of the results of that meeting by phone on January 24, 1987, by reporting to Christenson that the Union had voted to reject the County's proposal of a reduced work week. The Highway Committee met on January 30, 1987. The minutes from that meeting note:

> Committee held general conference relative to labor troubles, Dennis reported to committee. A meeting with all foremen and committee is to be set up.

Bonnell issued a letter to Fenton dated "February 2nd., 1987" which reads as follows:

> Whereas Waupaca County Highway has not received any reply of the results of the Employee's Union Meeting held on January 24th., 1987, we will proceed with layoff plans as specified by Sec. 8.12 as proposed.
>
> The recent snowfall has temporarily delayed any reductions in the work force, however we do intend to reduce the work force if and when the need presents itself again.

> Unless we hear different from you we will proceed as planned.

Bonnell was aware that the Union had rejected the County's proposal when he issued the February 2, 1987, letter, but was concerned by the fact that the Union's position had not been confirmed in writing. Before receiving Bonnell's letter of February 2, 1987, Fenton issued a letter to Bonnell and Christenson dated February 3, 1987, which reads as follows:

> This letter will serve to confirm my telephone call to Mr. Earl Christenson on Saturday, January 24, 1987.
>
> On January 24, 1987, I indicated to Mr. Christenson that Local 1756, by a vote of 61 to zero chose to maintain current working conditions as outlined in the collective bargaining agreement. That is, the Local chose to continue working five days a week (Monday through Friday), eight hours per day.
>
> Should you have questions, please feel free to contact me.

11. The Highway Committee met on February 5, 1987. Prior to, and at that meeting, Bonnell supplied the Committee with general information that maintenance expenses were higher than in previous years, and that revenue was lower than in previous years. Donald Fabricius, a member of the County Board of Supervisors and the Secretary of the Highway Committee, perceived that information to indicate that the County would have to expend its own tax dollars to continue to meet the Highway Department payroll. The minutes of the February 5, 1987, meeting read as follows:

> All members present from Committee and all Supervisors from Waupaca Shop and Outlying Shops . . . Rollcall vote . . . to discuss reduced work schedule with Supervisors and Unrepresented Employees. 8:40 P.M. motion . . . to go back into open session . . . all voted aye to have general layoff of all represented people, to begin effective February 9th., 1987 and shall be off until needed . . .

12. The County notified unit employes of the general lay off on February 6, 1987. The general lay off was in effect from February 9, 1987, through April 3, 1987. Certain unit employes were called in to perform snow removal work on a temporary basis during this period of time.

13. The Union filed a complaint of prohibited practice with the Commission on March 26, 1987, in which the Union alleged that the County's actions in laying off unit employes violated their rights under the Municipal Employment Relations Act.

14. The County recalled unit employes from lay off on April 3, 1987, and conducted a general meeting of the recalled employes at the Waupaca Shop. The entire Highway Committee, Bonnell, the County's Assistant District Attorney, and the Highway Department's Road Superintendent and Foremen were also present for the meeting. Bernhagen informed the assembled employes that those individuals who had not paid the premiums for their group health insurance during the period of the lay off should sign up for that insurance as soon as possible, and that there would be no waiting period before their coverage became effective. The assembled employes were also informed that no unit employes would be allowed to take their morning coffee break at a restaurant. After a question and answer period, the meeting was concluded.

15. On April 13, 1987, the County posted the following notice entitled "VACATION STAFFING REQUIREMENTS:"

> Beginning January 1, 1987 the following policy will be in effect and strictly enforced.
>
> No more than the following number of persons will be on vacation at any one time in the following locations.

WINTER SEASON:

CLINTONVILLE	----- 2 Persons
IOLA	----- 1 Person
MANAWA	----- 1 Person
NEW LONDON	----- 1 Person
WAUPACA	----- 5 Persons

SUMMER SEASON:

BRIDGE CREW	----- 1 Person
CLINTONVILLE	----- 1 Person
CONST. CREW	----- 1 Person
HOT MIX CREW	----- 2 Persons
IOLA	----- 1 Person
MANAWA	----- 1 Person
NEW LONDON	----- 1 Person
WAUPACA	----- 2 Persons

If there is a conflict of vacation scheduling the person with the most seniority will have first choice of time off.

Bonnell was aware this policy changed a past practice regarding vacation staffing requirements. The County has not, however, implemented the policy noted in this notice. In a letter to Andrew Stanislawski, the Union's President, dated "April 17th., 1987" Bernhagen stated the following:

> On April 3rd., 1987 I informed employees who had signed off the County's insurance that there would be no waiting period when they re-enrolled. However, I have been informed that my decision was not within my scope of authority, and that the Waupaca County Personnel Committee voted not to waive the 30 day waiting period. Enclosed you will find a copy of their official letter and decision.
>
> At this time, I would like to extend my sincere apology for relaying information that was not correct. Also, for those of your that had the Group Health Plan, I deducted April's employee's share from your paycheck dated April 10th., 1987. You can either ask for a refund or use that deduction for next month's insurance, and you would not have the employee's share taken out in May.
>
> Again, I would like to apologize for any inconvenience my actions have caused you. Please feel free to come in or call me if you have any questions.

The "official letter and decision" referred to by Bernhagen is a letter from James H. Fassbender, the County's Assistant District Attorney, to Dolly Hoffman, the County's Accounting Supervisor, dated April 16, 1987. That letter reads as follows:

> This is to inform you that on April 15, 1987, the Personnel Committee for Waupaca County voted not (emphasis from text) to waive the 30 day waiting period for employees wishing to re-enroll into the County's insurance plan. Therefore, that waiting period should be enforced for employees who discontinued their coverage.
>
> Please feel free to forward a copy of this letter to the appropriate people at our insurance carrier. Also feel free to contact me if you have any questions.

The County self-insures its group health plan, and utilizes Employer's Health Insurance of DePere, Wisconsin, to serve as the administrator of that plan.

16. Prior to the April 3, 1988, meeting, the County had permitted unit employes to take their morning coffee break at a restaurant if the restaurant was located at or on the way to the employe's work site. This practice existed at least as early as 1981. In collective bargaining in 1981 or 1982, the practice

was discussed by the parties, without any express agreements being reached on the point. The practice was again discussed in collective bargaining for a labor agreement covering the 1986 and 1987 calendar years. In that bargaining the County proposed to restrict the morning break to the work site. The Union proposed that the morning break be placed into the contract and that the contract expressly note that the break could be taken at a restaurant located on the way to an employe's work site. The parties ultimately agreed to place Section 14.07 into the parties' collective bargaining agreement. During the term of that agreement, certain employes continued to take their morning break at a restaurant located at or on the way to their work site. The County has disciplined employes for spending too much time at a restaurant during the morning break, including its suspension of two employes without pay in the fall of 1985 for the abuse of the morning break.

17. Sometime in December of 1986, Bonnell approached Stanislawski regarding Bonnell's desire to make changes in the way vacation time was set. Stanislawski discussed the matter with Fenton, who, in a letter to Bonnell headed "RE: Proposed Change in Vacation," dated December 20, 1986, stated the following:

> Andy Stanislawski gave me a copy of a document entitled "Vacation Staffing Requirements."
>
> Please be advised that Local 1756 believes these are changes in the status quo. Any changes in the status quo must be negotiated. Should the County want to negotiate such changes, please contact either myself or Andy.
>
> Unless and until changes are negotiated, Local 1756 expects that the current contract and current understandings regarding past practice(s) will be maintained. If you have any questions, feel free to contact me.

Fenton received no reply to this letter. The Union and the County have not met to discuss any changes to the scheduling of vacations.

18. The County's group health insurance plan is described in a booklet entitled "County of Waupaca Employee Health and Welfare Benefit Plan." That booklet states the following:

> ELIGIBILITY AND
> EFFECTIVE DATE OF COVERAGE
>
> EMPLOYEE (SINGLE) COVERAGE
>
> You are eligible for coverage if the following conditions are met:
>
> 1. You are an employee eligible for insurance according to the eligibility requirements of the employer.
>
> 2. You satisfy a probationary period of 30 days.
>
> 3. You are "actively at work".
>
> . . .
>
> TERMINATION OF COVERAGE
>
> Coverage terminates on the earliest of the following dates:
>
> . . .
>
> 8. If you are not "actively at work" and are on an approved leave of absence or are on temporary layoff, your coverage may be kept in force for a period of time as approved by the employer on a non-discriminatory basis.
>
> . . .

The County permitted its employes to continue their health insurance coverage during the period of lay off if the employe paid the insurance premium. Some of the laid off employes continued their insurance coverage, and some did not. During the general lay off, Hoffman contacted the administrator of the plan regarding the eligibility of employes who had terminated their coverage during the lay off, and understood the administrator's recommendation to be that such employes should satisfy a thirty day waiting period before their coverage was considered to be in effect. Hoffman does not know if the Personnel Committee was aware of the administrator's recommendation. The Highway Committee was aware of the administrator's recommendation.

19. As of February 9, 1987, brush cutting and road-patching work was not finished on various State, County and Township roadways. For the purpose of projecting monthly routine maintenance costs, the State analyzes monthly County billings to the State, and creates a formula by which an estimated monthly cost can be projected based on County billings for a particular month in the preceding three years. Using that formula, the State projected estimated County billings for January of 1987 which were $20,909 greater than the amount actually billed by the County. For February of 1987, the County billed the State $34,557 less than the State had projected, and for March of 1987, $45,115 less. In April of 1987, the County billed the State $12,197 more than the State had projected, and in May of 1987, the County billed the State $142,824 more than the State had projected. As of the end of May, 1987, then, the County had billed the State $54,440 more than the State had projected. In the summer of 1987, the County experienced a shortage of gravel for paving work. In a departure from its usual practice, the County purchased crushed gravel from a private contractor and from a neighboring county to address this unanticipated shortfall. The shortfall was due in substantial part to the County's obtaining shouldering work from the State to be performed in May of 1987. The gravel used for this shouldering work was taken from inventory set aside for paving projects, and was not replenished by the County at its own crusher. No unit employes were on partial or total lay off at the time these gravel purchases were made. As of February 9, 1987, the County had not yet crushed sufficient limestone to meet its then anticipated needs for the coming year. By mid-October of 1987, however, the County had crushed 22,966 cubic yards of lime rock. The total amount of lime rock crushed by the County in 1986 was 26,645 cubic yards, and in 1985 was 24,440 cubic yards.

20. As of February 9, 1987, Bonnell, Bernhagen and the County Highway Committee had a good faith belief that the Highway Department's drop in revenues and the increase in its maintenance costs were going to significantly and adversely impact the Highway Department's ability to meet its 1987 budget, and further that meeting the Highway Department's payroll throughout the winter of 1986-87 would deprive anticipated paving and other maintenance and construction projects of needed funding. This good faith belief had a sound basis in fact, since the Highway Department did experience in December of 1986 and in January of 1987 a significant decrease in non-County based sources of revenue, coupled with a significant increase in County funded expenditures for routine maintenance. As of February 9, 1987, the County had not yet secured authorization for State special maintenance work, or for construction work involving significant federal funding. The County's inability to secure such work by that date was due to circumstances beyond the County's control. The lay off effected by the County of February 9, 1987, was within the scope of its authority under the relevant provisions of Articles II and VIII of the collective bargaining agreement noted in Finding of Fact 3 above, and did not violate the provisions of Article XIV of that agreement.

21. The County, by abrogating the practice of allowing unit employes to take a morning break in a restaurant located at or on the way to their worksite violated Sections 4.01 and 14.07 of the collective bargaining agreement noted in Finding of Fact 3. The County's unilateral imposition of a thirty day waiting period for group health insurance coverage violated Section 17.01 of the collective bargaining agreement noted in Finding of Fact 3. The County's April 13, 1987, posting of a memo entitled "VACATION STAFFING REQUIREMENTS" violated Section 16.05 of the collective bargaining agreement noted in Finding of Fact 3. The County's actions regarding the morning break, health insurance and vacation staffing requirements taken at and after the meeting of April 3, 1987, had a reasonable tendency to interfere with the assertion, on behalf of Highway Department employes represented by the Union, of the March 26, 1987, complaint of prohibited practice.

CONCLUSIONS OF LAW

1. Each Highway Department employe represented by the Union is a "Municipal employe" within the meaning of Sec. 111.70 (1) (i), Stats.

2. The Union is a "Labor organization" within the meaning of Sec. 111.70 (1) (h), Stats.

3. The County is a "Municipal employer" within the meaning of Sec. 111.70 (1) (j), Stats.

4. The County, by proposing and by effecting the lay off of February 9, 1987, did not commit any violation of Secs. 111.70 (3) (a) 1, 4 or 5, Stats.

5. The County, by abrogating the practice of allowing Highway Department employes represented by the Union to take a morning break in a restaurant located at or on the way to their worksite violated the collective bargaining agreement between the Union and the County, in violation of Sec. 111.70 (3) (a) 5, and derivatively, of Sec. 111.70 (3) (a) 1, Stats.

6. The County's unilateral imposition of a thirty day waiting period for group health insurance coverage vioalted the collective bargaining agreement between the Union and the County in violation of Sec. 111.70 (3) (a) 5, and derivatively, of Sec. 111.70 (3) (a) 1, Stats.

7. The County's April 13, 1987, posting of a memo entitled "VACATION STAFFING REQUIREMENTS" violated the collective bargaining agreement between the Union and the County in violation of Sec. 111.70 (3) (a) 5, and derivatively, of Sec. 111.70 (3) (a) 1, Stats.

8. The County's conduct regarding morning breaks, health insurance and vacation staffing requirements taken at and after the meeting of April 3, 1987, violated Sec. 111.70 (3) (a) 1, Stats., but did not violate Sec. 111.70 (3) (a) 4, Stats.

ORDER 1/

1. Those portions of the complaint and of the amended complaint asserting County violations of Secs. 111.70 (3) (a) 1, 4 and 5, Stats., regarding the County's proposal and effectuation of the February 9, 1987, lay off are dismissed.

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

Section 111.07(5), Stats.

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

2. Those portions of the complaint and of the amended complaint asserting a County violation of Sec. 111.70 (3) (a) 4, Stats., regarding the County's conduct following the February 9, 1987, lay off are dismissed.

3. To remedy its violation of Secs. 111.70 (3) (a) 1 and 5, Stats., the County, its officers and agents shall immediately:

a. Cease and desist from:

(1). Refusing to allow Highway Department employes represented by the Union to take a morning break in a restaurant located at or on the way to their worksite, consistent with the provisions of Section 14.07 of the collective bargaining agreement noted in Finding of Fact 3.

(2). Taking any action recognizing a thirty day waiting period for health insurance coverage for Highway Department employes represented by the Union and subject to the layoff of February 9, 1987.

(3). Posting any memo regarding vacation staffing requirements which is inconsistent with the County's obligations and acknowledged practices under Section 16.05 of the collective bargaining agreement noted in Finding of Fact 3 above.

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

(1). Permit Highway Department employes represented by the Union to take a morning break in a restaurant located at or on the way to their worksite, consistent with the provisions of Section 14.07 of the collective bargaining agreement noted in Finding of Fact 3.

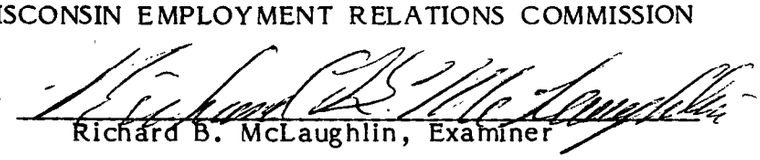
(2). Make Highway Department employes represented by the Union whole, with interest, 2/ for any expenses incurred by any of those employes as a result of the County's imposition of a thirty day waiting period for health insurance coverage for those employes subject to the February 9, 1987, lay off.

(3). Notify Highway Department employes represented by the Union by conspicuously posting the attached Appendix "A" in places where notices to such employes are customarily posted, and take reasonable steps to assure that said notice remains posted and unobstructed for a period of thirty days.

(4). Notify the Wisconsin Employment Relations Commission within twenty days of the date of this Order as to what steps the County has taken to comply with this Order.

Dated at Madison, Wisconsin, this 1st day of July, 1988.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Richard B. McLaughlin, Examiner

2/ The applicable interest rate is the Sec. 814 (4), Stat., rate in effect at the time the complaint was initially filed with the agency. The instant complaint was filed on March 26, 1987, at a time when the Sec. 814.04 (4), Stats., rate in effect was "12% per year." Sec. 814 (4), Wis. Stats. Ann. (1983). See generally, Wilmot Union High School District, Dec. No. 18820-B (WERC, 12/83), citing, Anderson v. LIRC, 111 Wis.2d 245, 258-259 (1983), and Madison Teachers Inc. v. WERC, 115 Wis.2d 623 (CtApp IV, 1983).

APPENDIX "A"

NOTICE TO WAUPACA COUNTY HIGHWAY DEPARTMENT EMPLOYES REPRESENTED BY LOCAL 1756, AFSCME, AFL-CIO

As ordered by the Wisconsin Employment Relations Commission, Waupaca County notifies you as follows:

1. The Waupaca County Highway Department will permit Highway Department employes represented by Local 1756, AFSCME, AFL-CIO, to take a morning break in a restaurant located at or on the way to their worksite. Such breaks must, however, comply with the provisions of Section 14.07 of the collective bargaining agreement between Waupaca County and Local 1756, AFSCME, AFL-CIO.

2. Waupaca County will take no action recognizing the thirty day waiting period for group health insurance coverage for Highway Department employes represented by Local 1756, AFSCME, AFL-CIO, and subject to the layoff of February 9, 1987. Waupaca County will make any such employe whole, with interest, for any expense incurred by the employe due to Waupaca County's unilateral imposition of such a waiting period.

3. Waupaca County will not implement the provisions of a memo entitled "VACATION STAFFING REQUIREMENTS" which was posted by Waupaca County on or about April 13, 1987. Waupaca County will take no action regarding vacation staffing requirements which is inconsistent with the collective bargaining agreement between Waupaca County and Local 1756, AFSCME, AFL-CIO.

WAUPACA COUNTY

By _____ _____
Name Title

_____
Date

THIS NOTICE IS TO REMAIN POSTED FOR 30 DAYS AND IS NOT TO BE COVERED OR OTHERWISE OBSTRUCTED OR DEFACED.

WAUPACA COUNTY (HIGHWAY DEPARTMENT)

MEMORANDUM ACCOMPANYING
FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Background

The Union's original complaint, filed with the Commission on March 26, 1987, alleged that the County violated Secs. 111.70 (3) (a) 1, 4 and 5, Stats., by its conduct from the January 16, 1987, notice to the Union of a four day work week to the February 9, 1987, effectuation of a general lay off. The Union also alleged in the original complaint that, in the period following the February 9, 1987, lay off, the County utilized supervisory and other personnel to perform the work formerly done by the laid off bargaining unit members, in violation of Secs. 111.70 (3) (a) 1, 4 and 5, Stats. The County's answer to the original complaint, filed with the Commission on April 7, 1987, denied the alleged statutory violations. On May 22, 1987, the Union filed with the Commission an amended complaint in which the Union alleged that in addition to the County conduct challenged by the original complaint, the County's unilateral requirement of a thirty day waiting period for insurance coverage; the County's posting of an unbargained change in vacation staffing requirements; and the County's unilateral imposition of a limitation on the morning break also constituted violations of Secs. 111.70 (3) (a) 1, 4 and 5, Stats. The County filed an answer to the amended complaint dated June 5, 1987, in which the County denied the additional allegations contained in the amended complaint. At the start of the three days of heaing on the complaint, the parties stipulated that the Examiner should exercise the Commission's jurisdiction under Sec. 111.70 (3) (a) 5, Stats., to determine the contractual allegations raised by the Union. 3/ In addition, the County asserted a motion alleging that the Union had failed to comply with certain provisions contained in the parties' collective bargaining agreement regarding the "Settlement of Prohibited Practice Problems," and that it followed that the additional allegations of the amended complaint should not be considered properly before the Examiner for determination. At the close of the hearing, the parties reached an understanding regarding the allegations of the amended complaint, and the County's motion regarding that amendment, by which the County would "either schedule a meeting consistent with the contract or write to the Examiner and the other party and indicate that the defense, the motion has been withdrawn and that therefore the matter's submitted to the Examiner on the basis of the amended complaint as it may further be amended this afternoon . . . " 4/ The parties also sitpulated that none of the several grievances relating to "an improper recall of employees based upon a revision of the seniority provisions of the contract" 5/ were before the Commission for determination. After the statement of these understandings, the Union requested that allegations regarding the performance of bargaining unit work by supervisors be considered stricken from the amended complaint. With no objection from the County, the Examiner granted the Union's request. In a letter to the Examiner which was received by the Commission on October 26, 1987, the County stated the following:

> Waupaca County hereby withdraws its objection to your consideration of the Amended Complaint as amended by the Union at the hearing. At the conclusion of the hearing, the Union withdrew that portion of the Complaint dealing with supervisors performing bargaining unit work.
>
> . . .

3/ The transcript (Tr.) at 6 erroneously reads "111.738 (5)." As noted in the text above, however, the parties' stipulation concerns Sec. 111.70(3)(a)5, Stats.

4/ Tr. at 596.

5/ Tr. at 597.

The Parties' Positions

After an extensive review of the record, the Union argues that the complaint poses four questions for decision:

> (D)id Waupaca County interfere with, restrain or coerce the bargaining unit employees in their exercise of (Sec. 111.70 (2), Stats.) rights when it laid all of them off, when they failed to accede to its demand that they unconditionally accept a four-day work week for an indefinite period of time?
>
> . . .
>
> (D)id the County interfere with, restrain or coerce the bargaining unit employees in their exercise of the rights guaranteed at Sec. 111.70 (2), Wis. Stat., when, after calling them back to work, it changed certain conditions of their employment and voted to enforce a waiting period before they could regain health insurance coverage?
>
> . . .
>
> Did the County fail to bargain collectively with the employees' union when it presented the employees with a "take it or leave it" demand that they unconditionally accept a four-day work week, and then laid all of them off when they failed to accede to its demand and when it unilaterally changed certain conditions of their employment?
>
> . . .
>
> (D)id Waupaca County violate a collective bargaining agreement previously agreed upon when it laid off all of the bargaining unit employees, instead of only the least senior twenty percent of the employees, and when it changed certain conditions of their employment?
>
> . . .

According to the Union, the record demands an affirmative answer to each question. The Union's first major line of argument in support of this position is that "(w)hen Waupaca County laid off all of the bargaining unit employees, when they failed to accede to its demand that they unconditionally accept a four-day work week for an indefininte period of time, the County violated Secs. 111.70 (3) (a) 1, 4 and 5, Wis. Stat." Contending that work day and work week are mandatory subjects of bargaining and that the parties' collective bargaining agreement contains, at Section 14.03, a requirement to bargain a reduction in hours, the Union concludes that "as a matter of contract, as well as by law, Waupaca County was obligated to bargain any reduction in the bargaining unit employees' work hours or work week." The Union then contends that a review of the record establishes that the "County did not bargain the reduction in the employees' work hours and work week that is at issue here." Beyond the breach of its duty to bargain with the Union "in a mutually genuine effort to reach an agreement with reference to the subject under negotiation," the County's lay off also, according to the Union, "breached its agreement with the union only to 'layoff the requisite number of employees.'" The bargaining history to Section 14.03 establishes, according to the Union, that:

> The 'requisite number of employees' to be laid off expressly was equated with the number of days by which the work week was proposed to be reduced: the example discussed was that a one day reduction in the work week would be the equivalent of a layoff of the least senior twenty percent of the employees.

The Union contends that the lay off implemented by the County flies in the face of this understanding. The Union's next line of argument is that "(t)his case is one of the few cases where an employer is guilty of violating Sec. 111.70 (3) (a) 1, Wis. Stat., independent of the violations of Secs. 111.70 (3) (a) 4 and 5, Wis. Stat." The Union views the lay off as punitive, since it effected three times the

savings that the County projected as necessary prior to January 21, 1987. As the Union puts it:

> The general layoff was not a consequence of any change in the County's financial situation, but only of the employees' assertion of what they believed to be their rights under the collective bargaining agreement.

The Union's next major line of argument is that "(w)hen, upon their return to work after they had filed a complaint with the Commission, Waupaca County unilaterally changed certain conditions of employment of the bargaining unit employees and voted to enforce a waiting period before they could regain health insurance coverage, the County violated Secs. 111.70 (3) (a) 1, 4 and 5, Wis. Stat." Specifically, the Union argues that the "scheduling of the use of vacation time and morning coffee breaks both are mandatory subjects of bargaining" which the County refused to bargain with the Union. Beyond this, the Union argues that the County's unilateral acts regarding breaks and vacation violated Section 4.01 of the collective bargaining agreement. In addition, the Union argues that "(w)hen, upon their return to work after they had filed a Complaint with the Commission, the County unilaterally changed conditions of the bargaining unit employees' employment and voted to enforce a health insurance waiting period, the County interfered with the employees' exercise of the rights guaranteed at Sec. 111.70 (2), Wis. Stat." Viewing the record as a whole, the Union concludes that:

> Waupaca County should be held to have violated Secs. 111.70 (3) (a) 1, 4 and 5, Wis. Stat. The bargaining unit employees should be made whole for any and all losses they suffered because of the County's unlawful actions.

In reply to the Union's brief, the County contends that the complaint poses four issues for decision:

> Did the County violate the collective bargaining agreement or interfere with, restrain, or coerce employees when employees were laid off on February 6, 1988?
>
> . . .
>
> Did the highway commission refuse to bargain with respect to the sec. 14.03 meeting?
>
> . . .
>
> Did the actions of the County with respect to the scheduling of vacations policy, coffee breaks, and refusal to waive the thirty day waiting period for health insurance, interfer(e) with, restrain or coerce bargaining unit employees?
>
> . . .
>
> Did the County violate the collective bargaining agreement when it laid off all employees for a short period of time rather than a few employees for a longer period of time?
>
> . . .

According to the County, the record demands a negative response to each question. After an extensive review of the record, the County contends that "this case involves lay offs not a reduced work week." It follows, according to the County, that the determinative agreement provisions are Articles II and VIII, and not Article XIV. The County summarizes the impact of Section 14.03 on the present facts thus:

> . . . Sec. 14.03 is merely a creation of collective bargaining agreement, unrelated to case or statutory law. This section does not require what would generally be described as baragaining.

> The language states that prior to implementing a reduced work schedule for employees per day or per week, the Highway Committee shall meet with the Union to work out a solution. The layoff language applies in the event the parties cannot reach a satisfactory solution.

Beyond this, the County argues that the lay off occurred after a period of good faith bargaining, and, in any event, "(t)he County did follow the contract in implementing the layoffs." The County summarizes its actions regarding the lay off thus:

> No reduced work week was implemented. In the absence of the implementation of a reduced work week, no bargaining was required. In addition, this case did not involve the permanent replacement of employees. It was a short term layoff for a legitimate reason (citation omitted). The layoff action was permissible.

Beyond this, the County argues that "(i)n February, 1987, the County acted responsibly when it faced a financial emergency." The record establishes, according to the County, that it did not act to "(p)unish employees," in effecting the lay off, but simply responded to the "(u)nseasonal weather" which "(c)reated the 1987 layoff problem." The County summarizes the record on this point thus:

> Unit employees have a sincere belief that they were picked on, punished, abused, and/or treated unfairly. Employees failed to accept the County's financial explanation. They believed that budgets and finances were the County's province, as well as the County's problem.
>
> . . . The protests, concerns, anxiety and unhappiness of the Union, although understandable, should not be twisted into a framework that mischaracterizes the actions of the County or prevents the County from exercising legitimate options contained in the collective bargaining agreement (i.e., layoff).

Regarding the change in vacation policy, the County contends that the issue is moot because "if the County had never implemented the vacation policy, it did not have to bargain about something that it did not do . . . " Beyond this, the County argues that "(t)he County followed the recommendation of the insurance carrier and past practice with respect to the insurance issue." The County further asserts that "(t)he break rule was based upon abuse of break periods." At most, according to the County, the record on this point demonstrates that "the County's actions represent a good faith attempt to correct disciplinary problems related to abuse of break periods." The County concludes that the record will not support a conclusion that it interfered with, restrained or coerced employes when they returned to work. Viewing the record as a whole, the County asserts that "(t)he Complaint and grievances associated with the Complaint should be dismissed."

In response to the County's brief, the Union notes initially that "(t)here is no serious dispute in this case regarding what happened . . . (t)he dispute here centers on why it happened, and the legal significance of what happened." The Union initiates its argument by asserting that the County "(l)aid off all of the bargaining unit employees, because they failed to accede to its demand that they unconditionally accept a four-day work week for an indefinite period of time." Specifically, the Union asserts the County did not face any financial emergency; that County evidence regarding the alleged emergency was developed after the lay off; that substantial road work was available and necessary; that the assertion that a general lay off was more efficient than a partial lay off is without merit; and that the County itself linked its "demanded reduction in the employees' work week or hours with a general layoff." Beyond this, the Union asserts that the County's proposed reduction in the work week corresponds to a lay off of "twenty percent of the least senior employees," yet the the County ultimately effected a total reduction without any explanation. the Union concludes its argument on this point thus:

> . . . there can be no question that the otherwise inexplicable general layoff, which the Committe threatened as an alternative for the first time at that meeting, was

> intended to coerce the employees into accepting the work week reduction that the Committee already, previously had decided upon and announced publically. When the employees instead voted to stand on thier collective bargaining agreement rights, the Committee simply made good its threat. Such conduct, in addition to breaching Sections 2.01 (E) and 14.03 of the collective bargaining agreement, also constituted a failure to bargain and, independently, interfered with the employees' rights guaranteed at Sec. 111.70 (2), Wis. Stat.

The Union's next major line of argument is that "(u)pon their return to work Waupaca County unilaterally changed certain conditions of employment of the bargaining unit employees and voted to require a waiting period before they could regain health insurance coverage, because they had filed a complaint with the Commission." Specifically, the Union notes that the vacation policy changes are not moot since the notices posted on the point were coercive in nature. Beyond this, the Union argues that the County has failed to to establish a valid defense regarding the unilateral changes in breaks and regarding the waiting period for insurance coverage. The Union concludes by requesting that violations of Secs. 111.70 (3) (a) 1, 4 and 5, Stats., be found, and by requesting that:

> The Highway Department bargaining unit employees should be made whole for any and all losses they suffered because of the County's unlawful actions, including back wages and fringe benefits, health insurance premiums and any lapse in health insurance coverage.

Discussion

The amended complaint fully incorporated the fundamental allegations of the original complaint. Essentially, the original complaint questions County conduct leading up to and including the February 9, 1987, layoff, with the amended complaint supplementing these allegations by questioning County conduct following the laid off employes' return to work. The following discussion will first focus on the County's conduct up to, and including, February 9, 1987.

Secs. 111.70 (3) (a) 1, 4 and 5, Stats., govern the propriety of the County's conduct during this period of time. The Union's allegations regarding these sections are inextricably intertwined, but ultimately turn on the provisions of the parties' contract, and thus on Sec. 111.70 (3) (a) 5, Stats.

The reason the Union's Sec. 111.70 (3) (a) 4, Stats., allegations turn on the provisions of the collective bargaining agreement are rooted in the law governing such allegations, which the Commission has stated thus:

> The duty to bargain collectively during the term of an agreement does not extend to matters covered by the agreement or to matters on which the Union has otherwise clearly and unmistakably waived its right to bargain. 6/

There is no dispute that the conduct at issue here took place during the term of the parties' 1986-87 collective bargaining agreement. Nor is there any allegation that the County failed to bargain in good faith in reaching and in executing that agreement with the Union. Articles II and VIII of that agreement govern lay off, and Article XIV governs the reduction "of hours of work per day and/or per week." The lay off of February 9, 1987, and the conduct preceding its effectuation, including the County's alleged wrongful insistence on a reduced work week in place of that lay off, form the core of the parties' dispute. Because the parties' 1986-87 agreement clearly and unmistakably covers the matters at issue here, it follows that the Union has waived its right to bargain, except insofar as such a right is granted by the parties' agreement. The determinative issue here, then, is not whether the County has violated Sec. 111.70 (3) (a) 4, Stats., by effecting the general lay off of February 9, 1987. The Union has waived the right to bargain on lay off and on a reduction in hours by agreeing to the relevant provisions of Articles II, VIII and XIV. Rather, the determinative point here is whether the County, by effecting the general lay off of February 9, 1987, has violated the terms of the 1986-87 collective bargaining agreement.

6/ City of Richland Center, Dec. No. 22912-B (WERC, 8/86), at 4.

The Union's Sec. 111.70 (3) (a) 1, Stats., allegations also ultimately turn on the parties' 1986-87 labor agreement, and thus on Sec. 111.70 (3) (a) 5, Stats. A County violation of Sec. 111.70 (3) (a) 5, Stats., would also constitute a derivative violation of Sec. 111.70 (3) (a) 1, Stats.

The Union accurately notes that the Commission has a separate standard for determining independent violations of Sec. 111.70 (3) (a) 1, Stats. Applied to the present record, the Commission's standard for determining an independent violation of Sec. 111.70 (3) (a) 1, Stats., demands that the Union demonstrate, by a clear and satisfactory preponderance of the evidence, that the County's conduct in effecting the lay off of February 9, 1987, had a reasonable tendency to interfere with Highway Department employes' exercise of rights granted under Sec. 111.70 (2), Stats. 7/ It is not necessary for the Union to prove that the County intended to interfere with the exercise of such rights, or that there was actual interference. 8/ There is no dispute that the Union's demand for a meeting on the proposed reduced work week, and its conduct after that meeting constitute employe conduct protected by Sec. 111.70 (2), Stats. The Union asserts, however, that the County's response to that conduct was first to threaten, and then to punish the employes for that conduct by linking a proposed reduced work week to a general lay off, then effecting that general lay off. This threat and retribution, according to the Union, had a reasonable tendency to interfere with protected employe rights.

On the present record, however, the Sec. 111.70 (3) (a) 1, Stats., analysis is indistinguishable form the relevant Sec. 111.70 (3) (a) 5, Stats., analysis due to the language of Section 2.01 E) of the collective bargaining agreement. Section 2.01 E) authorizes the County to "layoff employees because of lack of work or other legitimate reasons." If, as the Union asserts, the threat of, and the general lay off itself were retribution for the employes' attempt to assert their contractual rights, then no "legitimate reason" for the lay off exists, and it would follow that the lay off both violated the contract and interfered with the employes' exercise of protected rights. If, however, as the County asserts, the lay off was effected solely to keep the Highway Department on budget, then the lay off was contractually permitted. No independent violation of Sec. 111.70 (3) (a) 1, Stats., can be found if the County's argument is accepted, because accepting that argument demands rejecting the union's assertion that the lay off was retributive, and not financial. 9/

It is necessary, then, to determine if the County's conduct, as of February 9, 1987, violated the parties' collective bargaining agreement. As preface to this discussion, it is necessary to note that where, as here, the relevant labor agreement contains a procedure for final impartial resolution of disputes over contract compliance, the Commission generally will not assert its statutory complaint jurisdiction over breach of contract claims, because of the presumed exclusivity of the contractual procedure and a desire to honor the parties' agreement. 10/ The Commission has, however, noted that exceptions to this policy exist, including cases in which "the parties have waived the arbitration provision." 11/ In this case, except regarding certain recall grievances, the parties have made such a waiver.

7/ See Beaver Dam Unified School District, Dec. No. 20283-B (WERC, 5/84).

8/ Ibid.

9/ As noted above, a showing of intentional or actual interference is not essential to an independent violation of Sec. 111.70(3)(a)1, Stats. If the Union's argument is that the general lay off, whatever the reason for it, had a tendency to interfere with employe rights, that argument must be rejected, since the argument is simply a vehicle to use Sec. 111.70(3)(a)1, Stats., as a guarantee of work. If the County's exercise of a contractually permitted lay off option could be over-ridden by Sec. 111.70(3)(a)1, Stats., in such a manner, the terms of the collective bargaining agreement would be effectively rendered meaningless.

10/ Monona Grove School District, Dec. No. 22414 (WERC, 3/85) at 6.

11/ Ibid., at footnote 2/.

Because the disputed action in this matter is a general lay off, the provision governing the dispute is Section 2.01 E). Seniority issues under Section 8.12 are not presented, since each unit employe was laid off. The Union has challenged the propriety of the general lay off by asserting that there was no "lack of work" as required by Section 2.01 E), and that the lay off was retributive in nature, not constituting a "legitimate reason" within the meaning of that section. Section 14.03 mandates a meeting between the parties "to work out a mutually satisfactory solution . . . (s)hould there be any necessity to reduce the number of hours . . . per week." Since the County did not implement a reduced work week, that section does not govern the present dispute, but does provide background to the Union's general contention that the County used the general lay off as a means to punish unit employes for their refusal to accede to the proposed reduction in the work week.

There is no dispute that a general layoff due to a lack of funds for available work is permitted under the terms of Section 2.01 E). Because the record supports the County's contention that the February 9, 1987, lay off was due to a lack of funds for available work, no violation of the parties' labor agreement can be found. The record establishes that the winter of 1986-87 was unusually mild, and that this mildness resulted in greater expenditures of County exacted revenues for brush cutting on County and on Township roads, coupled with falling revenues from the State and Townships for snow removal. The Union accurately points out that no precise determination of the revenue drop had been made as of the lay off. However, the fact remains that Bonnell and Bernhagen were aware of the revenue drop throughout January of 1987, were concerned that it presented a significant budgetary dilemma, and had repeatedly communicated that problem to the Highway Committee. The January 2, 1987, meeting notes demonstrate this concern arose early in the year. The testimony of Fabricius establishes that the Committee was concerned that County tax funds would have to be inordinately used to meet the winter payroll. Bonnell feared that funding for summer projects would be placed in jeopardy by the winter's drop in revenue. Further complicating the situation was the County's calendar based budget year, since the revenue drop was occurring early in the year and was due to weather conditions of a then unknowable duration. In addition, special maintenance work projects for the State had not been finalized, and federal funding for two major projects remained in doubt throughout the spring, due to circumstances beyond the County's control.

The record thus demonstrates that the County had a good faith concern regarding its ability to stay on budget for 1987, while maintaining the work regimen demanded by the mild weather. The record also demonstrates the County's concerns had a sound basis in fact. Bonnell reacted to this situation by attempting to secure work during the period of the lay off. He succeeded in securing State approval for a significant amount of State special maintenance work, which was approved by April 3, 1987. By April 3, 1987, unit employes had been recalled from lay off. In sum, the record supports the County's contention that it effected the general lay off to realize budget savings until significant non-County based revenues could be secured.

As noted above, the Union has challenged the basis for the general lay off, contending that work was available and that the lay off was retributive in nature. These contentions raise troublesome points, but the record will not support a conclusion that the Union has proven "by a clear and satisfactory preponderance of the evidence" any County violation of Section 2.01 E). To establish that work was available at the time of the general lay off, the Union urges that rock crushing, routine maintenance work on State highways and brush cutting work was available as of February 9, 1987. The Union also points to events following the lay off, such as the lack of crushed gravel for summer paving work, to establish this point. Initially, it should be noted that, as various witnesses observed, work is always available to the Highway Department. Roadways are in constant use, and thus are inevitably in less than ideal condition. More significantly, the Union's argument ignores that the issue is not whether work could be made available, but whether adequate funding for such work existed. Specifically, the Union's assertion ignores that much of the available work it points to, such as brush cutting and rock crushing, draw on County funds and it was the draw down of such funds that prompted the County's concerns. Routine maintenance on State roads does not carry any requirement regarding when it is to be performed during the term of the AFE agreement authorizing it. Regarding events following the lay off, it can be noted that the record does not demonstrate conclusively that the lack of crushed gravel for paving work was solely due to the lay off. Bonnell's testimony that State shouldering work performed in May of 1987 depleted the County's inventory stands

unrebutted. The purchase of crushed gravel from non-County sources appears, if anything, a function of an inadequate estimate of inventory requirements. County lime rock production is not significantly different than that of the preceding two years, in spite of the lay off. Beyond this, if events after the lay off are fully considered, then the more specific data generated by the County after the lay off but before the hearing in this matter must be evaluated. That data indicates that Bonnell's and Bernhagen's budgetary fears proved well-founded.

Ultimately, however, the relevant determination under Section 2.01 E) is not whether work could have been made available for some, if not all, of the unit employes, but whether the County effected the general lay off due to a lack of funding. The record will support the conclusion that the County effected the general lay off to stay on budget for 1987. That work which was available at the time of the lay off was deferred until later in the year.

As noted above, the Union's challenge to the contractual propriety of the lay off goes beyond the asserted availability of work, and extends to the propriety of the County's conduct in dealing with the Union. Specifically, the Union contends that the County engaged in a pattern of bad faith conduct. According to the Union, the County did not meet in good faith with the Union on January 21, 1987, but used that meeting to threaten the Union that if it did not accede to the County's demand, a general lay off would follow. The pattern culminates, under the Union view, with a retributive lay off of all Union members to effect cost savings realizable by a lay off of twenty per cent of the unit.

Here too, the Union raises a series of points which do have support in the record, but which do not constitute proof by a clear and satisfactory preponderance of the evidence that the lay off violated Section 2.01 E). The Union's view does have support in the January 16, 1987, notice as well as in the minutes of the Highway Committee's January 16, 1987, meeting. Both documents can plausibly be read to indicate no County flexibility on the reduced work week. The Union's view ignores, however, Bonnell's letters to Fenton of January 13 and 19 of 1987. Each of those documents refers to anticipated or proposed action on the County's part. Why one set of documents should be credited and the other discredited is not immediately apparent.

Beyond this, the Union's view of the January 21, 1987, meeting is not unequivocally established in the record. The Union's view ignores that the meeting lasted two hours, and involved several caucuses by each party. The Union's proposals do not appear to have been rejected out of hand. In addition, the Union's assertion that the County assumed an improper "take it or leave it" attitude is not supported by the record or by the authority the Union cites. The authority cited by the Union involves collective bargaining for an initial or successor collective bargaining agreement. The January 21, 1987, meeting occurred during the term of an agreement, and as a function of that agreement. This is not to say in-term bargaining need not be in good faith. Rather it is to point out that each aspect of the "take it or leave it" approach condemned by the Union involved a contractually permitted option. The Union has not demonstrated how the County's selection and forceful advocacy of two contractually permitted options can constitute a legally impermissible threat.

The Union has, however, persuasively pointed to the County's lack of flexibility during this meeting. While this point must be acknowledged, it should also be pointed out that the Union view exagerates the Union's flexibility on the points at issue. The County came into the meeting concerned about a potential budget shortfall due to mild weather of then unknowable duration. The Union's proposals sought a guaranteed end date for the reduced work week, and a recognition of call-in pay for any work on the "reduced" day. The Union altered, but did not abandon either proposal, neither of which fully addressed the County's budgetary concerns, since any certain end date to the reduced work week demanded an accurate prediction of the duration of the unseasonable weather, and any increase in pay on the "reduced" day cut into any savings generated by the reduced day. Fenton's February 2, 1987, letter confirmed the Union's adamance on its own

view. 12/ The record demonstrates, then, that each party approached the January 21, 1987, meeting with deeply held and irreconcilable views. That no agreement was reached is not surprising, and can not be relegated simply to bad faith on the County's part.

In sum, evidence on the County's conduct leading up to and including the January 21, 1987, meeting is not sufficient, standing alone, to demonstrate the County bore bad faith to the Union.

Nor does County conduct after January 21, 1987, demonstrate that the February 9, 1987, layoff was anything but financially motivated. The Union contends that the County could have, as argued by the Union in both 1981 and in 1987, laid off the least senior twenty percent of the work force to achieve the same level of savings implicit in the County's proposed reduced work week. The Union has not, however, clarified how any County conduct in 1981 or 1987 can create a guaranteed level of employment of this sort. How the County's proposal of a one day reduction in the normal work week for an indefinite period, unaccompanied by any promise of no further cuts, can be translated into a guarantee of something less than a general lay off is not apparent. Beyond this, the record is silent on what the County could gain by the retributive lay off asserted by the Union. The record does establish that the parties' bargaining relationship ruptured on the issue of the February 9, 1987, lay off, but the record does not reveal any reason to believe the parties' bargaining relationship, apart from that lay off, was unsatisfactory. The retribution the Union points to is thus unpersuasively rooted on this single matter. In addition, the Union's view ignores that the County denied itself the benefit of the labor of its employes during the lay off, and that the loss of this labor disrupted the County's normal regimen of work during the year. The record does not establish a persuasive and non-financial basis for such "retribution." Finally, it must be noted that the County recalled unit employes as it secured a significant amount of State AFE agreements for special maintenance projects. The timing of the recall can not be dismissed as coincidental. Rather, it appears the County recalled its work force after it had secured a significant amount of non-County based sources of revenue.

On balance, then, the County's conduct in effecting the February 9, 1987, lay off does not evince a desire by the County to punish the Union for its refusal to accept a reduced work week. Rather, the record demonstrates the County sought to use the general lay off as a means to effect the savings necessary to keep the Highway Department on budget for 1987, and as a result of the unusually mild weather of the winter of 1986-87. Because the general lay off did not violate the authority granted the County by Section 2.01 E) of the parties' collective bargaining agreement, there has been no County violation of Sec. 111.70 (3) (a) 5, Stats., and thus no violation of Sec. 111.70 (3) (a) 1, Stats. As noted above, there has been no violation of Sec. 111.70 (3) (a) 4, Stats., and those portions of the complaint and amended complaint dealing with the propriety of the County's conduct in effecting the February 9, 1987, lay off have been dismissed.

The amended complaint challenges County conduct following the filing of the complaint, focusing on the meeting of April 3, 1987, and events flowing from that meeting.

Secs. 111.70 (3) (a) 1, 4 and 5, Stats., govern the propriety of the County's conduct during this period of time. The Union's allegations regarding those sections are intertwined, but ultimately focus on the provisions of the parties' collective bargaining agreement, and thus on Sec. 111.70 (3) (a) 5, Stats.

The law governing the Union's Sec. 111.70 (3) (a) 4, Stats., allegations has been noted above. Here too, the Union has waived, by contract, a County duty to bargain regarding the morning break, vacation staffing requirements, or insurance coverage. The morning break is governed by Section 14.07, with past practices not

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12/ That letter may assert, and the Union argues in passing, that Sec. 14.02 guarantees forty hours of work per week. If this is the assertion, it must be rejected. Section 14.02 refers to a "normal" week and "normal" hours of work. This section undoubtedly serves as a basis for the calculation of certain premium rates of pay. It is not, however, a guarantee of work in the abnormal conditions of the present matter.

mentioned in the agreement being governed by Section 4.01. The vacation benefit is established by Section 16.01, with vacation staffing requirements covered by Section 16.05, or, arguably by Section 4.01. The termination of certain fringe benefits during a lay off is governed by Section 8.13, with the eligibility and premium payment for group health insurance governed by Section 17.01. By these provisions, the Union has clearly and unmistakably waived its right to bargain regarding these subjects during the term of the collective bargaining agreement.

The Union's allegations regarding Secs. 111.70 (3) (a) 1 and 5, Stats., are inextricably intertwined. A finding of any violation of Sec. 111.70 (3) (a) 5, Stats., includes a derivative violation of Sec. 111.70 (3) (a) 1, Stats. The Commission's standard for determining an independent violation of Sec. 111.70 (3) (a) 1, Stats., applied to that aspect of the record at issue here, demands that the Union demonstrate, by a clear and satisfactory preponderance of the evidence, that the County's conduct at, or following the April 3, 1987, meeting had a reasonable tendency to interfere with the exercise of Highway Department employes' rights under Sec. 111.70 (2), Stats. As noted above, it is not necessary for the Union to show the County intended such interference or that such interference actually occurred.

On the present record, the Union's Sec. 111.70 (3) (a) 1 and 5, Stats., allegations are so intertwined that they are virtually inseparable. The allegations of contract violations must, however, be addressed first because the contractual propriety of the County's conduct is, at the least, a relevant factor in determining the alleged coercion. At the most, the contractual propriety of the County's conduct may constitute a defense to the Union's allegations.

It is necessary, then, to examine the contractual validity of the Union's allegations. A morning break is established at Section 14.07, but the contract is silent regarding the site for the break. Thus, Section 4.01 is relevant to a determination of this point if a "previous practice" within the meaning of that section exists. The record establishes such a practice does exist. The essence of a past practice is the agreement manifested by the parties' conduct. Criteria typically applied by arbitrators to determine whether past conduct does manifest such agreement has been stated thus:

> In the absence of a written agreement, 'past practice,' to be binding on both Parties, must be (1) unequivocal; (2) clearly enunciated and acted upon; (3) readily ascertainable over a reasonable period of time as a fixed, and established practice accepted by both Parties . . . 13/

The practice alleged by the Union meets all of these criteria. The County has permitted employes to take their morning break at a restaurant located at or on the way to their worksite since at least 1982. The practice has survived the negotiation of a series of collective bargaining agreements; has been openly discussed by the parties during collective bargaining for two different agreements; and has survived the County's attempt to eliminate the practice in the collective bargaining for the agreement at issue here. In sum, the practice regarding morning breaks does evince a binding "previous practice" within the meaning of Section 4.01, and the County's attempt to abrogate that practice constitutes a violation of Sections 4.01 and 14.07.

The County has asserted the break has been the source of past discipline. The County has the right under Section 2.01 D) to discipline "employees for just cause." The reference to "employees" is plural, but there has been no showing that prior difficulties regarding the break were anything but isolated incidents involving individual employes. Thus, Section 2.01 D) offers no basis for the County's attempted abrogation of a practice with unit-wide significance.

The parties' dispute regarding the County's imposition of a thirty day waiting period for insurance coverage purposes has focused on the provisions of the benefit booklet. The parties agree that the County can waive the thirty day waiting period under the terms of that booklet. The focus of allegations regarding Sec. 111.70 (3) (a) 5, Stats., must, however, be a "collective

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13/ Elkouri and Elkouri, How Arbitration Works, (4th Edition, BNA, 1985), at 439.

bargaining agreement." The insurance plan booklet is a relevant consideration only as incorporated into the parties' collective bargaining agreement. Thus, the parties' dispute must be focused onto that agreement.

Section 17.01 governs the provision of the group health insurance benefit. The first sentence to that section specifies the County's obligation regarding premium payment, and the second sentence specifies employe eligibility for the premium payment. The final sentence specifies an employe option for alternative coverage, but does not limit the eligibility provisions of the second sentence. The first sentence clearly and unambiguously demands the County "shall provide payment of the premium" for the basic group plan. The second sentence is no less clear regarding eligibility: "All regular employees shall be eligible for such coverage . . ." (emphasis added). Read together, the sentences mandate County premium payment for basic coverage for all regular unit employes.

A limitation on this mandate is stated at Section 8.13: ". . . other benefits shall cease to accrue during the period of time the employee is off payroll." This limitation is, by its terms, irrelevant to the County's imposition of a thirty day waiting period, since the recalled employes were no longer "off payroll." That the plan booklet grants the County a right to claim such a waiting period is irrelevant here. The booklet may well cover unrepresented as well as represented employes. There is no persuasive evidence that the booklet was negotiated by the parties or has been incorporated by language or by practice into their labor agreement. That agreement, not the plan booklet, is the source of the rights at issue here. It follows, then, that the County's attempt to impose such a waiting period violated the provisions of Section 17.01, and thus of Sec. 111.70 (3) (a) 5, Stats.

The record regarding the April 13, 1987, posting regarding vacation staffing requirements is sketchy, with the parties' arguments focusing more on the effect of the memo than on the contractual propriety of its substance. The County asserts the posting presents a moot issue since the policy was not implemented. The Union argues the issue is not moot since the posting of the memo alone was coercive, and represents one aspect of a series of coercive acts which violated both the contract and the statutes. The Union's argument is persuasive, and the coercive effect of the posting of the memo can not be dismissed as a moot issue.

Because of the record's sparseness regarding the substance of the memo, the examination of the contractual propriety of the memo can focus only on the posting of the memo, and not on its substance. The record is sketchy on the details of the practice regarding vacation staffing requirements, but all of the witnesses, Union and County, who testified on the point acknowledged the memo states a change in an acknowledged practice. Broadly speaking, the practice involves consultation between an an employe requesting vacation and that employe's supervisor where the request may conflict with a work project. Because Section 16.05 expressly refers to "the staffing requirements of the Employer," it follows that the second sentence to Section 4.01 is irrelevant, since that section applies to "conditions of employment "not specifically referred to in this Agreement." The acknowledged practice regarding staffing requirements, then, gains its binding force as an interpretive guide to Section 16.05, and not as a condition of employment specifically established under Section 4.01. The sparseness of the record precludes, however, any finding more specific than that the County, by posting the memo on April 13, 1987, knowing that the posted policy conflicted with an acknowledged practice, violated Section 16.05 of the labor agreement.

The contractual violations noted above establish County violations of Sec. 111.70 (3) (a) 5, Stats., and virtually conclude the analysis of the alleged Sec. 111.70 (3) (a) 1, Stats., violations. The Sec. 111.70 (3) (a) 5, Stats., violations establish derivative Sec. 111.70 (3) (a) 1, Stats., violations, and thus trigger the remedial authority that flows from Sec. 111.70 (3) (a) 1, Stats. It follows that analysis of an independent violation of Sec. 111.70 (3) (a) 1, Stats., is arguably not necessary. For purposes of completing the record for purposes of review, however, the analysis will be touched upon.

The standard for determining an independent violation of Sec. 111.70 (3) (a) 1, Stats., has been stated above. As noted above, the issue under that standard is not whether the County deliberately sought to punish the Union for filing the complaint. Rather, the issue is whether the conditions created by the County following the recall had a reasonable tendency to interfere with the employes' concerted activity in asserting the complaint. There is no dispute that the assertion of the complaint is conduct protected by Sec. 111.70 (2), Stats.

That the County committed a series of contractual violations immediately following the recall virtually establishes the creation of a coercive work environment which tended to interfere with the employes' assertion of their rights. Further evidence regarding the context of the April 3, 1987, meeting and its aftermath underscores the conclusion that the County's conduct constitutes an independent violation of Sec. 111.70 (3) (a) 1, Stats.

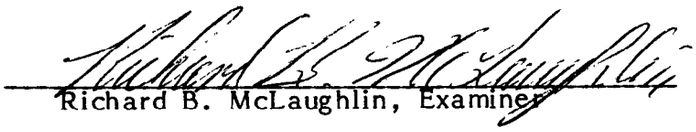
The April 3, 1987, meeting was unique, in that virtually all of the management representatives of the Highway Department, as well as the Assistant District Attorney were present. Standing alone this might not establish interference within the meaning of Sec. 111.70 (3) (a) 1, Stats., but coupled with the substance of that meeting and its aftermath, the alleged interference is established. At the meeting, the County abrogated a known past practice. The practice had unit-wide significance, and there was no apparent reason for the County to take action regarding the practice at that time. Breaks could not have been abused immediately prior to the meeting, since all of the employes had been laid off. Whatever problems surrounded the practice concerned individual employes, and were not sufficiently significant to cause the attempted abrogation at any time between the negotiations for the 1986-87 agreement and the February 9, 1987, lay off.

Within two weeks of this action, the County, for no reason communicated to the Union, imposed a thirty day waiting period for health insurance coverage, in spite of representations made by Bernhagen in the presence of the Highway Committee. The Highway Committee's silence at the meeting is of some significance, since Hoffman's testimony indicates they were aware of what she perceived the recommendation of the administrator to be. 14/ Even if the Highway Committee was unaware of the recommendation at the April 3, 1987, meeting, the absence of any explanation for the waiting period remains significant. In addition to this, shortly after the April 3, 1987, meeting, the County posted the vacation staffing requirements memo, another action of unit-wide significance. In sum, the County unilaterally committed a series of actions violative of the parties' labor agreement shortly after the filing of the complaint. The atmosphere at the time of the lay off and at the time of the recall can fairly be described as tense. Against this background, the County's unilateral actions, viewed as a whole, had a reasonable tendency to interfere with the Highway Department employes' exercise of the protected right of asserting the complaint, thus violating Sec. 111.70 (3) (a) 1, Stats.

The remedy ordered above does not require extensive discussion. The notice has been required to remedy the unit-wide effect of County actions taken at and after the April 3, 1987, meeting. The general make-whole order is to remedy the wrongful imposition of the thirty day waiting period for insurance coverage. That general order can not be made more specific due to the sketchiness of the record on this point. Employes who terminated their insurance coverage were wrongfully denied the benefit of that coverage for the term of the waiting period. For such employes, the remedy would require the County to make any affected employe whole for the expenses, if any, which the employe would not have incurred but for the County's unilateral imposition of the thirty day waiting period. For those employes who continued their insurance coverage, the remedy would require the County to make any affected employe whole for any premium payment the employe would not have paid but for the County's unilateral imposition of the thirty day waiting period.

Dated at Madison, Wisconsin, this 1st day of July, 1988.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Richard B. McLaughlin, Examiner

14/ Whether Hoffman's testimony is sufficient to establish the truth of the administrator's recommendation is not significant here, since the evidence was offered to demonstrate the good faith of the County's actions.