STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

OAKHILL CORRECTIONAL INSTITUTION, LOCAL 3021, DISTRICT COUNCIL 24, AFL-CIO, and WISCONSIN STATE EMPLOYEES UNION, Complainants, vs. STATE OF WISCONSIN, and OAKHILL CORRECTIONAL INSTITUTION, Respondents.	Case 263 No. 41528 PP(S)-151 Decision No. 25978-B

Appearances:
Mr. Richard V. Graylow, Lawton & Cates, S.C., Attorneys at Law, 214 West Mifflin Street, Madison, Wisconsin 53703-2594, appearing on behalf of Oakhill Correctional Institution, Local 3021, District Council 24, AFL-CIO, and Wisconsin State Employees Union.
Mr. David C. Whitcomb, Legal Counsel, Department of Employment Relations, State of Wisconsin, 137 East Wilson Street, P.O. Box 7855, Madison, Wisconsin 53707-7855, appearing on behalf of State of Wisconsin, and Oakhill Correctional Institution.

ORDER AFFIRMING IN PART AND REVERSING IN PART EXAMINER'S FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER, AND REMANDING COMPLAINT TO EXAMINER

Examiner Richard B. McLaughlin having on December 6, 1989 issued Findings of Fact, Conclusions of Law and Order with Accompanying Memorandum in the above matter wherein he dismissed the above captioned complaint pursuant to Respondents' motion for summary judgment based upon his conclusion that:

> 3. Under no interpretation of the facts alleged by the January 6, 1989, complaint and its subsequent amendments, can the terms of the Local Agreement be considered enforceable under Secs. 111.84(1)(a), (d) or (e), Stats., beyond July 30, 1988. Thus, the issuance of the July 11, 1988, memo and the termination of the Local Agreement by Oakhill management do not raise any factual or legal issue remediable under Secs. 111.84(1)(a), (d) or (e), Stats.

and Complainants having timely filed a petition with the Commission seeking review of the Examiner's decision pursuant to Secs. 111.07(5) and 111.84(4) Stats.; and the parties having submitted written argument in support of and in opposition to the petition, the last of which was received on February 12, 1990; and the Commission having considered the matter and being fully advised in the premises, makes and issues the following

ORDER

A. That Examiner's Findings of Fact 1-6 are affirmed.

B. That Examiner's Finding of Fact 7 is set aside.

C. That Examiner's Conclusions of Law 1 and 2 are affirmed.

D. That Examiner's Conclusion of Law 3 is set aside and the following Conclusions of Law 3 and 4 are issued:

> 3. Within the context of the arguments presented by the Union herein, under no interpretation of the facts alleged by the January 6, 1989, complaint and its subsequent amendments, can the terms of the Local Agreement be considered enforceable under Sec. 111.84(1)(d) Stats., beyond July 30, 1988. Thus, the issuance of the July 11, 1988, memo and the termination of the Local Agreement by Oakhill management do not raise any factual or legal issue remediable under Sec. 111.84(1)(d), Stats.
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> 4. Under certain interpretations of the facts alleged by the January 6, 1989, complaint and its subsequent amendments, the terms of the Local Agreement can be

considered enforceable under Sec. 111.84(1)(e), Stats., beyond July 30, 1988. Thus, the issuance of the July 11, 1988, memo and the termination of the Local Agreement by Oakhill management do raise factual and legal issue potentially remediable under Sec. 111.84(1)(e), Stats.

E. That the Examiner's Order dismissing the complaint is affirmed as to the alleged violation of Sec. 111.84(1)(d), Stats., and reversed as to the alleged violation of Sec. 111.84(1)(e), Stats.

F. That the portion of the complaint alleging a violation of Sec. 111.84(1)(e), Stats., is remanded to the Examiner for further proceedings.

Given under our hands and seal at the City of Madison, Wisconsin this 10th day of July, 1990.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Herman Torosian /s/
Herman Torosian, Commissioner

William K. Strycker /s/
William K. Strycker, Commissioner

Chairman A. Henry Hempe did not participate.

STATE OF WISCONSIN, and OAKHILL CORRECTIONAL INSTITUTION

MEMORANDUM ACCOMPANYING ORDER AFFIRMING IN PART AND REVERSING IN PART EXAMINER'S FINDINGS OF FACT CONCLUSIONS OF LAW AND ORDER, AND REMANDING COMPLAINT TO EXAMINER

BACKGROUND

Complainants alleged before the Examiner that Respondents violated Secs. 111.84(1)(a),(d) and (e), Stats., by terminating the Local Agreement between the parties on July 30, 1988. The Respondents filed a pre-hearing motion for summary judgment which the parties agreed the Examiner should decide before full hearing was held. Given the procedural posture of the case, the Examiner concluded that the Respondents' motion could be granted only if under no interpretation of the facts alleged would Complainants be entitled to relief.

THE EXAMINER'S DECISION

The Examiner dismissed the complaint based upon his Conclusion of Law 3 that:

> 3. Under no interpretation of the facts alleged by the January 6, 1989, complaint and its subsequent amendments, can the terms of the Local Agreement be considered enforceable under Secs. 111.84(1)(a), (d) or (e), Stats., beyond July 30, 1988. Thus, the issuance of the July 11, 1988, memo and the termination of the Local Agreement by Oakhill management do not raise any factual or legal issue remediable under Secs. 111.84(1)(a), (d) or (e), Stats.

After noting that the Complainants' allegation of interference under Sec. 111.84(1)(a), Stats. was derivative and not independent in nature, the Examiner turned to consideration of whether the termination of the Local Agreement constituted a refusal to bargain in violation of Sec. 111.84(1)(d), Stats. He initially concluded that the Local Agreement, standing alone, was not enforceable under Sec. 111.84(1)(d), Stats., because the duty to bargain does not compel parties to reach agreement. The Examiner then concluded:

> With this as background, any possible violation of Sec. 111.84(1)(d), Stats., demands that the Union establish either that Farrey's July 11, 1988, memo constitutes a bad faith repudiation of a specific agreement to extend the Local Agreement until the negotiation of a successor, or that the State was under a legal obligation to honor the terms of the Local Agreement during the gap between the expiration of the Local Agreement and agreement on its successor. Neither line of argument can be persuasive on the present record. The Union has stipulated that it is not alleging that the State has bargained in bad faith. This stipulation forecloses any conclusion that the State, through Farrey's July 11, 1988, memo, issued a bad faith repudiation of a specific agreement to extend the term of the Local Agreement. Nor is it possible to conclude, on the present record, that the State was under a legal obligation to honor the terms of the Local Agreement during the gap between its expiration and agreement on its successor. Such a legal obligation assumes the existence of a contractual hiatus, and the Union's arguments assert that no contractual hiatus has occurred. As the Union puts it, the Local Agreement has "ongoing validity". This ongoing validity assumes that due either to the language of the Master Agreement, or to the reference in the Local Agreement that "(t)his agreement shall extend until a new local contract. . . has been negotiated", or both, the Local Agreement has not expired. These arguments presume that the terms of the Local Agreement are enforceable standing alone, and thus must arise under Sec. 111.84(1)(e), Stats.

As to the question of whether the Respondents violated Sec. 111.84(1)(e), Stats., the Examiner held:

> Nor does the record present any legal or factual basis to ground the Union's allegation that the State has violated Sec. 111.84(1)(e), Stats. The Local Agreement is effective through the authorization of the Master Agreement. The Master Agreement generally authorizes negotiations at the local level, and does not expressly effect the specific terms of the Local Agreement. At

> the time the Master Agreement, by its terms, became effective, negotiations were occurring at the local level to reach a successor to the Local Agreement. Those negotiations broke down in July of 1988, and Oakhill management terminated the Local Agreement. This occurred during the nominal term of the Master Agreement. The Union has offered no persuasive basis to conclude the Master Agreement specifically authorized the effectiveness of the Local Agreement beyond July 30, 1988, or generally authorized such effectiveness through the reference in the Local Agreement that it would remain in effect until its successor was negotiated. No specific authorization for such an extension can be found on the face of the Master Agreement, and reading the cited reference from the Local Agreement to have the effect would make the Local Agreement a contract of indefinite duration, contrary to the terms of the SELRA. It follows that the record presents no legal or factual basis to ground the Union's allegation that the State has violated Sec. 111.84(1)(e), Stats.

When reaching this determination, the Examiner concluded that Secs. 111.92(3) and (4), Stats., did not allow the Local Agreement to be interpreted as having an indefinite duration. He held:

> The absence of any expiration date in the Local Agreement can not be interpreted to create a contract of indefinite duration without violating the terms of the SELRA. Sec. 111.92(3), Stats., provides that "Agreements shall coincide with the fiscal year or biennium". Sec. 111.92(4), Stats., provides: "It is the declared intention under this subchapter that the negotiation of collective bargaining agreements . . . shall coincide with the overall fiscal planning and processes of the state". The Master Agreement recognizes the force of these provisions by providing a fixed duration which coincides with the State's biennium. Thus, it can not be persuasively asserted that the Master Agreement has generally authorized a reference in the Local Agreement which the SELRA does not authorize for a master agreement. Nor can the assertion be made persuasive by implying that the Local Agreement is assumed to expire with a master agreement, and that the reference extending its term is a specific agreement governing the present negotiations. As noted above, doing so would make the July 11, 1988, memo and arguably bad faith repudiation of a specific agreement and the Union has noted it is not asserting that the State has bargained in bad faith.

The Examiner also determined that the Legislature's approval of master agreements could not be viewed as implicit renewal of local agreements. He stated:

> The Union's assertion that the Legislature's approval of the Master Agreement "breathed . . . new life" into the Local Agreement can not be accepted. The Legislature approved the language of the Master Agreement, which, as noted above, generally authorizes negotiations on the local level, but does not expressly effect any specific local agreement. The Union has not demonstrated how the Legislature's action regarding the Master Agreement can be viewed to make effective the specific terms of the Local Agreement.

POSITIONS OF THE PARTIES

Complainants' Initial Brief

Complainants argue the Examiner erred when he concluded that Respondents could unilaterally repudiate the Local Agreement without violating Secs. 111.84(1)(a)(d) or (e), Stats. Complainants contend that the Local Agreement was authorized by the parties' Master Labor Agreement and that the Master Agreement ensures the enforceability and vitality of a Local Agreement. Complainants assert that when the Master Agreement was extended to cover a period beyond July 30, 1988, so too was the Local Agreement.

Respondents' Responsive Brief

Respondents urge the Commission to affirm the Examiner.

In response to Complainants, Respondents acknowledge that local agreements are authorized and entered into pursuant to master agreements.

Indeed Respondents contend that violations of local agreements are enforceable through the grievance procedure in the master agreements. However, Respondents allege that the general enforceability and vitality of local agreements is not at issue in this case.

As to Complainants' assertion that extension or renewal of a master agreement automatically extends or renews local agreements, Respondents contend that this theory was properly rejected by the Examiner as producing agreements in perpetuity. Respondents also argue that it is factually incorrect in this case to assert that extension of the 1985-1987 Master Agreement is even relevant. Respondents assert that the 1985-1987 Master Agreement was extended only until November 1987 and that the Local Agreement in question was terminated July 30, 1988 during the term of the 1987-1989 Master Agreement.

Respondents allege that the force and effect of the Local Agreement is limited to and derived from the Master Agreement under which the Local Agreement was originally reached. As argued by Complainants in the Kerkman arbitration proceeding, either party to a local agreement without an expiration date is free to terminate said agreement.

Complainants' Reply Brief

Complainants assert that the parties have a practice of extending local agreements when they extend master agreements. The Complainants contend that the Respondents have never before unilaterally repudiated a local agreement and that Respondents should be bound by that practice.

Complainants also argue that the 1987-1989 Master Agreement in force at the time of repudiation provides for advisory arbitration if no agreement can be reached during negotiations on a new Local Agreement. Complainants assert the Respondents could not repudiate the Local Agreement without first exhausting this contractual dispute resolution procedure.

Given the foregoing, Complainants assert "Appropriate remedial orders must be entered forthwith."

DISCUSSION

We concur with and affirm the Examiner's analysis and dismissal of the Complainants' refusal to bargain Sec. 111.84(1)(d) allegation. However, we disagree with the Examiner's conclusion that, as a matter of law, the Local Agreement in question cannot be enforced through Sec. 111.84(1)(e), Stats. Therefore, we have remanded this portion of the complaint to the Examiner for further proceedings.

Section 111.84(1)(e), Stats., provides in pertinent part that it is an unfair labor practice for Respondent State:

> (e) To violate any collective bargaining agreement previously agreed upon by the parties with respect to wages, hours and conditions of employment affecting state employes, ...

In the context of its argument to the Examiner regarding the alleged violations of Secs. 111.84(1)(a) and (d), Stats., the Respondent asserted that a local agreement is not a "collective bargaining agreement" under the State Employment Labor Relations Act. While the Respondents did not explicitly make this argument as to the Sec. 111.84(1)(e), Stats., allegation and appear on review to concede that local agreements are enforceable through the grievance procedure in a master contract, it is necessary for us to address this question because it is a matter of law not resolved by the Examiner and is necessarily raised by the language of Sec. 111.84(1)(e), Stats.

We think it clear that a local agreement is a "collective bargaining agreement" within the meaning of Sec. 111.84(1)(e), Stats. Section 111.81(1), Stats., defines "collective bargaining" quite broadly as:

> . . . the performance of the mutual obligation of the state as an employer, by its officers and agents, and the representatives of its employes, to meet and confer at reasonable times, in good faith, with respect to the subjects of bargaining provided in s. 111.91(1) with the intention of reaching an agreement, or to resolve questions arising under such an agreement. The duty to bargain, however, does not compel either party to agree to a proposal or require the making of a concession. Collective bargaining includes the reduction of any agreement reached to a written and signed document. (Emphasis added)

As the foregoing indicates, "collective bargaining" includes the obligation to reduce "any agreement" reached to a written document, including agreements reached "to resolve questions arising under" a master agreement. Local agreements clearly are one of the types of agreements this statutory obligation

produces. Given the breadth of the definition of "collective bargaining," given the fact that Sec. 111.84(1)(e), Stats., makes "any" collective bargaining agreement enforceable thereunder, and given the declared policy interests in Sec. 111.80, Stats., regarding availability of tribunals for dispute resolution, 1/ we conclude that the Legislature clearly intended that local agreements are "collective bargaining agreements" within the meaning of Sec. 111.84(1)(e), Stats.

It is undisputed that the Legislature can and does approve tentative master agreements which by their terms authorize the negotiation of local agreements by labor and management representatives in various State departments or agencies.

What is disputed between the parties in the context of Respondent State's Motion for Summary Judgement is whether this specific Local Agreement can be enforced through Sec. 111.84(1)(e), Stats.

The Local Agreement in question was originally bargained by the parties in 1981, last amended in October 1983, and unilaterally terminated by Respondents in July 1988. The Local Agreement has no stated expiration date but provides:

> Either party may initiate negotiations of proposed additions, deletions or changes to this contract by giving notice of their intent at the regular Labor/Management meetings.
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> This Agreement shall extend until a new local contract between the two (2) parties has been negotiated.

The Complainants argued to the Examiner that in July 1988, the Local

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1/ **111.80 Declaration of policy.** The public policy of the state as to labor relations and collective bargaining in state employment, in the furtherance of which this subchapter is enacted, is as follows:
(1) It recognizes that there are 3 major interests involved: that of the public, that of the state employe and that of the state as an employer. These 3 interests are to a considerable extent interrelated. It is the policy of this state to protect and promote each of these interests with due regard to the situation and to the rights of the others.
(2) Orderly and constructive employment relations for state employes and the efficient administration of state government are promotive of all these interests. They are largely dependent upon the maintenance of fair, friendly and mutually satisfactory employe management relations in state employment, and the availability of suitable machinery for fair and peaceful adjustment of whatever controversies may arise. It is recognized that whatever may be the rights of disputants with respect to each other in any controversy regarding state employment relations, neither party has any right to engage in acts of practices which jeopardize the public safety and interest and interfere with the effective conduct of public business.

(3) Where permitted under this subchapter, negotiations of terms and conditions of state employment should result from voluntary agreement between the state and its agents as an employer, and its employes. For that purpose a state employe may, if he desires, associate with others in organizing and in bargaining collectively through representatives of his own choosing without intimidations or coercion from any source.

(4) It is the policy of this state, in order to preserve and promote the interests of the public, the state employe and the state as an employer alike, to encourage the practices and procedures of collective bargaining in state employment subject to the requirements of the public service and related laws, rules and policies governing state employment, by establishing standards of fair conduct in state employment relations and by providing a convenient, expeditious and impartial tribunal in which these interests may have their respective rights determined. (Emphasis added)

Agreement was enforceable under Sec. 111.84(1)(e), Stats., because each fiscal biennium when Legislature approved a new master collective bargaining agreement between the parties, the Legislature also renewed the Local Agreement in question. Thus, the Complainants asserted that when the Legislature approved the parties' November 6, 1987 to June 30, 1989 master collective bargaining agreement, the Local Agreement was renewed until June 30, 1989 unless the parties' Local Agreement negotiations produced a new Local Agreement.

The Examiner rejected Complainants' argument in this regard concluding:

> The Union's assertion that the Legislature's approval of the Master Agreement "breathed . . . new life" into the Local Agreement can not be accepted. The Legislature approved the language of the Master Agreement, which, as noted above, generally authorizes negotiations on the local level, but does not expressly effect any specific local agreement. The Union has not demonstrated how the Legislature's action regarding the Master Agreement can be viewed to make effective the specific terms of the Local Agreement.

We disagree with the Examiner's analysis. We conclude that when the Legislature approves master bargaining agreements which by their terms authorize the existence of local agreements, the Legislature also implicitly approves of the continued existence and viability of any local agreements of unspecified duration which the parties have reached under the auspices of previous master agreements and which neither party has proposed to modify. When this approval process occurs, local agreements of unspecified duration acquire a duration consistent with the master contract and remain in force and effect for the term of the next master contract unless the local agreement itself gives the parties the option of modifying or terminating the agreement prior to the master contract's expiration.

Applying the foregoing framework to the facts as pled in this case, we conclude that this Local Agreement, last amended in October 1983, was implicitly renewed when the Legislature approved the 1985-1987 Master Contract. Through this renewal process, the Local Agreement acquired a duration consistent with the 1985-1987 Master Agreement unless modified or terminated by the parties pursuant to the terms of the Local Agreement itself. 2/ Through this renewal process, the Local Agreement was not a contract of unlimited indefinite duration which would raise issues regarding the impact of Secs. 111.92(3) and (4), Stats., but instead a contract whose duration would mirror that of the Master Agreement unless the parties exercise of their rights under the Local Agreement produced a different result. In September 1986, during the term of the 1985-1987 Master Agreement, the parties began to bargain over modifications to the Local Agreement. This bargaining had not produced a new Local Agreement by the time the 1987-1989 agreement was reached by the parties on a new Master Agreement. Under our analytical framework set forth above and contrary to the Complainants' argument herein, legislative approval of the 1987-1989 Master Agreement did not constitute implicit approval of the Local Agreement for 1987-1989 because the terms of said Agreement were being disputed by the parties at the time legislative approval occurred. Thus, the Local Agreement expired on June 30, 1987 with the expiration of the 1985-1987 Master Agreement. However, the July 11, 1988 memo from the Respondent State to the Complainant Union, which is set forth in the complaint, alleges that following the June 30, 1987 expiration of the Local Agreement, said Agreement was extended. Extension of the Local Agreement presumably required some bilateral agreement between the parties and the terms of the extension agreement clearly have a direct impact on whether the State could terminate the Local Agreement on June 30, 1988.

Given the foregoing, we are satisfied that under certain interpretations of the facts alleged in the complaint and its subsequent amendment, the Local Agreement is potentially enforceable under Sec. 111.84(1)(e), Stats. 3/ The Respondent State apparently contends that the extension agreement allowed either party to terminate the existing Local Agreement when negotiations between the parties on a new Local Agreement were unsuccessful. The Complainant Union apparently contends that under the duration language quoted

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2/ In its July 1988 memo to Complainants, Respondents appear to have adopted a position consistent with this analysis. Thus, although the Local Agreement was last amended in October 1983, the Respondents nonetheless asserted that the Local Agreement was in effect during the term of the 1985-1987 Master Agreement.

3/ If the Local Agreement is determined to be enforceable through the grievance/arbitration provisions of the Master Contract, then Sec. 111.84(1)(e) proceedings are unavailable to the Union. Absent agreement of the parties or repudiation by one of the parties of the grievance/arbitration process, the Commission will not exercise its Sec. 111.84(1)(e) jurisdiction over a complaint filed by a party to the contract where a contractual mechanism for resolution of contract compliance issues exists. State of Wisconsin, Dec. No. 20830-B (WERC, 8/85).

above, the advisory arbitration language in the 1987-89 Master Agreement, and any extension agreement reached by the parties, the State was obligated to continue to honor the terms of the Local Agreement beyond July 30, 1988. Our remand will allow the parties to present facts and/or further argument to the Examiner as how this difference of opinion between the parties should be resolved and as to the availability of grievance/arbitration as an enforcement mechanism of the Local Agreement. The Examiner will then proceed to issue a decision.

Dated at Madison, Wisconsin this 10th day of July, 1990.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Herman Torosian /s/
Herman Torosian, Commissioner

William K. Strycker /s/
William K. Strycker, Commissioner

Chairman A. Henry Hempe did not participate.