STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

PLUMBERS LOCAL 75, Complainant, vs. CITY OF MILWAUKEE, Respondent.	Case 361 No. 44483 MP-2389 Decision No. 26640-A

Appearances:

Ms. Judith Kuhn, Legal Counsel, Plumbers Local 75, 9601 West Silver Spring Drive, Milwaukee, Wisconsin 53202-3551, appearing on behalf of the Complainant.

Mr. Thomas Goeldner and Ms. Mary Rukavina, Assistant City Attorneys, City of Milwaukee, 200 East Wells Street, Milwaukee, Wisconsin 53202, appearing on behalf of the Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Plumbers Local 75 filed a complaint on August 20, 1990, with the Wisconsin Employment Relations Commission alleging that the City of Milwaukee had committed prohibited practices within the meanings of Secs. 111.70(3)(a)1, 4 and 5, Stats., when it failed to execute a tentative agreement reached in bargaining and failed to recommend that agreement to the City Council for approval and execution. The Commission appointed Raleigh Jones, a member of its staff, to act as Examiner in this matter and to make and issue Findings of Fact, Conclusions of Law and Order, as provided in Sec. 111.07(5), Stats. A hearing was held in Milwaukee, Wisconsin on October 22, 1990 and January 15, 1991 at which time the parties were given full opportunity to present their evidence and arguments. Both parties filed briefs by March 18, 1991 whereupon the record was closed. The Examiner, having considered the evidence and arguments of Counsel and being fully advised in the premises, makes and files the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. That Plumbers Local 75, hereinafter referred to as the Complainant or Union, is a labor organization with its office located at 9601 West Silver Spring Drive, Milwaukee, Wisconsin 53225; that at all times material hereto, the Complainant has been the exclusive collective bargaining representative for certain of Respondent's employes in a unit consisting of all plumbing inspectors, irrigation specialists and plan examiners; and that Richard Lansing is the Union's Business Manager.

2. That the City of Milwaukee, hereinafter referred to as the Respondent or City, is a municipal employer with its principal office located at 200 East Wells Street, Milwaukee, Wisconsin 53202; and that Danae Davis Gordon is the City's Labor Negotiator and Archie Hendrick is a Labor Relations Specialist in the Labor Negotiator's office.

3. That in April of 1989 negotiations commenced between these parties for a successor agreement to their 1987-88 agreement which had expired on December 31, 1988; that the Union's priority issue in these negotiations was to tie the plumbing inspectors' wages to the prevailing union wage rate paid to private sector journeyman plumbers; that the prevailing wage approach of linking public and private sector wage rates essentially allows public sector craft wages to be negotiated in the private sector; that the irrigation specialist in the Union's bargaining unit was already paid at 92 percent of the prevailing wage; that most of the Union's other public sector labor agreements tie wages to the private sector prevailing rate, including agreements with Milwaukee County, Milwaukee Public Schools, University of Wisconsin - Milwaukee and Ethan Allen School; that in the case of each of these agreements, public sector craft employes are paid a wage equivalent to a percentage of the base private sector union wage rate, not including the cost of employe benefit fund contributions; that where the employes are paid less than the prevailing wage the difference is intended to compensate for the difference in employe benefits between private and public sector craft workers; and that the City has a prevailing wage agreement with the Milwaukee Building and Construction Trades Council whereby craft employes covered by that agreement are paid 92 percent of the outside union craft rate (i.e. the prevailing wage).

4. That the Union advised the City early in their negotiations that it was seeking to eliminate its private sector vacation fund in its contract with the Milwaukee Plumbing and Mechanical Contractors Association, hereinafter referred to as the Plumbing Contractors Association; that private sector

employes represented by the Union do not have paid vacations; that instead they, like most other construction union employes, have historically had an hourly contribution placed in the Union's vacation savings plan; that monies deposited in this plan were available at all times to employes for their use; that this money was considered "wages" instead of "employe benefits" so it was taxable to the employe; and that the Union decided that since vacation plan administration had become a headache for the Union and since the cost of administration threatened to reduce the amount available for use by employes, it was seeking to terminate the vacation plan and fold the vacation contribution into the overall economic package.

5. That the City was aware of the implication this proposal could have on the prevailing wage because of an arbitration award involving it and the Milwaukee Building and Construction Trades Council issued in June, 1989; that what happened there was that the Ironworkers and Bricklayers Unions eliminated their existing private sector vacation plans and folded that money into their base pay; that afterwards, the Unions sought to have the prevailing wage increased accordingly; that this raised the issue of whether the City was required to increase City employe wages under the prevailing wage section of their labor agreement when outside wages increased as a result of the termination of the vacation plans; that the City argued that it already pays vacation benefits to its employes and it should not have to pay twice for those benefits by including vacation foldovers in the City's wage rate; that Arbitrator Gil Vernon found that the vacation fund money was to be included in the wage rate used for computing the prevailing wage; that this award increased the prevailing wage that the City had to pay the affected employes; and that the Union was aware of the Vernon award.

6. That little progress was made in contract negotiations until April, 1990; 3/ that a major stumbling block in negotiations was the City's opposition to the Union's proposal to tie the inspectors' wage rate to the private sector prevailing wage; that in late April, City Labor Negotiator Danae Davis Gordon became personally involved in the negotiations; that the City subsequently changed its position concerning this issue when Davis Gordon told Union Business Manager Richard Lansing that the City would agree to a prevailing wage agreement but that it would not agree to the percentage sought by the Union (i.e. 92 percent); and that Davis Gordon also advised Lansing in this phone call that the prevailing wage was not to include monies added to wages as a result of eliminated benefits because she did not want a recurrence of what happened in the Building and Construction Trades Council case.

7. That following this phone call, the City prepared a "what-if" package proposal for the Union to review; that this "what-if" package provided for two contracts: a 1989 contract and a 1990-92 contract; that the wage proposal for 1989 contained a straight two percent increase for the plumbing inspectors; that the wage proposal for 1990 also began with a two percent wage increase effective January 1, 1990, but then went on to tie the inspectors' wage rate to graduating percentages of the prevailing wage; that under this proposal, inspectors were to receive 89 percent of the prevailing wage by the end of the contract term; that in return for the prevailing wage connection, the City proposed to eliminate personal days, reduce the number of sick days and cap comp time accumulation; that this package also included a new dress code for inspectors; that additionally, the package proposed that the mechanical plan examiners, currently represented by the Union, be removed from the Union's bargaining unit; and that attached to this "what-if" proposal was a list of proposed tentative agreements between the parties dealing with funeral leave, dress code, pension, health and dental insurance, sick leave incentive control program and the savings clause.

8. That the City's "what-if" package was reviewed in detail at a key bargaining session on May 7; that at that time the parties discussed the City's offer to tie the inspectors' wage rate to graduating percentages of the prevailing wage; that in doing so, they agreed that the prevailing wage was the minimum or base hourly rate for journeyman plumbers, not including fringe benefits; that although she cannot recall the exact words that she used, Davis Gordon told Union negotiators during this discussion that the prevailing wage was not to include any monies added to wages as a result of eliminated benefits because she did not want a recurrence of what happened in the Building and Contruction Trades Council case; that the City's minutes of the bargaining session indicate in pertinent part: "Davis Gordon said that the City was talking about the prevailing wage rate but if this Union merged the benefits into wages, the City would just do the wage part"; that the Union's minutes of the bargaining session do not reflect such a statement by Davis Gordon; that neither the City's nor the Union's minutes reflect any discussion of the prevailing wage arbitration award involving the Milwaukee Building and Construction Trades Council; that following the discussion on wages the parties discussed the remainder of the items in the City's "what-if" package; that during the course of that discussion Lansing indicated that the matters of duration, removal of the plan examiners from the Union's bargaining unit and the money included in the City's "what-if" package were fine, but the Union had a problem with the proposed elimination of the personal days and the cap on comp time accumulation; that Davis Gordon indicated the Union could either take

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1/ All dates hereinafter refer to 1990.

the City's "what-if" proposal as originally written or accept it with the following modifications, to wit: eliminate one personal day in 1991 and another one in 1992 and reduce the number of sick days to ten per year effective January 1, 1991; and that at the end of the bargaining session Lansing indicated he wanted to see if the City's "what-if" proposal would fly at a union membership meeting set for May 10.

9. That on May 9, Lansing called Archie Hendrick and asked for clean copies of the City's proposal that had been discussed at the May 7 negotiating session to show his members; that Hendrick complied with this request and faxed the following documents to Lansing: a letter of understanding regarding the employment of Thomas Cottreau and Karl Schutte; a summary of proposed wage and benefit modifications for a 1989 labor agreement between the City and the Union; a summary of proposed wage and benefit modifications for a 1990-92 labor agreement between the City and the Union; and two memorandums of understanding indicating that each side would recommend and support ratification of same; that the summary sheet for the 1990-92 labor agreement included the following concerning wages:

> Base Salary
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> Effective PP 1, 1990: 2% increase for Plumbing Inspectors
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> Effective PP 16, 1990: Increase Plumbing Inspectors to 86% of prevailing wage; increase Landscape and Irrigation Specialist (L.I.S.) to 92% of prevailing Journeyman Plumber's wage.
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> Effective PP 16, 1991: Increase Plumbing Inspectors to 87% of prevailing wage; increase Landscape and Irrigation Specialist (L.I.S.) to 92% of prevailing Journeyman Plumber's wage.
>
> Effective PP 16, 1992: Increase Plumbing Inspectors to 89% of prevailing wage; increase Landscape and Irrigation Specialist (L.I.S.) to 92% of prevailing Journeyman Plumber's wage.;

that this wage proposal was identical to the 1990-92 wage proposal contained in the City's "what-if" package discussed at the May 7 bargaining session; that the term "prevailing wage" was not defined in this document; and that on May 10, Lansing called Hendrick and asked him to fax language for a contractual savings clause, which Hendrick did.

10. That these faxed documents were reviewed by the Union membership at a meeting that same day; that at that meeting Lansing described the term "prevailing wage" to the membership as being the wage negotiated by the Union with the Plumbing Contractors Association; that this wage was undetermined at the time because the Union was still in the process of negotiating it with the Plumbing Contractors Association; that the membership was also advised at this meeting that the Union was seeking to eliminate its (private sector) vacation fund, but it was unknown whether the Plumbing Contractors Association would agree to eliminate same and add that contribution onto the base wage; that at that meeting the membership voted to accept the City's faxed package offer; and that when the Union accepted the City's faxed offer, it intended that the private sector vacation contribution would be added to the hourly wage rate if that fund (i.e. the vacation fund) was eliminated.

11. That Lansing called Hendrick the next day, May 11, and advised him that the union membership had ratified the contract; that Hendrick responded that there was no contract to ratify yet because there were still things to be worked out between the parties, specifically the contract language itself and the language concerning the transfer of the mechanical plan examiners from the plumbers' bargaining unit to the technicians, engineers and architects' bargaining unit; that during this phone call, Lansing proposed that the parties continue a side letter concerning the City's right to select HMO carriers; and that Lansing also inquired about the retroactivity of the pay increase for the plumbing inspectors if the wages for the private sector plumbing contract were not settled by pay period 16, to which Hendrick responded that he would have to discuss it with Davis Gordon.

12. That the retroactivity question Lansing raised was subsequently resolved and the stipulation concerning the transfer of the mechanical plan examiners from the plumbers' bargaining unit to the technicians, engineers and architects' bargaining unit was drafted and signed by the respective unions; that Hendrick then drafted two complete labor agreements between the City and the Union: one for 1989 and one for 1990-92; that the City's draft contract for 1990-92 contains the following pertinent language in Article 9, 1, b (the salary section):

> b. Effective Pay Period 16, 1990 (July 22, 1990): The wage rate for Plumbing Inspectors (Pay Range 785) and Landscape and Irrigation Specialists

(Pay Range 786) in the City bargaining unit shall be 86% (for Plumbing Inspectors) and 92% (for Landscape and Irrigation Specialists) of the minimum hourly wage rate for Journeyman Plumbers in Building Construction which is in effect on the first day of the City's Pay Period 16, 1990 (July 22, 1990) as agreed to by the Union and the Plumbing and Mechanical Contractors Association (Milwaukee) for their contract covering the period from June 1, 1990, up to and including May 31, 1991. This minimum hourly wage rate for Journeyman Plumbers used to calculate the wage rate for employees in the City bargaining unit shall not include any amounts contributed to the Welfare, Vacation, Pension or any other "Funds" by any employer nor shall it include any increase in the minimum hourly wage rate for Journeyman Plumbers resulting from a reduction below the June 1, 1989, amounts of the amounts contributed to the Welfare, Vacation, Pension or any other funds by any employer as of June 1, 1989. Wage rates for employees in the City bargaining unit shall be adjusted no more than once per calendar year. (Emphasis added);

that similar language appears for 1991 and 1992; and that the underlined language was never specifically provided to the Union, discussed or agreed upon at the bargaining table, but City negotiators thought it incorporated the parties' agreement concerning the prevailing wage.

13. That on June 13, Hendrick and Union Legal Counsel Judy Kuhn met to review Hendrick's draft contracts to insure that the contractual language reflected the parties' agreement; that during the meeting Kuhn objected to part of the language Hendrick had drafted for Article 9, 1, b concerning the prevailing wage in the 1990-92 contract; that Kuhn specifically objected to the aforementioned underlined part which read: "nor shall it include any increase in the minimum hourly wage rate for Journeyman Plumbers resulting from a reduction below the June 1, 1989, amounts of the amounts contributed to the Welfare, Vacation, Pension or any other funds by any employer as of June 1, 1989."; that Kuhn told Hendrick that the aforementioned language was not part of the parties' agreement; that Hendrick disputed this and contended it had been the City's position all along that it wanted to protect itself from repeating the situation where a union eliminated a vacation fund to jack up their wages as happened in the Building and Construction Trades Council arbitration; that Kuhn replied that she and Lansing were aware of that arbitration award and therefore were surprised when they received the fax from Hendrick on May 9 which said in the summary of proposed wage and fringe benefit modifications that the City would pay a percentage of the prevailing wage; that after it became apparent that Hendrick and Kuhn could not resolve this disagreement concerning the definition of the prevailing wage, Davis Gordon was called into the meeting; and that Davis Gordon told Kuhn that the City did not agree on May 7 to a wage rate that was inflated by eliminating an outside fund and putting that money onto wages.

14. That shortly thereafter, the City learned that the Union had settled a three-year private sector contract with the Plumbing Contractors Association retroactive to June 1; that this agreement included an economic package for each of three years; that the package consisted of a total amount for each of the three years (82 cents for the first year, 85 cents for the second year and 90 cents for the third year) which will be allocated between wages and benefits each year as needed; that in the first year package, ten cents was allocated to the pension contribution, 16 cents was allocated to the health fund and the remainder to wages; that the second and third year economic packages will be allocated before they become effective when the parties know the needs of the funds; that also as part of their agreement these parties eliminated their existing vacation fund and folded the $1.15 hourly contribution onto wages in addition to the aforementioned amounts; and that this folding in of the vacation contribution onto wages raised the plumbers' prevailing wage rate by a like amount.

15. That the parties later met and attempted to resolve this matter but were not successful; that on July 13, the Union sent the City draft contracts for 1989 and 1990-92 and requested that the City submit those documents to the City Council with a recommendation for approval; that the Union's draft contract for 1989 is identical to that proposed by the City; that the Union's draft contract for 1990-92 contract is identical to that proposed by the City with two exceptions: the first is a typographical error making all 1991 and 1992 wage increases retroactive to 1990 and the second is that the Union deleted the language in the City's draft contract for Article 9, 1, b which would have reduced the prevailing wage used to compute wages by any amounts resulting from benefit cost reductions; that the Union's draft contract for 1990-92 contains the following pertinent language in Article 9, 1, b (the salary section):

> This minimum hourly wage rate for Journeyman Plumbers used to calculate the wage rate for employees in the City bargaining unit shall not include any amounts contributed to the Welfare, Vacation, Pension or any other "Funds" by any employer. Any hourly wage rate negotiated by the Union and the Plumbing and Mechanical Contractors Association after the first day of Payroll Period 16, 1990, which is effective on or before the first day of Payroll Period 16, 1990, shall be recognized by the City as being effective as of the first day of Payroll Period 16, 1990. (Emphasis added);

that similar language appears for 1991 and 1992; and that the underlined language was never specifically provided to the City, discussed or agreed upon at the bargaining table, but Union negotiators thought it incorporated the parties' agreement concerning the prevailing wage.

16. That to date, the City's Labor Negotiator's office has not submitted either draft contract to the City Council with a recommendation for approval.

17. That the City did not intend their wage offer of May 7 and 9 to include the folding in of any eliminated private sector benefits, specifically vacation contributions, while the Union interpreted the City's wage offer to include the folding in of any eliminated private sector benefits, specifically

vacation contributions; that as a result, there was no meeting of the minds between the parties on the prevailing wage; and that the language included by each side in their draft contract for 1990-92 concerning the prevailing wage was not agreed to by the other side.

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

CONCLUSIONS OF LAW

1. That the City and the Union did not reach a total tentative agreement for a 1990-92 contract on May 10, 1990 when the Union accepted the City's faxed offer because there was no meeting of the minds on the prevailing wage, and thus the City did not violate Sec. 111.70(3)(a)4, Stats., or derivatively, Sec. 111.70(3)(a)1, Stats., by refusing to submit the Union's draft contracts to the City Council for ratification.

2. That by refusing to submit the Union's draft contracts to the City Council for ratification, the City did not violate Sec. 111.70(3)(a)5, Stats.

On the basis of the above and foregoing Findings of Fact and Conclusions of Law, the Examiner makes the following

ORDER 2/

IT IS ORDERED that the complaint be, and the same hereby is, dismissed in its entirety.

Dated at Madison, Wisconsin this 13th day of June, 1991.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Raleigh Jones, Examiner

(See Footnote 2/ on page 7)

2/ 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.

CITY OF MILWAUKEE

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

BACKGROUND

In its complaint initiating these proceedings, the Union alleged that the City committed prohibited practices in violation of Secs. 111.70(3)(a)1, 4 and 5, Stats., by its refusal to execute a tentative agreement reached in bargaining and its failure to recommend that agreement to the City Council for approval and execution. The City admits that it has not submitted the documents in question to the City Council for approval but denies that in doing so it violated MERA. In an amended complaint, the Union alleged that the City's unilateral implementation of dress code restrictions modified the parties' existing dress code agreement in violation of Secs. 111.70(3)(a)4 and 5, Stats. This amended complaint was resolved at the hearing and subsequently withdrawn.

POSITIONS OF THE PARTIES

The Union initially contends that the parties reached an overall tentative agreement based on the unqualified written proposals given to the Union by the City on May 7 and 9. In the Union's view, once it accepted these proposals on May 10 a tentative agreement was created which the Employer was legally obligated under established WERC law to recommend to the City Council and Mayor for approval. Inasmuch as that has not yet happened, the Union submits that the City has violated Sec. 111.70(3)(a)1, 4 and 5, Stats. Next, the Union contends that in addition to reaching an overall tentative agreement, there was a meeting of the minds on the specific matter involved here, namely the definition of prevailing wage. In this regard the Union notes that the City's written wage proposals specified that the inspectors' wage was to be computed on the basis of the private sector wage and there was nothing in these written proposals which reduced the private sector wage by benefit cost reductions or any other reason. The Union further notes that the City's wage proposal was discussed at the May 7 negotiating session where, according to the Union, the parties agreed on what it characterized as the standard definition of prevailing wage, to wit: private sector base wages without benefit contributions. In the Union's opinion, the City's negotiator never qualified this definition to not include monies added to wages as a result of benefit reductions. It contends that the statement shown in the City's bargaining minutes is, at best, enigmatic. It therefore argues that the City's belief that this definition of prevailing wage was qualified so as to not include monies added to wages as a result of benefit reductions is simply not supported by the record evidence. In support thereof, it cites the adamant testimony of all the Union witnesses that the language which the City included in their draft contract concerning the prevailing wage, and the concept behind it, was not discussed in negotiations. In order to remedy this alleged prohibited practice, the Union requests that the City negotiating team be ordered to execute the memoranda of agreement faxed to the Union on May 9 and to submit the Union's draft contracts to the City Council and Mayor with a recommendation for approval.

The City contends that the parties never came to a meeting of the minds on the matter of the prevailing wage during their May 7, 1990 negotiating session and thus no overall tentative agreement was reached with respect to a new collective bargaining agreement. In this regard the City asserts that the two sides obviously had different understandings of the prevailing wage. Specifically, the City's mindset was that the prevailing wage would not be inflated by the elimination of a benefit fund (such as a vacation fund) while the Union thought otherwise. The City submits it insisted throughout negotiations that the prevailing wage be interpreted so as not to enhance wages by adding an eliminated benefit fund. It asserts that one indication that the Union was aware of the City's position was that when the City faxed its summary of proposed wage and fringe benefit modifications to the Union on May 9, both Kuhn and Lansing "were surprised" that the document said the City would pay a percentage of the prevailing wage. The City notes that despite the Union's "surprise" at the use of the term "prevailing wage" in that document, the Union has seized this opportunity to insist that, as a result of the use of that term, the City must now pay a percentage of the inflated wage rate. In the City's view, the Union was very aware of the previous arbitration award on this issue and the City's sensitivity on this issue, but it now feigns ignorance as to the City's concern on this point of contention. Finally, the City claims that the fact that both sides later departed from their May 7 wage positions and continued negotiating wages at their June 19 meeting is an indication that the parties did not have a meeting of the minds on the prevailing wage at the May 7 meeting. The City therefore requests that the complaint be dismissed. It asserts that if it is not, and if the Union's draft contract is incorporated into a collective bargaining agreement, then contract language would be imposed upon the City which it never bargained.

DISCUSSION

Alleged Violations of Sec. 111.70(3)(a)4 and 1, Stats.

The duty to bargain in good faith requires the employer's negotiating team to seek and support ratification of tentative agreements reached in collective bargaining. 4/ Failure to do so constitutes a refusal to bargain which is a prohibited practice within the meaning of Secs. 111.70(3)(a)4 and 1, Stats. Previous Commission decisions dealing with this issue have involved factual situations where the existence of the tentative agreement was undisputed. 5/ Here, though, the existence of a tentative agreement is disputed by the City. As a result, it follows that the ultimate issue here is whether a tentative agreement in fact exists between the parties.

In resolving this issue attention is focused initially on the question of whether there was a meeting of the minds between the parties on the specific subject matter involved here, namely the prevailing wage. This matter was first discussed in earnest in a phone call between Davis Gordon and Lansing. It is undisputed that during that phone call Davis Gordon told Lansing that the City would agree to a prevailing wage agreement but that the City would not agree to the percentage sought by the Union. What is disputed is whether Davis Gordon addressed any other component of the prevailing wage during this call. Davis Gordon testified that in addition to the foregoing, she also told Lansing that the prevailing wage was not to include monies added to wages as a result of eliminated benefits because she did not want a recurrence of what happened in the Building and Construction Trades Council case. Although Lansing does not recall Davis Gordon making such a statement, the undersigned has credited her testimony in this regard. Following this phone call the City prepared a "what-if" package that, among other things, tied the inspectors' wage rate to the "prevailing wage." This proposal was discussed in detail at the May 7 bargaining session. It is undisputed that during this meeting the parties agreed that the "prevailing wage," which was not defined in the City's proposal, was the minimum or base hourly rate for journeyman plumbers, not including amounts contributed to fringe benefit funds. What is disputed is whether City negotiators addressed any other component of the prevailing wage during the meeting other than that just identified. Davis Gordon testified she also told Union negotiators what she had previously told Lansing, namely that the prevailing wage was not to include monies added to wages as a result of benefit reductions because she did not want a recurrence of what happened in the Building and Construction Trades Council case. By her own admission though, Davis Gordon does not recall what her exact words were but she felt she made it clear to Union negotiators that the prevailing wage was not to include (private sector) benefit contributions which were reduced or eliminated (such as the vacation fund). Although all four Union negotiators deny that Davis Gordon said anything to this effect, the Examiner finds that she did because words to that effect are reflected in the bargaining notes taken by fellow City negotiator Hendrick. There it provides in pertinent part: "Davis Gordon said the City was talking about the prevailing wage rate but if this Union merged the benefits into wages, the City would just do the wage part." This written notation satisfies the undersigned that Davis Gordon did in fact raise the matter with Union negotiators. Moreover, while the Union characterizes this statement as enigmatic, the Examiner believes it is sufficiently clear to have put Union negotiators on notice that if the Union eliminated a private sector benefit fund, the City was not agreeing to add (i.e. merge) the money from the eliminated fund to the base wage. Given the foregoing findings, the undersigned is persuaded that Davis Gordon advised Union negotiators during their discussions of the prevailing wage that the City did not want (private sector) benefit funds which were eliminated to be added to the base wage. Having said that though, it is also undisputed that the Union never agreed to this interpretation of the prevailing wage. As a result, it stands to reason that there was no meeting of the minds between the parties on this component of the prevailing wage because the City thought that private sector benefit contributions which were eliminated were not going to be added to the base wage while the Union thought otherwise and ratified the City's offer on that assumption.

The extent of the parties' misunderstanding concerning the prevailing wage did not become apparent until after Hendrick drafted proposed contract language that he thought reflected the parties' agreement. Only after he did so was it discovered for the first time that both sides had fundamentally different views on what they thought the term "prevailing wage" would include, with the City understanding that eliminated private sector benefit contributions would not be added to the base wage while the Union understood they would. These conflicting views simply cannot be reconciled. Since there was no meeting of the minds between the parties on this aspect of the prevailing wage, and both parties acknowledge that the prevailing wage was a central issue in their negotiations, it follows that there was no overall agreement. Inasmuch as there was never a complete tentative agreement between the parties, the City did not violate Sec. 111.70(3)(a)4, Stats., or

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3/ Oconto County, Dec. No. 26289-A (Gratz, 7/90); City of Green Bay, Dec. No. 21785-A (Roberts, 10/84); Florence County, Dec. No. 13896-A, (McGilligan, 4/76); Hartford Union High School District, Dec. No. 11002-A, (Fleishli, 2/74); Jt. School District No. 5, City of Whitehall, Dec. No. 10812-A (Torosian, 9/73); VTAE, District #13, Dec. No. 11352, (Schurke, 9/73); and Adams County, Dec. No. 11307-A (Schurke, 4/73).

4/ Ibid.

derivatively, Sec. 111.70(3)(a)1, Stats., by refusing to submit the Union's draft contracts to the City Council for ratification. Therefore, the alleged violations of these sections have been dismissed.

Alleged Violation of Sec. 111.70(3)(a)5, Stats.

The Union also claims such actions by the City violated Sec. 111.70(3)(a)5, Stats. That section provides that it is a prohibited practice for an employer "to violate any collective bargaining agreement previously agreed upon by the parties..." Here, though, there was no collective bargaining agreement previously agreed upon by the parties, so it follows that the Employer could not have violated same. That being so, the alleged violation of this section has also been dismissed.

Dated at Madison, Wisconsin this 13th day of June, 1991.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Raleigh Jones, Examiner