STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of GENERAL DRIVERS, DAIRY EMPLOYEES AND HELPERS LOCAL 579, affiliated with INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA Involving Certain Employes of CITY OF EVANSVILLE	Case I No. 13216 ME-495 Decision No. 9334-C
GENERAL DRIVERS, DAIRY EMPLOYEES AND HELPERS LOCAL 579, affiliated with the INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, Complainant, vs. CITY OF EVANSVILLE, Respondent.	Case II No. 13430 MP-79 Decision No. 9440-A

Appearances:

Goldberg, Previant & Uelmen, Attorneys at Law, by Mr. Alan M. Levy and Mr. John S. Williamson, Jr., appearing on behalf of the Complainant.

Ropella & Soukup, Attorneys at Law, by Mr. Frank G. Soukup and City of Evansville, by Mr. W. H. Bewick, City Attorney, appearing on behalf of the Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Objections to the conduct of the election and complaint of prohibited practices having been filed with the Wisconsin Employment Relations Commission in the above-entitled matter, and the Commission having appointed John T. Coughlin, a member of the Commission's staff, to act as Examiner and to make and issue Findings of Fact, Conclusions of Law and Order as provided in Section 111.07(5) of the Wisconsin Employment Peace Act; and on January 9, 1970, the Wisconsin Employment Relations Commission having issued an Order consolidating both matters for hearing; 1/ and hearing on said matters having been held at Evansville, Wisconsin on February 9, 1970, before the Examiner; and the Examiner having considered the evidence, arguments and briefs of counsel and being fully advised in the premises

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1/ The decision in Case I, No. 9334-C, ME-495 as to whether the objections to the conduct of the election are either moot or meritorious is for the determination of the Commission in a separate Order or direction of election.

makes and files the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. That General Drivers, Dairy Employees and Helpers Local 579, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, hereinafter referred to as Complainant, is a labor organization and maintains its principal offices at 2214 Center Avenue, P.O. Box 817, Janesville, Wisconsin.

2. That the City of Evansville, hereinafter referred to as the Respondent, is a Municipal Employer and has its principal offices at 31 South Madison Street, Evansville, Wisconsin.

3. That on October 8, 1969, the Finance Committee of the City of Evansville held an open public meeting to discuss wages and conditions of employment involving the various municipal departments.

4. That immediately prior to October 15, 1969, the uniformed policemen met with Respondent's Public Safety Committee to discuss wages and conditions of employment. 2/

5. That by October 15, 1969, a majority of the employes of the Water Department, Street and Alley Department and Police Department Dispatchers had signed Union authorization cards designating Complainant as their collective bargaining representative.

6. That on October 15, 1969, the aforesaid Finance Committee held its second public meeting to discuss wages and conditions of employment of the various municipal departments.

7. That on October 16, 1969, Complainant sent Respondent a petition signed by the four uniformed policemen comprising that department designating Respondent as their statutory representative in labor relations matters.

8. That on October 20, 1969, Respondent received a letter from Complainant stating that it represented a majority of employes in the following units: all employes of the Water Department, Street and Alley Department and all Police Department Dispatchers; that the letter also requested that Respondent recognize it and negotiate with it concerning terms and conditions of employment.

9. That on October 20, 1969, the Wisconsin Employment Relations Commission, hereinafter referred to as the Commission, received an election petition from Respondent seeking to represent all of the employes in the Water Department, Street and Alley Department and all Police Department Dispatchers.

10. That on October 24, 1969, Respondent mailed two letters to the Union: the first stating that the City of Evansville had no information that the employes of the Water Department, Street and Alley Department and Police Department Dispatchers had authorized the Union to represent them; the second letter stating that the City had not been advised by any of the employes of the uniformed Police Department that they had designated any representative to act on their behalf.

2/ It should be noted that the Union is not asking for any sort of relief for the uniformed policemen but that the alleged improper actions taken by Respondent regarding said policemen influenced Respondent's other employes to vote against the Union.

11. By October 25, 1969, Complainant had cards authorizing it as the collective bargaining representative from all but one of the petitioned-for employes and had received the Union initiation fee of $10.00 from all but two of said employes.

12. That on November 8, 1969, the Janesville Gazette newspaper published the then current wages and benefits of City employes and the proposed increase in wages and benefits as offered to the employes in a meeting held on October 28, 1969.

13. On November 17, 1969, a hearing was held by the Commission concerning the election petition signed by Complainant and on November 21, 1969, an election was directed among the employes of the Public Works Department, Water and Light Department and nonuniformed employes of the Public Safety Department in order to determine if said employes desired to constitute themselves a collective bargaining unit separate and distinct from all other employes of the Employer and whether said employes desired to be represented by the Complainant Union. 3/

14. That on November 24, 1969, a copy of an article subsequently published on November 27, 1969, by the Evansville Review newspaper was mailed to all the employes of the City of Evansville and that said article stated as follows:

"November 24, 1969

VOICE OF THE PEOPLE:
EVANSVILLE REVIEW
EVANSVILLE, WISCONSIN

Mayor Conroy and the City Councilmen of Evansville wish to state their position and report some pertinent facts on the recent petition by the city employee's (sic) to be represented by the Teamster Union for arbitration with the City on a new working agreement.

The City can not prevent their employee's (sic) from petitioning for union representation, and it is not our intent to do so, nor is it our intent to degrade unions.

We sincerely believe, that if all concerned would sit down and honestly evaluate all situations, a fair and equitable agreement could be reached without the employee's (sic) having to pay a $10.00 initiation fee and $7.00 per month thereafter for union dues. We are sure they could use this money elsewhere.

The City has tried to negotiate with the employee's (sic). As an example, the Water and Light Committee met October 22, 1969, with their employee's (sic) under very amicable conditions and worked out a wage and fringe benefit package that was unanimously accepted by the employees. However, this was only a verbal agreement, and within four days something happened, as the employee's (sic) made a complete reversal and rejected the offer. The Chairman of the Public Works Committee requested a meeting with his employee's (sic) and they refused this request.

3/ In the Direction of Election the Commission ordered that both a unit vote and a representation vote be held; that the three voting groups should be the following: Public Works Department employes (originally referred to in the election petition as Street and Alley Department employes); Water and Light Department employes (originally referred to in the election petition as Water Department employes); and nonuniformed employes of the Public Safety Department (originally referred to in the election petition as Police Department Dispatchers).

We wonder if the city employee's (sic) are cognizant of the fact that if they voted to accept the union, all fringe benefits now being paid by the city, would cease and the only pay they would receive, would be their base pay. Any fringe benefits gained there-after, (sic) would have to be bargained for. If a union were to be accepted, it is conceivable that many new problems and hardships would be created not only on the city, but on the employee's (sic) as well. Some examples might be the installation of time clocks, regulated coffee breaks, and the possible loss of certain freedoms that the employee's (sic) now enjoy. In essance, (sic) a demarcation line would be drawn, with the salary or whitecollar (sic) workers and supervisors on one side and the hourly employee's (sic) on the other.

We fully realize that we have a responsibility to our employee's (sic), but we also realize that we have a responsibility to all the tax payers of Evansville.

If an emergency or some problem developes (sic) either in the area of public works or water and light department, as it now stands, each department immediately assists the other. This is as it should be, but would not be possible under union practices, because each department would then be a separate entity in itself and would have to conform to the work rules and standards of operation set forth by the union.

Following are some of the added benefits we have this year offered to our employee's (sic): (1) Will pay all their family health insurance which would amount to approximately $18.00 per month. (2) A 5% premium for night shift pay, which would amount ot (sic) as much as $25.00 per month for some employee's (sic) of the Police Department. (3) Four weeks vacation after 15 years of service instead of 3 weeks. (4) A 2 1/2% straight wage increase for all employee's (sic). This would amount to approximately $12.50 per month for the lower paid employee's (sic) and $19.50 per month for the higher paid employee. (5) Sixty days accrued sick leave retroactive to January 1, 1968. (6) Would supply personnel (sic) rain gear for the Public Works Department and also for personnel who might be using the squad car and / or ambulance. We are always willing to further discuss these proposals.

There have been statements made that the City was going to take away certain fringe benefits. This is entirely untrue. We will maintain all present benefits including the cost-of-living benefit. It is because of this misunderstanding that we are attempting to clear the air and set the record straight.

Evansville is a fine, clean, well protected city, thanks to an excellent Police and Fire Department, Public Works Department, Water and Light Department, and a highly regarded Public School System. It is our aim as your city officials, to do everything in our power to maintain this high standard of proficiency within our city structure. It is our hope that each employee will make an honest appraisal of the entire situation and that he will vote from his own conscience and not from pressure from someone else.

If any employee has a grievance or feels that an injustice is being done in any of our city departments, we would welcome having it brought to our attention for corrective action.

Lastly, there shall be no animosity shown or reprimand given to any employee who has taken an active part in trying to procure Union services.

Ida T. Conroy
Keith Williams
Robert Pendell
Marlin Reese
Robert M. Olsen
Francis Erbs
Charles Nordeng"

15. That sometime during the last week of November 1969, a meeting was called by Frederick Schwartzlow, Director of Public Works; that at this meeting Schartzlow told the Public Works' employes that if the Union were successful it would not mean greater job protection for them and that if the City wanted to it could subcontract garbage collection and snow plowing.

16. That in the later part of November or early December 1969, but prior to the election held on December 9, 1969, Respondent mailed a letter to all of its employes which stated as follows: 4/

"Russell R. Thompson

Your Mayor and Council are definitely interested in resolving the impasse which appears to have arisen, regarding wage negotiations this year, (due to misunderstanding of the offer already made) without the necessity of a union being brought in. The cost to you of Union Membership would be $94.00 for the year 1970 alone, and is no guarantee that the offer already made could or would be improved. We are taking this opportunity to again advise you of the actual wage rates, both with and without the fringe benefits, you already have.

Old hourly rate. $3.35
Old hourly rate and fringe benefits. $3.77
You would receive in 1970.
Hourly rate. $3.50
Hourly rate with fringe benefits. $4.07
This amounts to an actual .30 cents per hour increase and the cost of living increase will also be added January 1, 1970.

We feel that this is an extremely fair offer while bearing in mind our responsibility to the local tax payers who, after all, actually are paying the wages and salaries. We feel that with unionization action our City Departments could and would lose much of the freedom of action which they now have.

In summation we feel that our employees should reconsider their position and by talking with their aldermanic committees, completely

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4/ The non-monetary information found in this letter to Mr. Thompson was the same that was sent to all of Respondent's employes; the monetary information contained in the letter would vary according to the particular department that employed the individual.

resolve this situation without the expense to them of having an outsider involved.

Sincerely,

Ida T. Conroy, Mayor
F. Erbs, Ald.
C. Nordeng, Ald.
R. Olsen, Ald.
R. Pendell, Ald.
M. Reese, Ald.
K. Williams,Ald."

17. That sometime during the last part of November or early December 1969, but prior to the election, Wayne Ballard, superintendent of the Water and Light Department, interrogated one of the employes under his supervision as to said employe's union affiliation.

18. That sometime during the last part of November or early December 1969, but prior to the election, the uniformed policemen notified Complainant that they no longer needed the assistance of the Union; and that immediately after that, but prior to the election, Complainant's president withdrew its claim that it represented the aforementioned employes.

19. That on December 9, 1969, the Commission held a unit and representation vote among the aforementioned voting groups with the following numerical results:

	Unit Vote	Representation Vote
VOTING GROUP NO. 1 (DEPT. OF PUBLIC WORKS)		
1. ELIGIBLE TO VOTE	8	Impounded
2. BALLOTS CAST (Includes all ballots)	8	
3. BALLOTS CHALLENGED	3	
4. BALLOTS VOID	0	
5. BALLOTS BLANK	0	
6. VALID BALLOTS COUNTED (Total ballots cast minus challenged ballots, blank ballots and void ballots)	5	
7. "YES" BALLOTS	3	
8. "NO" BALLOTS	2	
VOTING GROUP NO. 2 (WATER & LIGHT DEPT.)		
1. ELIGIBLE TO VOTE	5	5
2. BALLOTS CAST (Includes all ballots)	5	5
3. BALLOTS CHALLENGED	0	0
4. BALLOTS VOID	0	0
5. BALLOTS BLANK	0	0
6. VALID BALLOTS COUNTED (Total ballots cast minus challenged ballots, void ballots and blank ballots)	5	5
7. "YES" BALLOTS	3	2
8. "NO" BALLOTS	2	3

	Unit Vote	Representation Vote
VOTING GROUP NO. 3 (PUBLIC SAFETY DEPT.)		
1. ELIGIBLE TO VOTE	3	Impounded
2. BALLOTS CAST (Includes all ballots)	3	
3. BALLOTS CHALLENGED	0	
4. BALLOTS VOID	0	
5. BALLOTS BLANK	0	
6. VALID BALLOTS COUNTED (Total ballots cast minus challenged ballots, void ballots and blank ballots)	3	
7. "YES" BALLOTS	1	
8. "NO" BALLOTS	2	

20. That subsequent to the election on December 9, 1969, Complainant timely filed objections to the conduct of the election maintaining therein that Respondent had engaged in pre-election conduct affecting the results of the election.

21. That Respondent interfered, restrained and coerced its employes in the exercise of their rights to engage in concerted activity in and on behalf of Complainant by threatening said employes with loss of benefits if they voted for the Union; by promising them future benefits if they opposed the Union; by interrogating an employe concerning his union affiliation while in the presence of said employe's fellow workers; and by threatening to subcontract unit work if its employes supported the Union at a time when the Union enjoyed majority status.

22. That the Respondent's acts of interference, restraint and coercion as found heretofore, made at such time when the Complainant had been authorized by a majority of the employes in an appropriate unit to represent them in conferences and negotiations with Respondent, were engaged in for the purpose of undermining the prestige and authority of the Complainant as the representative of a majority of Respondents employes; and that Respondents refusal to recognize Complainant as the exclusive representative of its employes was motivated by a desire to gain time with which to undermine the Complainant and to dissipate its majority status.

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

CONCLUSIONS OF LAW

1. That the employes of Respondent, City of Evansville, in the following described unit constitute an appropriate unit within the meaning of Section 111.70 of the Wisconsin Statutes: All employes of the Public Works Department, Water and Light Department and nonuniformed employes of the Public Safety Department, but excluding all supervisors, confidential employes and clerical employes; and that since October 15, 1969, and continuing at all times thereafter, Complainant General Drivers, Dairy Employees and Helpers Local 579, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, has been, and is, the designated majority representative for the employes in the petitioned-for unit and that as such is the exclusive representative of the employes in said unit for the purposes

of representing the aforementioned employes in conferences and negotiations with Respondent within the meaning of Section 111.70 of the Wisconsin Statutes.

2. That Respondent, City of Evansville, by its officers and agents, by threatening its employes with loss of benefits if they voted for the Union; by promising them future benefits if they opposed the Union; by interrogating one of its employes concerning his union affiliation while in the presence of said employe's fellow workers; and by threatening to subcontract unit work if its employes supported the Union at a time when the Union enjoyed majority status, interfered with, restrained and coerced its employes in their rights under 111.70(2), Wisconsin Statutes, and accordingly have committed prohibited 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 Examiner makes the following

ORDER

IT IS ORDERED that Respondent City of Evansville, its officers and agents, shall immediately

1. Cease and desist from:

(a) Refusing to recognize General Drivers, Dairy Employees and Helpers Local 579, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America as the exclusive representative for all employes of the Public Works Department, Water and Light Department and nonuniformed employes of the Public Safety Department, excluding all supervisors, confidential employes and clerical employes.

(b) Threatening its employes with the loss of benefits previously enjoyed by them for the purpose of discouraging their activities on behalf of and membership in General Drivers, Dairy Employees and Helpers Local 579, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or in any other labor organization.

(c) Promising its employes improved benefits to discourage their activities on behalf of and membership in General Drivers, Dairy Employees and Helpers Local 579, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or any other labor organization.

(d) Interrogating its employes concerning their affiliation with General Drivers, Dairy Employees and Helpers Local 579, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or any other labor organization.

2. Take the following affirmative action designed to effectuate the policies of Section 111.70 of the Wisconsin Statutes:

(a) Recognize General Drivers, Dairy Employees and Helpers Local 579, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America as the exclusive representative for all employes of the Public Works Department, Water and Light Department and nonuniformed employes of the Public Safety Department, excluding all supervisors, confidential employes and clerical employes.

(b) Notify all of its employes by posting in conspicious places on its premises, where notices to all its employes are usually posted, a copy of the Notice attached hereto and marked Appendix "A". Such copy shall be signed by the Mayor of the City of Evansville, and shall be posted immediately upon receipt of the copy of this Order, and shall remain posted for thirty (30) days after its initial posting. Reasonable steps shall be taken by the Mayor of the City of Evansville to insure that said Notices are not altered, defaced or covered by other materials.

(c) Notify the Wisconsin Employment Relations Commission, in writing, within twenty (20) days from the date of the receipt of this Order, of the steps that have been taken to comply therewith.

Dated at Madison, Wisconsin, this 21st day of October, 1970.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By John T. Coughlin
John T. Coughlin, Examiner

"APPENDIX A"

NOTICE TO ALL EMPLOYES

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

1. WE WILL recognize General Drivers, Dairy Employees and Helpers Local 579, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America as the exclusive representative for all employes of the Public Works Department, Water and Light Department and nonuniformed employes of the Public Safety Department, excluding all supervisors, confidential employes and clerical employes.

2. WE WILL NOT refuse to recognize General Drivers, Dairy Employees and Helpers Local 579, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America as the exclusive representative for all employes of the Public Works Department, Water and Light Department and nonuniformed employes of the Public Safety Department, excluding all supervisors, confidential employes and clerical employes.

3. WE WILL NOT threaten employes with the loss of benefits previously enjoyed by them for the purpose of discouraging their activities on behalf of and membership in General Drivers, Dairy Employees and Helpers Local 579, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or in any other labor organization.

4. WE WILL NOT promise employes improved benefits to discourage their activities on behalf of and membership in General Drivers, Dairy Employees and Helpers Local 579, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or any other labor organization.

5. WE WILL NOT interrogate employes concerning their affiliation with General Drivers, Dairy Employees and Helpers Local 579, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or any other labor organization.

CITY OF EVANSVILLE

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Mayor, City of Evansville

Dated_____

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.

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of GENERAL DRIVERS, DAIRY EMPLOYEES AND HELPERS LOCAL 579, affiliated with INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA Involving Certain Employes of CITY OF EVANSVILLE	Case I No. 13216 ME-495 Decision No. 9334-C
GENERAL DRIVERS, DAIRY EMPLOYEES AND HELPERS LOCAL 579, affiliated with the INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, Complainant, vs. CITY OF EVANSVILLE, Respondent.	Case II No. 13430 MP-79 Decision No. 9440-A

MEMORANDUM ACCOMPANYING FINDINGS OF FACT CONCLUSIONS OF LAW AND ORDER

PLEADINGS

The Union on January 6, 1970, filed a complaint of prohibited practice wherein it alleged that the Employer violated Section 111.70(3)(a)1 by engaging in acts of intimidation and coercion of its employes thereby restraining and interfering with their rights to affiliate with and be represented by labor organizations of their own choosing. 5/

On January 30, 1970, the Employer filed an answer to the complaint wherein it denied having made any written offer of benefits to employes during the pre-election period and said Employer further denied that it threatened employes with loss of benefits if they supported the Union. Hearing on the consolidated matter was held before the Examiner on February 9, 1970. Final briefs were received from the parties on April 24, 1970.

The specific acts of prohibited practice alleged in the complaint

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5/ Since there existed some identity of allegations in the Complainant's objections to the conduct of the election and the complaint filed in the instant matter, the Commission on January 9, 1970, ordered that the previously scheduled hearing on objections to the conduct of elections be consolidated with the complaint hearing.

are as follows:

"1 . . .by its Mayor and Alderman Respondent threatened to deprive employes of their fringe benefits if they voted for the Union; it negotiated with individual employes; and it promised them certain benefits if they voted against the Union.

2. Knowing that Respondent represented a majority of police, Respondent, as part of its campaign of intimidation, bribery and threats, negotiated directly with the policemen with the purpose, among others, of convincing its other employes that they would gain greater benefits if they opposed the Union and that Respondent would not comply with the law.

3. As a result of the conduct set forth above, a majority of employes were intimidated or bribed into voting against Complainant.

4. By its refusal to recognize Complainant at a time when it represented a majority of employes while engaging in or planning to engage in an unlawful course of conduct designed to dissipate Complainant's majority, Respondent violated Section 111.70(3)(a)1.

5. By its direct negotiations with its employes after it received Complainant's demand letter and knew of its filing of a petition with this Commission, and after it knew or should have known that Respondent had been designated as the representative by a majority of its employes, Respondent violated Section 111.70(3)(a)1.

6. By its direct negotiations with its police with a purpose of interfering with the rights of its other employes, Respondent violated Section 111.70(3)(a)1."

RESPONDENT'S ACTIVITIES WITH REGARD TO UNIFORMED POLICEMEN

Complainant alleges that the Respondent negotiated directly with the policemen with the purpose of convincing its other employes that they would gain greater benefits if they opposed the Union. The record establishes that uniformed policemen had met with the Public Safety Committee to discuss wages and conditions of employment prior to the Union mailing its demand letter and signed petition to the Respondent on October 16, 1969. 6/

The record further shows that on October 24, 1969, Respondent refused to recognize Complainant. On November 6, 1969, Complainant sent Respondent a second demand letter with an accompanying employe-signed petition similar to the one referred to above. Respondent on November 8, 1969, published in the Janesville Gazette newspaper a salary proposal which was made to the policemen in an October 28, 1969, meeting. However, John Whitmore, Sergeant and de facto representative of the uniformed policemen, stated in his testimony that, "Well, after we signed the second petition to request Union representation, I believe, then we (policemen) waited for a matter of several weeks, and we heard nothing from the Union so we decided that maybe they weren't going to represent us so we went ahead and did it ourselves (referring to bargaining with the Public Safety Committee)."

6/ The petition designated Complainant Union as the policemen's statutory representative for labor relations matters.

Shortly after this the uniformed policemen and the Public Safety Committee worked out an agreement as to wages and working conditions. Then, Sergeant Whitmore called Complainant's business representative, Leonard Schoonover, and told him that the policemen independently had worked out an agreement with the Safety Committee because the Union had not bothered to contact them. Whitmore testified that Schoonover told him that the reason nothing was done to assist the uniformed policemen was because the Union attorney that was supposed to help them was on vacation. Shortly after that, Werner Wathke, the Union president, withdrew the Union's claim that it represented the uniformed policemen.

The Examiner finds that the credible evidence supports the conclusion that the uniformed policemen independently bargained with the Public Safety Committee before the Union came on the scene and subsequently bargained and came to an agreement with said Committee on an independent basis because the Union had through its own inefficiency failed to service and fulfill the needs of said policemen. The Union claims that the fact that the uniformed policemen independely bargained and came to the agreement with the Respondent had a detrimental effect on its attempts to properly represent the other employes of the City. However, even assuming arguendo that this is true (and it well might be) this result flows from the Union's own inefficaciousness and not from any sort of egregious behavior attributable to Respondent.

EMPLOYER'S THREATS AND PROMISES

The Union alleges that Respondent threatened to deprive employes of their fringe benefits if they voted for the Union and that it promised them certain benefits if they opposed the Union. On November 24, 1969, a copy of an article subsequently published on November 27, 1969, by the Evansville Review newspaper was mailed to all employes of the City of Evansville and that said article stated inter alia

. . .

> "We wonder if the city employee's (sic) are cognizant of the fact that if they voted to accept the union, all fringe benefits now being paid by the city, would cease and the only pay they would receive, would be their base pay. Any fringe benefits gained there-after, (sic) would have to be bargained for. If a union were to be accepted, it is conceivable that many new problems and hardships would be created not only on the city, but on the employee's (sic) as well. Some examples might be the installation of time clocks, regulated coffee breaks, and the possible loss of certain freedoms that the employee's (sic) now enjoy. In essance, (sic) a demarcation line would be drawn, with the salary or whitecollar (sic) workers and supervisors on one side and the hourly employee's (sic) on the other."

Respondent argues that it had no intention of attempting to interfer with its employes statutory rights by sending its employes the above-mentioned letter. To substantiate this premise Respondent cites two sentences from that letter (the complete text of this letter is found on pages 3-5, supra, in the Findings of Fact): First, "The City cannot prevent their employees from petitioning for union representation, and it is not our intent to do so, nor is it our intent to degrade unions"; second, "Lastly, there shall be no animosity shown or reprimand given to any employee who has taken an active part in trying to procure Union services".

The Examiner finds Respondent's argument quite specious in that it contradicted the above-quoted pious platitudes within the very letter itself by stating that if its employes voted for the Union all fringe benefits that the City was then paying would cease and that certain other privileges, both specified and unspecified, might be curtailed or lost. Such blatant threats as those spelled out in Respondent's letter to its employes, which letter was also published in the local newspaper, cannot be mitigated by benign generalities.

The Employer did not limit his threats to this one communication. During the last part of November or early part of December, 1969, but prior to the December 9, 1969, election yet another letter was sent to all of Respondent's employes. The letter stated inter alia that,

> "Your Mayor and Council are definitely interested in resolving the impasse which appears to have arisen, regarding wage negotiations this year, (due to a misunderstanding of the offer already made) without the necessity of a union being brought in. The cost to you of Union Membership would be $94.00 for the year 1970 alone, and is no guarantee that the offer already made could or would be improved.
>
> . . .
>
> We feel that with unionization action our City departments could and would lose much of the freedom of action which they now have.
>
> In summation we feel that our employes should reconsider their position and by talking with their aldermanic committees, completely resolve this situation without the expense to them of having an outsider involved."

By the above-quoted statement to its employes Respondent continued its campaign of threats of dire consequences that might result if the Union were successful in organizing its employes by stating that if the employes paid $94.00 to join the Union they would have no guarantee that the Respondent's offer could or would be improved. The inference could well be drawn that if the employes were unionized the City's offer would probably not be improved; but if the Union were not successful the City's offer probably would be improved. Furthermore, Respondent threatened its employes with loss of freedom of action if they unionized.

In addition, it is uncontroverted that sometime during the last part of November or early December 1969, but prior to the election, Wayne Ballard, superintendent of the Water and Light Department, in the presence of all but one of the employes under his supervision, asked employe Cole if he belonged to the Union. Cole replied to Ballard's inquiry by asking him if it made any difference if he did belong to the Union. Ballard then replied to Cole that, "You might as well tell me because if you don't I'll find out anyway." Upon hearing this Cole admitted that he did belong to the Union. There can be no doubt that Ballard's interrogation of Cole in the presence of all but one of the employes in his (Ballard's) department not only was threatening and coercing to Cole but most probably had the identical effect on Cole's fellow workers.

Finally, Frederick Schwartzlow, Director of Public Works, called a meeting of his employes approximately two weeks before the election to discuss the Union's organization drive. Employe Grenwalt testified that Director Schwartzlow at this meeting told him and the other assembled

employes that he felt that the Union was not right for the men, and that it wouldn't necessarily give them any job protection. Grenwalt further testified that Schwartzlow then stated that, "If the City wanted to, they could contract the garbage out and they could contract the snow plowing out, and, therefore, these jobs could be eliminated (emphasis supplied)."

Contrariwise, Schwartzlow testified although he did tell his employes at this meeting that he did not want them to join the Union, to the best of his knowledge, he did not discuss subcontracting. Schwartzlow did acknowledge that the subject of subcontracting garbage had been discussed during the previous spring and summer. Obviously, there exists a complete disparity of testimony as to whether subcontracting was discussed at this meeting. Therefore, the Examiner based upon the physical demeanor of witnesses Grenwalt and Schwartzlow credits the testimony of Grenwalt. In addition, it appears to the Examiner that the threat of subcontracting unit work was just one more example of Respondent's attempt to undermine the Union's majority status.

Based upon the above the Examiner finds that evidence clearly preponderates in favor of the conclusion that Respondent's public and private communications, containing both blatant threats and implied promises, coupled with interrogation of employes, was part of a general course of conduct which constitutes coercion, restraint and interference thereby depriving employes of their rights created by Section 111.70 and that such deprivation and coercion results in a forceable erosion of these rights resulting in a complete negation of the intendment of that statute. Furthermore, there is undisputed evidence of the Union's majority status long prior to the election. It is uncontroverted that not only did the Union enjoy majority status on October 16, 1969, when it mailed its demand letter to the Respondent but by October 25, 1969, the Union had signed authorization cards from all but one employe and it had received the $10.00 initiation fee from all but two employes. It necessarily follows that Complainant's majority status was dissipated by Respondent's unlawful inference with its employes Section 111.70 rights thereby tainting the results of the December 9, 1969, election.

EMPLOYER'S DIRECT NEGOTIATION WITH ITS EMPLOYES

Complainant alleges that Respondent violated Section 111.70(3)(a)1 by negotiating directly with its employes when it was designated by a majority of the petitioned-for employes to be their collective bargaining representative. However, such conduct if proven clearly amounts to a refusal to bargain with a majority representative. Section 111.70 as interpreted by current case law does not impose upon a municipal employer any enforceable statutory duty to bargain in good faith with the union representative over wages, hours and conditions of employment. 7/

REMEDY

Complainant contends that part of an appropriate remedy in the instant case would be to order Respondent to bargain with it. As stated above, a refusal to bargain by a municipal employer as defined by current case law is not a prohibited practice under Section 111.70.

7/ City of New Berlin (7293) 3/66; Milwaukee Board of School Directors (6883-A) 3/66; LaCrosse County (7077-A) 6/67; City of Milwaukee (8410) 2/68; Wauwatosa Board of Education (8319-B) 6/68 and (8319-C) 7/68; Madison School Board 37 Wis 2d 483 12/67

Therefore, it necessarily follows that the remedy that flows for a refusal to bargain, namely, a bargaining order, can not issue when such refusal is not a prohibited practice. However, this is not to say that there could not be a case where a municipal employer's refusal to bargain coupled with extreme attendant consequences might be construed to be a prohibited practice. For example, the Wisconsin Supreme Court in Board of School Directors v. W.E.R.C., 42 Wis. 2d 637, 654 (1969) stated that, "If the minority union representative met privately with the municipal employer to discuss negotiable topics, i.e. wages, hours and conditions of employment, the employer would certainly have committed a prohibited practice".

The Complainant further contends that part of the remedial action ordered by the Examiner should be that Respondent be ordered to recognize the Union as the exclusive bargaining agent without having another election. Respondent contends that if it is determined that it committed prohibited practices that affected the election results the only permissible remedial action would be for the Commission to order a second election in conjunction with the objections to conduct of election case currently pending before it. Respondent argues that Wisconsin Statutes, 111.70(4)(d) establishes and limits the authority of the Commission to certify the Union as the exclusive representative for employes in an appropriate unit without conducting an election. 8/ However, Section 111.70(4)(a) confers broad powers to the Commission in fashioning remedial orders. 9/

The Commission exercised that power in Portage Stop 'N' Shop, Inc., (7037) 2/65, when it ordered the Employer to recognize the Union as the exclusive representative of its employes even though it could have chosen a more conventional remedy by upholding the timely filed objections to the conduct of election coupled with a direction of a second election. For a similar result see Tony's Pizza Pit, (8405-A), 8/68, page 25, where the Examiner concluded that, "The Employer's conduct was of such effectiveness and magnitude as to thwart the possibility of a fair election being conducted in the near future." It should be carefully noted that the Examiner is only citing the above cases in the private sector to illustrate the Commission's remedial powers covering both private and municipal employers, which power flows directly from a common source, namely, Section 111.07 of the Wisconsin Employment Peace Act.

Therefore, based upon the above, the Examiner finds that Respondent's argument that absent an election, there is no statutory authority for Union to be certified as the exclusive bargaining representative to be

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8/ Section 111.70(4)(d) states that, "Whenever a question arises between a municipal employer and a labor union as to whether the union represents the employes of the employer, either the union or the municipality may petition the board to conduct an election among said employes to determine whether they desire to be represented by a labor organization. Proceedings in representation cases shall be in accordance with ss. 111.02(6) and 111.05 insofar as applicable..."

9/ Section 111.70(4)(a) under the heading "Prevention of prohibited practices" states that, "Section 111.07 (this refers to the Wisconsin Employment Peace Act covering private as opposed to municipal employers) shall govern procedure in all cases involving prohibited practices under this subchapter." Section 111.07(4) states in pertinent part that, "final orders may dismiss the charges or require the person complained of to cease and desist from the unfair labor charges found to have been committed . . .and require him to take such affirmative action, including reinstatement of employes with or without pay, as the board (now Commission) may determine proper (emphasis supplied)."

inappropriate. Furthermore, the Commission in City of New Berlin, supra, page 30, stated that it would not allow a Municipal Employer to engage "in a campaign of threats and coercive conduct designed to undermine the Union's majority status, and which conduct also makes it impossible to conduct an election wherein the employes could express their free and uncoerced choice". The Commission then refers to the situation in the instant case when it unequivocally stated that,

> "Where an Employer engages in such coercive conduct, and thus commits a prohibited practice under Section 111.70 (3)(a)1, the Board could properly find that the organization represented an uncoercive majority of the employes in an appropriate bargaining unit and it could designate the organization as the exclusive representative of said employes, with all rights and privileges it would have been entitled to exercise had there been an election where the majority of the employes had selected such organization as their representative (emphasis supplied)."

In the case at hand, there could be no doubt that the Respondent engaged in a campaign of threats and coercive conduct designed to undermine the Union's majority status. As noted above, at the time the Union sent Respondent a request to be recognized it enjoyed majority status; within nine days subsequent to the aforementioned request the Union had expanded that majority status to the point where it had signed authorization cards from all but one employe and had secured a $10.00 initiation fee from all but two employes. Subsequent to the Union's securing of this apparently overwhelming support, the Employer mounted an extensive campaign of blatant threats, implied promises and improper interrogation in a concerted effort to dissipate the Union's majority and very nearly unanimous status. As noted previously, this campaign took the form of both private letter and public pronouncements in the public press. On November 24 and November 27, 1969, the Respondent told its employes that new problems and hardships would result if they voted to accept the Union. Respondent then drove the point home by citing specific samples of the hardships that would result, namely, installation of time clocks, regulated coffee breaks and the loss of yet other freedoms.

Subsequent to the aforementioned threats but prior to the election, the Employer mailed a letter to all of its employes wherein it stated that if they voted for the Union there was no guarantee that the offer already made by the City could or would be improved. The obvious implication of this statement seems to be a threat that if the Union were successful and won the pending election that the City's offer would not be improved; the converse of this statement is the implied promise that if the employes did vote against the Union the offer would be improved. Furthermore, in this same letter Respondent threatened City departments and by direct implication the employes thereof with a loss of freedom of action if the Union were victorious. Finally, Respondent, through one of its agents coercively interrogated one of its employes in the presence of said employe's fellow workers by stating that if the employe in question did not divulge his Union affiliation he (the superintendent) would find out anyway. This campaign came to its fruition when on December 9, 1969, the Union after having authorization cards from all but one employe and initiation fees from all but two employes, lost the election.

If the Examiner would accept Respondent's position that the only possible remedy should be a cease and desist order, it would in effect be rewarding Respondent and allowing it to profit from the refusal to recognize Complainant while at the same time curtailing employes right to freely determine their exclusive representative. Respondent could continue to delay or disrupt the election process and put off indefinitely the recognition of the Union; any election held under these circumstances would not be likely to demonstrate the employes right to cast a free and unfettered ballot.

In the instant case where the Union enjoyed clear majority status the Examiner's responsibility is two-fold. He must not only seek to prevent further prohibited practice by issuing a cease and desist order but he must take the necessary steps to effectuate ascertainable and uncoerced employe free choice. In fashioning such a remedy the Examiner can properly take into consideration the extensiveness of Respondent's prohibited practices in terms of their past effect on the election conditions and the likelihood of their reoccurrence in the future. Viewed in this light, the Examiner finds that the possibility of eradicating the effects of past prohibited practices through the possible direction of a Commission directed election, although present, is at best marginal and that the overwhelming employe sentiment as expressed through the Union authorization cards could better be protected by ordering Respondent to recognize Complainant Union. Therefore, the Examiner is issuing an order whereby Respondent is directed to recognize General Drivers, Dairy Employees and Helpers Local 579, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America in order to repair the past unlawful effects of Respondent's campaign of threats, promises and interrogation and to insure that such conduct would not in the future dissipate the Union's majority status if a rerun election were in fact ordered. As noted in the Conclusions of Law, page 7, supra, the Examiner found that the appropriate unit in the instant case is the unit originally petitioned for by Complainant. Being as the Examiner has found that Respondent's pre-election conduct amounted to interference, restraint and coercion of its employes right to affiliate or not to affiliate with a labor organization of their choice, it follows that such conduct would also taint and erode the laboratory conditions that should have surrounded both the employe vote as to whether they wished to be a separate unit and whether they wished to be represented by Complainant Union. It is not possible to measure with any reasonable degree of accuracy the combined effect of Respondent's unlawful action on both the separate unit vote and the representation vote and to attempt to bifurcate the effect on the two votes on an individual basis would be equally folly. Therefore, the Examiner has ordered that Complainant Union be recognized as the exclusive representative for all the employes of the Public Works Department, Water and Light Department and the nonuniformed employes of the Safety Department. 10/

10/ As noted previously, Complainant Union's original petition referred to the above-mentioned three departments as Street and Alley Department, Water Department and Police Department Dispatchers. It was subsequently decided that the names of the departments as listed on the original petition should be changed. The unit that the Examiner has found appropriate reflects those changes.

In the event the decision set forth in the Examiner's Finding of Fact, Conclusions of Law and Order become the Findings and Order of the Commission, the Commission will dismiss the objections to conduct of election pending in City of Evansville, Case II, No. 9334-C, ME-495.

Dated at Madison, Wisconsin, this 21st day of October, 1970.

By John T. Coughlin
John T. Coughlin, Examiner