STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

BROWN COUNTY, Complainant, vs. ARTHUR L. MILLIN and WISCONSIN COUNCIL OF COUNTY AND MUNICIPAL EMPLOYEES, AFSCME, AFL-CIO, Respondent.	Case VIII No. 13198 MP-75 Decision No. 9537

Appearances:
Mr. Robert R. Flatley, Corporation Counsel, and Mr. Donald VanderKelen, Wage Negotiator, for the Complainant.
Lawton & Cates, Attorneys at Law, by Mr. John C. Carlson, for the Respondent.

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

The above entitled matter having come on for hearing before the Wisconsin Employment Relations Commission on November 20, 1969, at the Brown County Courthouse Annex, Green Bay, Wisconsin, Zel S. Rice II, Commissioner, being present; and the Commission having considered the evidence, arguments, motions and briefs of Counsel, and being fully advised in the premises, makes and files the following Findings of Fact, Conclusion of Law and Order.

FINDINGS OF FACT

1. That Brown County, hereinafter referred to as the Complainant, has its offices at Green Bay, Wisconsin.

2. That the Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, hereinafter referred to as the Respondent Union, is a labor organization, having offices at 119 Monona Avenue, Madison, Wisconsin; and that Arthur L. Millin, hereinafter referred to as Respondent Millin, is a representative of the Respondent Union.

3. That on September 23, 1969, at a meeting called by the Respondent Union and attended by Complainant's employes employed in the courthouse and welfare department, which meeting was called for the primary purpose of organizing said employes and for explaining procedures with respect to an election petition filed by the Respondent Union with the Wisconsin Employment Relations Commission, Respondent Millin, in response to an inquiry with

respect to the policy of the Respondent Union concerning strikes in municipal employment, remarked that the Respondent Union was "not strike happy," that the Respondent Union "doesn't avoid strikes if bargaining reaches an impasse," and that "the law says we shall not strike . . . we do it anyway, you reach a point where there's nothing else left"; that during said meeting, Respondent Millin also remarked in effect, that he had been advised that courthouse supervisory personnel had met to discuss opposition to Respondent Union; that however no such meeting had been conducted by supervisory personnel for such purpose; and that the aforesaid statements made by Respondent Millin were reported in the Green Bay Press Gazette daily newspaper on September 24, 1969.

4. That the published statements made by Respondent Millin, as described in paragraph 3 above, did not interfere with, restrain or coerce, and is not interfering with, restraining, or coercing, any employe of the Complainant in the exercise of his right of self-organization to affiliate with a labor organization of his choosing, or with the right to be represented by a labor organization of his choice in conferences and negotiations with the Complainant on questions of wages, hours and conditions of employment, or with the right to refrain from any and all such activities; and further, that such statements did not constitute an attempt to coerce, intimidate or interfere, nor did they in fact coerce, intimidate or interfere an attempt to induce the Complainant to coerce, intimidate or interfere with its municipal employes in the enjoyment of their legal rights.

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

CONCLUSION OF LAW

1. That, since the statements made by Respondent Arthur L. Millin to various employes of the Complainant, Brown County, on September 23, 1969, did not coerce, intimidate or interfere with municipal employes in the exercise of their rights as set forth in Section 111.70(2), Wisconsin Statutes, and since said statements did not constitute an attempt to coerce, intimidate or interfere with municipal employes in their enjoyment of their legal rights set forth in Section 111.70(2), Wisconsin Statutes, neither Respondent Arthur L. Millin nor Respondent Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, have committed any prohibited practices within the meaning of either Section 111.70(3)(c) or Section 111.70(3)(b)1, Wisconsin Statutes.

Upon the basis of the above and foregoing Findings of Fact and Conclusion of Law the Commission makes the following

ORDER

IT IS ORDERED that the complaint filed in the instant matter be, and the same hereby is, dismissed.

Given under our hands and seal at the City of Madison, Wisconsin, this 6th day of March, 1970.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Morris Slavney, Chairman

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Zel S. Rice II, Commissioner

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William R. Wilberg, Commissioner

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MEMORANDUM ACCOMPANYING
FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

In its complaint the County alleged (1) that the statement made by Millin with respect to an alleged meeting conducted by County supervisory personnel to discuss opposition to the Respondent Union was false and constituted a prohibited practice within the meaning of Sections 111.70(3)(c) and 111.70(3)(b)1, in that such statement, published in the Green Bay Press Gazette, "tended to create the impression that elected and appointed county officials were opposed to Unions, and therefore, to cause pressure to be exerted upon them in behalf of Respondent Union to interfere with the free choice of municipal employees in respect to affiliation with a labor organization," and (2) that Millin's statement with respect to strikes in municipal employment, as published in the Green Bay Press Gazette, constituted a prohibited practice within the meaning of the same sections of the statute, "in that strikes by municipal employees are expressly prohibited by Section 111.70(4)(l) and the advocating of a practice prohibited by law would tend to interfere with the free choice by municipal employees in respect to affiliation with a labor organization."

Prior to the hearing the Respondents filed a motion urging the Commission to dismiss the complaint, contending that if the statements allegedly made by Millin were, in fact, made, such statements did not constitute any prohibited practices, and, further, that such statements would be protected free speech.

We are satisfied from the evidence adduced at the hearing that Millin made the remarks attributed to him in the meeting of certain employes of the County and that such remarks were published in the Green Bay Press Gazette. The evidence also established that County supervisory personnel had not met to discuss opposition to the Union. Therefore, Millin's statement in that regard is deemed false.

The County contends that Millin's accusations with respect to an alleged meeting of supervisory personnel to discuss opposition to the Union is a prohibited practice since the assertion was false and the County bases its argument in that regard on the Wisconsin Supreme Court decision in WERB vs. Milk etc., Union,[1/] wherein our Supreme Court stated "to assert that one is unfair to organized labor may properly be adjudged to be an unfair labor practice whereas here the evidence shows that the assertion is false."

The County further asserts that the dissemination of the false statement in the newspaper of wide circulation in the County "is coercive and intimidating to the elected representatives who comprise the governing body of the County. The members of the Brown County Board of Supervisors must depend in part for their election on the votes of Union members and their families. To imply that these men are permitting anti-Union activities or condoning such activities on the part of the supervisory employees responsible to them could well cause them to fear the loss of their elected position. Such a false statement is considerably more coercive and intimidating when made in municipal employment than if such accusations were levied against a private business that is not directly accountable to the public." In addition, the County argues that to accuse it of a violation of the law also constitutes unlawful coercion.

There are some distinctions in the case cited by the County in support of its argument from the factual situation herein. However, we conclude that it is not necessary to discuss such distinctions since the mere opposition by an employer to a union does not, in itself, constitute a prohibited practice. It is where an employer, in support of such opposition, engages in unlawful activity among its employes, such as making threats of reprisals or promises of benefits to discourage them from concerted activity, or where he discharges employes for such activity, which constitutes the unfair labor or prohibited practice. Were we to adopt the Complainant's contention in this regard, every complainant failing to prove his allegations in an unfair labor or prohibited practice proceeding before the Commission would, by such "false" allegations, commit an unfair labor or prohibited practice. Such a conclusion would be ludicrous.

1/ 238 Wis. 379 (1941).

The Commission has held that while strikes in municipal employment are specifically prohibited in Section 111.70, strike activity by municipal employes does not constitute a prohibited practice.[2/] If strike activity is not a prohibited practice, a statement to the effect that the Respondent Union has engaged in strikes and might do so in the future does not constitute a prohibited practice. We have therefore dismissed the complaint.

Dated at Madison, Wisconsin, this 6th day of March, 1970.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Morris Slavney, Chairman

_____
Zel S. Rice II, Commissioner

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William R. Wilberg, Commissioner

2/ Wauwatosa Board of Education, Decision No. 8636, 7/68.