

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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**RICE LAKE ELECTRIC UTILITY, Complainant,**

vs.

**LOCAL 953, IBEW, Respondent.**

Case 61  
No. 56165  
MP-3394

**Decision No. 29380-A**

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Appearances:

Weld, Riley, Prens & Ricci, S.C., Attorneys at Law, by **Ms. Victoria L. Seltun** and **Mr. Stephen L. Weld**, 4330 Golf Terrace, Suite 205, P.O. Box 1030, Eau Claire, Wisconsin 54702-1030, on behalf of Complainant Rice Lake Electric Utility.

**Mr. James S. Dahlberg**, International Representative, International Brotherhood of Electrical Workers, 2206 Highland Avenue, Eau Claire, Wisconsin 54701, on behalf of Respondent Local 953, I.B.E.W.

**FINDINGS OF FACT,**  
**CONCLUSION OF LAW AND ORDER**

On February 18, 1998, Rice Lake Electric Utility, hereinafter the Complainant, filed a complaint of prohibited practice with the Wisconsin Employment Relations Commission wherein it alleged that Local 953, I.B.E.W., hereinafter the Respondent, had refused to execute a previously agreed upon collective bargaining agreement in violation of Sec. 111.70(3)(b)3, Wis. Stats. The parties subsequently attempted to resolve the matter, but were unsuccessful. On June 2, 1998, the Respondent filed its answer wherein it denied that a settlement was negotiated or that it had committed a prohibited practice.

The Commission appointed a member of its staff, David E. Shaw, as Examiner to make and issue findings of fact, conclusions of law and order. Hearing was held before the

No. 29380-A

Examiner on July 8, 1998 in Rice Lake, Wisconsin, and a stenographic transcript was made of the hearing. In the course of filing post-hearing briefs in the matter, the parties reached a stipulation as to certain facts. The post-hearing briefing schedule was completed by September 28, 1998.

Having considered the evidence and the arguments of the parties, the Examiner now makes and issues the following

### **FINDINGS OF FACT**

1. The City of Rice Lake Electric Utility, hereinafter the "Complainant" or "Utility", is a municipal employer with its principal offices located at 320 West Coleman Street, Rice Lake, Wisconsin 54868. At all times material herein, Daniel Rodamacher has been the Utility's General Manager and Attorney Stephen Weld has represented the Utility as labor counsel and chief spokesman in collective bargaining. The governing body is the Utility Commission.

2. Local 953, International Brotherhood of Electrical Workers, hereinafter the "Union", is a labor organization having offices at 2206 Highland Avenue, P.O. Box 3005, Eau Claire, Wisconsin 54702-3005, and at 1920 Ward Avenue, LaCrosse, Wisconsin 54601. At all times material herein, Bruce Michalke has been the Assistant Business Manager for the Union.

3. The Utility and the Union have had a collective bargaining relationship for at least twenty years with the Union being the exclusive collective bargaining representative of the Utility's regular full-time employees. The Utility and the Union were party to a 1996-1997 Collective Bargaining Agreement which, by its terms, expired on December 31, 1997.

By letter of August 15, 1997 from Michalke, the Union notified the Utility that it wished to open negotiations on a successor agreement to the 1996-1997 Agreement and enclosed its proposals in that regard. The parties met in late October of 1997, at which time the Utility gave the Union its proposals for a successor agreement and scheduled further bargaining sessions for December 11 and December 17, 1997. The Utility's bargaining team consisted of Weld, as chief spokesman, and Rodamacher, as well as any of the Commissioners that chose to attend a bargaining session. The Union's bargaining team consisted of Michalke, as chief spokesman, and Bob Crotteau, a member of the bargaining unit. At that October meeting, Michalke told the Utility's bargaining team that any tentative agreement on a successor agreement reached at the bargaining table would have to be taken back to the full membership for a ratification vote.

4. The parties met in negotiations on December 11, 1997. Present for the Utility was Weld, Rodamacher and a number of the Utility's Commissioners. Present for the Union were Michalke, Crotteau and all but one of the other bargaining unit members. The bargaining unit members present attended all of the face-to-face discussions at that session. There were a number of offers and counteroffers made and tentative agreements reached on various issues, some of which were agreements "in concept", with actual language to be worked out later between Weld and Michalke. There came a point where there was a "hallway discussion" between Michalke, Crotteau and Weld, during which Weld was told that the membership really wanted an improvement on vacation and were not interested in the Utility's non-duplication of insurance proposal. The Utility caucused and responded that it could not improve vacation and had to have its proposal on subcontracting, but was willing to drop its non-duplication of insurance proposal and would go to increases on wages of 3 ¼% the first year, 3 ½% the second year and 3% the third year. The Union caucused and then Michalke and Crotteau had another "hallway discussion" with Weld, telling him that the Utility's package was acceptable to the membership, but that they were uncomfortable with the third year. The Utility then caucused, and thereafter, Weld, Michalke and Crotteau had another "hallway discussion", at which time Weld informed them the Utility would give the employees the choice of a two-year agreement with wage increases of 3 ¼% the first year and 3 ½% the second year or the three-year agreement with 3% the third year and a "me too" clause so that if there were settlement with other City bargaining units higher than 3% in the third year, this bargaining unit's wages would be similarly increased to the same percentage, up to a maximum of 4%. Michalke and Crotteau told Weld that would be acceptable and that they would make a decision on whether to have a two or three-year agreement.

Michalke and Crotteau advised Weld that they would need to inform the absent bargaining unit member about the settlement and that a vote of the membership would be required. There was no statement made to the effect that some or any of the bargaining unit members present did not support the tentative agreement the parties had reached and it was Weld's understanding that they would support it. It was apparent from the members' presence and the Union bargaining team's responses to Weld that the membership participated in the negotiations and in the decision to accept the tentative agreement and the Utility's bargaining team relied upon the membership's participation in altering its proposals. The bargaining session on December 11, 1997 resulted in a tentative agreement being reached between the parties on a successor agreement.

5. By cover letter of December 18, 1997, Weld sent Michalke a summary of the tentative agreement reached on December 11, 1997. That summary was dated December 17, 1997 and contained a number of errors. By a facsimile transmission of December 22, 1997, Michalke advised Weld of what he felt were errors in Weld's summary of the tentative agreements and noted a comment made to the bargaining unit about "root time":

**To:** STEVE WELD

**Date:** December 22, 1997

**Fax #:** 715-839-8609

**Pages:** 3, including this cover sheet

**From:** BRUCE MICHALKE

**Subject:** CITY OF RICE LAKE

COMMENTS:

ENCLOSED FIND MY UNDERSTANDING AS TO THE FINAL PROPOSALS REACHED WITH THE CITY OF RICE LAKE.

ALSO FIND A COPY OF THE COMMENTS ISSUED TO THE EMPLOYEES STATING 40 HOURS PER YEAR.

**#4** Leave language as follows:

**For all fractions of quarter hour worked.**

Delete – Last sentence beginning with the employer may provide, etc.

**#7** City had withdrawn this proposal.

**#10** Third year 3% effective January 1, 2000, with a me too clause.

. . .

Weld sent Michalke the following response of December 23, 1997, along with a revised summary of the tentative agreement:

Dear Bruce:

Enclosed please find a revised summary of the collective bargaining agreement between the Rice Lake Electric Utility and Local 953.

In Paragraph No. 4, I have amended the first sentence of Article IX, Section E to reinstate the phrase “for all fractions of quarter hours worked.” I have not, however, deleted the last sentence. My understanding of the settlement was that the only substantive change was the reduction of the 30-minute minimum to a

15-minute minimum. That change required deletion of the parenthetical phrase but not the last sentence.

In Paragraph No. 5, I have changed the title of Article X from "Personal Leave" back to "Sick Leave." The change in title previously agreed to was subsequently rescinded by the parties.

We have eliminated Paragraph No. 7 which created Article XVI, Section F. The Employer dropped that proposal.

I have also modified Paragraph No. 9 to reflect the agreed upon "me too" clause in the third year. You will note that, as we discussed, it is limited to other organized bargaining units. It does not apply to an individual who may or may not be represented by a bargaining unit or even a classification of individuals who may or may not be represented.

Finally, you raised a concern about root time, Article IX, Section C. While the City had a proposal in this area, it was ultimately dropped. There was, therefore, no change in the contractual language.

If you have any questions regarding this, please so advise.

Very truly yours,

WELD, RILEY, PRENN & RICCI, S.C.

Steve /s/  
Stephen L. Weld

By letter of December 30, 1997, Weld reminded Michalke that the "me too" clause regarding a third year wage increase had a floor of 3% and a cap of 4%.

6. The bargaining unit met and voted on the tentative agreement on December 30, 1997. Michalke and Cottreau recommended approval of the tentative settlement with the Utility on December 11, 1997, but the membership voted to reject the settlement. Michalke advised the Utility of the vote by letter of January 5, 1998 to Weld and requested that the parties resume negotiations. After further communications between the parties, the bargaining unit again voted on the December 11 tentative agreement on February 9, 1998, and

unanimously rejected it. The Utility was advised of the rejection by Michalke's letter of February 10, 1998 to Weld.

7. On February 18, 1998, the Utility filed the instant complaint with the Commission alleging that the Union had committed a prohibited practice.

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

### **CONCLUSIONS OF LAW**

1. The bargaining session of December 11, 1997 resulted in a tentative agreement being reached by the City of Rice Lake Electric Utility and Local 953, I.B.E.W., for a successor collective bargaining agreement, and the only question left to be decided by the bargaining unit was whether the agreement will be for two years or for three years.

2. The members of the bargaining unit who were present at the December 11, 1997, bargaining session at which a tentative agreement was reached between the City of Rice Lake Electric Utility and Local 953, I.B.E.W., by virtue of their presence and their participation in the decision to accept the Utility's offer, and thus their participation in reaching the tentative agreement, are required to support that tentative agreement by voting to ratify that agreement. Bob Crotteau, as a member of the bargaining unit and the Union's bargaining team who was present when the tentative agreement was reached, is required to support that tentative agreement and vote for ratification of that agreement.

3. By voting to reject the tentative agreement reached by the City of Rice Lake Electric Utility and Local 953, I.B.E.W. on December 11, 1997, those members of the bargaining unit who were present at the December 11, 1997 bargaining session and Bob Crotteau, as a member of the Union's bargaining team who was present at that bargaining session, have bargained in bad faith in violation of Sec. 111.70(3)(b)3, Stats.

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

### **ORDER**

Local 953, I.B.E.W., and the members of the City of Rice Lake Electric Utility bargaining unit represented by Local 953, I.B.E.W. who were present at the December 11, 1997 bargaining session, shall immediately:

1. Cease and desist from refusing to bargain in good faith within the meaning of Sec. 111.70(1)(a), Stats., with the City of Rice Lake Electric Utility by refusing to support and vote in favor of ratification of the tentative agreement reached on December 11, 1997 between Local 953, and its members who were present, and the City of Rice Lake Electric Utility.

2. Take the following affirmative action which the Examiner finds will effectuate the policies of the Municipal Employment Relations Act:

a. Pursuant to Local 953's internal by-laws and procedures, schedule a meeting of this bargaining unit's members for the purpose of holding a ratification vote on the tentative agreement reached with the City of Rice Lake Electric Utility for either a two-year or three-year collective bargaining agreement. At said meeting, Crotteau is to recommend ratification of that tentative agreement, and those members of the bargaining unit who were present at the December 11, 1997 bargaining session at which the tentative agreement was reached, including Crotteau, are to vote in favor of ratification of the tentative agreement for either a two-year or three-year term.

b. Notify the Commission within twenty (20) days of the date of this Order as to the action taken to comply herewith.

Dated at Madison, Wisconsin this 6th day of January, 1999.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

David E. Shaw /s/

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David E. Shaw, Examiner

**CITY OF RICE LAKE**  
**(ELECTRIC UTILITY)**

**MEMORANDUM ACCOMPANYING FINDINGS OF FACT,**  
**CONCLUSIONS OF LAW AND ORDER**

The Utility filed a complaint of prohibited practices with the Commission alleging that the Union, by the failure of its members who were present on December 11, 1997 when the tentative agreement was reached to vote in support of that agreement, failed to bargain in good faith in violation of Sec. 111.70(3)(b)3, Stats.

The Union filed an answer to the complaint wherein it denied a settlement had been reached at the December 11 bargaining session and denied it, or its members, had committed a prohibited practice.

**Utility**

The Utility takes the position that the Union committed a prohibited practice when the members of the bargaining unit who were present at the December 11, 1997 bargaining session failed to support and ratify the tentative agreement reached at that bargaining session. It asserts that those in attendance when a tentative agreement is reached must support ratification of that agreement by their respective principals. Citing, LINCOLN COUNTY, DEC. NO. 23671-A (Shaw, 12/86); JT. SCHOOL DISTRICT NO. 5, CITY OF WHITEHALL, DEC. NO. 10812-A (Torosian, 9/73); FLORENCE COUNTY, DEC. NO. 13896-A (McGilligan, 4/76). In WAUNAKEE COMMUNITY SCHOOL DISTRICT, DEC. NO. 27837-B (WERC, 6/95), the Commission stated there is a general presumption that all in attendance when a tentative agreement is reached are obligated to support and vote for the agreement, absent explicit statements or agreements to the contrary. The Commission noted:

Any member of either bargaining team. . .who either opposes or has reservations about any tentative agreement the parties appear to be reaching has only to say so to the other side to preserve a continuing individual right to oppose the tentative agreement at ratification time.

What is not permissible under any circumstances, however, is attack by ambush – that is, apparent concurrence (express or implied) to the proposed tentative agreement by a bargaining team member who subsequently opposes it at ratification time. Such conduct, of course, serves only to create a bargaining relationship of distrust and chicanery between the parties, and is destructive of collective bargaining. (*Id.* at 17-18) (Emphasis added.)



In this case, the parties understood that the Union required a ratification vote by the bargaining unit and that the Utility required an open session ratification vote by members of the Utility Commission. However, all but one member of the bargaining unit was physically present at the December 11 bargaining session and because they failed to voice opposition to the two-year tentative agreement with the third year option, those members in attendance were obligated to vote for that tentative agreement.

The Utility also asserts that there is no *bona fide* reason that would allow the bargaining unit members to oppose the tentative agreement reached at the December 11, 1997, bargaining session. While the Union implied in its opening statement that the case arises out of a misunderstanding as to the obligation of the bargaining unit members in attendance at the bargaining session, and stated that they understood that any tentative agreement was subject to presentation to the full membership for discussion, debate and ratification and that the proposals made had not been voted on by those present, that analysis does not square with the mandates of *WAUNAKEE, supra*. The Utility asserts that where, as in this case, a majority of the bargaining unit participate in the negotiation resulting in a tentative agreement, there is a legal obligation to ratify that agreement, and those in attendance must support that tentative agreement. Since a majority of the unit was in attendance on December 11, ratification was required, absent a *bona fide* reason not to ratify. The Union has presented no justification for rejecting the tentative agreement. The conceptual agreements were ironed out and errors in the first summary were corrected prior to the Union's ratification meeting. Even had there been a dispute as to the meaning of language incorporated in the tentative agreement, those employees present still would have been required to vote for ratification. Citing, *BROWN COUNTY, DEC. No. 28289-A (Crowley, 8/95)*. The revised settlement summary provided by the Utility contained no errors and there were no misunderstandings in the terms of the contents of the settlement. The only possible confusion was as to the term and the Utility had made it clear that the employees could have a two-year agreement or the option of a third year. The only reason offered was a general statement that those in attendance when the tentative agreement was reached understood they could vote against the settlement later. That constitutes bargaining by ambush and the Union should be directed to execute the previously agreed-upon agreement.

### Union

The Union asserts that while a tentative settlement, which included the option of a two-year package or three-year package, was reached at the December bargaining session, the Union's business representative informed the Utility's bargaining committee at the initial negotiation session that any kind of agreement would need to be brought back to the membership for a ratification vote. In this case, the Union's bargaining committee consisted of one bargaining unit member and the Union's business representative. Despite a recommendation from that bargaining committee, the membership rejected the tentative

settlement and the Utility was notified of that and additional bargaining was requested by the Union. The Utility, however, notified the Union of its opinion that an agreement was made at the December bargaining session.

The Union asserts that the testimony of the business representative and the Utility's attorney confirm that the Utility was explicitly informed that the Union would need to bring any tentative settlement back to the membership for ratification. At no point during the bargaining process was any other message given to the Utility.

The Union asserts that its good faith was illustrated by the recommendation to accept the tentative settlement by its business representative. The Union's negotiating committee agreed to take the tentative settlement back to the membership for a ratification meeting and at that meeting the committee recommended acceptance of the tentative settlement. The tentative settlement was presented, recommended, debated and voted on, and while rejection was perhaps unwise, it is nonetheless a basic right of union members. The fact that the tentative settlement included an option of a two-year or three-year term does not eliminate the membership's right to reject both forms of the proposal. To force a tentative agreement upon the membership would not only circumvent the collective bargaining system, but would have a chilling effect on the negotiating process. If the mere act of bringing a tentative agreement back for ratification implies no right to reject by the membership, the rights of Union members to self-determine what is acceptable would be removed. Except where the membership has given express prior authorization to the committee to accept the final agreement on their behalf, they are entitled to a fair understanding of the tentative settlement, debate if desired, and a vote on the basis of the self-defined method for ratification. The Union requests that the parties be remanded to return to the collective bargaining process and the charge of prohibited practice denied.

### **DISCUSSION**

The Utility alleges that the Union violated Sec. 111.70(3)(b)3, Stats., which provides that it is a prohibited practice for a municipal employe, individually or in concert with others:

3. To refuse to bargain collectively with the duly authorized officer or agent of a municipal employer, provided it is the recognized or certified exclusive collective bargaining representative of employes in an appropriate collective bargaining unit. Such refusal to bargain shall include, but not be limited to, the refusal to execute a collective bargaining agreement previously agreed upon.

The Utility essentially argues that since a majority of the bargaining unit members were present at the December 11 bargaining session when the tentative agreement was reached, the agreement was, in effect, accepted by the membership at that time. While the Utility agrees that both parties still needed to hold a ratification vote on the settlement agreement, it asserts that those who were present for the Union when the tentative agreement was reached were required to support and vote for ratification, with the only option being whether it was to be a two-year or a three-year agreement.

The most recent Commission decisions in this area are WAUNAKEE COMMUNITY SCHOOL DISTRICT, *supra*, and CITY OF COLUMBUS (POLICE DEPARTMENT), DEC. NO. 27853-B (WERC, 6/95). In both cases the Commission dealt with the issue of whether a member of the employer's bargaining team who was not present when a tentative agreement was reached was nonetheless required to support and vote for ratification of that tentative agreement. While that issue is not pertinent to this case, the Commission's rationale in deciding that issue provides some guidance. In deciding that a member of the bargaining team who was absent when the tentative agreement was reached was not obligated to support ratification of that tentative agreement, the Commission reasoned in CITY OF COLUMBUS:

We reach this conclusion because we believe that only those who participated in the decision to reach a tentative agreement should be bound (absent explicit statements or agreements to the contrary) by their decision. Team members who do not participate in the decision to reach a tentative agreement are functionally no different than members of the bargaining unit or elected officials not on the team. Their lack of participation in the decision-making of the collective bargaining process frees them to vote as they see fit as to contract ratification. Team members who are present when a tentative agreement is reached are presumed to have participated in decision-making and are bound to support the decision. Team members who are physically absent but who nonetheless participated in the decision to reach the tentative agreement, or have given their prior assent to any tentative agreement, or who have been bound by their own team's internal decision-making, are also bound to support and vote for the tentative agreement. However, absent participation, prior assent or binding action by others, we are unwilling to extend ratification obligations to team members who were not physically present when the tentative agreement is reached.

(At 17.) (See also WAUNAKEE, at 18.)

The Commission also addressed a second issue in CITY OF COLUMBUS which is more on point. In that case, the Complainant Union had alleged that the Mayor, who was present when a tentative agreement was reached with the City, but was not a member of the City's bargaining

team, had stated in joint session at the end of the meeting that he would vote in

Page 12  
Dec. No. 29380-A

favor of ratification if it were necessary for him to vote, and that the Mayor committed a prohibited practice when he later voted against ratification of the tentative agreement. The City denied the Mayor had made the alleged statement or that he was bound to support ratification. In deciding the Mayor was not bound by such a statement, even if he had made it, the Commission stated:

We reach this conclusion for several reasons. First and foremost, it is clear that the Mayor was not a member of the City's bargaining team. Thus, we are satisfied that he was free to support or not support the tentative agreement, and equally free to change his mind as to support or opposition even if he had publicly taken a position one way or the other. Further, if the Mayor made the alleged statement, it was not a statement upon which the Association relied when deciding whether it should reach a tentative agreement with the City. The alleged statement occurred at a point in time when the parties had already reached a tentative agreement and were preparing to leave the meeting. The alleged statement only occurred as part of the Mayor's brief response to a question from City Consultant Patterson as to whether he should be present at the City's ratification meeting. Thus, we are not persuaded that the Association acted in reasonable reliance on the Mayor's alleged statement.

(At 17.)

It is noted with regard to the above, that there was no mention in either the Examiner's decision or the Commission's decision, of the Mayor having participated in the decision to reach tentative agreement. The Examiner finds that distinction critical in this case. Here, the bargaining unit members were present throughout the December 11 bargaining session. Further, Weld's un rebutted testimony was that Michalke and Crotteau told him that the three-year offer from the Utility "was acceptable to the membership, but they were really uncomfortable with the third year." (Tr. 30). Weld further testified that the Utility then offered the option of either a two-year agreement or a three-year agreement with a "me too" clause. This indicates two things: (1) That the membership actively participated in the Union's decision-making during the December 11 bargaining session, including the decision to accept the Utility's offer and optional offer; and (2) that the Utility's bargaining team altered its position in bargaining with the Union in reliance upon the membership's participation, as that was indicated to the Utility team's chief spokesman (Weld) by Michalke and Crotteau. Thus, while the bargaining unit members who were present at the December 11 bargaining session were not officially members of the Union's bargaining team, they *de facto* acted as such. The Utility's bargaining team reasonably assumed as much and relied upon the Union bargaining team's statements as to the acceptability to the membership of the Utility's proposals in altering its position on those proposals and reaching tentative agreement with the Union. That being the

case, it was incumbent upon the Union to make clear to the Utility's bargaining team at the December 11 bargaining session that the members of the bargaining unit

Page 13  
Dec. No. 29380-A

who were present were reserving their right to accept or reject the tentative agreement when the Union held its ratification vote and were not committing to support any tentative agreement that was reached at that session. Had that been done, the Utility's bargaining team could not have reasonably presumed the membership's support for a tentative agreement that was reached, nor could it have reasonably relied upon the membership's support in reaching the tentative agreement.

The Examiner is cognizant that this decision appears to expand the Commission's case law as to "ratification obligation", however, the decision is based upon the participation of the membership who were present in the decision to reach the tentative agreement with the Utility and the Utility bargaining team's reasonable reliance upon the statements by the Union bargaining team as to the non-acceptability/acceptability of its proposals to the membership in reaching the tentative agreement. Those bases are consistent with the Commission's rationale in its decisions in both WAUNAKEE COMMUNITY SCHOOL DISTRICT supra, and CITY OF COLUMBUS, supra. It is further noted that the decisions in JT. SCHOOL DISTRICT NO. 5, CITY OF WHITEHALL, DEC. NO. 10812-A (Torosian, 9/73), aff'd, DEC. NO. 10812-B (WERC, 12/73), involved the support and ratification obligations of board of education members who were present when a tentative agreement was reached. There was no discussion in either Examiner Torosian's decision or the Commission's affirmance as to whether or not these board members were officially members of the board's bargaining team, rather, all that was noted was that they had been present when the tentative agreement was reached. Absent the disclaimers that can be made in this regard, the Examiner sees no reason for not extending that same support/ratification obligation to bargaining unit members who are present when a tentative agreement is reached. For that reason, the Examiner has found those members who were present when the tentative agreement was reached, and who failed to support ratification of the tentative agreement, guilty of bargaining in bad faith in violation of Sec. 111.70(3)(b)3, Stats., and has issued an order requiring those members who were present to support and vote in favor of ratifying that tentative agreement for either a two-year or three-year term.

Dated at Madison, Wisconsin this 6th day of January, 1999.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

David E. Shaw /s/

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David E. Shaw, Examiner

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