STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

SHEBOYGAN COUNTY SUPPORT SERVICES LOCAL 110, AFSCME, AFL-CIO, Complainant, vs. SHEBOYGAN COUNTY, Respondent.	Case 210 No. 49303 MP-2741 Decision No. 27692-B

Appearances:

Mr. Bruce F. Ehlke, Attorney at Law, P.O. Box 2155, Madison, Wisconsin 53701, appearing on behalf of the Complainant.

Mr. Alexander Hopp, Corporation Counsel, 601 North Fifth Street, Sheboygan, Wisconsin 53081, appearing on behalf of the Respondent.

ORDER AFFIRMING AND MODIFYING EXAMINER'S FINDINGS OF FACT AND CONCLUSIONS OF LAW AND AFFIRMING EXAMINER'S ORDER

On January 4, 1994, Examiner Coleen A. Burns issued Findings of Fact, Conclusions of Law and Order in the above matter wherein she concluded that Respondent Sheboygan County had not committed prohibited practices within the meaning of Secs. 111.70(3)(a)1, 2, 3 or 4, Stats. She therefore dismissed the complaint filed by Sheboygan County Support Services, Local 110, AFSCME, AFL-CIO.

On January 7, 1994, Complainant Local 110 filed a petition with the Wisconsin Employment Relations Commission seeking review of the Examiner's decision pursuant to Secs. 111.70(4)(a) and 111.07(5), Stats. On January 21, 1994, Complainant filed an amended petition for review and the parties thereafter filed written argument in support of and in opposition to the amended petition, the last of which was received February 18, 1994.

Having considered the matter and being fully advised of the premises, the Commission makes and issues the following

ORDER 1/

A. Examiner's Findings of Fact 1 - 2 are affirmed.

B. Examiner's Finding of Fact 3 is affirmed as modified through deletion of the lined through words and addition of the emphasized words.

~~At hearing, Miller, who did not have any bargaining notes from the initial contract, recalled that the term "subcontracting" was never used during negotiations and that there was no representation that the language of Article 3 was intended to be a subcontracting provision. According to Miller, the language of Article 3 meant that the County "could ask any of the county employees to work wherever their work might take them if it was within the courthouse or in another location."~~

During bargaining of the initial contract, there was no discussion of whether Article 3 related to subcontracting.

C. Examiner's Findings of Fact 4 - 8 are affirmed.

D. Examiner's Finding of Fact 9 is affirmed as modified through deletion of the lined through words.

~~Felsher does not recall making these statements, but acknowledges that he may have made these statements.~~

E. Examiner's Finding of Fact 10 is affirmed.

F. Examiner's Conclusions of Law 1 - 6 are affirmed.

G. Examiner's Conclusions of Law 7 and 8 are set aside and the following Conclusions of Law are made:

7. Article 3 of the parties' collective bargaining agreement does not address the issue of subcontracting. Sheboygan County bargained in good faith to impasse with Sheboygan County Support Services Local 110, AFSCME, AFL-CIO as to the decision to subcontract the Stagecoach service.

1/ see footnote on page 3

8. Sheboygan County Support Services Local 110, AFSCME, AFL-CIO had the opportunity to and did in fact bargain with Sheboygan County over the impact of the subcontract of the Stagecoach service.

H. Examiner's Conclusions of Law 9 - 10 are affirmed.

I. Examiner's Order dismissing the complaint is affirmed.

Given under our hands and seal at the City of Madison, Wisconsin, this 8th day of March, 1995.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By A. Henry Hempe /s/
A. Henry Hempe, Chairperson

Herman Torosian /s/
Herman Torosian, Commissioner

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

1/ Pursuant to Sec. 227.48(2), Stats., the Commission hereby notifies the parties that a petition for rehearing may be filed with the Commission by following the procedures set forth in Sec. 227.49 and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.53, Stats.

227.49 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection

does not apply to s. 17.025(3)(e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

(footnote 1 continued on page 4)

(footnote continued from page 3)

227.53 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefore personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.49, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.48. If a rehearing is requested under s. 227.49, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 77.59(6)(b), 182.70(6) and 182.71(5)(g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.57 upon which petitioner contends that the decision should be reversed or modified.

. . .

(c) Copies of the petition shall be served, personally or by certified mail, or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon all parties who appeared before the agency in the proceeding in which the order sought to be reviewed was made.

Note: For purposes of the above-noted statutory time-limits, the date of Commission service of this

decision is the date it is placed in the mail (in this case the date appearing immediately above the signatures); the date of filing of a rehearing petition is the date of actual receipt by the Commission; and the service date of a judicial review petition is the date of actual receipt by the Court and placement in the mail to the Commission.

SHEBOYGAN COUNTY

MEMORANDUM ACCOMPANYING ORDER AFFIRMING AND MODIFYING EXAMINER'S FINDINGS OF FACT AND CONCLUSIONS OF LAW AND AFFIRMING EXAMINER'S ORDER

The Pleadings

In its complaint, the Union alleges that the County violated Secs. 111.70(3)(a)1,2,3 and 4, Stats., by subcontracting work performed by bargaining unit employes and retaliating against employes through the use of tests when employes sought to bump into other unit positions following the subcontract. The County denies that it committed any prohibited practices.

The Examiner's Decision

The Examiner initially concluded that the County's decision to subcontract bargaining unit work was a mandatory subject of bargaining. However, she concluded that Article 3 of an existing collective bargaining agreement expressly provided the County with the right to subcontract unit work. Based upon her determination that the right to subcontract had already been bargained by the parties, she concluded that the County had no obligation to bargain with the Union over the decision to subcontract bargaining unit work.

Turning to the County's duty to bargain over the impact of the decision to subcontract unit work, the Examiner concluded that the Union had not made any impact proposals in response to the County's invitation to bargain. She therefore concluded that the Union had clearly and unmistakably waived by inaction any right it had to bargain over the impact of the subcontracting decision. She further concluded that the contract already addressed certain impact issues such as the contractual rights of laid-off employes to receive other bargaining unit positions and the County's right to administer tests to said employes to determine whether they are qualified for such alternative positions. Given the foregoing, the Examiner concluded that the County had not failed to bargain as to the impact of the subcontracting decision.

The Examiner also rejected a Union allegation that the County was violating Sec. 111.70(3)(a)3, Stats., by testing laid-off employes who wished to move into another bargaining unit position. She concluded that the Union had not established that the County's decision to require testing was motivated in any part by hostility toward protected activity. She therefore concluded that no violation of Sec. 111.70(3)(a)3, Stats., had been established.

Lastly, the Examiner concluded that there had been no showing that the County's conduct

had violated Secs. 111.70(3)(a)1 or 2, Stats. She therefore dismissed these allegations as well.

Positions of the Parties

The Union

The Union contends the Examiner erred by concluding that the collective bargaining agreement gives the County the right to subcontract unit work. The Union asserts that the contract language in question only recognizes the County's right to contract with third parties for additional work to be done by County employes and the County's further right to assign the employes to do such work without regard to where the work is located. The Union alleges that both a comparison of the contract language to provisions in other County agreements and consideration bargaining history establish that the language in question does not give the County the right to subcontract unit work. Therefore, the Union urges the Commission to reverse the Examiner's conclusion in this regard.

The Union further contends that the Examiner erred by concluding the County had bargained in good faith over the decision to subcontract and the impact of that decision. The Union asserts the County had already decided to subcontract before it engaged in any meaningful bargaining. The Union argues that the discussions between it and the County over the decision to subcontract establish a "take-it-or-leave-it" posture by the County which demonstrates that the County had no intention to reach an agreement with the Union. The Union contends the County regarded the bargaining as a "mere technical requirement" which had to be met before the County subcontracted the unit work. The Union alleges that the discussions were a "sham at best."

In this regard, the Union asserts that the County was represented by people who had no authority to even make a tentative agreement, that the County failed and refused to make any counter-proposal to the Union's cost-saving proposals, and that the County broke off meetings with the Union before the Union could meet with anyone in authority relating to the subcontracting decision. Given all the foregoing, the Union contends the Examiner erred by failing to find that the County bargained in bad faith as to the decision and the impact of the decision to subcontract.

The Union asks that the Commission reverse the Examiner as to the duty to bargain allegations and order the County to reinstate the affected employes and make them whole pending the County's fulfillment of its obligation to bargain in good faith over any decision to subcontract and the impact of any such decision.

The County

The County urges the Commission to affirm the Examiner's decision. The County argues that the Examiner correctly concluded that the existing contract gave it the right to subcontract the

unit work in question. It further contends that the record amply supports the Examiner's conclusion that the Union failed to pursue bargaining over the impact of the subcontracting decision and therefore waived its right by inaction. Lastly, the County alleges that there is no evidence that it acted out of hostility toward the exercise of rights under the Municipal Employment Relations Act and thus asserts that the Examiner properly dismissed those allegations as well.

The County contends that the record as a whole supports the Examiner's decision. The County urges the Commission to affirm the Examiner in all respects.

Discussion

We begin with a consideration of whether the Examiner erred when she concluded Article 3 of the parties' contract gave the County the right to subcontract the Stagecoach service.

Article 3 states in pertinent part:

> The right to contract for any work it possesses and to direct its employees to perform such work wherever located is specifically reserved to the Employer.

The Examiner analyzed this contract language as follows:

> In arguing that the County has the contractual right to subcontract the Stagecoach service, the County relies upon the provision of Article 3, MANAGEMENT RIGHTS RESERVED, which states that "The right to contract for any work it possesses and to direct its employees to perform such work wherever located is specifically reserved to the Employer." The Union denies that this service and argues that the purpose of the provision is to recognize the County's right to contract with third parties for additional work to be done by its employes and the County's right to assign the employes to do such work regardless of where the work might be located.
>
> The Union's construction of the provision is not reasonable in that it ignores the fact that the provision references work that the County "possesses." Work possessed by the County is not work belonging to a third party. Giving effect to the plain language of Article 3, the undersigned is satisfied that the language of Article 3

expressly provides the County with the right to subcontract work that the County possesses and to direct County Employes to perform work that the County possesses wherever that work is located.

This language of Article 3 was agreed upon by the parties when they negotiated their initial collective bargaining agreement, which agreement was effective January 1, 1968. Ethel Miller, who retired from County employment in 1988, was a member of the Union team which negotiated the initial collective bargaining agreement with the County. At hearing, Miller, who did not have any bargaining notes from the initial contract negotiations, stated that the term "subcontracting" was never used during negotiations and that there was no representation that the language of Article 3 was intended to be a subcontracting provision. According to Miller, the language of Article 3 meant that the County "could ask any of the county employees to work wherever their work might take them if it was within the courthouse or in another location." 6/ Miller, however, does not claim, and the record does not establish, that Miller's interpretation of Article 3 was based upon any County representations, or upon any factor other than Miller's reading of the contract language.

6/ T., Vol. II at 8.

Miller and Marvin Grosskreutz, a retired County employe who was a member of the Union team which negotiated the initial Highway contract, agree that the Highway language served as a model for the language which was incorporated into Article 3 of the supportive services contract. The relevant Highway contract language is as follows:

> The County Board and its Highway Committee shall have the sole right to contract for any work it chooses and to direct its employees to perform such work wherever located subject only to the restrictions imposed by this agreement and the Wisconsin Statutes. But in the event the

> Employer desires to subcontract any work which will result in the lay-off of any county employees, said matter shall first be reviewed with the Union.

Grosskreutz recalls that, at the time the language was negotiated, the Highway Department contracted for work, such as blacktopping. According to Grosskreutz, this language was developed to clarify that the County had the right to send employes to work wherever the County had a contract for work.

As the County argues, the language contained in Article 3 of the supportive services contract differs materially from the language of the Highway contract. Not only does the Highway contract provide a limitation upon the County's right to subcontract work which is not found in the supportive services contract, but also the first sentence references the County's right to "contract for any work it chooses." (Emphasis supplied)

Given the differences in the language of the two provisions, Grosskreutz's testimony concerning the parties intent with respect to the language contained in the Highway contract does not provide a reasonable basis for interpreting the language contained in the supportive services contract. Indeed, the fact that the language of the supportive services contract does not mirror that of the Highway contract indicates that the parties did not intend to provide the supportive services employes with the same benefit which was provided to the Highway employes.

Neither Miller's testimony, nor any other record evidence, demonstrates that the parties mutually intended the language of Article 3 to be given any meaning other than that which is reflected in the plain language of the Article. The plain language of Article 3 expressly provides the County with the right to subcontract bargaining unit work. Since the County's right to subcontract the Stagecoach work is expressly embodied in the parties' collective bargaining agreement, there has been a waiver by contract of the County's statutory duty to bargain with the Union on the decision to subcontract the Stagecoach service.

We do not find the Examiner's analysis to be persuasive. In our view, the contract language is ambiguous as to its meaning. The Examiner rightfully criticizes the Union's proposed

interpretation of the language because the word "possesses" is rendered meaningless thereunder. However, her analysis does not come to grips with other portions of the sentence which cast doubt on the interpretation proffered by the County. The phrase "the right to contract for any work it possesses" is ambiguous on its face. As a general matter, one does not need to contract for work one already has. Given the ambiguity of the first phrase in the sentence, the meaning of the later reference to "such work" also becomes unclear. "Such work" would normally be understood to refer back to the "work" the County "possesses". However, if the first phrase in the sentence is interpreted to convey the right to subcontract, the second phrase (to direct its employees to perform such work . . .) becomes nonsensical because the County's employes would no longer be performing the work.

Given the ambiguity of the contract language, we turn to evidence of bargaining history and past practice for assistance in determining the intent of the parties.

As the above-quoted segment from the Examiner's analysis indicates, evidence of bargaining history was presented by two Union witnesses, Miller and Grosskreutz.

Miller, a Union bargaining team member, testified without contradiction that when the disputed contract language was discussed at the bargaining table and ultimately agreed upon as part of the parties' first contract, the term "subcontracting" was not used. Miller further testified that based upon her recollection of what was discussed at the bargaining table, she understood the language to give the County the right to require its employes to perform any work the County acquired by contract wherever that work was located. Lastly, her testimony indicates that contract language ultimately agreed upon came from a County proposal which drew upon language from the first County Highway Department bargaining agreement.

The Highway Department contract language to which Miller referred states:

> The County Board and its Highway Committee shall have the sole right to contract for any work it chooses and to direct its employees to perform such work wherever located subject only to the restrictions imposed by this agreement and the Wisconsin Statutes. But in the event the Employer desires to subcontract any work which will result in the lay-off of any county employees, said matter shall first be reviewed with the Union.

Grosskreutz, a Highway Department union bargaining team member, testified that the first sentence of the Highway contract language did not deal with the subject of subcontracting but rather with the County's right to require unit employes to work at the site of any work which the County acquired by contracting with outside parties.

The Examiner discounted Miller's testimony as insufficient to establish a mutual intent

contrary to meaning of the "plain language" of Article 3. She discounted Grosskreutz's testimony because the language of Article 3 does differ from the language of the Highway contract.

If the language of Article 3 did have a meaning which was "plain" to us, we would share the Examiner's disposition of the testimony of Miller and Grosskreutz. However, as we find Article 3 to be ambiguous, we find their testimony to be helpful when determining the parties' intent. In our view, Miller's testimony (and to a lesser extent Grosskreutz's) provides a valid basis for resolving the ambiguities of Article 3 in a manner consistent with the Union's position herein. However, before reaching that conclusion, we must consider the County argument that a past practice exists which is supportive of its position as to meaning of Article 3.

The evidence of past practice consists of the testimony of Human Services Director Johnson and Division of Aging Manager McCabe regarding the subcontract of certain billing and transportation work. At least as to the transportation work referenced by McCabe, it seems clear such work would normally have been performed by the bargaining unit and it seems likely that unit members would have been aware of the subcontract. However, as persuasively argued by the Union, even if the evidence justified a finding that the Union knew of the McCabe subcontract and did not object, it does not necessarily follow that Union acquiescence reflected an understanding that Article 3 allowed the County to subcontract. Acquiescence could as easily reflect a Union judgement that the amount of work involved was not sufficient to warrant a challenge to the County's actions. Thus, we do not find the evidence of past practice to persuasively support the County's position as to the proper interpretation of Article 3.

Given all of the foregoing, the evidence of bargaining history provides a persuasive basis for us to resolve the ambiguity of Article 3. Thus, we conclude Article 3 simply does not address the issue of subcontracting but rather expresses the County's right to require County employes to perform work at any location.

Having concluded that Article 3 is silent as to the parties' rights and responsibilities as to the Stagecoach subcontract, we turn to the question of whether the County met its obligation to bargain with the Union as to the decision to subcontract 2/ and the impact thereof.

The record establishes that during the summer of 1992, the County Human Services Board concluded that it would seek proposals from private contractors regarding the cost of providing existing levels of Stagecoach bus service. The Human Services Board created and followed a procedure for analyzing the two proposals it received from private contractors. The analysis of the proposals satisfied the County Human Services Board Review Committee that the County could save a minimum of $100,000 by subcontracting Stagecoach service. Once the savings level became known, the County Board voted to cut $100,000 from the transportation budget of its Department of Human Services. On November 17, 1992, the Human Services Board voted to accept the recommendation of its Review Committee to enter into a contract with one of the two bidders to provide the existing service.

2/ The County does not dispute that the Examiner correctly concluded the subcontracting decision was a mandatory subject of bargaining.

The Union argues that when the foregoing scenario is viewed in the context of a County bargaining committee with no authority, the public remarks of the County Board Chair, the County's failure to make any counter proposals to Union suggestions of cost savings, and the County's refusal to continue to meet after five bargaining sessions, it is apparent that the County did not meet its obligation to bargain over the subcontracting decision. While the issue is a close one, we are satisfied from the record as a whole that the County met its bargaining obligations.

Initially, we note that it is not inherently inconsistent with good faith bargaining for the employer to have decided that it wants to save money by subcontracting for certain services before bargaining over the decision begins. Indeed, unless and until the employer decides that it wants to pursue a subcontract, there is nothing to bargain over. Here, through its own internal and ultimately political processes, the County (through its Human Services Board) decided that it would like to pursue a subcontract because the same transportation services it was providing through its employes could be provided by a subcontractor at a savings of at least $100,000.

Critical to our analysis of the County's intention to bargain in good faith over the decision is the question of whether the County would have continued to provide the existing services with its own employes if the bargaining process had provided $100,000 of savings. We conclude the record as a whole answers that question affirmatively. We base our answer on the following evidence:

1. The testimony of Johnson, Danforth, Lemahieu and Isferding (Vol. 3, p. 154) to the effect that the County Human Services Board had an open mind as to who would perform the work.

2. The County Personnel Director's November 20, 1992 letter to the Union which states in pertinent part:

> I am writing as a follow-up to our phone conversation of November 6, 1992 in which I requested a meeting to discuss the

information being considered by the Human Service Board regarding the operation of the bus system.

I wish to continue our discussion with regard to this issue and the Human Services Board decision that the County's operation of the bus system can be more economically done by contracting with a private carrier to provide the service. My understanding is that the Human Services Board made this decision based on savings ranging from $100-$160,000.00.

I am requesting that we meet to negotiate this decision and determine whether or not, with the assistance of the involved parties, a better solution or an equivalent solution, or an alternate solution is available that would produce the same results without affecting the services to the beneficiaries of the program. In the event we are unable to find such a solution, we should then negotiate the impact of that decision, and if possible, it seems to me that we ought to try and see if we can place the impacted people in other areas of County employment.

These are significant issues and it is my hope that we can reach solutions that are satisfactory and acceptable to all parties involved. In order for you to prepare for these discussions, I am enclosing a copy of the statistical data that was submitted to the Human Services Board and are prepared to supply you with any other information that is available which you may require.

Because of the significance of these decisions to the people involved, it obviously is in everyone's best interest if we meet soon, before the issue becomes polarized and then interfere with the negotiations. May I suggest that we have our first meeting during the week of November 30, Our preference at this writing is Friday, December 4 at 8:00 a.m. The meeting can be at the Human Services Building Fourth Floor conference room or at an alternate site if you feel a neutral site would better serve this propose.

Please contact me to confirm the acceptability of the above meeting time or to propose an alternate time that is more convenient to your schedule. I anticipate that Jim McCabe, Lynne Dennis and myself will be part of the committee to meet with you along with Alex Hopp, Bob Danforth and Gary Johnson to be utilized as

resource people in the discussion of this matter.

Thank you for your cooperation in this regard and I look forward to hearing from you.

3. At the bargain table, the County bargaining team advised the Union and the Union understood that if savings of $100,000 could be achieved, the County bargaining team would recommend that County employes continue to provide the services in question.

4. The County did not enter into a contract with G & G Enterprises until late April, 1993, approximately one month after the parties' last bargaining session on March 22, 1993.

We also reject the Union contention that the County bargained in bad faith because the bargaining team lacked authority to reach a tentative agreement. In our view, the record clearly establishes that composition of the bargaining team was based upon the County's desire for expertise on specific issues being bargained, that the team was assembled with the approval of the Chair of the County Board's Personnel Committee, that the County Board members were updated on the status of bargaining as it proceeded, and that if the Union had been willing to make concessions of approximately $100,000, the bargaining committee was empowered to reach a tentative agreement that unit employes would continue to do the work in question.

The Union also contends the County's failure to make specific counter-proposals evidences bad faith bargaining. We conclude otherwise. Here, the County had clearly advised the Union of the need to save a minimum of $100,000 while retaining existing service levels. During their bargaining, the parties agreed upon a cents per mile labor cost. Under such circumstances, the Union was fully capable of identifying and proposing wage and benefit concessions necessary to produce the necessary savings. The Union never was willing to make such a wage and benefit concession proposal. While there was certainly nothing preventing the County bargaining team from translating the necessary savings into a specific concession proposal, under the circumstances herein we do not find their failure to do so to be evidence of bad faith bargaining. We are further satisfied that the parties had the opportunity to and did in fact bargain over the impact of any subcontracting decision on affected employes. Issues of bumping and transfer rights were raised and bargained. The bargaining over impact produced no agreements. Both parties apparently decided to rely on their respective rights and responsibilities under the existing contract.

The Union also asserts that the parties were not at impasse when the County broke off bargaining after the parties' fifth meeting. We again conclude otherwise. In our view, the parties

had fully discussed all savings proposals the Union had presented. The Union had not indicated any willingness to make wage or fringe benefit concessions necessary to produce the needed level of savings while maintaining existing service levels. All that the Union sought at the end of the fifth session was the opportunity to make an "end run" to the Human Services Board to seek flexibility from the County which had not be present at the bargaining table. This desired opportunity (which the Union had the political opportunity to pursue at any point in the process) is not a persuasive basis for concluding that an impasse did not exist after the parties' fifth meeting.

The Union correctly argues that the public remarks to County Board Chair Felsher support an interference that the subcontract was a foregone conclusion, at least in Felsher's mind. However, when we balance the strength of this inference against the evidence we just recited, we do not find Felsher's remarks sufficient to establish that bargaining was a sham.

Given the foregoing, we conclude the County met its obligation to bargain over the decision to subcontract and the impact thereof. We have therefore affirmed the Examiner's dismissal of the complaint. 3/

Dated at Madison, Wisconsin, this 8th day of March, 1995.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By A. Henry Hempe /s/
A. Henry Hempe, Chairperson

Herman Torosian /s/
Herman Torosian, Commissioner

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

3/ The Union has not specifically attacked the Examiner's dismissal of the alleged violations of Secs. 111.70(3)(a)1, 2 or 3, Stats. We have reviewed the record as to these allegations and concluded the Examiner properly dismissed them.