

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS BOARD

WISCONSIN COUNCIL OF COUNTY AND
MUNICIPAL EMPLOYEES,

Complainant

v.

MARATHON COUNTY &
HARRIET MEAGHER,

Respondents

Case II
No. 9483 MP-10
Decision No. 6826

Appearances:

Lawton & Cates, Attorneys at Law by Mr. John A. Lawton,
for the Petitioner Complainant,
Mr. Patrick L. Crooks, District Attorney, by Mr. Daniel
L. La Rocque, Assistant District Attorney, for the
Municipal Employer Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND ORDER

The above entitled matter having come on for hearing before the Wisconsin Employment Relations Board at the Marathon County Court House, Wausau, Wisconsin, on February 10, 1964, James L. Greenwald, Examiner, being present; and the Board having considered the evidence and briefs of Counsel, and being fully advised in the premises, does hereby make and file the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. That Wisconsin Council of County and Municipal Employees, hereinafter referred to as the Complainant, is a labor organization affiliated with the American Federation of State, County and Municipal Employees, AFL-CIO, having its principal office at Madison, Wisconsin; and that the Complainant is engaged primarily in the organization and representation of city and county employes throughout the State of Wisconsin.

2. That Respondent Marathon County, hereinafter referred to as the Respondent, is a municipal employer, having its offices at Wausau, Wisconsin; that in the performance of its statutory function the Respondent, among other things, operates the Mount View Sanatorium, hereinafter referred to as the Sanatorium, Route 4, Wausau, Wisconsin, for the care and treatment of tubercular patients; and that at all

times material herein Respondent Harriet Meagher has been and is the Superintendent of the Sanitorium and in that capacity supervises some twenty-five to thirty persons employed by the Respondent therein.

3. That John Loy commenced his employment at the Sanitorium on March 6, 1961 in the classification of truck driver, and as such, drove a vehicle owned by the Sanitorium in the transportation of employes to and from their residences to and from their work at the Sanitorium and also in the hauling of supplies and materials utilized by the Sanitorium; that in said classification Loy also performed general maintenance work in and about the building and grounds of the Sanitorium; that in May, 1962, on the discontinuance by the Sanitorium of providing transportation for its employes, Loy's driving duties were reduced from approximately four to two hours daily; that in October, 1963, Loy was relieved of all driving duties, but continued to perform such duties until the date of the termination of his employment, November 4, 1963; that during his employment Loy performed all duties assigned to him in a satisfactory manner, at no time during his employment were any alleged shortcomings in this respect called to his attention; and that as of November 4, 1963, and continuing at least to the date of the hearing herein, the work previously performed by Loy was either performed by other maintenance employes or remained unperformed.

4. That at all times material herein various employes of the Sanitorium have maintained their residence at the Sanitorium rent free; that meals have been furnished employes while on duty at no charge to them; and that certain employes, who are required to wear uniforms in the performance of their duties, have been furnished such uniforms, and the laundering thereof, by the Sanitorium at no cost to said employes.

5. That sometime in 1962, the Complainant commenced organizational activities among employes of the Respondent including employes of the Sanitorium; that sometime in 1962, Meagher questioned Loy as to the identity of Sanitorium employes who were attending such organizational meetings, and at that time Meagher informed Loy that she knew the identity of one of the Sanitorium employes who had attended such meetings and she warned Loy that the unidentified employe "better watch out"; that at the time Meagher suggested to Loy that he attend such meetings and report to her as to the Sanitorium employes who were attending same; that sometime later, Meagher questioned Loy as to whether he and another employe had been attending such meetings and

whether they had joined the Complainant; that in the Spring of 1963, Loy was instrumental in establishing the Marathon County Institution Employees Local 1365, AFSCME, AFL-CIO, hereinafter referred to as the Local, which was chartered and affiliated by the Complainant and which consisted of employees employed by the Respondent at the Sanitorium; and that at the time said Local established only one office, that of treasurer, and that Loy was elected to said position and that he occupied same at all times material herein and that in said capacity Loy continued in his efforts to persuade Sanitorium employees to become affiliated with the Local.

6. That in the Spring of 1963, and continuing at least until October 29, 1963, Meagher questioned employees at the Sanitorium concerning their activities and membership in the Local; that among those so questioned by Meagher were employees Jeanette Kurth and Lawrence Henning and other unidentified employees; that sometime in May, 1963, Meagher warned a group of employees, including Marcella Thompson, that they would be discharged if they became affiliated with any labor organization; that also during this period, Meagher also threatened to change the conditions of employment if the employees chose to be represented by the Local, by eliminating rent free quarters for employees, by depriving them of free meals during working hours, by requiring employees to pay for their uniforms and the laundering thereof and as well as threatening to install a time clock for the purpose of keeping a more accurate record of hours worked by employees.

7. That sometime during September, 1963, Meagher, in a telephone conversation with Elmer Foster, a representative of the Complainant, reiterated her threats that in the event the employees chose to be represented by a labor organization that the employees would be required to pay for their uniforms and further that their lunch periods would be shortened; that on September 16, 1963, Meagher questioned employees Martha Mleczk and Elsbeth Prain as to whether Loy had solicited their membership in the Local, and on that occasion Meagher threatened said employees that the Sanitorium would charge for room, board and uniforms in the event the employees chose to be represented by the Local; and that shortly prior to the conduct of the election, in a conversation with employee Kurth, Meagher indicated that she was puzzled that Loy "could be so dirty and ruthless to her after she had given him a job out of the goodness of her heart."

8. That on September 9, 1963 the Local, pursuant to Section 111.70 of the Wisconsin Statutes, filed a petition with the Wisconsin

Employment Relations Board, wherein it requested the Board to conduct an election among certain employees of the Sanitorium to determine whether such employees desired to be represented by the Local in conferences and negotiations with the Respondent on matters pertaining to wages, hours and other conditions of employment at the Sanitorium; that on September 11, 1963 the Board issued a Notice of Hearing with respect to said petition and a copy thereof as well as a copy of the petition was served by the Board upon representatives of the Respondent, as well as upon Meagher in her official capacity as Superintendent of the Sanitorium; that, following a hearing on said petition and pursuant to a Direction of Election issued by it, the Board, on October 29, 1963, conducted an election among all employees of the Mount View Sanitorium, excluding the superintendent, supervisory personnel, professional employees, and confidential employees; that of 29 employees eligible to vote, 28 cast ballots, 14 of the employees voted in favor of being represented by the Local while the remaining 14 employees voted against such representation; that the number of employees voting in favor of representation were insufficient to establish the Local as the certified bargaining representative; that on November 5, 1963, pursuant to and in accordance with the Rules and Regulations established by the Board for the administration of Section 111.70 of the Wisconsin Statutes, the Local filed, with the Board, Objections to the Conduct of the Election, wherein it alleged that Meagher, prior to the election, had coerced, intimidated and threatened employees and thus interfered with their free choice in the election; that thereafter copies of such objections were served upon the representatives of the Respondent, as well as Meagher, and, pursuant to notice, hearing thereon was held simultaneously with the hearing on the instant complaint proceeding.

9. That on October 29, 1963, the date of the representation election conducted by the Board, in a meeting of the Respondent's Personnel Committee, said Committee laid over any action on abolishing the classification of the Sanitorium truck driver, which action had previously been suggested by Meagher, on an undisclosed date, who claimed that the classification "has outlived its purpose"; that on October 31, 1963 the Personnel Committee again met concerning said matter and its action with regard thereto was reflected in the notes executed by the Chairman of the Personnel Committee as follows:

"The first order of business was to meet with Miss Harriet Meagher, Superintendent of the Sanatorium. It concerned the abolition of the position of truck driver at the

Sanatorium, which is no longer needed, and also the charge for room and board for some of the help at the Sanatorium. The Committee felt that this should be considered at the time when Mr. Young makes the survey for the County on 'Compensation and Classification'."

10. That on November 4, 1963, without any prior notification, Meagher summarily terminated Loy from employment, and at the time gave as the reason therefore that he had not been driving the Sanatorium vehicle for over a month; and that on November 5, 1963 Meagher sent the following message to the Chairman of the Personnel Committee:

"Inasmuch as the Sanatorium car is no longer used to transport employes, and Fall work is all done, and there is no work for him to do, it was necessary to lay off Mr. John Loy on November 4, 1963.";

and that on November 8, 1963 the Personnel Committee formally abolished the truck driver classification.

On the basis of the above and foregoing Findings of Fact, the Board makes the following

CONCLUSIONS OF LAW

1. That Marathon County, by Miss Harriet Meagher, Superintendent of the Mount View Sanatorium, by discharging John Loy, discriminated in regard to the tenure of his employment to discourage membership in, and activities on behalf of Marathon County Institution Employees Local 1365, AFSCME, AFL-CIO, and thereby has engaged, and is engaging, in prohibitive practices within the meaning of Section 111.70(3)(a)2 and 111.70(3)(a)1 of the Wisconsin Statutes.

2. That Marathon County, by Miss Harriet Meagher, Superintendent of the Mount View Sanatorium, by interrogating employes concerning their membership in and activities on behalf of Marathon County Institution Employees Local No. 1365, AFSCME, AFL-CIO, by threatening to discharge employes who joined or engaged in activities on behalf of said Union, and by threatening to withhold privileges and benefits relating to the conditions of employment should employes select said labor organization as their representative, has interfered with, restrained and coerced, and is interfering with, restraining and coercing its employes in the exercise of their rights guaranteed by Section 111.70(2) of the Wisconsin Statutes, and thereby has engaged, and is engaging in, prohibitive practices within the meaning of Section 111.70(3)(a)1 of the Wisconsin Statutes.

Upon the basis of the above and foregoing Findings of Fact and Conclusions of Law, the Board makes the following

ORDER

IT IS ORDERED that Marathon County, its officers and agents, including Miss Harriet Meagher, Superintendent of the Mount View Sanitorium, shall immediately

1. Cease and desist from

- (a) Discouraging membership in the Marathon County Institution Employees Local No. 1365, AFSCME, AFL-CIO, or any other labor organization of its employees, by discharging any of its employees, or by discriminating against them in any other manner pertaining to their tenure, term or condition of employment.
- (b) In any other manner interfering with, restraining or coercing its employees in the exercise of their right to self-organization, to affiliate with and be represented by Marathon County Institution Employees Local No. 1365, AFSCME, AFL-CIO, or any other labor organization of their choice, in conferences and negotiations with Marathon County and its representatives, on questions of wages, hours and conditions of employment, or to refrain from any or all such activities.

2. Take the following affirmative action which the Board finds will effectuate the policies of Section 111.70 of the Wisconsin Statutes.

- (a) Immediately offer to John Loy reinstatement to his former position without prejudice to any rights and privileges which he previously enjoyed.
- (b) Make whole John Loy for any loss of pay which he may have suffered by reason of the discrimination against him by payment to him of sums of money equal to that which he normally would have earned as wages from the date of his discharge, November 4, 1963 to the date of an unconditional offer of reinstatement, less any net earnings which John Loy may have received elsewhere during such period.
- (c) Notify all of its employees, by posting in conspicuous places in its office and where notices to employees are usually posted in the Mount View Sanitorium, where all employees may observe them, copies of the Notice attached hereto and marked "APPENDIX A". Copies of such Notice shall be prepared by Marathon County, and shall be signed

by the Chairman of the Personnel Committee and the Superintendent of Mount View Sanitorium, and shall be posted immediately upon receipt of the copy of this Order, and shall remain posted for thirty (30) days thereafter. Reasonable steps shall be taken by the Superintendent of the Mount View Sanitorium to be sure that said Notices are not altered, defaced or covered by other material.

- (d) Notify the Wisconsin Employment Relations Board in writing within five (5) days from the date of the receipt of this Order, of the steps that have been taken to comply therewith.

Given under our hands and seal at the City of Madison, Wisconsin, this 5th day of August, 1964.

WISCONSIN EMPLOYMENT RELATIONS BOARD

By Morris Slavney /s/
Morris Slavney, Chairman

S E A L

Arvid Anderson /s/
Arvid Anderson, Commissioner

Zel S. Rice II /s/
Zel S. Rice II, Commissioner

"APPENDIX A"

NOTICE TO ALL EMPLOYEES

Pursuant to an Order of the Wisconsin Employment Relations Board, and in order to effectuate the policies of Section 111.70 of the Wisconsin Statutes, we hereby notify our employees that:

WE WILL NOT discourage membership in Marathon County Institution Employees Local No. 1365, AFSCME, AFL-CIO, or any other labor organization of our employees, by discharging any of our employees, or in any other manner discriminate against them, in regard to their hire, tenure, or any term or condition of their employment.

WE WILL NOT interrogate any of our employees concerning their membership, or their activities on behalf of Marathon County Institution Employees Local No. 1365, AFSCME, AFL-CIO, or any other labor organization, or threaten our employees with discharge because of the membership in or activities on behalf of Marathon County Institution Employees Local No. 1365, AFSCME, AFL-CIO, or any other labor organization, or threaten to deprive our employees of benefits previously enjoyed by them in connection with the condition of their employment because of their membership in or activities on behalf of Marathon County Institution Employees Local No. 1365, AFSCME, AFL-CIO, or any other labor organization, or in any other manner interfere, restrain or coerce our employees in the exercise of their right to join or to be represented by Marathon County Institution Employees Local No. 1365, AFSCME, AFL-CIO, or any other labor organization of their choice, for the purposes of conferences and negotiations with respect to wages, hours and conditions of employment, or in any manner interfere, restrain or coerce our employees in the exercise of their right to refrain from any and all such activities.

WE WILL immediately offer John Loy reinstatement to his former position in the Mount View Sanitorium, without prejudice to any rights and privileges which he previously enjoyed and we will make John Loy whole for any loss of pay that he may have suffered by reason of the discrimination against him, by paying him the sum of money which he normally would have earned as wages from the date of his discharge, November 4, 1963, to the date of our unconditional offer of reinstatement, less any other earnings which he may have received, during said period.

All our employees are free to become, or remain, or refrain from becoming, or remaining, members of Marathon County Institution Employees Local No. 1365, AFSCME, AFL-CIO, or any other labor organization.

MARATHON COUNTY
MOUNT VIEW SANITORIUM

By _____
Chairman of Personnel Committee

Miss Harriet Meagher, Superintendent

Dated this day of August, 1964.

THIS NOTICE MUST REMAIN POSTED FOR THIRTY (30) DAYS FROM THE DATE HEREOF AND MUST NOT BE ALTERED, DEFACED OR COVERED BY ANY OTHER MATERIAL.

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MEMORANDUM ACCOMPANYING FINDINGS
OF FACT, CONCLUSIONS OF LAW AND ORDER

In its complaint the Union alleged that Marathon County, by the Superintendent of the Mount View Sanitorium, Harriet Meagher, had committed prohibited practices within the meaning of Section 111.70 of the Wisconsin Statutes by discriminatorily discharging John Loy, by unlawfully interrogating employees concerning their membership in and activities on behalf of the Union, by threatening to remove privileges being enjoyed by certain employees, and by threatening employees with loss of employment, all for the purpose of interfering, restraining and coercing employees in the exercise of their right to engage in lawful concerted activity.

The Respondents filed no formal answer to the complaint but at the hearing orally denied the commission of any prohibitive practice.

The credible evidence clearly shows that up to the date of the representation election, Meagher actively interfered with the Union's organizational efforts. Meagher, as a witness, acknowledged having questioned a group of employees concerning their membership in the Union sometime in the Spring of 1963, and grudgingly, and with much equivocation, admitted that she had warned many employees that certain benefits would be withdrawn if the Union were selected by the employees as their bargaining representative. Her activities in this regard were substantiated by the testimony of the employees called by the Union. In denying certain of her activities, which had been testified to by employees to the effect that Meagher had warned employees of discharge and that she had interrogated them concerning their activities

on behalf of or membership in the Union, Meagher's testimony was evasive and unconvincing. We credit the testimony of the various employees and we conclude that Meagher, by interrogation and threats, waged an intensive campaign in an effort to discourage the organizational efforts among the Sanitorium employees.

With respect to the discharge of Loy, Meagher testified that at the time of Loy's termination, she informed Loy that the personnel Committee had abolished his job and that she no longer required his services. On the other hand, Loy testified that Meagher informed him that she was sorry that she found it necessary to lay him off since he had not driven the Sanitorium vehicle since September, 1963. Meagher, in the letter sent to the Personnel Committee the day after Loy's termination, stated that the Sanitorium vehicle was no longer used to transport employees. The undisputed testimony indicates that Loy had not transported employees for over a year and a half and that he still drove the Sanitorium vehicle on errands, and performed general maintenance work in and about the building and grounds of the Sanitorium. By Meagher's own admission, at the time of Loy's termination, there was work to be done about the premises such as installing storm windows on the nurse's home, raking leaves and removing picnic tables from the grounds. After Loy had been terminated, Meagher assigned some of the duties previously performed by Loy to other maintenance employees. During the course of the hearing, Meagher attempted to put forth another reason for the termination of Loy, to the effect that Loy performed his duties in an unsatisfactory manner. Draeger, an employee called as a witness by the Respondents, testified that Loy was a fair employee. Kurth and Thompson, employees called by the Union, testified that they on occasion heard Meagher compliment Loy for the manner in which he performed his work. Loy testified that he had never received any complaint concerning his work. While Meagher testified exhaustively on Loy's alleged shortcomings to perform the duties assigned to him, at no time during the course of his employment were any of these alleged shortcomings called to his attention. The Board does not credit Meagher's testimony with regard to Loy's alleged shortcomings. Nor are we convinced that Loy was terminated for the reason given to him at the time of his termination. On the contrary, we conclude that both claimed reasons are pretexts to disguise the real motivation for Meagher's action. We are convinced that Meagher desired to remove the employee who was most active in the effort to organize the Sanitorium employees. It appears to the Board that Meagher's

first objective was to cause the defeat of the Union at the representation election. She accomplished that result by interrogating and threatening the employees. The rejection of the Union by the employees did not completely satisfy Meagher. She carried out threats previously made to the employees by recommending to the Personnel Committee, two days following the election, that the Sanitorium abolish free room and board for employees who had previously enjoyed such privileges, and on November 4, 1963 by terminating the employment of Loy who was the most active Union member and the only officer of the Union employed at the Sanitorium.

At the outset of the hearing the hearing on the Objections to the Conduct of Election filed by the Union was consolidated with the prohibitive practice case hearing. The Assistant District Attorney, representing the Respondents, without admitting any facts, agreed that a new election could be conducted by the Board. With respect to the election proceeding, the Board shall set aside the results thereof because of the acts found to have been committed herein prior to the conduct of the vote and the Board shall conduct another election upon the request of the Union and at such time as the Board is satisfied that the illegal activity found to have been committed herein has been dissipated and at such time as the employees involved may cast a free and unfettered ballot.

Dated at Madison, Wisconsin, this 5th day of August, 1964.

WISCONSIN EMPLOYMENT RELATIONS BOARD

By Morris Slavney /s/
Morris Slavney, Chairman

Arvid Anderson /s/
Arvid Anderson, Commissioner

Zel S. Rice II /s/
Zel S. Rice II, Commissioner