

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

WISCONSIN COUNCIL OF COUNTY AND
MUNICIPAL EMPLOYEES, LOCAL 678, AFSCME,
AFL-CIO,

Complainant,

vs.

LAFAYETTE COUNTY,

Respondent.

Case 63

No. 53931 MP-3151

Decision No. 28770-A

Appearances:

Shneidman, Myers, Dowling, Blumenfield, Ehlke, Hawks & Domer, Attorneys at Law, 217 South Hamilton, P. O. Box 2155, Madison, Wisconsin 53701-2155, by Mr. Aaron N. Halstead, appearing on behalf of the Complainant.

Brennan, Steil, Basting & MacDougall, S.C., Attorneys at Law, 433 West Washington Avenue, Suite 100, P. O. Box 990, Madison, Wisconsin 53701-0990, by Mr. Howard Goldberg, appearing on behalf of the Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Wisconsin Council of County and Municipal Employees, Local 678, AFSCME, AFL-CIO, filed a complaint with the Wisconsin Employment Relations Commission on March 18, 1996, alleging that Lafayette County had committed prohibited practices within the meaning of Sec. 111.70(3)(a)4 of the Municipal Employment Relations Act (MERA). On June 21, 1996, the Commission appointed Coleen A. Burns, 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 in the matter was held on August 13, 1996, in Darlington, Wisconsin. The record was closed on December 16, 1996, upon receipt of post-hearing written argument. The Examiner, having considered the evidence and arguments of counsel, makes and issues the following Findings of Fact, Conclusions of Law and Order.

No. 28770-A

FINDINGS OF FACT

1. Wisconsin Council of County and Municipal Employees, Local 678, AFSCME, AFL-CIO, hereafter referred to as the Complainant or Union, is a labor organization within the meaning of Sec. 111.70(1)(h), Stats., and its offices are located at 1734 Arrowhead Drive, Beloit, Wisconsin. Thomas Larsen is a staff representative of Wisconsin Council 40, AFSCME, AFL-CIO, and has acted on behalf of the Complainant.

2. Lafayette County, hereafter referred to as the County or Respondent, is a municipal employer within the meaning of Sec. 111.70(1)(j), Stats., and has its principal office located at the Lafayette County Courthouse, 626 Main Street, Darlington, Wisconsin.

3. The County has recognized the Complainant as the exclusive collective bargaining representative of the following employees:

all regular full-time and regular part-time employees of the Lafayette County Courthouse and related departments, excluding professional, supervisory, confidential, craft, law enforcement employees, blue collar Highway Department employees, and employees of the Lafayette County Home and Lafayette County Hospital . . .

4. During the 1995-96 contract negotiations, Larsen was the chief spokesperson for the Complainant and Attorney Howard Goldberg was the chief spokesperson for the Respondent. The Complainant's initial bargaining proposal, dated August 4, 1994, included the following Item 5: "Provide for a longevity pay step for each employee after seven years equivalent to 4% above the base rate." On or about October 7, 1994, the Complainant filed a petition for interest arbitration with the Wisconsin Employment Relations Commission. The preliminary final offer attached to this petition included the following Item 5: "Provide for a longevity pay step for each employee after seven years equivalent to 2% above the base rate effective 7/1/95 and 4% above the base rate effective 7/1/96." On or about December 28, 1994, the County filed a responsive preliminary final offer. The responsive preliminary final offer of the County did not contain a proposal on longevity pay and the County had rejected previous proposals on longevity. The parties' expired agreement did not provide any longevity payment. On January 10, 1995, a member of the staff of the Wisconsin Employment Relations Commission conducted an investigation on the petition for interest arbitration and mediated the parties' contract dispute. During mediation, the parties were in separate rooms and the mediator met with each party individually. At the conclusion of mediation, each party had an understanding that they had reached a tentative settlement on the terms of the 1995-96 collective bargaining agreement. Each party further understood that this tentative settlement was subject to ratification by each party. Shortly after the investigation of January 10,

1995, County Clerk Steve Pickett received a letter from Goldberg, dated January 11, 1995, which states as follows:

Re: Courthouse Contract for 1995-96

Dear Steve:

Per your request, this letter is a summary of the settlement the (sic) we reached in mediation with the AFSCME union that represents the Courthouse employees.

1. Term. The term of the contract will be two years. The contract shall be effective as of January 1, 1995, and shall end on December 31, 1996.
2. Wages. The County will increase the wages of each employee in the bargaining unit by 2% as of January 1, 1995, and by another 2% percent as of January 1, 1996.
3. Longevity Step. In addition, the County agreed to provide an additional 2% payment for those employees who have attained nine full years of employment with the County. This would be calculated by adding 2% to the base salary for each year of the contract.
4. Insurance. The Union accepted the County's proposal to increase the contribution that the County pays for the family insurance premium by twenty five dollars (\$25.00) per month effective as of January 1, 1996. As of this time, the premium for the family plan is approximately \$521.00 per month. Since the employer paid portion is \$475.00 per month, the employee pays the difference. That difference is approximately \$46.00 per month. The County's contribution toward the single premium is set at \$215.00, which means that the County pays 100% of that premium. For the second year of the contract (i.e. 1996), the County agreed that the contribution formula would be changed. Instead of setting a cap on the amount of the employer contribution, it was agreed that the County will pay 85% of the premium for the family plan, and the employee will pay 15%. The County agreed to pay 100% of the single premium. This change would go into effect as of January 1, 1996.
5. New Hire Wages. It was agreed that the starting wage for new hires will be at a rate which is 85% of the base wage for the

appropriate wage classification. After completion of the first full year of employment, the wage will be increased to 93% of the base wage. After completion of the second full year of employment, the wage would be at 100% of the base wage. This provision will only apply to those persons who are hired after January 1, 1995. As of this time, there are no employees who would fall into this provision. This provision does not limit the right of the County to hire at a higher rate; provided, that the higher rate does not exceed the base rate for that employee's wage classification.

6. Deputies. Agreement was reached that, in the event a deputy of an elected official is terminated by the elected official, but not for cause, then the employee would have the right to bump other employees in the bargaining unit, pursuant to the layoff provisions set forth in the current contract. This provision is important as we are seeing more and more elected officials exercising their rights to appoint the persons that they want as their deputies. In such event, we need to have a procedure in place to deal with the displacement problem.

7. Physical Exams. The County agreed to pay for any required physical examination provided that the examination takes place at the facility designated by the County.

All other terms and conditions of the contract, including the side letters thereto, are to be continued to the extent not modified above.

I feel that this is a very good contract proposal, and I recommend its adoption by the entire county board. If I can be of further assistance or if you need me to answer any questions, please contact me.

In February, 1995, Respondent ratified the settlement set forth above. On January 17, 1995, Larsen prepared a document which states as follows:

**SUMMARY OF TENTATIVE AGREEMENTS FOR CHANGES
TO THE COLLECTIVE BARGAINING AGREEMENT
BETWEEN LAFAYETTE COUNTY AND
LOCAL 678 (Courthouse Unit), AFSCME, AFL-CIO**

18 January 1995

NOTE: Final contract language subject to approval by the parties

1. Effective 1/1/95 employees with nine (9) or more years of service will receive a longevity step of two percent (2%), effective 1/1/96 employees with nine (9) or more years of service will receive an additional two percent (2) longevity step (total of 4%).
2. Article XXIX - Travel and Expense Allowance B) Meals Out of the County: Modify to provide will be able to combine individual meal allowances which they are eligible for.
3. Effective 1/1/96 provide that the premium cost for family health benefits will be split with the Employer paying eighty-five percent (85%) and the employee paying fifteen percent (15%), with no dollar caps.
4. Add the following new provision:
In the event a constitutional office deputy, who is currently a member of the bargaining unit, is removed from his/her position by virtue of statutory or constitutional powers of the constitutional officer, the deputy shall be considered laid off, and shall be eligible to bump any less senior employee (excluding another constitutional office deputy) in the bargaining unit in accordance with the layoff provisions set forth in Article VI, Section 3 of the Agreement.
5. Add the following new provision:
New employees, who are hired on or after the date of ratification, shall be paid at eighty-five percent (85%) of the base wage for their first year of employment. Such employees will be paid at ninety-three percent (93%) of the base wage commencing with their third year of employment.
For subsequent years they will be paid at the base wage. (The current probationary wage reduction will not be applicable for these employees) The Employer shall have the right to waive all, or part of this wage reduction provision as to any new hire.
7. Wage will be adjusted across the board as follows:
2% effective 1/1/95

2% effective 1/1/96.

8. Provide for a two (2) year term of Agreement.
9. All other provision (sic) as currently constituted including side letter agreements.

A copy of this document was faxed to Robert Helm, Chair of Complainant's bargaining committee. On January 17, 1995, a copy of this document was also faxed to Goldberg, who prepared the following memorandum:

...

Date: January 18, 1995

Re: Re: Your fax dated January 17, 1995 pertaining to a summary of the Lafayette County Courthouse Unit settlement.

Tom, I find two errors in the summary that you faxed to me. First, I have no recollection that we ever discussed a change in travel and expense allowance provisions set forth in the contract for these employees. Perhaps you are confusing our agreement with the proposals that we made during mediation with the Professional Employees Unit employees. My notes show nothing about this for this unit and Steve Pickett had the same recollection. He agrees with my recollection. Also, I do not believe that we have a TA as to this item. Steve stated to me that few of the employees in the Courthouse bargaining unit ever go out of town. I have a call in to Deb Wojtowski to see what her notes say.

The second item relates to the reduction in pay for the new hires. You have the wage going from 85% of base to 93% of base as of the third year of employment. I believe that the wage would go up to 93% commencing with their second year of employment.

Please get back to me as to your reaction to these comments.

Larsen did not receive a copy of this memo until the day of hearing on the complaint. Larsen faxed Goldberg a document, dated January 18, 1995, which states as follows:

I have revised the summary to make a couple of corrections. In #5

the 93% applies to the second year. In #3 I added the note about the single insurance being paid at 100%.

The revised summary, which was also faxed to Goldberg, states as follows:

**SUMMARY OF TENTATIVE AGREEMENTS FOR CHANGES
TO THE COLLECTIVE BARGAINING AGREEMENT
BETWEEN LAFAYETTE COUNTY AND
LOCAL 678 (Courthouse Unit), AFSCME, AFL-CIO**

18 January 1995

NOTE: Final contract language subject to approval by the parties

1. Effective 1/1/95 employees with nine (9) or more years of service will receive a longevity step of two percent (2%), effective 1/1/96 employees with nine (9) or more years of service will receive an additional two percent (2) longevity step (total of 4%).
2. Article XXIX - Travel and Expense Allowance B) Meals Out of the County: Modify to provide will be able to combine individual meal allowances which they are eligible for.
3. Effective 1/1/96 provide that the premium cost for family health benefits will be split with the Employer paying eighty-five percent (85%) and the employee paying fifteen percent (15%), with no dollar caps. Single premiums will be paid one-hundred percent (100%) by the Employer.
4. Add the following new provision:
In the event a constitutional office deputy, who is currently a member of the bargaining unit, is removed from his/her position by virtue of statutory or constitutional powers of the constitutional officer, the deputy shall be considered laid off, and shall be eligible to bump any less senior employee (excluding another constitutional office deputy) in the bargaining unit in accordance with the layoff provisions set forth in Article VI, Section 3 of the Agreement.
5. Add the following new provision:
New employees, who are hired on or after the date of

ratification, shall be paid at eighty-five percent (85%) of the base wage for their first year of employment. Such employees will be paid at ninety-three percent (93%) of the base wage commencing with their second year of employment. For subsequent years they will be paid at the base wage. (The current probationary wage reduction will not be applicable for these employees) The Employer shall have the right to waive all, or part of this wage reduction provision as to any new hire.

7. Wage will be adjusted across the board as follows: 2% effective 1/1/95 & 2% effective 1/1/96.
8. Provide for a two (2) year term of Agreement.
9. All other provision (sic) as currently constituted including side letter agreements.

On January 18, 1995, Complainant ratified the 1995-96 collective bargaining agreement. Larsen did not receive any response to his revised summary of January 18, 1995, until Goldberg telephoned Larsen in July, 1995, to discuss matters raised in Goldberg's letter of July 11, 1995. Pickett received a letter from Goldberg, dated February 20, 1995, which states as follows:

Re: 1995-96 Courthouse Employees Wages

Dear Steve:

Per your request, I am enclosing a schedule of the 1995-96 wages for the above described labor unit. This schedule represents a 2% wage increase of the base wage, across the board, for 1995 and again in 1996. These wages will go into effect as of the first day of the calendar year. Further, we have agreed to a longevity step increase of 2% over the base wage for employees who have obtained nine or more years of seniority. This step will go into effect as of the first of the year or the date that the employee reaches nine years of seniority, whichever is later. Lastly, we agreed that, for new hires only, the starting wage would be 85% of the base wage for the employee's first year and 93% of the base wage for the second year of employment. The employee would be paid the base wage as of the third year of employment. These amounts are based on the anniversary year (date

of employment) rather than the calendar year.

If you have any questions, please contact me.

This letter had the following attachment:

Report of 1995-96 Wage Rates for:
Lafayette County Courthouse Employees (AFSCME)

Class	Base Wage 12/31/94	Base Wage 1/1/95	9 Yr Step	Base Wage 1/1/96	9 Yr Step
I	\$7.76	\$7.92	\$8.07	\$8.07	\$8.23
II	\$8.45	\$8.62	\$8.79	\$8.79	\$8.97
III	\$8.85	\$9.03	\$9.21	\$9.21	\$9.39
IV	\$9.07	\$9.25	\$9.44	\$9.44	\$9.63
V	\$9.22	\$9.40	\$9.59	\$9.59	\$9.78
VI	\$9.46	\$9.65	\$9.84	\$9.84	\$10.04
VII	\$9.86	\$10.06	\$10.26	\$10.26	\$10.46
VIIA	\$10.18	\$10.38	\$10.59	\$10.59	\$10.80
VIII	\$10.41	\$10.62	\$10.83	\$10.83	\$11.05
VIIIA	\$10.58	\$10.79	\$11.01	\$11.01	\$11.23
VIIIB	\$10.96	\$11.18	\$11.40	\$11.40	\$11.63
IX	\$11.63	\$11.86	\$12.10	\$12.10	\$12.34
X	\$11.80	\$12.04	\$12.28	\$12.28	\$12.52

Wage Rates For New Hires (hired in 1995 or thereafter)
(Wages are based on anniversary year)

1995	1st Yr. Wage	2nd Yr. Wage	1996	1st Yr. Wage	2nd Yr. Wage
I	\$6.73	N/A		\$6.86	\$7.51
II	\$7.33	N/A		\$7.47	\$8.18
III	\$7.67	N/A		\$7.83	\$8.56
IV	\$7.86	N/A		\$8.02	\$8.78
V	\$7.99	N/A		\$8.15	\$8.92
VI	\$8.20	N/A		\$8.37	\$9.15
VII	\$8.55	N/A		\$8.72	\$9.54
VIIA	\$8.83	N/A		\$9.00	\$9.85
VIII	\$9.03	N/A		\$9.21	\$10.07
VIIIA	\$9.17	N/A		\$9.36	\$10.24
VIIIB	\$9.50	N/A		\$9.69	\$10.60
IX	\$10.08	N/A		\$10.28	\$11.25

X	\$10.23	N/A	\$10.44	\$11.42
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Taking into consideration variations in rounding, the "9 Yr Step" rate of each Class is two percent (2%) above the "Base Wage" rate of each Class. Larsen sent Goldberg a letter dated March 28, 1995, which states as follows:

Re: Lafayette County Courthouse Unit
1st Draft of New CBA

Enclosed is a marked-up copy and a copy of the final draft of the new collective bargaining agreement for the Lafayette County Courthouse bargaining unit. At your request I have also enclosed a copy of both documents as well as the old CBA on diskette.

If this draft proves satisfactory we can proceed to have the CBA executed.

If you have any questions, please contact the writer.

EXHIBIT A of the attached marked-up copy contained the following language:

The Employer will pay all existing employees the wage rates as set forth in the classifications set forth below. All employees who are receiving wages in excess of the wages set forth in their classifications will receive increases of two percent (2%) effective 1/1/95. ~~1/1/93, two percent (2%) effective 7/1/93, two percent (2%) effective 1/1/96 1/1/94, and two percent (2%) effective 7/1/94.~~ New employees will receive the wages as set forth in Article XX, Section 3 ~~on this Exhibit and probationary employees will receive, while on probation, the wages set forth on this Exhibit less 14.5 cents per hour.~~

This language, without the changes, is found in the professional employees' collective bargaining agreement and was applied in such a manner that employees at the longevity step received a July 1, 1993 wage rate which was two percent (2%) above the July 1, 1993 "Off Probation" rate, i.e., base rate, and employees at the longevity step received a July 1, 1994 wage rate which was four percent (4%) above the July 1, 1994 "Off Probation" rate. EXHIBIT A of the attached marked-up copy also identified an "Off Probation" rate and a "9 years or more" rate for Grades I through X. The identified "9 years or more" rates were as follows:

<u>GRADE</u>	<u>1/1/95</u>	<u>1/1/96</u>
I	\$8.08	\$8.24
II	\$8.79	\$8.97
III	\$9.21	\$9.39
IV	\$9.44	\$9.63
V	\$9.59	\$9.78
VI	\$9.84	\$10.04
VII	\$10.26	\$10.47
VIIA	\$10.59	\$10.80
VIII	\$10.83	\$11.05
VIIIA	\$11.00	\$11.22
VIIIB	\$11.40	\$11.63
IX	\$12.10	\$12.34
X	\$12.28	\$12.53

Taking into consideration variations in rounding, the "9 years or more" rates are two percent (2%) above the "Off Probation" rate of each Grade. Larsen sent a copy of the marked-up copy and the final draft to Helm. Larsen signed the final draft copy prior to sending it to Helm and Goldberg. Goldberg sent Larsen a letter dated July 11, 1995, which states as follows:

Re: Lafayette County Courthouse Contract

Dear Tom:

How are you coming on the changes to the above contract? As you recall, I discussed with you the problems pertaining to the ability of the employees to lump their meal expenses when they are out of the county. I informed you that we had tentatively agreed to that item in the Professional Unit but not in this unit. Also, you did not include the language pertaining to the payment, by the county, of all of the medical examination costs provided the county has the right to designate the facility where the medical examination is to take place. If the employee does not want to go to that institution, then the current language of \$25.00 would apply. Lastly, it occurred to me that we need to clarify that it was not intended that your new language in Article VI Section 7 would give bumping rights to an employee who might be discharged for cause. Perhaps, at the end of the section the following should be stated: "This provision shall not apply to employees who may be discharged for cause."

If this letter corresponds with your understanding, please make the final changes so we can get the contract signed.

On August 16, 1995, Goldberg sent Larsen a letter which states as follows:

Re: (1995-1996) Lafayette County Courthouse Contract

Dear Mr. Larsen:

On July 11th I wrote you regarding the finalization of the above contract. In that letter, I pointed out that your proposed draft contained language pertaining to the meal allowance that was not agreed upon by the county during bargaining. Since that time, you told me that you thought the language in your draft had been agreed on, although you acknowledged that we did not include that item in the list of TA items that were specified to the mediator at the end of the mediation.

I have discussed this matter, at great length, with the county. I inquired if they would be willing to agree to your proposed change in the meal allowance language, so that the books can be closed. They are adamant that the contract contain only our agreements, and that your proposed language regarding meal allowances should not be included. Therefore, there will be no voluntary agreement, by the county, to include the proposed change to the meal allowance language.

I am sure that you are aware that the county has implemented the new wage structure, even though it does not have a signed labor agreement. That action, on their part, was done in good faith and in reliance of the terms of our agreement. I must insist, on behalf of the county, that you immediately finalize the labor agreement along the lines of our stipulation. In the event you are unwilling to do so, then be advised that the county has authorized me to file a prohibited practice charge against the union. It will also consider reverting to the former (1994) wage rates until this matter is resolved.

You are hereby notified that you have until August 23, 1995, to prepare and forward to me final copies of the labor agreement. In

the event acceptable drafts of the contract are not received by that date, then be advised that I will proceed to file charges.

Goldberg sent Larsen a letter dated August 28, 1995, which states as follows:

Re: Prohibited Practice Charge (Courthouse Unit)

Dear Mr. Larsen:

I am enclosing herein a copy of the prohibited practice charge that Lafayette County has filed with the WERC. Prior to filing this charge, I met with the members of the county bargaining committee, and they have authorized this charge to be filed. In addition, they have asked me to inform you that the county implemented the agreed wage increase, last spring, in reliance that you would be sending to them a finalized labor agreement that would include the terms of our agreement. They paid the higher wages because they trusted you to provide an accurate contract, as you have done in previous years. As you know, the contract has not been signed for reasons which form the basis of this dispute. The committee has voted to rescind the wage increase, pending resolution of this charge; however, the county will not institute a roll-back to the former wage rates if the matter can be resolved by the end of September. Therefore, please be advised that the county will pay its employees in this bargaining unit at the 1994 wage rates if an acceptable version of the new contract is not presented to the county prior to September 30, 1995.

Because of the seriousness of this matter, we urge you, and your bargaining team, to review your position as soon as possible.

The attached prohibited practice complaint contains the following allegations:

1. Complainant, Lafayette County, is a municipal employer within the meaning of Chapter 111 Wisconsin Statutes. Its mailing address is:

Lafayette County
c/o Steve Pickett, County Clerk
Lafayette County Courthouse

626 Main Street
Darlington, WI 53530

2. Steven Pickett is the elected county clerk of Lafayette County and signs this complaint in that capacity.
3. Respondent is the exclusive collective bargaining representative of all regular full-time and regular part-time employees of the Lafayette County Courthouse and related departments, excluding professional, supervisory, confidential, craft, law enforcement employees, blue collar Highway Department employees and employees of the Lafayette County Home and Lafayette County Hospital, certification by Wisconsin Employment Relations Commission, Decision No. 17260, for the purposes of conferences and negotiations with the Employer or its lawfully authorized representatives, on questions of wages, hours and conditions of employment. Respondent's mailing address is:

Wisconsin Council 40
AFSCME, AFL-CIO
8033 Excelsior Drive, Suite B
Madison, WI 53717-1903

4. Thomas Larsen is the AFSCME Staff Representative assigned to this bargaining unit at all relevant time periods. Mr. Larsen acted, at all times relevant, as the designated agent of Respondent as to all matters pertaining to the collective bargaining for the above described unit. Mr. Larsen's mailing address is:

Thomas Larsen
1734 Arrowhead Drive
Beloit, WI 53511

5. On or about January 10, 1995, Complainant and Respondent met for the purpose of collective bargaining of a labor agreement for the 1995-96 calendar year for the above described bargaining unit. Prior to this meeting, Respondent had filed a petition for arbitration with the Wisconsin Employment Relations Commission (WERC). The WERC assigned Examiner Debra L. Wojtowski to investigate the matter.

6. At the January 10, 1995 meeting, the Complainant and Respondent were able to reach an agreement as to all terms and conditions for a new labor agreement. The proposed contract was for a two year term commencing January 1, 1995 and ending December 31, 1996.
7. Respondent's representative, Thomas Larsen, volunteered to prepare the written contract. On January 17, 1995, Mr. Larsen sent, by facsimile, an outline of the agreement to the attorney representing the Complainant. That outline contained two erroneous provisions that had not been agreed on by the parties during negotiations. On January 18, 1995, the attorney representing the Respondent sent a letter to Respondent in which these errors were noted and objected to.
8. In February of 1995 the Lafayette County Board ratified the terms of the proposed settlement. Thereafter, Complainant was informed by Respondent that the union membership had also ratified the settlement and Respondent prepared a draft of the proposed labor agreement for review and signing.
9. In reliance of the settlement reached by the parties, Complainant calculated and paid to all of the employees in the bargaining unit the wages agreed upon by the parties on January 10, 1995, even though the written labor agreement had not been actually signed.
10. Demand has been to Respondent that it draft and execute a collective bargaining agreement which only contained the terms that the parties agreed upon during collective bargaining and Respondent has refused to do so.
11. Respondent's refusal to execute a collective bargaining agreement on the terms previously agreed upon constitutes a prohibited practice contrary to Sec. 111.70(3)(b)3 Wisconsin Statutes.

The complaint requested the following remedy:

1. Respondent should be ordered to execute the labor

agreement containing only those terms previously agreed to by the parties during bargaining.

2. Respondent should be ordered to post, in all locations that it represents municipal employees, a notice stating that it has committed a prohibited practice under Sec. 111.70(3)(b)3 and that it will cease and desist from such actions in the future.

3. Respondent should be ordered to reimburse Complainant for all costs and expenses that it incurred in bringing this charge.

Larsen sent a letter to Jane B. Buffett, Conciliator, Wisconsin Employment Relations Commission, dated November 17, 1995, which states as follows:

Re: Lafayette County
Case 59 No. 53104 MP-3070
Settlement Agreement

Enclosed please find your copy of the executed settlement agreement regard the above captioned matter.

I have also forwarded to Howard Goldberg an executed copy of the settlement agreement together with a revised draft of the collective bargaining agreement reflecting terms of this agreement.

Thank you for your cooperation and assistance in this matter. If you have any questions, please contact the writer.

The enclosed executed settlement agreement stated as follows:

SETTLEMENT AGREEMENT

Wisconsin Employment Relations Commission

Prohibited Practices Complaint

Case 59, No. 53104, MP-3070

1. During the term of the 1995-1996 collective bargaining agreement, employees may combine the cost of two or three meals in one day for purposes of reimbursement, provided the employee is away over night.
2. The parties will execute the collective bargaining agreement without any provision regarding combining meal costs.
3. No part of this settlement will be admissible in any arbitration proceeding.
4. The County requests the Commission to dismiss this complaint upon receipt of an executed copy of this settlement agreement.

The revised draft of the collective bargaining agreement referenced in Larsen's letter of November 17, 1995, included the following:

EXHIBIT A - Salary and Classification Schedule

The Employer will pay all existing employees the wage rates as set forth in the classifications set forth below. All employees who are receiving wages in excess of the wages set forth in their classifications will receive increases of two percent (2%) effective 1/1/95. two percent (2%) effective 1/1/96 New employees will receive the wages as set forth in Article XX, Section 3

The wage rates contained in this EXHIBIT A are identical to those contained in the draft collective bargaining agreement forwarded to Goldberg on March 28, 1995. However, the "Off Probation" step contained in the March 28, 1995 document, is identified as the "Base Wage" step. Taking into consideration variations in rounding, the "9 Years or More" step rates of this Exhibit A are two percent (2%) above the "Base Wage" step rates of each Grade. Goldberg sent Pickett a letter dated November 21, 1995, which states as follows:

Re: Agreement between County of Lafayette and
Lafayette County Courthouse Employees Union

Dear Steve:

Enclosed is the agreement between the County of Lafayette and the Lafayette County Courthouse Employees Union. This document is okay to sign. I have this document on disk in WordPerfect 6.1 format, if you should need it.

The enclosed agreement is the collective bargaining agreement referenced in Larsen's letter of November 17, 1995. Thereafter, this collective bargaining agreement was signed by County representatives. The following Complainant representatives also signed this collective bargaining agreement: Robert Helm, Fran Fink, and Thomas Larsen. When Complainant Representative Janice Ruf reviewed this collective bargaining agreement, she concluded that she could not sign the collective bargaining agreement because it did not accurately reflect the settlement on the longevity provision. Ruf believed that the longevity provision was in error because it provided for a 1996 longevity step of two percent (2%), rather than four percent (4%). Ruf discussed her concerns with Complainant representative Lisa Trimble, who also had not signed the collective bargaining agreement, and understood that Trimble agreed that there was an error in the longevity provision. Neither Trimble, nor Ruf, signed this copy of the collective bargaining agreement. On November 22, 1995, Larsen was contacted by a member of Complainant's bargaining unit and advised that there was a mistake in the 1996 longevity rate of the draft collective bargaining agreement. Larsen reviewed the matter, concluded that there had been a mistake, and sent Goldberg a letter dated November 22, 1995, which states as follows:

Attached is (sic) three (3) copies of the revised salary schedule for the Courthouse CBA. This revision includes the 1996 adjustment in the longevity (9th year) step, to a total four percent (4%).

Thank you for your cooperation in this matter. If you have any questions, please contact the writer.

The "9 years or more" step rates in the revised salary schedule are as follows:

<u>GRADE</u>	<u>1/1/95</u>	<u>1/1/96</u>
I	\$8.08	\$8.40
II	\$8.79	\$9.14
III	\$9.21	\$9.56
IV	\$9.44	\$9.82

V	\$9.59	\$9.97
VI	\$9.84	\$10.23
VII	\$10.26	\$10.67
VIIA	\$10.59	\$11.01
VIII	\$10.83	\$11.26
VIIIA	\$11.00	\$11.44
VIIIB	\$11.40	\$11.86
IX	\$12.10	\$12.58
X	\$12.28	\$12.77

Taking into consideration variations in rounding, the 1996 "9 Years or More" rates are four percent (4%) above the 1996 "Base Wage" rates of each Grade. The 1995 "9 Years or More" rates are two percent (2%) above the 1995 "Base Wage" rates of each Grade. Goldberg sent Larsen a letter dated November 22, 1995, which states as follows:

I have been contacted this day by Lafayette County as to the change that you sent to them, by fax, regarding the 1996 wage rates for the employees who have nine or more years of seniority. This proposed wage rate is not accurate. We only agreed to a 2% wage increase for each year. Your amended wage table provides for a 4 % wage increase for the above employees. When I called you about this, you hung up on me.

Please be advised that the County is not willing to accept this latest attempt to put provisions into the contract which were not bargained. Please inform me as to all other changes that you have made to the contract terms. Until such notification, the County will not sign any document that has not been fully proofed. The County further will not agree to drop the present prohibited practice charge as long as this new (similar) issue is outstanding. In the event the pending charges have been dismissed by the WERC, then be advised that we will be filing new charges if this matter is not immediately resolved.

Larsen sent Goldberg a letter dated December 8, 1995, which states as follows:

We have discover (sic) yet another drafting error in the latest draft for the 1995-96 collective bargaining agreement for the Courthouse unit.

On page 11, Section 14.01 does not reflect the increase in the family health contribution for 1995. The correct amount should be four-hundred seventy-five dollars (\$475). I have enclosed a copy of a revised page 11 to be inserted in the collective bargaining agreements.

I am also in receipt of your letter dated December 4, 1995 in which you indicate that Lafayette County is not accepting the revised pages to the contract draft I previously sent incorporating the 1996 adjustment to the nine year step. I have also enclosed a copy of the Summary of Tentative Agreements which I sent to you after the mediation session which was held on January 8, 1995.

As you can see from this document, it was clearly the understanding of the Union negotiating committee that the nine year step was to be implemented over two years, two percent on 11/95 and an additional two percent on 1/1/96 for a total of four percent. It was based on this understanding that the Union membership ratified the tentative agreement.

Accordingly, if the County does not implement that portion of the tentative agreement the Union will undertake to enforce the terms of the agreement as we understand them to have been agreed upon.

If you have any questions, please contact the writer.

Goldberg sent Larsen a letter dated December 11, 1995, which states as follows:

Re: Lafayette County Courthouse 1995-96 Labor Agreement

Dear Sir:

I am in receipt of your December 8, 1995 letter regarding the above matter. We were recently made aware that your draft of the labor agreement did not include the increase in the health insurance premium cap for the 1995 calendar year. Since the County has actually implemented that increased cap and since the calendar year is just about completed, it seemed nonsensical to make an issue about this.

I have, again, taken the opportunity to review your draft of the summary of the agreement that we reached last January, in mediation. I do not believe that your draft says anything other than what we have been saying all along. Specifically, we are saying that, as of 1/1/95, those employees who have obtained nine or more years of seniority shall be paid an additional two percent as a longevity payment. Further, we agreed that this longevity payment would be increased by an additional two percent for all employees who have nine or more years of seniority as of January 1, 1996. This represents a total increase of four percent. This interpretation conforms with your summary and this interpretation reflects the wage rates that you calculated at the time. Now you want the contract to be (sic) provide for a two percent longevity payment in 1995 and an additional four percent payment in 1996. That would total six percent, not four percent. I can assure you that the County never intended to pay these employees six percent over the above described two year period. If you insist that the union intended a six percent wage increase, then it is clear to me that there never was a meeting of the minds. You are hereby advised that the County will not implement any wage schedule that calls for a six percent wage increase as you have suggested.

Larsen sent Goldberg a letter dated January 27, 1996, which states as follows:

Re: Lafayette County Courthouse Contract

As you are aware the parties have continued to have a disagreement as to the terms and conditions of the parties (sic) 1995-96 collective bargaining agreement. On Friday, 17 November 1995 I prepared for the review of the parties a revised draft of the collective bargaining agreement reflecting the parties (sic) resolution of the prohibited practices complaint filed by the County.

On Tuesday, 22 November I contact (sic) yourself and Lafayette County Clerk Steve Pickett that an error had been discovered in that latest draft. members (sic) of the Union's bargaining team had also informed Mr. Pickett that the draft was (sic) did not correctly reflect the longevity (9th year) pay rates for 1996 and refused to sign the agreement. Subsequently the County proceeded to execute the incorrect draft. A further error was discovered in Article XIV-Health

and Welfare.

Accordingly, since the parties have not to date executed a document that represents the mutual understanding of the parties I have prepared a complete draft which represents the Union's understanding of the agreement of the parties, including the understanding that the longevity (9th year) rate for 1996 is four percent (4%) above the base rate.

We therefore are requesting that the County execute the revised collective bargaining agreement enclosed, which has been fully executed by the members of the Union's bargaining committee.

If you have any questions, please contact the writer.

This collective bargaining agreement was executed by all the members of Complainant's bargaining committee, i.e., Robert Helm, Fran Fink, Lisa Trimble, Janice Ruf, and Thomas Larsen, and included the following

EXHIBIT A - Salary and Classification Schedule

The Employer will pay all existing employees the wage rates as set forth in the classifications set forth below. All employees who are receiving wages in excess of the wages set forth in their classifications will receive increases of two percent (2%) effective 1/1/95. two percent (2%) effective 1/1/96 New employees will receive the wages as set forth in Article XX, Section 3

The wage rates "set forth below" are identical to those set forth in the salary schedules which Larsen sent to Goldberg by letter dated November 22, 1995. Goldberg sent Larsen a letter dated January 29, 1996, which states as follows:

Re: Lafayette County Courthouse 1995-96 Contract

Dear Mr. Larsen:

I am in receipt of your certified letter dated January 27, 1996 regarding the above matter. As I indicated to you, in my December

11, 1995 letter, the wage rates that you are now proposing are not the wages that the parties agreed upon during mediation. As I indicated to you in my December 4, 1995 letter, the contract that you signed and sent to the county has been approved, signed, and implemented by the county as of that time.

The County has not signed the collective bargaining agreement which Larsen sent to Goldberg by letter dated January 27, 1996.

5. At the conclusion of the investigation session of January 10, 1995, the parties met in joint session with the Investigator. At that time, the Investigator reviewed the terms of the tentative settlement reached in mediation. When reviewing the tentative settlement, the Investigator stated that longevity would be two percent (2%) in the first year and two percent (2%) in the second year for employees with nine or more years of employment. Neither party objected to the Investigator's review of the tentative settlement. Pickett and Goldberg, two members of Respondent's bargaining committee who were present during the investigation of January 10, 1995, understood the tentative settlement to include a 1996 longevity step of two percent (2%) above the 1996 base wage. Larsen, Ruf and Fink, three members of Complainant's bargaining committee who were present during the investigation of January 10, 1995, understood the tentative settlement to include a 1996 longevity step of four percent (4%) above the 1996 base wage. The parties have not reached a meeting of the minds on the 1996 longevity provision.

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

CONCLUSIONS OF LAW

1. Complainant has not proven, by a clear and satisfactory preponderance of the evidence, that the tentative settlement of January 10, 1995, includes a 1996 longevity step of four percent (4%) above the 1996 base wage.

2. Respondent did not refuse to execute a collective bargaining agreement previously agreed upon and, therefore, did not violate Sec. 111.70(3)(a)4, Stats., or, derivatively, Sec. 111.70(3)(a)1, Stats., when Respondent refused to execute a collective bargaining agreement which contains a 1996 longevity step of four percent (4%) above the 1996 base wage.

Upon the basis of 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 be, and the same hereby is, dismissed in its entirety.

Dated at Madison, Wisconsin, this 11th day of April, 1997.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Coleen A. Burns /s/
Coleen A. Burns, Examiner

1/ See footnote on Page 24.

1/ (Footnote continued from Page 23.)

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.

This decision was placed in the mail on the date of issuance (i.e. the date

appearing immediately above the Examiner's signature).

LAFAYETTE COUNTY

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The complaint filed on March 18, 1996, alleges that Respondent violated Sec. 111.70(3)(a)4, Stats., by refusing to sign a collective bargaining agreement upon which the parties had agreed in January, 1995. Respondent denies that it has committed the prohibited practice alleged in the complaint.

COMPLAINANT'S POSITION

The parties agreed upon a collective bargaining agreement during the January 10, 1995, mediation session which provided longevity payments to employees. The agreed upon longevity payments were two percent (2%) above the base wage in the first year of the 1995-96 contract and four percent (4%) above the base wage in the second year of that contract. This agreement on the longevity payments was confirmed in Union Representative Larsen's January 17 and January 18, 1995, memos to County Representative Goldberg, without objection from Goldberg.

The County has refused to sign a collective bargaining agreement containing the longevity step increase agreed to at the mediation session and confirmed twice by Union Representative Larsen. By this conduct, the County has committed a prohibited practice within the meaning of Sec. 111.70(3)(a)4, Stats. In remedy of this statutory violation, the County should be ordered to execute the contract drafted by the Complainant.

RESPONDENT'S POSITION

The County never agreed to a four percent (4%) longevity step in the second year of the collective bargaining agreement. The County only agreed to a longevity step of two percent (2%) above the base wage. The 1995-96 collective bargaining agreement, which was tendered by the Union and signed by all parties, reflects the agreement of the parties.

If the Union's interpretation of the settlement agreement differs from that of the County, then there has not been a meeting of the minds. Absent such a meeting of the minds, there can be no enforceable collective bargaining agreement.

The Union has failed to meet its burden of proof. There is no merit to the Union's alleged claim of prohibited practice and, thus, the complaint must be dismissed.

DISCUSSION

Complainant, contrary to Respondent, alleges that the tentative settlement of January 10, 1995 includes a 1996 longevity step of four percent (4%) above the 1996 base wage. Complainant asserts, therefore, that Respondent has a Sec. 111.70(3)(a)4, Stats., duty to execute a collective bargaining agreement which contains a 1996 longevity step of four percent (4%) above the 1996 base wage.

Sec. 111.70(3)(a)4, Stats., states that it is a prohibited practice for a municipal employer, individually or in concert with others:

4. To refuse to bargain collectively with a representative of a majority of its employees in an appropriate collective bargaining unit. Such refusal shall include action by the employer to issue or seek to obtain contracts, including those provided for by statute, with individuals in the collective bargaining unit while collective bargaining, mediation or fact-finding concerning the terms and conditions of a new collective bargaining agreement is in progress, unless such individual contracts contain express language providing that the contract is subject to amendment by a subsequent collective bargaining agreement. Where the employer has a good faith doubt as to whether a labor organization claiming the support of a majority of its employees in an appropriate bargaining unit does in fact have that support, it may file with the commission a petition requesting an election to that claim. An employer shall not be deemed to have refused to bargain until an election has been held and the results thereof certified to the employer by the commission. The violation shall include, though not be limited thereby, to the refusal to execute a collective bargaining agreement previously agreed upon. The term of any collective bargaining agreement shall not exceed 3 years.

Complainant has the burden of proving, by a clear and satisfactory preponderance of the evidence, that Respondent has violated Sec. 111.70(3)(a)4, Stats. 2/ A municipal employer who violates Sec. 111.70(3)(a)4, Stats., derivatively interferes with the Sec. 111.70(2), Stats., rights of bargaining unit employees in violation of Sec. 111.70(3)(a)1, Stats. 3/

2/ Sec. 111.07(3), Stats. Made applicable to this proceeding by Sec. 111.70(4)(a), Stats.

3/ Green County, Dec. No. 20308-B (WERC, 11/84).

Respondent does not have a Sec. 111.70(3)(a)4, Stats., duty to execute the collective bargaining agreement unless the collective bargaining agreement embodies the tentative settlement which was agreed upon and ratified by each party. 4/ Thus, the threshold issue to be decided is whether or not the tentative settlement of January 10, 1995, includes a 1996 longevity step of four percent (4%) above the 1996 base wage, as claimed by Complainant.

At the time that the parties commenced the investigation of January 10, 1995, Complainant's written proposal on longevity stated as follows: "Provide for a longevity pay step for each employee after seven years equivalent to 2% above the base rate effective 7/1/95 and 4% above the base rate effective 7/1/96." Respondent, who had previously rejected all proposals on longevity, did not have any proposal on longevity.

During the investigation of January 10, 1995, the Investigator mediated the parties' contract dispute. It is not evident that the parties had any face to face discussions during mediation. Nor is it evident that the parties exchanged any written proposals during mediation. At the conclusion of mediation, representatives of each party understood that the parties had reached a tentative settlement of their 1995-96 collective bargaining agreement.

At the conclusion of mediation, the parties met with the Investigator in joint session. At that time, the Investigator reviewed the terms of the tentative settlement which had been reached in mediation.

Three members of Complainant's bargaining team testified at hearing, *i.e.*, Thomas Larsen, Janice Ruf, and Fran Fink. The testimony of Larsen, Ruf, and Fink demonstrates that each understood that this tentative settlement included a 1996 longevity step of four percent (4%) above the 1996 base wage. County Clerk Steve Pickett, the only member of Respondent's bargaining committee to testify at hearing, understood that this tentative settlement included a 1996 longevity step of two percent (2%) above the 1996 base wage.

The discussions which occurred in mediation were unilateral discussions, *i.e.*, involving the representatives of only one party. Any party's understanding of the longevity agreement which is based upon discussions which occurred outside the presence of the representatives of the other party cannot be imputed to that other party. Thus, the Examiner turns to the only discussion which

4/ Sec. 111.70(3)(a)4, Stats., imposes a duty upon Respondent's bargaining representatives to present the tentative settlement to appropriate representatives for ratification. Waunakee Teachers Association, Dec. No. 27837-A (Jones, 4/94); *affm'd in part*, Dec. No. 27837-B (WERC, 6/95); Oconto County, Dec. No. 26289-A (Gratz 7/90). After each party has ratified the tentative settlement, Sec. 111.70(3)(a)4, Stats., imposes a duty upon Respondent to execute a collective bargaining agreement which contains the tentative settlement. Brown County, Dec. No. 28289-A (Crowley, 8/95).

involved representatives of each party, i.e., the joint session which was held at the conclusion of mediation.

At hearing, Larsen, Ruf, and Fink were asked to recall what the Investigator said when the Investigator reviewed the terms of the longevity provision of the tentative settlement. 5/ Larsen recalls that the Investigator stated as follows:

"It would be 2 percent at nine years of service effective in the first year and 2 percent the second year." 6/

Ruf recalls that the Investigator stated as follows:

"That there would be a 4 percent increase over the two year contract. That there would be 2 percent the first year and 2 percent the second year." 7/

Fink recalls that the Investigator stated as follows:

"The 2 percent wage increase each year and an additional 2 percent each year, which was 2 percent and 2 percent on longevity for people over nine years of employment." 8/

Ruf's recollection that the Investigator stated that there would be a four percent increase in longevity over the two year contract is inconsistent with the recollection of Larsen and Fink. Accordingly, the Examiner is persuaded that Ruf is mistaken when she recalls that the Investigator stated that there would be a four percent increase in longevity over the two year contract.

The testimony, as a whole, leads the Examiner to conclude that, when the Investigator

5/ Pickett was not asked to relate the statements of the Investigator.

6/ T. at 43.

7/ T. at 92-93.

8/ T. at 86.

reviewed the terms of the tentative settlement, the Investigator stated that longevity would be two percent (2%) in the first year and two percent (2%) in the second year for employees with nine or more years of employment. It is not evident that the Investigator, or any other individual, made any other statement regarding longevity at the joint session.

Neither party objected to the Investigator's review of the longevity provision of the tentative settlement. It is reasonable to conclude, therefore, that each party agreed with this review.

However, the fact that neither party objected to the Investigator's review of the longevity provision of the tentative settlement does not mean that each party had the same understanding of the longevity provision. To reach such a conclusion, the Examiner must be persuaded that the Investigator's review of the longevity provision was clear and unambiguous.

Since the Investigator did not identify the base upon which the two percent (2%) was to be calculated in the first and second year, the Investigator's review of the longevity provision is unclear and ambiguous. Given this ambiguity, it is possible that each party had a different interpretation of the longevity provision. In this case, the fact that neither party objected to the Investigator's review of the longevity provision of the tentative settlement does not demonstrate that the parties had the same understanding of the longevity provision.

In summary, the evidence of the parties' conduct on January 10, 1995, does not demonstrate that the tentative settlement of January 10, 1995, includes a 1996 longevity step of four percent (4%) above the 1996 base wage, as claimed by Complainant. 9/ The Examiner turns, therefore, to

9/ Apparently, Complainant's bargaining representatives understood that the language of the longevity provision would mirror the language of the longevity provision found in the professional collective bargaining agreement and would be applied in the same manner. The language of the professional collective bargaining agreement, in relevant part, states as follows:

... In addition, those employees with seven or more years of service as of July 1, 1993 shall receive an additional two percent (2%) effective July 1, 1993, and those employees with seven (7) or more years of service as of July 1, 1994 shall receive an additional two percent (2%) effective July 1, 1994.

This language was applied in such a manner that employees at the longevity step received a July 1, 1993 wage rate which was two percent (2%) above the July 1, 1993 "Off Probation" rate, i.e., base rate, and employees at the longevity step received a July 1, 1994 wage rate which was four percent (4%) above the July 1, 1994 "Off Probation" rate. The record, however, fails to establish that Respondent's bargaining representatives had agreed that the longevity provision would mirror the language of the longevity provision found in the professional collective bargaining agreement and would be applied in the same manner as

the other evidence relied upon by Complainant.

As Complainant argues, on January 17 and 18, 1995, Larsen provided County Representative Goldberg with a copy of a summary of tentative agreements which contained, inter alia, the following:

1. Effective 1/1/95 employees with nine (9) or more years of service will receive a longevity step of two percent (2%), effective 1/1/96 employees with nine (9) or more years of service will receive an additional two percent (2) longevity step (total of 4%).

As Complainant further argues, it is reasonable to construe the plain language of Item 1, supra, as providing a 1996 longevity step of four percent (4%).

In a memo dated January 18, 1995, addressed to Larsen, Goldberg stated that he had found two errors in the summary of tentative agreements of January 17, 1995. 10/ Neither error involved Item 1, supra. As Complainant argues, Goldberg's failure to identify any error in Item 1 gives rise to an inference that Goldberg, Respondent's bargaining spokesperson, agreed that the tentative settlement of January 10, 1995, included a 1996 longevity step of four percent (4%).

Shortly after the investigation of January 10, 1995, Pickett received a letter from Goldberg, dated January 11, 1995, which purports to be "a summary of the settlement" reached in mediation with the Courthouse employees. This "summary" includes the following:

3. Longevity Step. In addition, the County agreed to provide an additional 2% payment for those employees who have attained nine full years of employment with the County. This would be calculated by adding 2% to the base salary for each year of the contract.

Following the County's ratification of the tentative settlement, Pickett received a letter from Goldberg, dated February 20, 1995, which states, inter alia, that "Further, we have agreed to a longevity step increase of two percent (2%) over the base wage for employees who have obtained nine or more years of seniority. This step will go into effect as of the first of the year or the date

the longevity provision found in the professional collective bargaining agreement.

- 10/ According to Larsen, he did not receive a copy of this memo until the day of hearing on the complaint.

that the employee reaches nine years of seniority, whichever is later." Attached to this letter is a wage schedule for the 1995-96 collective bargaining agreement. The 1996 "9 Yr Step" rates contained in this wage schedule are two percent (2%) above the 1996 base wage.

As the Union argues, Goldberg did not provide Larsen with a copy of either letter. This fact, however, does not preclude the Examiner from giving consideration to these letters.

The letter dated January 11, 1995, was prepared shortly after the mediation which produced the tentative settlement and prior to the time that Goldberg had any reason to believe that there was a dispute over longevity. Having no reasonable basis to conclude that Goldberg intentionally misrepresented the tentative settlement of January 10, 1995, to his client, the County, the Examiner considers the letters of January 11, 1995, and February 20, 1995, to provide the best evidence of Goldberg's understanding of the tentative settlement of January 10, 1995. 11/

In summary, Goldberg's failure to challenge Item 1 of Larsen's summary of tentative agreements gives rise to an inference that Goldberg agreed that the tentative settlement included a 1996 longevity step of four percent (4%). This inference, however, is rebutted by Goldberg's letters of January 11, 1995, and February 20, 1995, which confirm that Goldberg understood the tentative settlement to include a 1996 longevity step of two percent (2%) above the 1996 base wage.

On or about November 17, 1995, Larsen prepared and provided Goldberg with a revised draft copy of the collective bargaining agreement. The salary schedule appended to this draft copy contained 1996 longevity step rates that were two percent (2%) above the 1996 base wage. By letter dated November 21, 1995, Goldberg advised Pickett that the draft copy "is okay to sign". 12/ When Larsen prepared and provided Goldberg with a collective bargaining agreement which included a salary schedule with 1996 longevity step rates that were four percent (4%) above the 1996 base wage, Goldberg immediately objected to the salary schedule. This evidence of Goldberg's conduct also supports the conclusion that Goldberg understood that the tentative settlement included a 1996 longevity step of two percent (2%) above the 1996 base wage.

Conclusion

Complainant has not proven, by a clear and satisfactory preponderance of the evidence, that the tentative settlement of January 10, 1995, includes a 1996 longevity step of four percent (4%)

11/ Goldberg did not testify at hearing.

12/ Larsen had prepared an earlier draft of the collective bargaining agreement which contained a salary schedule in which the 1996 longevity step was two percent (2%) above the 1996 base wage. Goldberg had objected to portions of this draft, but had not objected to the salary schedule of this draft.

above the 1996 base wage. Respondent's bargaining representatives do not have a Sec. 111.70(3)(a)4, Stats., duty to execute a collective bargaining agreement which contains a 1996 longevity step of four percent (4%) above the 1996 base wage. Respondent has not been shown to have committed the prohibited practice alleged by the Complainant and, therefore, the complaint has been dismissed.

Dated at Madison, Wisconsin, this 11th day of April, 1997.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Coleen A. Burns /s/
Coleen A. Burns, Examiner