STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

WISCONSIN PROFESSIONAL POLICE ASSOCIATION/LAW ENFORCEMENT EMPLOYEE RELATIONS DIVISION, Complainant, vs. CITY OF COLUMBUS (POLICE DEPARTMENT), Respondent.	Case 23 No. 48212 MP-2651 Decision No. 27853-A

Appearances:

Cullen, Weston, Pines & Bach, Attorneys at Law, by Mr. Gordon E. McQuillen, 20 North Carroll Street, Madison, WI 53703, appearing on behalf of the Association.

von Briesen & Purtell, S.C., Attorneys at Law, by Mr. James R. Korom, 411 East Wisconsin Avenue, Suite 700, Milwaukee, WI 53202-4470, appearing on behalf of the City.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Wisconsin Professional Police Association/Law Enforcement Employee Relations Division filed a complaint with the Wisconsin Employment Relations Commission on October 23, 1992, and an amended complaint on December 22, 1992, alleging that the City of Columbus had committed prohibited practices within the meaning of Secs. 111.70(3)(a)4 and 1 of the Municipal Employment Relations Act. On October 27, 1993, the Commission appointed Lionel L. Crowley, a member of its staff, to act as Examiner and to make and issue Findings of Fact, Conclusions of Law and Order as provided in Sec. 111.07(5), Stats. Hearing on the amended complaint was held on December 1, 1993, in Columbus, Wisconsin. The parties filed briefs and reply briefs, the last of which were exchanged on February 25, 1994. The Examiner, having considered the evidence and the arguments of counsel, makes and issues the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Wisconsin Professional Police Association/Law Enforcement Employee Relations Division, hereinafter referred to as the Association, is a labor organization and the exclusive collective bargaining representative for all employes of the City of Columbus Police Department who have the power of arrest, but excluding the Police Chief, Assistant Chief and the Sergeant, and its address is c/o S. James Kluss, 7 North Pinckney Street, #220, Madison, Wisconsin 53703.

2. The City of Columbus, hereinafter referred to as the City, is a municipal employer within the meaning of Sec. 111.70(1)(j), Stats., and its offices are located at 105 North Dickason Boulevard, Columbus, Wisconsin 53925.

3. The Association and the City commenced negotiations for a successor agreement to the 1990-91 agreement in late 1991 or early 1992. The parties were unable to reach an agreement and an investigator was called in and after two mediation sessions, the parties reached a tentative agreement on August 18,

1992. After the parties reached the tentative agreement, a joint session was held with the mediator. Present for the City were Bruce K. Patterson, Employee Relations Consultant, who was the City's Chief Negotiator; Ernest Platz, Alderperson and Chair of the Wage, Salary and Personnel Committee and member of the negotiating team; Karen Henn, Alderperson and member of the Wage, Salary and Personnel Committee and member of the negotiating team; Tom Christiansen, Mayor, who was not a member of the negotiating team; the WERC mediator; S. James Kluss, the Association's spokesman; Scott Rychnovski, Mike Smith, Pete Gasser and Craig Keninger, all members of the Association's bargaining team.

Sometime during this meeting Bruce Patterson asked Ernest Platz if the City needed him at the City Council meeting where ratification would be taken up. Platz told Patterson he was not needed and the Mayor also said he did not need to appear. What, if anything, the Mayor stated after this is in dispute. Kluss and Rychnovski testified that the Mayor stated that, if necessary, in case of a tie vote, he would cast his vote in favor of the tentative agreement. Mayor Christiansen, Ernest Platz and Bruce Patterson denied that the Mayor made this statement and Karen Henn could not recall what was said. The evidence failed to establish that the Mayor made the statement.

4. After the August 18, 1992 meeting, Kluss prepared the tentative agreements and sent them to Patterson and to the City's Clerk on or about August 20, 1992. One tentative agreement was item 4. as follows:

> 4. ARTICLE 5 - GRIEVANCE PROCEDURE
> A. Definition of a Grievance - Add the following at the end of the current language:
>
> ...including discipline, suspension, or discharge of any employee for "just cause."

On September 1, 1992, the City's Common Council met and one item on its agenda was the ratification of the tentative contract with the Association. The City's Attorney, Randall Lueders, felt that more discussion was needed on Article 5, set out above. Alderman Platz moved for the contract to be accepted as is. This motion died for lack of a second. Platz then moved to accept the contract with Article 5 to be clarified and this motion also died for lack of a second. Matt Tompach, who was an Alderman and a member of the Wage, Salary and Personnel Committee but was not present at the August 18, 1992 meeting, moved to table the consideration of the tentative agreement to the next meeting. The motion was seconded by Henn and carried with Platz voting "no."

5. The City's Common Council met on September 15, 1992, at which time Platz made a motion, seconded by Henn, that the Council approve the Police Union contract with the following changes:

> 1. deletion of the following language from Article 5(A): "Including discipline, suspension, or discharge of any employee for just cause".
> 2. Language of the agreement is not retroactive with respect to the pending grievance filed by Officer Smith on January 27, 1992.
> 3. Delete last two sentences of Article XI(B). This language appears to conflict with the new language in this section.
> 4. Delete references to Sergeant and part time employees on Appendix A. These persons are not in the

union.

The motion carried on a unanimous roll call vote.

6. Patterson sent a letter dated September 26, 1992, to Kluss which stated as follows:

> I have been advised by the City Attorney for the City of Columbus that the Common Council, at its regular meeting on September 15, 1992, approved the 1992-1993 Labor Agreement subject to the following:
>
> 1. Deletion of the following language from Article V(A), "including discipline, suspension, or discharge of any employee for just cause".
>
> 2. Language of the Agreement is not retroactive with respect to the pending grievance filed by Officer Smith on January 27, 1992.
>
> 3. Delete last two sentences of Article XI(B). This language appears to conflict with the new language in this section.
>
> The City has directed that I so advise you of these changes and request that these changes be agreed upon. Please advise as to your position relative to these matters.

Kluss did not agree to paragraph 1 and 2 of the letter, and the Association filed the instant complaint alleging a refusal by the City to bargain collectively with the Association.

7. On December 1, 1992, the City's Common Council met and during this meeting Platz made a motion, seconded by Henn, to rescind the action by the Common Council on September 15, 1992, approving the agreement with the four changes and the motion passed. Thereafter the Council voted to reject the tentative contract. On December 15, 1992, the City's Common Council met, voted to rescind the Council's action on December 1 rejecting the tentative agreement. Platz then made a motion, seconded by Tompach, to approve the recommendation of the Wage, Salary and Personnel Committee and pass the tentative agreement. Platz, Tompach and Henn voted for it and Neesam, Padavich and Sanderson voted against it. The Mayor broke the tie by voting against the tentative agreement. The City Council then voted to submit a final offer and proceed to interest arbitration.

8. The City's Wage, Salary and Personnel Committee recommended ratification of the tentative agreement between the City and the Association and the members of the City bargaining committee voted for ratification of the contract and thereby fulfilled its obligation to bargain collectively with the Association.

Upon the basis of the above and foregoing Findings of Fact, the Examiner makes and issues the following

CONCLUSIONS OF LAW

1. The City's Wage, Salary and Personnel Committee's recommendation and votes on December 15, 1992, for the tentative agreement reached on August 18, 1992, rescinded their prior actions and constituted good faith bargaining, and therefore, the City did not commit any prohibited practices in violation of Secs. 111.70(3)(a)4 and 1, Stats.

2. Mayor Christiansen's vote against ratification of the tentative agreement did not constitute a refusal to bargain in good faith within the meaning of Secs. 111.70(3)(a)4 and 1, Stats.

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

ORDER 1/

IT IS ORDERED that the complaint, as amended, be, and the same hereby is, dismissed.

Dated at Madison, Wisconsin, this 20th day of April, 1994.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Lionel L. Crowley /s/
Lionel L. Crowley, Examiner

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

Section 111.07(5), Stats.

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

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1/ (See footnote on Page 5.)

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.

This decision was placed in the mail on the date of issuance (i.e. the date appearing immediately above the Examiner's signature).

MEMORANDUM ACCOMPANYING
FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

In its complaint, as amended, the Association alleged that the City had violated Secs. 111.70(3)(a)4 and 1, Stats., by refusing to bargain collectively with the Association by the conduct of the bargaining team members in failing to recommend ratification of the tentative agreement the parties reached on August 18, 1992, and by failing to vote in favor of said recommendation and the Mayor's casting a tie breaking vote against the ratification. The City answered the complaint denying that it had committed any prohibited practices and alleging that the arbitral review under a just cause standard of PFC decisions is an unlawful subject of bargaining, the Association's submission of a final offer constitutes a waiver, the complaint fails to state a claim and is moot.

Association's Position

The Association contends that the City violated its duty to bargain with the Association on several occasions. The Association argues that the City Council's actions on September 1, 1992, violated Secs. 111.70(3)(a)4 and 1, Stats., in that Platz moved acceptance of the tentative agreement but neither Henn nor Tompach seconded that motion, and their failure to do so constituted a refusal to act on the ratification of the tentative agreement. It submits that Platz's second motion on September 1, 1992, to approve the tentative agreement with Article 5 to be clarified was a prohibited practice because he failed to recommend the tentative agreement but rather supported a modification of the tentative agreement. The Association contends that by tabling the matter, the Council committed a prohibited practice because they were required to accept or reject the tentative agreement.

The Association asserts that the City committed several prohibited practices on September 15, 1992, and all were accomplished by a single motion. It points out that Platz's motion at the September 15, 1992 Council meeting deleted one portion of the tentative agreement and introduced a new subject of bargaining. It notes that it was alleged that the City Attorney had opined that the just cause/arbitration language was illegal and Platz had found an article in The Municipality supporting this interpretation. It takes the position that Platz was not informed about the contract's Savings Clause or the procedure for a declaratory ruling before the Commission or in court. The Association also notes that the Commission had twice declared such provisions were not illegal citing City of DePere, Dec. No. 19703-B (WERC, 12/93) and City of Janesville, Dec. No. 27645 (5/93). The Association maintains that under the circumstances the City committed a prohibited practice by refusing to recommend and support the tentative agreement as written.

The Association alleges that the City Council's action on December 1, 1992, violated Secs. 111.70(30(a)4 and 1, Stats. It notes that the action to rescind the Council's earlier action on September 15, 1992, was probably

meritorious because it cured an earlier inappropriate action. It insists that the next action to reject the contract which was supported by all three members of the City's negotiating committee was a clear violation of their duty to recommend and support approval of the tentative agreement.

The Association claims the City Council's actions on December 15, 1992, were prohibited practices. It points out that the Council rescinded its rejection of the contract and, at last, Platz, Henn and Tompach voted to approve the tentative agreement, something they should have done on September 1, 1992. The Association submits that the die had long since been cast and the other three members of the Council voted against it leaving the issue to Mayor Christiansen to break the tie by a "no" vote. It believes that this action by the City was orchestrated on the advice and suggestion of the City Attorney and "this shameless manipulation of the local legislative process must surely stand as an independent prohibited practice." The Association argues that the Mayor was an active participant in reaching the tentative agreement, and he was obligated to recommend and support approval and adoption of the tentative agreement and his "no" vote is clear evidence of bad faith bargaining.

The Association alleges that in light of the egregious prohibited practices committed by the City, only one remedy is appropriate: an order that the tentative agreement was in full force and effect from January 1, 1992 through December 31, 1993.

It asks for a finding that the City committed prohibited practices on September 1 and 15 and December 1 and 15, 1992.

City's Position

The City agrees that in the normal collective bargaining situation, the general rule is that its bargaining representatives must present and recommend ratification of tentative agreements reached in collective bargaining to the City's governing body. The City contends that the instant case presents an issue not previously addressed by the Commission. It states that Platz and Henn were relieved of their obligation to support the tentative agreement by the City Attorney's advice that a provision was illegal, and that the Mayor never committed to support the just cause issue and was not on the bargaining team, and if he were, he was entitled to the same defense as Platz and Henn, the "bonafide reason" exception.

The City maintains that employer representatives are permitted to change their mind prior to a final vote if they can demonstrate a "bonafide" reason for doing so. It submits that the "bonafide" reason in the instant case is the City Attorney's advice that the just cause provision was unlawful under state law.

The City believes that the Mayor could vote his conscience. It suggests that he was only an observer to the negotiations and was "in and out" of the August 18, 1992 mediation session and did not vote to accept the tentative agreement on August 18, 1992. It submits that even if the Mayor made the statement attributed to him by Mr. Kluss (which the City denies), the statement

is irrelevant as the Mayor had no authority to commit or bind the City and he was free to make any comments he wished and he was also free to vote his opinion when the matter came up. The City maintains that if the statement is found to have been made, then, at best, it was merely in support of the wage settlement and because it was made after tentative agreement had been reached, no detrimental reliance was shown and no binding promise was created.

With respect to the remedy, the City insists that the Union's request to consider the tentative agreement a final and binding contract is overreaching. The City argues that it complied with the general rule at its December 15, 1992 vote.

The City maintains that the City Attorney's opinion is a "bonafide" reason for the City Council to reject the tentative agreement. The City Attorney advised the City Council that the just cause provision violated Sec. 62.13, Stats. The City submits that it is unnecessary to determine whether the City Attorney is correct on this matter and no case refutes or confirms this opinion. It contends that the Association's reference to the DePere and Rhinelander cases is not on point. Rhinelander involved the selection of a union's final offer with a just cause provision in it and DePere (Dec. No. 19703-C (WERC, 12/83) merely involved dicta about what could have been done in a different case but the employer won in DePere. The City points out the dicta in DePere was challenged in City of Janesville, 93-CV-412 (CirCt Rock, 1994).

The City alleges that it is not relevant whether the City Attorney's opinion is correct but whether Platz and Henn properly exercise good faith and judgment in their actions. It points out that Platz did review an article in The Municipality magazine confirming the City Attorney's opinion and this constitutes a valid defense.

The City rejects the Association's arguments about the use of the Savings Clause as it would not change an illegal subject to a legal one and this clause does not allow the City to agree to a contract it believes is illegal. The City notes that it has used the declaratory ruling process to have the Commission decide the issue but did this only after all attempts to reach a voluntary settlement failed.

The City believes that its efforts after September 1, 1992, to attempt to resolve this issue support its claim of bargaining in good faith. It submits that its September 15, 1992 action was to indicate that it was not backing off on any agreements except the just cause issue and its December 1, 1992 action was in response to the instant prohibited practice complaint. It asserts that its September 15, 1992 actions were not intended to be unilateral actions but a communication of its offer to enter into all lawful provisions of the contract. The City maintains that it did what it was legally required to do on December 15, 1992. All these actions, according to the City, show its good faith efforts to bring this matter to closure. The City requests the complaint be dismissed.

Association's Reply

The Association contends that the cases and facts cited by the City do not support the existence of a "bonafide" reason as an exception to the requirement that a party's bargaining representatives must vote in favor of a tentative agreement. It submits that unlike Rock County, Dec. No. 22679-A (McLaughlin, 1/86), it was not members who were not on the bargaining team who changed their minds but rather it was bargaining team members who refused to second a motion for ratification and then engaged in subterfuge by setting up a carefully contrived vote when it became clear the Mayor would vote no. The Association asserts that the claim that the provision on just cause/arbitration was illegal is not supported in Patterson's letter to Kluss on September 26, 1992, nor by the minutes of the September 1 and 15, 1992 City Council meetings. It alleges that the City Attorney simply did not want the discipline of officers be subject to an external arbitrator. The Association reiterates that there is no case that holds the provision in dispute is illegal. The Association argues that the advice by the City Attorney is based on his own interpretation which is contrary to DePere and Rhinelander. If the City Attorney believed the provision was illegal, the Association questions why he would advise Platz, Henn and Tompach to vote for it at the December 15, 1992 meeting. With respect to the Savings Clause, the Association claims that after tentative agreement, in the event a competent tribunal later declares the provision to be illegal, the Clause would save the City from any illegal conduct. The Association disputes the City's assertion that it tried to resolve this matter after September 1, 1992, by further good faith negotiations because all the City did was attempt to remove the provision as well as two others from the tentative agreement. It submits that this is bad faith bargaining by unilaterally attempting to change a subject of bargaining after the parties had reached a tentative agreement.

The Association renews its request for relief by ordering that the parties did, in fact, have an agreement.

City's Reply

The City contends that the Association fails to acknowledge that there are intervening circumstances which can be a bonafide reason for a bargaining team to change its position on a tentative agreement. It submits that a legal opinion from a city attorney that a clause in the tentative agreement is illegal, is such an exception. It argues that under the narrow facts presented in this case, the City has established a bonafide reason for changing its position.

The City claims that the Association places mistaken emphasis on the alleged promises by the Mayor. The City asserts that the Mayor never made the statement, and even if he did, it is irrelevant. It alleges that the Mayor was not an active participant in bargaining but was at the joint session after tentative agreement had been reached and so the Association never relied on any statement of the Mayor before a tentative agreement was reached. There was no detrimental reliance on a statement of a non-bargaining team member, the Mayor, and he was free to vote as he deemed appropriate on the tentative agreement.

The City reiterates its opposition to the remedy sought by the Association. It asserts that the Association is attempting to bind another Council member and the Mayor, when only two alderpersons entered into the tentative agreement. The City objects to the Association's claim that the December 15, 1992 Council meeting was orchestrated by the City Attorney. The City maintains that all of the alderpersons were free to vote their own views and did so. It insists that the Association's claim is not supported by a

shred of evidence and it should be ignored. The City believes it engaged in good faith bargaining and has attempted to reach a lawful agreement with the Association. It asks that the complaint be dismissed.

Discussion

Section 111.70(3)(a)4, Stats., provides that it is a prohibited practice for a municipal employer to refuse to bargain collectively with a representative of a majority of its employes in an appropriate bargaining unit including the refusal to execute a collective bargaining agreement previously agreed upon. It is a refusal to bargain prohibited practice for a municipal employer's bargaining representatives to fail to follow through on their agreement to present and recommend ratification of tentative agreements reached in collective bargaining to the municipal employer's governing body. 2/ It is undisputed that the parties reached a tentative agreement on August 18, 1992, and it was the City's negotiating team's responsibility to present and recommend ratification to the City Council and vote in favor of the tentative agreement. On September 1, 1992, Alderman Platz moved to accept the tentative agreement but this motion died for a lack of a second. 3/ Alderperson Henn testified that she did not second the motion because the City Attorney had told the Council the provision on just cause was illegal and that is why she did not second the motion. 4/ Platz made a second motion to accept the contract with Article V clarified and that too died for a lack of a second. 5/ A motion was then made to table the agreement until the next meeting, seconded by Henn and it passed with Platz voting against the motion. 6/

Although the Association claimed that the City committed prohibited practices on September 1, 1992, the undersigned does not so find. Essentially,

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2/ Oconto County, Dec. No. 26289-A (Gratz, 7/90), aff'd by operation of law, Dec. No. 26289-B (WERC, 8/90); Florence County, Dec. No. 13896-A (McGilligan, 4/76), aff'd by operation of law, Dec. No. 13896-B (WERC, 5/76); City of Green Bay, Dec. No. 21785-A (Roberts, 10/84), aff'd by operation of law, Dec. No. 21785-C (WERC, 11/84).

3/ Ex. 23.

4/ Tr. 147, 148.

5/ Ex. 23.

6/ Id.

a question was raised about a provision in the tentative agreement and it was neither approved nor rejected at this meeting but merely delayed until the next meeting where it would again be taken up. A delay of two weeks, in light of the City Attorney's opinion, for the City Council to consider it further does not appear to constitute bad faith bargaining with respect to the bargaining committee's duty to sponsor and support ratification of the tentative agreement.

At the September 15, 1992 City Council meeting, Platz moved and Henn seconded a motion to approve the tentative agreement with certain changes. 7/ Once a tentative agreement is reached, a new issue cannot be introduced into the process, but the tentative agreement reached between the parties must be acted on. 8/ The City's arguments that this was not bad faith bargaining but an attempt to show its good faith by indicating that it could agree to all the provisions except the just cause provision is not persuasive. The City could have voted on the tentative agreement which Platz and Henn had to support and, if it was voted down by the Council, then it could have informed the Association that it was willing to accept all provisions previously agreed upon except the just cause provision and the latter method would have been bargaining in good faith, whereas the former procedure was not.

On December 1, 1992, the City Council again acted on the tentative agreement with Platz moving and Henn seconding a motion to rescind the Council's actions on September 15, 1992, approving the tentative agreement with four changes. 9/ In paragraph 3 of the Association's amended complaint, it states in part as follows: ". . . except that to the extent such complaint alleged illegal conduct by the City in adopting the "police contract with four changes," that allegation is withdraw (sic) by virtue of the City's act of nullification as described in paragraph 6(c) above.

Thus, the Council's action to rescind its prior interjection of other matters in the tentative agreement was a repudiation of its prior conduct and because the Association withdrew its allegation, this issue is moot.

However, the City then went on to reject the tentative agreement in its entirety. 10/ This again was bad faith bargaining because the tentative agreement was not recommended or supported by the bargaining team members as required by their obligation to bargain in good faith. 11/

The City Council met again on December 15, 1992, and rescinded its action to reject the tentative agreement. 12/ Platz then moved and Tompach seconded a motion to approve the tentative agreement. Platz, Tompach and Henn voted for approval whereas the other three alderpersons voted against it and Mayor Christiansen voted against it and the tentative agreement was therefore not

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7/ Id.

8/ City of Green Bay, Dec. No. 21785-A (Roberts, 10/84), aff'd by operation of law, Dec. No. 21785-C (WERC, 11/84).

9/ Ex. 23.

10/ Id.

11/ n. 2, supra.

12/ Ex. 23.

approved. 13/

The Association contends that the City committed a prohibited practice based on the Mayor's voting no based on a statement he made at the final joint session on August 18, 1992. Section 111.07(3), Stats., provides that the party on whom the burden of proof rests shall be required to sustain such burden by a clear and satisfactory preponderance of the evidence. In this case, the Mayor denied making the statement, 14/ Platz did not recall this statement nor did Patterson, 15/ and Henn had no recall of it. 16/ On the other hand, Kluss 17/ and Rychnovski 18/ testified that he said it. There is just not enough of a clear and satisfactory preponderance of the evidence to find that he said it, so it has been found that the evidence failed to prove he said it.

But even if he did, it would be irrelevant. The Mayor was not on the negotiating team, so it was only Platz and Henn that had an obligation to take back any tentative agreement to the City Council and the Mayor would only vote if there was need for a tie breaker. Additionally, the Mayor's alleged statement came after the tentative agreement was reached so there was no reliance on it by the Association in reaching a tentative agreement. Most importantly, however, is the fact that the Mayor's alleged statement was in response to an inquiry by Chief Negotiator Patterson whether the City wanted him to attend the Council meeting when ratification would be taken up. The response was directed to him and not to the Association. The Association merely listened in on a conversation that the City's Chief Negotiator was having with City officials and the Mayor certainly cannot be bound by what he responds to the City Negotiator's question as to the Negotiator's appearance at a Council meeting. This is somewhat comparable to a political speech to constituents where members of the Association are present. The speech is not binding on the speaker as to his/her position with respect to any agreement reached by the City's negotiating team. Thus, it is concluded that the Mayor's alleged statement, even if he made it, is irrelevant.

The Association asserts that the December 15, 1992 Council vote was a

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13/ Id.

14/ Tr. 67, 75-76.

15/ Tr. 99, 167, 182.

16/ Tr. 144.

17/ Tr. 25, 53-54.

18/ Tr. 186.

sham orchestrated by the City Attorney. The evidence fails to prove that City Council's vote was controlled by the City Attorney. The City Council may have followed his advice but all were free to vote as they saw fit and this allegation is simply not proven by the record. Additionally, a great amount of argument was devoted to whether the City Attorney was correct or not. Again this is irrelevant. The three dissenters and Mayor may have not liked the language because it decreased the power of the PFC and rejection of the tentative agreement on that basis is not improper.

Generally, when the Commission has concluded that there has been a refusal to recommend the vote for a tentative agreement, the remedy has been to order the bargaining team to take the tentative agreement to the governing body and recommend it and vote for ratification. 19/ This has already been done and the tentative agreement has been rejected so no further remedy need be ordered. 20/

The tentative agreement was presented to the City Council, albeit belatedly, on December 15, 1992, and the bargaining team recommended it and voted in favor of it, but it did not pass. It is concluded that the City did what is required by law and in accord with any remedy that would be ordered for their prior conduct, and the City's action in not approving the contract was not violative of Sec. 111.70(3)(a)4, Stats., or derivatively of Sec. 111.70(3)(a)1, Stats. Therefore, the complaint, as amended, has been dismissed.

Dated at Madison, Wisconsin, this 20th day of April, 1994.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Lionel L. Crowley /s/
Lionel L. Crowley, Examiner

19/ Oconto County, Dec. No. 26289-A (Gratz, 7/90), aff'd by operation of law, Dec. No. 26289-B (WERC, 8/90).

20/ Florence County, Dec. No. 13896-A (McGilligan, 4/76), aff'd by operation of law, Dec. No. 13896-B (WERC 5/76).