

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

DELBERT SEEBRUCH and WEST MILWAUKEE
PROFESSIONAL FIRE-FIGHTERS'
ASSOCIATION, LOCAL 1417, IAFF,

Complainants,

vs.

HARRY RYDLEWICZ and CLARENCE QUANDT
(VILLAGE OF WEST MILWAUKEE),

Respondents.

Case VI
No. 13995 MP-85
Decision No. 9845-B

Appearances:

Lawton & Cates, Attorneys at Law, by Mr. John Carlson, appearing
on behalf of the Complainants.
Quarles, Harriott, Clemons, Teschner & Noelke, Attorneys at Law,
by Mr. James C. Mallen, appearing on behalf of the Respondents.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Complaint of prohibited practices having been filed with the Wisconsin Employment Relations Commission in the above-entitled matter, and the Commission having appointed Robert B. Moberly, 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 hearing on said complaint having been held at Milwaukee, Wisconsin, on October 1, 1971 before the Examiner; and the Commission having on June 30, 1971 transferred the proceedings to itself; and the Commission having considered the evidence, arguments and briefs of Counsel, and being fully advised in the premises, makes and files the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. That Complainant, West Milwaukee Professional Firefighters' Association, Local 1417, IAFF, hereinafter referred to as Local 1417, is a labor organization, having its offices in West Milwaukee, Wisconsin; and that Complainant Delbert Seebruch, at all times material herein, has been, and is, the President thereof.
2. That the Village of West Milwaukee, hereinafter referred to as the Municipal Employer, has its principal office at 4755 West Beloit Road, West Milwaukee, Wisconsin; that the Municipal Employer, in addition to its other functions, maintains and operates a Fire Department, housed in one station located at 4515 West Burnham Street, West Milwaukee, Wisconsin; that Respondent Harry Rydlewicz is the Chief of said department; that Respondent Clarence Quandt and James Kurgl are two of the three Captains of said department; that in addition, the department includes six Lieutenants, approximately twenty-six Fire Fighters, including Seebruch, and two Inspector Fire Fighters; that said firefighter personnel perform their duties on three platoons, with each platoon

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working alternate twenty-four hour shifts; that each platoon normally consists of one Captain, two Lieutenants, and nine to ten Fire Fighters; and that the Chief and the Captains are supervisory employees and agents of the Municipal Employer.

3. That on January 28, 1963, Local 1417 filed a petition with the Wisconsin Employment Relations Commission, hereinafter referred to as the Commission (which at the time was known as the Wisconsin Employment Relations Board) requesting that an election be conducted pursuant to Sec. 111.70, Wisconsin Statutes, among "all regular fire-fighters employed in the Fire Department of the Village of West Milwaukee, excluding the supervisory personnel"; that during the course of the hearing on said petition representatives of both Local 1417 and the Municipal Employer agreed on the unit appropriate for collective bargaining, as well as upon the eligibles in the unit, which included only employees classified as "Firefighters" and that said representatives also agreed to exclude from the eligibles the Fire Chief, Fire Captains and Fire Lieutenants; that thereafter, and on March 26, 1963, pursuant to a Direction issued by it, the Commission conducted an election in the bargaining unit, and on April 19, 1963, the Commission issued a Certification of Representatives, 1/ wherein it certified Local 1417 as the exclusive collective bargaining representative of "all regular Firefighters employed in the Fire Department, excluding the supervisory personnel" of the Municipal Employer.

4. That since the date of the aforementioned certification Local 1417 has remained, and presently is, the collective bargaining representative of the employees of the Municipal Employer employed as Firefighters; that in said relationship and during all times material herein, Local 1417 and the Municipal Employer on March 17, 1969 entered into a collective bargaining agreement, effective from January 1, 1969, to and including December 31, 1970, covering the wages, hours and working conditions of all "Firefighters and Fire Inspectors" employed in the Fire Department; and that said agreement contained among its provisions the following material herein:

"ARTICLE II - Union Security

- A. The Union maintains an open shop.
- B. The Village shall deduct monthly Union dues and assessments from the wages of such employees and authorize such payroll deductions and forward as indicated on the authorization form."

"ARTICLE VI - Extra Hours

- A. Extra hours for Fire Department employees covered under the terms of this contract shall be as herein-after set forth:
 - 1. Emergency Overtime
Shall be such time required of a member of the Fire Department when he is performing services not hereinafter defined as non-emergency overtime.

1/ Dec. No. 6264

2. Emergency overtime as hereinabove defined shall be compensated by money payment at the following rates. This money payment shall be paid by the Village to the employee as an addition to his regular salary check and the deductions required to be taken therefrom by both local, state and federal laws shall be withheld therefrom. Fire Department personnel covered under the terms of this Contract shall be compensated at the wage rate of time and one-half for all EMERGENCY overtime based on an annual average 56 hour work week, to-wit:

During the calendar year 1969 @ \$4.50 per hour
During the calendar year 1970 @ \$4.80 per hour"

"ARTICLE XVI - Grievance Procedure

- A. A grievance procedure for Fire Department employees covered under the terms of this contract shall be as hereinafter set forth:

1. Crucial to the cooperative spirit between the Union and Village, is the sense of fairness and justice brought by the parties to the adjudication of employee grievances. Should an employee feel that his rights and privileges have been violated, he shall consult with his Union steward immediately. The steward shall then try to settle this grievance in an informal manner. If the steward cannot settle the grievance informally he shall submit the grievance in writing to the Union grievance committee. The Union grievance committee shall then determine if the employee's grievance is valid or invalid. When a Union steward is not available or is the grievor an Executive Board member shall act as steward. If the Union grievance committee declares that the employee's grievance is invalid, the employee shall be notified in writing of same and the grievance disregarded. If the Union grievance committee declares that the employee's grievance is valid, the Union grievance committee shall present the facts in writing within fifteen (15) days to the captain of the platoon that the grievance occurred on. Within fifteen (15) calendar days thereafter, the platoon captain shall submit his answer in writing to the Union.
2. Should the Union decide that the reply of the platoon captain is unsatisfactory, the Union grievance committee shall within fifteen (15) days submit the facts of the grievance in writing to the Fire Chief. The Fire Chief shall within fifteen (15) days reply to the Union in writing giving his decision.
3. It is not the intention of the parties hereto to circumvent or contravene any Village ordinance or State Law. If there is any conflict or ambiguity insofar as any phrase, sentence or paragraph of this contract is concerned, then the ordinance or State law shall apply.

4. Nothing herein shall limit any employee from his rights to a hearing pursuant to Section 62.13 of the Wisconsin Statutes in case formal charges are being filed against him."

5. That in the summer of 1969 Chief Rydlewicz, hereinafter referred to as the Chief, advised the Deputy Clerk of the Municipal Employer, that the Fire Department's Officer Personnel Code (which established wages and benefits for the Chief, Captains and Lieutenants) did not provide for the check-off of dues for Lieutenants to Local 1417; that as a result, the Deputy Clerk ceased to submit dues, previously authorized by Lieutenant Harold Blaessing to be "checked-off", to Local 1417, as was done for approximately three years as a result of Blaessing's membership in Local 1417, during which period Blaessing held the position of Lieutenant; that in the summer of 1969 Lieutenant Stenz joined Local 1417 and at the same time executed a dues check-off authorization in favor of Local 1417, and, subsequently, pursuant to the Chief's directive to the Deputy Clerk, Stenz's check-off authorization was revoked; and, that on July 29, 1969, Firefighters Kolvenbach, Habermann and Budney, all members of Local 1417, whose dues check-off authorizations had been honored by the Deputy Clerk, were promoted to Lieutenants, and that shortly thereafter, pursuant to the aforementioned directive of the Chief, their dues check-off authorizations were revoked.

6. That in the summer of 1969 Captain Quandt initiated an organization identified as the West Milwaukee Fire Officers Association, hereinafter referred to as the Association, and Quandt requested the remaining two Captains and six Lieutenants to become members thereof; that said individuals did in fact become members of the Association; that the Chief, although not a member of the Association, had knowledge thereof and approved of such organization; that the claimed purpose of the Association was to gain recognition for its officer members and to bargain with the Municipal Employer on their wages, hours and other conditions of employment; that Quandt, as Chairman of the Association, on August 15, 1969, directed the following letter to the Board of Trustees of the Municipal Employer:

"Please be advised that all of the company officer personnel of the West Milwaukee Fire Department have agreed to form an organization for the purpose of having representation as a collective bargaining unit to negotiate our salaries with the Board of Trustees of the Village of West Milwaukee. The name of this organization is 'West Milwaukee Fire Officers Association'. This arrangement has the approval of the fire chief.

Although Chapter 11 of the Wisconsin Statutes excludes supervisory personnel from collective bargaining rights, it is our hope that your honorable body will agree to meet with our representatives at such times when fire department officer salaries are discussed.

We would appreciate a reply to the Board's intentions in granting this courtesy to us.

Respectfully submitted,

WEST MILWAUKEE FIRE
OFFICERS ASSOCIATION

cc to:
Fire Chief
Fire and Police
Commission

CLARENCE QUANDT, Chairman
for
James Kargl, Fire Captain
Frank Wickert, Fire Captain
Hick Fedonia, Fire Lieutenant
Richard Stenz, Fire Lieutenant
Harold Blaesing, Fire Lieutenant
Raymond Budney, Fire Lieutenant
Ronald Habermann, Fire Lieutenant
John Kolvenbach, Fire Lieutenant

7. That Lieutenant Ronald Habermann, in a letter to the Executive Board of Local 1417 dated August 18, 1969, requested to withdraw his membership from Local 1417, and further stated that "the purpose for my request is to enable me to join and participate in the newly formed West Milwaukee Fire Officers Association"; that there was no letterhead on said letter; that in a letter dated the same day, under letterhead of the West Milwaukee Fire Department, Lieutenant Habermann again requested to withdraw his membership from Local 1417, but therein omitted to state the reason for the request; that Lieutenant Habermann then advised the President of Local 1417 to ignore the first letter; that also on August 18, 1969, under letterhead of the West Milwaukee Fire Department, Lieutenants Richard Stenz and Raymond Budney wrote to Local 1417 requesting withdrawal cards; that by letter of August 19, 1969, under no letterhead, Lieutenant John Kolvenbach requested a withdrawal card from Local 1417; and that by letter of August 20, 1969, under no letterhead, Lieutenant Harold Blaesing requested a withdrawal card from Local 1417.

8. That on August 20, 1969, Local 1417 filed a "petition for clarification of representation" with the Commission, requesting a clarification of whether the six Fire Lieutenants should properly be included and considered as members of the bargaining unit represented by Local 1417; that the matter came on for hearing before the Commission on September 11, 1969, but, prior to the opening thereof, the parties requested that the matter be held in abeyance pending the effectuation of a proposed settlement, wherein Local 1417 and the Municipal Employer agreed that an election would be held at the Marquette University Law School, supervised by the Dean thereof, in which the Fire Lieutenants would be given the opportunity to vote on the question of whether they desired Local 1417 to represent them in collective bargaining with the Municipal Employer; that said election was conducted and therein a majority of the Fire Lieutenants selected Local 1417 as their bargaining representative; that a dispute subsequently arose as to whether the Fire Lieutenants would be included in the existing certified bargaining unit of "Fire Fighters", or whether they would be considered as a separate bargaining unit; that on October 20, 1969, Local 1417 advised the Commission that the proposed settlement had not been effectuated and that the issues could only be resolved through a formal determination by the Commission, and requested that a hearing be scheduled by the Commission on the petition for Clarification of Representation; that the matter again came on for hearing November 6, 1969; and that on April 1, 1970, the Commission issued a declaratory ruling in which the Commission determined

*That the positions of Lieutenant in the employ of the Fire Department of the Village of West Milwaukee, West Milwaukee, Wisconsin, are not supervisory positions and therefore said positions are to be included in the

certified collective bargaining unit consisting of all regular fire fighters employed in the Fire Department of the Village of West Milwaukee, excluding supervisory personnel." 2/

9. That in May of 1969 the Chairman of the Public Relations Committee of Local 1417 wrote a letter to the Director of Safety and Security of Eex Chainbelt, Inc., West Milwaukee, Wisconsin, under Local 1417's letterhead, requesting the use of said Company's parking lot for the purpose of setting up a beer stand in conjunction with the July 4, 1969 celebration in West Milwaukee's County Park; that said Director of Safety and Security met with the Police Chief and, at the Police Chief's request, with the Chief, to discuss the request; that on May 23, 1969, the said Director of Safety and Security wrote a letter to said Public Relations Chairman denying the request, citing objections from the Police Chief to the potential of accidents to people from vehicles, and also stating that

"Fire Chief Harry Rydlewicz was disturbed that this request was sent to me without his knowledge. He said this was a violation of West Milwaukee Fire Department regulations covering unofficial public activities of the personnel of his department."

10. That subsequently two trustees of the Municipal Employer suggested that Local 1417 request that part of Mitchell Street in West Milwaukee be closed off so there would be no traffic problem; that on June 2, 1969, the Public Relations Chairman of Local 1417 wrote the Board of Trustees of the Municipal Employer requesting a permit for Local 1417 to sell beer, soda and food on the Fourth of July, 1969, and also requesting that a portion of West Mitchell Street be closed off to erect a booth; that in a meeting on the same date, the Board of Trustees referred the request to the Chief; that on June 4, 1969, a trustee of the Municipal Employer set a meeting on Local 1417's request for June 13, 1969, and sent copies to the Board of Trustees, the License Committee, to the Chief and to representatives of Local 1417; that in an unofficial meeting the Board of Trustees subsequently met with the Chief, who at said meeting opposed the granting of the permit, contending that "that the funds that would be used by this Local would be used against the Board [of Trustees]"; that at said unofficial meeting the Board of Trustees cancelled the scheduled June 13 meeting with Local 1417; that Local 1417's request for the permit and permission to block off a portion of West Mitchell Street was not granted; and that in a discussion between the Public Relations Chairman, Local 1417's Steward and the Chief, the latter informed that the beer stand, as proposed by Local 1417, would violate Fire Department Rule 36, which provides as follows:

"No member of the department shall represent the department at any social or public gathering without permission of the Fire Chief."

11. That the representatives of Local 1417 advised the Respondent Chief that the function would have no connection with the Fire Department, but that it concerned an activity solely of Local 1417; that the Chief stated that the rule still applied and that it would be unbecoming for Fire Fighters to engage in the sale

of beer, and that he felt that Local 1417 should have advised him prior to requesting permission for the beer stand; that Local 1417's Steward reminded the Chief (1) that for approximately the last five years Local 1417 has conducted a dance in the fall of the year in which the Fire Fighters dispensed beer, with the Chief, the Village Trustees and others in attendance without complaint, (2) that Local 1417 intended that Fire Fighters would be present at the stand only in their off hours, out of uniform, and that the beer booth sign would refer only to Local 1417 and not to the Fire Department, and (3) that in June of 1969, Captain Quandt sold beer from a stand on land of Rex Chainbelt, Inc. in conjunction with a carnival sponsored by the Lions Club; that in a discussion with the Steward of the Union, the Chief advised that the Lions Club had used their funds for charity, while Local 1417's receipts "will be used for attorneys' fees, and things like, that could be used against the Village in negotiations"; that on another occasion, the Chief advised the President of Local 1417, in objecting to the beer stand, that Local 1417 would use the money against him; that the Board of Trustees of the Municipal Employer denied Local 1417's request primarily because of the Chief's opposition; and that the Chief, in opposing Local 1417's request regarding a beer stand was motivated primarily by his opposition to lawful concerted fund-raising activity on behalf of Local 1417.

12. That on August 1, 1969, Fire Fighter James Pogorzelski was directed to report to the scene of a fire twenty-seven minutes prior to his scheduled starting time; that he performed such assignment as directed, and that upon his return to the station, requested of Captain Kargl overtime compensation for the twenty-seven minutes pursuant to Article VI of the contract; that Captain Kargl directed Pogorzelski to the Chief; and that later the same day the Chief called Pogorzelski into his office and inquired whether in fact Pogorzelski was requesting overtime; that the Chief stated that he could expect such a request from an "eight ball" but that he did not expect such a request from Pogorzelski; that Pogorzelski informed the Chief that overtime was required by the contract, to which the Chief responded that he did not have to follow the contract, but that he had to follow the rule book and State Statutes; that the Chief also warned that, if Pogorzelski filed a grievance in regard to the overtime claim, Pogorzelski would be responsible for opening "Pandora's Box", that there would be "some changes" and that the men would blame Pogorzelski; that nonetheless a grievance was filed by Local 1417 on August 2, 1969, claiming compensation for overtime pay for emergency overtime; that the Platoon Captain did not respond to the grievance in writing within fifteen days; as provided for by Article XVI of the collective bargaining agreement; that, instead, Captain Quandt asked Pogorzelski and Local 1417's Steward into his office, where Quandt informed Pogorzelski that the latter was making much to do about a small item, that it would be better if Pogorzelski withdrew the grievance, and that "things" had been going smoothly and the processing of the grievance could rile things up; that approximately a week later Captain Kargl again approached Pogorzelski requesting to discuss the grievance; that Captain Kargl said he was not attempting to intimidate Pogorzelski but that he desired to know why Pogorzelski was filing the grievance and he thought that Pogorzelski was making a lot of trouble over twenty-seven minutes of overtime; that Pogorzelski replied that if any employee could not file a grievance without management personnel trying to talk him out of it, "you have shot your grievance right out the window"; and that, nonetheless, Local 1417 continued to process the grievance until its ultimate written denial by the Chief on August 21, 1969 as follows:

"Rather than go into a lengthy desertation for my reasons of denial, I feel that since I had the opportunity to discuss the issue with the aggrieved party concerned, it will not be necessary to go into any further detail."

13. That within a few days Respondent Chief requested a meeting with the Executive Board of Local 1417 regarding Pogorzelski's grievance, which meeting was held on August 27, 1969; that the Chief asked each Executive Board member individually if they thought Pogorzelski should be paid overtime, and each member responded in the affirmative; that the Chief thereupon stated that because Local 1417 processed the grievance and forced him to recognize the contract to the letter, he would have to make certain changes, stated that roll call would be announced at 7:55 a.m., that there would be no early quitting on Sundays and holidays, that the men would be responsible for putting their own fire-fighting clothes away, and that all trades would require an explanation for the trade and require his approval; that toward the end of the meeting the Chief stated that another member of the Local 1417's Executive Board was a "better man" than its President; that also at said meeting the Chief announced "Special Order #4-69", which contained several specific changes including changing the time for the announcement of roll call from 8:00 a.m. to 7:55 a.m., adding roll calls on Sundays and holidays, and changing the procedure for the removal of fire-fighting clothing; that Local 1417 then filed a complaint in the Milwaukee County Circuit Court alleging that the Chief violated the collective bargaining agreement by changing the rules, but that said matter was finally settled when the Village Board directed the Chief to drop at least a portion of the new rules.

14. That on September 11, 1969, a notice was posted regarding the annual fall clothing inspection; that on October 13, 1969, Fire Fighter Robert Ammerman filed a grievance relating to the time set aside for the clothing inspection; that on the morning of October 14, 1969, Captain Wickert approached Ammerman and Local 1417's Steward, George Heuer, and ordered them to the Chief's office to discuss the grievance; that they objected, claiming that a conference was in violation of the grievance procedure, but were told that "the Chief wants to see you up there now"; that thereupon Ammerman and Heuer made the same assertion in the latter's office; that in the ensuing discussion the grievance was resolved, but then the discussion concerned itself with the relationship between the Chief and Local 1417; that Heuer stated that he did not think the Chief had authority to change the conditions of employment set forth in the collective bargaining agreement; that thereupon the Chief threatened to change the platoon schedules, the vacations and the paydays, and further stated that he did not understand how Local 1417's membership had elected Seebuch as the President of Local 1417 because Seebuch was not the type of person that could lead men.

15. That a few weeks later, the Chief changed the date of issuing pay checks from Thursday to Friday; that previously checks had been issued on Thursday, making it more convenient for off-duty men to pick up their pay check; that on October 20, 1969, the Deputy Clerk of the Municipal Employer sent an inter-office correspondence to all department heads, stating as follows:

"October 20, 1969

SUBJECT: PAYROLL CHECKS

We have been getting repeated calls from the bank regarding our payroll checks that have been cashed before the effective payroll date. In the future no checks will be distributed until the payroll date, which is every other Friday.

Carolyn Joerns,
Deputy Clerk"

16. That the Chief subsequently issued all checks on Friday instead of Thursday; that Seeburch first became aware of this change near the end of October or the first part of November 1969; that he then checked with the bank, where he was told that the bank had no complaints, and with the Clerk's Office, where he was told that the Chief could give out the checks whenever he desired; that Seeburch informed the Chief of his investigation, and that the Chief indicated he would look into the matter; and that the Chief then returned to the practice of issuing checks on Thursday.

17. That as Seeburch left the Chief's office after giving the Chief the above information, Captain Quandt called Seeburch to disclose a change in the method of computing vacation time which resulted in a substantial reduction in the amount of time Fire Fighters would receive for vacations in 1970 over what they had received in 1968 and 1969; that Seeburch objected to the change; that the decision to reduce vacation time was made by the Chief, without consultation with any representative of Local 1417 before the change was made; that on November 15, 1969, Seeburch's next workday, the vacation changes were posted on the bulletin board and platoon seniority was also posted; that the platoon seniority list indicated that commencing in 1970 Seeburch was shifted from Platoon Three to Platoon One; that upon noticing said changes, Seeburch contacted Captain Quandt by telephone, who advised that in addition to his change of platoons, Seeburch also was being switched from the duties of driver of Engine No. 1 to the duties of driver of Engine No. 2 and that Fire Fighter Koehn was being switched from Platoon One to Platoon Three, where Koehn would assume Seeburch's duties of driving Engine No. 1; that when Seeburch asked the reason for the change, Captain Quandt said that Fire Fighter Koehn was a specialist and that the Chief desired the change; and that on December 10, 1969, a notice was posted listing several other platoon changes, in addition to Seeburch's, for the year 1970.

18. That the following Fire Fighters perform specialized or specific functions, in addition to general maintenance and normal fire fighting duties; Dodge (Mechanic), Koehn (Gardener) and Curran (Boiler Room); that in 1969 Platoon One contained ten Fire Fighters (including specialists Dodge and Koehn), Platoon Two contained nine Fire Fighters with no specialists, and Platoon Three contained nine Fire Fighters, (including Curran and Seeburch); that in 1970, following the resignments, Platoon One contained nine Fire Fighters, (including Dodge and Seeburch), Platoon Two contained ten Fire Fighters with no specialists, and Platoon Three contained nine Fire Fighters (including Curran and Koehn).

19. That the Fire Department uses three basic pieces of apparatus: Engine No. 1 (a pumper); Engine No. 2 (a pumper also used as a rescue squad); and Aerial No. 1 (a ladder truck); that Engine No. 1 is the primary fire fighting apparatus at a fire, and is the first to arrive at a fire and the last to leave; that at the scene of a fire, it is the principal source of water, while Engine No. 2's role is that of an auxiliary or reserve piece of equipment; that the driver of Engine No. 1 at a fire has the responsibility of tending to that piece of equipment, including inspecting the gauges and water pressure; that the driver of Engine No. 1 rarely, if ever, is required to enter a burning structure; that the Captain of the platoon rides on Engine No. 1; that during a fire the Captain normally communicates with the driver of Engine No. 1 through a walkie-talkie; regarding regulation of line pressures and other matters; that traditionally the driver of Engine No. 1 has been promoted

to Lieutenant and in that regard, of the six past Lieutenants, four have been promoted thereto from the position of driver of Engine No. 1; that at least in the last twelve years no driver of Engine No. 1 has been transferred from that position to any position except Lieutenant; that the Fire Fighters consider a transfer to the position of Driver of Engine No. 1 as a promotion; that although there were other transfers from one platoon to another for 1970, only Seebruch and Koehn received changes in their work assignments, with Seebruch being changed to Koehn's assignment of Engine No. 2, and Koehn being changed to Seebruch's former assignment of driver of Engine No. 1.

20. That the 1969 Engine No. 1 driven by Seebruch was a 1965 Saegrave pumping engine; that Seebruch drove the same vehicle in 1970 when he was reassigned as driver of Engine No. 2; that a new pumper was purchased in 1970 which became Engine No. 1.

21. That the Fire Department maintains annual performance evaluation reports evaluating its Fire Fighters, containing the four ratings of "Unsatisfactory", "Needs Improvement", "Competent" and "Outstanding"; that in the year 1964, Seebruch's evaluation was "Needs Improvement"; that in Seebruch's evaluation reports 1965 through 1967 he was ranked "Competent"; that effective January 1, 1968 he was assigned to the position of driver of Engine No. 1; and that in the years 1968 and 1969 he also ranked "Competent"; and that during said two year period he was never criticized nor reprimanded by his platoon captain, and in fact was commended by Captain Kargl and was told he was doing an efficient job.

22. That the activities of the Chief and Captain Quandt, with respect to the formation of the West Milwaukee Fire Officers Association, and with respect to the withdrawal by Lieutenants from membership in Local 1417 and the revocation of their dues check-off in favor of Local 1417, were not motivated to, nor did such activities interfere, restrain and coerce, the Lieutenants involved in the exercise of their right to engage in lawful concerted activity on behalf of, and in, Local 1417, for the reason that at the time of the occurrence of such activities, said Lieutenants were deemed supervisory employees by both the Municipal Employer and its agents, as well as by Local 1417, as reflected in the Certification of Representatives issued by the Commission on April 19, 1963, following an election, wherein the Municipal Employer and Local 1417 had agreed to exclude the Chief, Captains, and Lieutenants from the unit of fire fighters.

23. That the activity of the Chief in opposing the request of Local 1417 to operate a beer stand, as reflected in paragraphs 9, 10 and 11, supra, interfered, restrained and coerced, and is interfering, restraining and coercing, employees in their right to engage in lawful concerted activity on behalf of Local 1417.

24. That the Chief in (a) threatening to, and in fact, changing the time for the announcement of roll call, adding roll call on Sundays and holidays, and changing the procedure for the removal of fire-fighting clothing; (b) threatening to change platoon schedules and threatening and, in fact, changing the vacation times and the paydays; and (c) removing Seebruch as driver of Engine No. 1 and assigning him to the position of driver of Engine No. 2 was motivated primarily to discourage the legitimate concerted activities of members of Local 1417 in processing grievances and in asserting their right to engage in concerted activities; and that such action by the Chief interfered, restrained and coerced employees in their right to engage in lawful concerted activity on behalf of Local 1417.

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

CONCLUSIONS OF LAW

1. That the activities of Respondent Harry Rydlewicz and Respondent Clarence Quandt, employed by the Village of West Milwaukee, Wisconsin, in the positions of Fire Chief and Fire Captain, respectively, with respect to the formation of the West Milwaukee Fire Officers Association and with respect to the withdrawal by the Lieutenants in the employ of the Fire Department of West Milwaukee, Wisconsin, from membership in West Milwaukee Professional Fire Fighters' Association, Local 1417, IAFF, and the revocation of their dues check-off in favor of said labor organization, did not interfere, restrain and coerce the Lieutenants involved in the exercise of their right to engage in lawful concerted activity on behalf of, and in, said labor organization; and, therefore, in said regard, said Respondents have not committed any prohibited practices within Section 111.70 of the Wisconsin Statutes.

2. That the activity of Respondent Harry Rydlewicz, as Chief of the Fire Department of the Village of West Milwaukee, Wisconsin, by applying fire department rule 36 and otherwise opposing the request of West Milwaukee Professional Fire Fighters' Association, Local 1417, IAFF, to operate a beer stand on July 4, 1969, interfered, restrained and coerced, and is interfering, restraining and coercing, employees in the employ of the Village of West Milwaukee, Wisconsin, in their right to engage in lawful concerted activity on behalf of said labor organization, and therefore, in that regard, Respondent Harry Rydlewicz has committed, and is committing, a prohibited practice within the meaning of Section 111.70(3)(a)1 of the Wisconsin Statutes.

3. That Respondents Harry Rydlewicz and Clarence Quandt, by discouraging the processing of grievances by firefighters James Pogorzelski and Robert Ammerman, in accordance with the grievance procedure set forth in the collective bargaining agreement existing between the Village of West Milwaukee, Wisconsin, and the West Milwaukee Professional Fire Fighters' Association, Local 1417, IAFF, by threats to change existing conditions of employment has interfered, restrained and coerced, and is interfering, restraining and coercing, employees in their right to representation, and thereby said Respondents have committed prohibited practices within the meaning of Section 111.70(3)(a)1 of the Wisconsin Statutes.

4. That Respondent Harry Rydlewicz interfered, restrained and coerced, and is interfering, restraining and coercing employees of the Village of West Milwaukee, Wisconsin, in their right to engage in lawful concerted activity on behalf of West Milwaukee Professional Fire Fighters' Association, Local 1417, IAFF, by (a) threatening to change, and in fact changing, the time for the announcement of roll call, adding roll call on Sunday and holidays and changing the procedure for the removal of fire-fighting clothing, (b) threatening to change schedules and, in fact changing the vacation times and the pay days, and (c) removing Delbert Seebruch, the President of such labor organization, as the driver of Engine No. 1 and assigning him to the position of Driver of Engine No. 2, has committed, and is committing, prohibited practices within the meaning of Section 111.70(3)(a)1 and 2 of the Wisconsin Statutes.

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

ORDER

IT IS ORDERED that Respondents Harry Rydlewicz and Clarence Quandt, as well as any other agent of the Village of West Milwaukee, Wisconsin, shall immediately:

1. Cease and desist from

- (a) Applying departmental rules or otherwise preventing employees from participating in protected employee fund-raising activities.
- (b) Threatening employees with changes in benefits or other working conditions as a result of their desire to process grievances or to engage in other protected concerted activity or otherwise interfering with, restraining or coercing their employees in the exercise of their rights under Section 111.70(2) of the Wisconsin Statutes.
- (c) Discriminatorily changing benefits or working conditions of any of its employees because of the processing of grievances or other lawful concerted activity on behalf of West Milwaukee Professional Fire Fighters' Association, Local 1417, IAFF, or any other labor organization, or discriminatorily reassigning employees to other job duties, or in any other manner discriminating against employees affecting their terms and conditions of employment, for the purpose of discouraging membership in, or activity on behalf of, West Milwaukee Professional Fire Fighters' Association, Local 1417, IAFF, or any other labor organization.

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

- (a) Immediately add to the 1971 vacations earned by employees of the Fire Department the number of vacation days lost by said employees in 1970 due to the action of Respondent Harry Rydlewicz in reducing the 1970 vacation benefits;
- (b) Immediately offer to Delbert Seabrich the position of driver of Engine No. 1 with the same rights and privileges previously enjoyed by him in that position;
- (c) Notify all of the fire fighting employees, by posting in conspicuous places where notices to fire fighting employees are usually posted, and where all fire fighting employees may observe them, copies of the Notice attached hereto and marked "Appendix A." Copies of such Notice shall be prepared by the Fire Chief, and shall be posted immediately upon the 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 Fire Chief to insure that said Notices are not altered, defaced or covered by other materials.

V(d) 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.

Given under our hands and seal at the City of Madison, Wisconsin, this 27th day of October, 1971.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Joe B. Kirkman, Commissioner

NOTICE TO ALL FIRE DEPARTMENT EMPLOYEES OF THE
VILLAGE OF WEST MILWAUKEE, WISCONSIN

APPENDIX "A"

Pursuant to the Order of the Wisconsin Employment Relations Commission and in order to effectuate the policy of Section 111.70, Wisconsin Statutes, we hereby notify our fire fighting employees that:

WE WILL immediately offer to Delbert Seebach, the position of driver of Engine No. 1, with the same rights and privileges he previously enjoyed.

WE WILL immediately add on to the fire fighting employees' 1971 vacations the number of vacation days lost by the employees in 1970 due to the action of the Fire Chief in reducing vacation benefits.

WE WILL NOT discriminatorily change benefits or working conditions, or make job assignments or change job duties, of any fire fighting employee because of his concerted activity in the processing of grievances or in other concerted activity, or otherwise discriminate against our fire fighting employees in any manner pertaining to the terms and conditions of their employment, for the purpose of discouraging membership or activities on behalf of West Milwaukee Professional Fire Fighters' Association, Local 1417, IAFF, or any other labor organization.

WE WILL NOT threaten fire fighting employees with changes in benefits or working conditions if they process grievances or engage in other legal concerted activity on behalf of West Milwaukee Professional Fire Fighters' Association, Local 1417, IAFF, or otherwise interfere with, restrain or coerce our fire fighting employees in the exercise of their rights of self-organization, affiliation and representation under Section 111.70 of the Wisconsin Statutes.

Harry Rydlewicz, Fire Chief

Clarence Quandt, Captain

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.

Respondents.

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

Complainant West Milwaukee Professional Fire Fighters' Association, Local 1417, International Association of Fire Fighters, hereinafter referred to as Local 1417, and its President, Delbert Seabruch, alleged in the complaint that Respondents Fire Chief Harry Rydlewicz and Captain Clarence Quandt in the employ of the Fire Department of the Village of West Milwaukee, hereinafter referred to as the Municipal Employer, engaged in prohibited practices within the meaning of Section 111.70, Wisconsin Statutes. The complaint alleged that Local 1417 was the exclusive bargaining representative of all non-supervisory employees of said Fire Department, and that the positions of Lieutenant in the employ therein are non-supervisory positions, and are therefore included in the certified collective bargaining unit. The complaint further alleged the following:

"6. The Respondents have engaged in a course of conduct which individually in its totality has tended to interfere with, restrain and coerce the bargaining unit employees in the exercise of their rights provided in Wis. Stats., Sec. 111.70 (2), and has tended to discourage membership in Local 1417 by virtue of discrimination in regard to tenure and other terms or conditions of employment; the said course of conduct including the following:

(a) The transfer of Complainant, Delbert Seabruch by Chief Harry Rydlewicz from driver of Engine No. 1 to driver of Engine No. 2 because of his union activities.

(b) Threats by Chief Harry Rydlewicz to union members that he is not bound by the collective bargaining agreement and insistence by employees on their contractual rights would result in reprisals, including the following:

(i) Changes in roll call and inspection procedures by Chief Harry Rydlewicz;

(ii) Change of the method of allocating the amount of vacation to which each employee is entitled by Chief Harry Rydlewicz;

(iii) Threats by Chief Harry Rydlewicz to change the day employees are paid from Thursday to Friday.

(c) Attempts by Chief Harry Rydlewicz and Captain Clarence Quandt to undermine Local 1417 as the exclusive bargaining representative of all non-supervisory employees of the Village of West Milwaukee Fire Department by attempting to form a separate bargaining unit for Captains and Lieutenants, and unilaterally taking Lieutenants off dues check-off.

(d) Attempts by Chief Harry Rydlewicz to influence the Village Board of the Village of West Milwaukee to deny to Local 1417 permission to engage in lawful fund raising activities."

The complaint demanded that Respondents Rydlewicz and Quandt be found to have violated Section 111.70 (3)(1) and (2), Wisconsin Statutes, and as relief demanded

"that Respondents be ordered to reinstate Complainant, Delbert Seebuch, as the driver of Engine No. 1; that Respondents be ordered to cease and desist from interference, restraint and coercion of the employees in the exercise of their protected rights; that Respondent's be ordered to post copies of said report on all bulletin boards regularly used by and referred to members of the bargaining unit; and for such other and further relief as the Commission deems appropriate under the circumstances."

Although the complaint did not name the Village of West Milwaukee as a respondent, the Village through its agents received notice of and participated in all proceedings.

In their Answer, the Respondents denied the allegations in paragraph 6 of the Complaint, except that, with respect to sub-paragraph (a), Respondents admitted "that when Engine No. 1, which Delbert Seebuch was assigned to driving, was re-numbered and designated as Engine No. 2, Delbert Seebuch continued to be assigned to driving this specific piece of equipment."

As an affirmative defense, Respondents alleged that at all times material to these proceedings there was in existence a collective bargaining agreement between the Local 1417 and the Village of West Milwaukee, which was applicable to the individual Complainants, that the collective bargaining agreement provides a method of resolving grievances, including those matters alleged in the complaint herein, and that plaintiffs had not exhausted their remedies under said grievance procedure.

The matter was heard October 1, 1970. Complainants filed their initial brief December 17, 1970, Respondents filed an answering brief January 4, 1971 and Complainants filed a reply brief January 21, 1971.

STATUTES INVOLVED

"111.70

(2) **RIGHTS OF MUNICIPAL EMPLOYEES.** Municipal employees shall have the right of self-organization, to affiliate with labor organizations of their own choosing and the right to be represented by labor organizations of their own choice in conferences and negotiations with their municipal employers or their representatives on questions of wages, hours and conditions of employment, and such employees shall have the right to refrain from any and all such activities.

(3) **PROHIBITED PRACTICES.** (a) Municipal employers, their officers and agents are prohibited from:

1. Interfering with, restraining or coercing any municipal employee in the exercise of the rights provided in sub. (2).

2. Encouraging or discouraging membership in any labor organization, employee agency, committee, association or representation plan by discrimination in regard to hiring, tenure or other terms of employment."

POSITION OF COMPLAINANTS

Local 1417 makes the following arguments:

1. The Chief's termination of the Lieutenants' dues check-off privileges and Captain Quandt's solicitation of the Lieutenants, with the Chief's approval, to join an officers' association, interfered with the right of the Lieutenants to be represented by the labor organization of their own choice. It especially emphasizes the secret ballot vote by the Lieutenants in favor of Local 1417 even after they had formally requested withdrawal of their membership cards to join the officers' association.

2. The Municipal Employer prevented Local 1417 from engaging in legitimate fund-raising activities (the proposed July 4 bear stand), and in so doing interfered with the employees' concerted activity.

3. The Chief and Captain Quandt attempted to interfere with, restrain and coerce the employees in their utilization of the grievance procedure, and in so doing interfered with the employees' right to be represented.

4. The Chief threatened employees and made unilateral changes in working conditions in retaliation for the Local 1417's and employees' attempts to enforce their contract through the grievance procedure, and these actions also constituted prohibited practices.

5. The Chief's removal of President Seabruch from driver of Engine No. 1 to driver of Engine No. 2 was a discriminatory action, calculated to undermine the Local 1417, as well as interference with protected employee rights. Local 1417 argues that the reasons for the change given by the Municipal Employer were pretexts, the reassignment was a de facto promotion, and that at least one of the motivating factors behind the reassignment was Seabruch's concerted activities and the status of Local 1417 as the representative of the employees.

In conclusion, Local 1417 argued that, "The record in this case presents a typical but aggravated picture of the public employer who is confronted for the first time with its employees attempting to exercise their statutory rights of self representation and determination in an effective and real way." It argued that the record demonstrates "flagrant violation" of employee rights, and it requested appropriate injunctive and remedial orders.

POSITION OF THE RESPONDENTS

The Respondents, with respect to the decision to remove Seebruch as the driver of Engine No. 1, maintain that it was a "management decision" and not bargainable, and counsel states that "We question the wisdom and the authority" of the WERC to order the Respondents to make Seebruch the driver of Engine No. 1. Respondents also argue that the violation of the provisions of a collective bargaining agreement is not a prohibited practice under the provisions of Section 111.70, and that threats of reprisal against an employee who insists on his contractual rights is therefore not a prohibited practice under Section 111.70.

With respect to the efforts of Captain Quandt to form an officers' association, Respondents state that, "Captains and lieutenants have the right to organize and to seek to form their own collective bargaining unit. They also have the right to have their collective bargaining representative deal with their employer. This issue has been thrashed out in other proceedings before the WERC."

Respondents further argue that "dues check-off is a matter for negotiation, not order by the WERC."

Finally, the Respondents dispute the contention that the Chief interfered with the Union's fund-raising activities, and argues that the decision to deny the beer permit was based on traffic considerations and the Chief had little or nothing to do with the ultimate decision.

DISCUSSION

Revocation of Dues Checkoff and Employer-Dominated Officers Association

The Chief first testified that he had "nothing to do" with termination of the check-off privileges of the Lieutenants, and that this decision was solely between the Village Clerk and the employees in question. However, he subsequently contradicted himself in stating that he "discussed it" with the Village Clerk's Office. Moreover, he ultimately admitted that he initiated the conversation with the Clerk's Office, and that he advised the Deputy Clerk that the Officer Personnel Code makes no provision allowing the check-off of dues for Lieutenants. He also testified that he "can't recall" whether he told her anything else. We conclude that the Chief was primarily responsible for the termination of the Lieutenants' check-off privileges. The Chief was not a reliable or credible witness, contradicting himself on numerous occasions. He relied on the Officers' Personnel Code in causing the check-off privileges to be terminated, but that Code was in effect on January 1, 1969 and the check-off terminations did not occur until approximately six months later, after there had been serious disputes between the Chief and Local 1417.

The above events occurred at about the same time Captain Quandt was forming the West Milwaukee Officers Association, with the Chief's approval, and was soliciting membership of the Lieutenants. On August 15, 1969, Captain Quandt wrote a letter to the Board of Trustees of the Municipal Employer requesting recognition of the Association and stating that the arrangement had the approval of the Fire Chief. Three and four days later the five Lieutenants wrote Local 1417 requesting to withdraw their membership card from Local 1417, and one of the letters stated that the purpose for the request was to enable the Lieutenant to join the newly formed West Milwaukee Fire Officers Association. Three of the letters were written under letterhead of the West Milwaukee Fire Department.

The claimed purpose of forming the Officers Association was to seek representation for bargaining with the Municipal Employer. The Association was initiated and created by supervisory employees, and was approved and dominated by the Fire Chief as well as the supervisory Captains. It is an admitted fact that Captain Quandt, a supervisory employee, actively solicited membership of the Lieutenants.^{3/} Assuming that the Commission was satisfied by the actions of the Chief and Captain Quandt that the Lieutenants were coerced to withdraw from Local 1417, to revoke their checkoffs therein and into joining the Officers Association, we could not find that such activity by the Respondents constituted unlawful interference, restraint and coercion of the Lieutenants since at the time of the occurrence of such activity, the Lieutenants were deemed supervisory employees, as reflected in the Certification of Representatives issued by the Commission following an election conducted among fire fighters in the employ of the Fire Department. The unit involved in that election was established by the agreement of the parties, wherein they had agreed to exclude from the eligibles, the Lieutenants, as well as the Captains and the Chief, as supervisory personnel. Supervisory personnel have no rights to engage in concerted activity under Section 111.70. The collective bargaining agreement executed following the certification of Local 1417 as the bargaining representative of the Fire Fighters and Fire Inspectors in the employ of the Fire Department, which agreement became effective January 1, 1969, and was to remain in effect to December 31, 1970, covered the "wages, hours of work and working conditions for all Fire Fighters and Fire Inspectors." Furthermore, the agreement, in Article VII, entitled "Wages" covered the wages of only the "Fire Fighters and Fire Inspectors." It was only after the revocation of their check-offs by the Lieutenants, and the formation of the Officers Association, did Local 1417 contend that Lieutenants were employees entitled to be in the bargaining unit, and subsequently the Commission did make a determination that the Lieutenants were employees, and not supervisors, and they chose to be represented by Local 1417. Under the timing of such circumstances we cannot deem that such activity by the Chief and Captain Quandt constituted a prohibited practice. Had the Lieutenants not been considered supervisors by the parties at the time of the occurrence of said events, our conclusion might have been the opposite.

Bear Stand Incident

The Chief, by protesting that the funds raised by a bear stand at a Fourth of July celebration could be used by Local 1417 against

^{3/} None of the Lieutenants were called as witnesses, either by Local 1417 or the Respondents.

the Municipal Employer and against him, was successful in causing the Board of Trustees of the Municipal Employer to deny Local 1417's request to close off a portion of a street and for a permit permitting such a beer stand.

The Chief relied in part on Rule 36 of the West Milwaukee Fire Department, which provided that "No member of the department shall represent the department at any social or public gathering without permission of the Fire Chief." However, his reliance of this rule was misplaced. First, under Local 1417's request for a beer stand the Fire Fighters would have been representing Local 1417, their Union, and not the department. The employees would have been off duty and out of uniform, and the sign would have clearly designated Local 1417 rather than the department as the beer stand sponsor. Secondly, even if the rule did prohibit union activity of this nature, the rule would be improper and a prohibited practice as applied. Fund raising on off-duty hours is a protected union activity under Section 111.70, and interference with such activity is a prohibited practice. A municipal employer may not control or prevent lawful concerted activities, carried on under the name of the union and not under the name of the municipal employer. Labor organizations, like other service organizations, require funds to effectively perform their function. When the legislature guaranteed municipal employees the right to be represented, it surely intended the right to effective representation. If an employer could reduce or eliminate a union treasury by prohibiting fund-raising activities of a labor organization which are unrelated to the job, it could interfere with the employees' right to representation in a way in which the statute was intended to prohibit. We conclude that when a municipal employer, through departmental rules or other means, prevents a union from engaging in permissible fund-raising activities, it is clearly interfering with the employees' right to representation. Rule 36 was here applied to prevent protected fund-raising activities, and as applied, the rule is invalid.

The evidence is clear that the Chief's reason for opposing the Union's requested beer stand was for the purpose of denying the Union the opportunity to increase its resources. The Chief asserted this to the Village Board and admitted it to Union members. Moreover, when one of the Fire Captains sold beer from a beer stand in conjunction with a Lions Club event, the Chief stated that this was proper because the Lions Club funds were used for charity, while the Union's funds would be used for attorneys' fees and "other things" that could be used against the Village in negotiations. Moreover, in past years, prior to strong union activity, the Chief had permitted Fire Fighters to conduct a dance at which beer was served without complaint. While some effort was made to show that the Local 1417 requests were denied because of the Police Chief's opposition because of the traffic problems involved, a thorough review of the record convinces us that the primary reason for the refusal of the Union requests by the Village Board was the Fire Chief's opposition, and the primary motivating factor of the Fire Chief was his opposition to legitimate fund-raising activity on behalf of Local 1417.

Interference and Coercion in Grievance Process;
Threats and Changes in Working Conditions

Local 1417 signed its first contract with the Municipal Employer on March 17, 1969 and from the beginning the Chief made obvious his

distaste for the contract and the procedures set forth therein. Under the contract the Fire Fighters gained certain rights which they had not had in the past, including a grievance procedure, time and one-half for overtime under certain conditions and other rights.

Yet when the employees attempted to exercise the grievance procedure, the Chief and Captain Quandt interfered with and coerced the employees in their processing of grievances. When Fire Fighter James Pogorzelski made a claim for overtime payments under the contract, the Chief called him into his office and threatened changes in working conditions if he filed a grievance. When the grievance was filed, there was no written response as provided in the grievance procedure; rather, two Captains on two separate occasions approached Pogorzelski, outside of the grievance procedure, in an attempt to talk him into dropping the grievance. A few days later the Chief called a meeting with the Executive Board of Local 1417 regarding Pogorzelski's grievance and asked each member individually whether he thought Pogorzelski should have gotten overtime pay. When each member responded affirmatively, the Chief said that he would have to make certain changes, and issued "Special Order #4-69," which contained several specific changes including changing the time for the announcement of roll call, adding roll calls on Sundays and holidays, and changing the procedure for the removal of fire-fighting clothing.

On October 13, 1969, Fire Fighter Robert Ammerman filed a grievance relating to a change in time for clothing inspection. The following morning the Chief ordered the grievant and the Union Steward into the Chief's office to discuss the grievance. When the Union representatives told the Chief the meeting was in violation of the grievance procedure, the Chief ignored that fact and insisted on discussing it anyway. In the same meeting the Steward told the Chief that he did not have authority to unilaterally change conditions of employment set forth in the contract, whereupon the Chief threatened to change the platoon schedules, the vacations and the paydays. In that same meeting the Chief stated that he did not see how the Union could elect Seebuch as their President, because he was not the type of person that could lead men. Subsequently, the Chief changed the paydays from Thursday to Friday, thereby making it more difficult for off-duty men to receive their check; changed the method of computing the vacation time, resulting in a substantial reduction in the amount of time Fire Fighters would receive for vacations in 1970 over what they had received in 1968 and 1969.

When a grievance procedure is established by contract, the right to process grievances without coercion or interference along the way from an employer is a fundamental right included within the employees' right to representation. In this case the Chief and both Captains attempted to restrain, coerce and interfere with the employees' processing of grievances, and in so doing, we conclude, they interfered with, restrained and coerced their employees in their rights of representation.

Moreover, the Chief made several threats and actual changes in working conditions outlined above, and it is clear from the testimony and the entire record that in said regard the Chief was motivated by the employees' attempts to enforce their contractual rights. The Chief did not deny making these threats or the changes, nor did he deny the motive attributed to him. These threats and unilateral changes flagrantly interfered with the employees' rights, and if the Chief were allowed to continue in this course of conduct he could thoroughly

discourage protected concerted activity.. The rights of self-organization, affiliation and representation are hollow rights indeed if an Employer can change working conditions as a penalty for employees' attempts to enforce their contractual rights. We conclude that in making these threats and changes the Chief was motivated, in whole or in part, by his desire to retaliate against the employees for their legitimate concerted activity in processing grievances.

The Municipal Employer argues that since it is not a prohibited practice under Section 111.70 to violate a collective bargaining agreement, it is therefore also not a prohibited practice to threaten reprisals against an employee who insists on his contractual rights. We reject this contention. Regardless of whether the collective bargaining agreement actually was violated or whether this agency has no jurisdiction over contract violations, it is nonetheless a prohibited practice to threaten reprisals or otherwise interfere with, restrain and coerce an employee in the exercise of his right to engage in protected concerted activities such as being represented by a union in the processing of grievances.

With respect to the actual changes made, a Union representative testified that "Special Order #4-69" was dropped by the Village Board of Trustees as part of a settlement wherein the Union agreed to drop a circuit court action brought against the Village.^{4/} The Chief testified that only the portion of the Special Order relating to Sunday and holiday roll call was dropped. In any event, there appears to have been a settlement of the dispute, and the Union makes no claim here that the Municipal Employer should be directed to rescind any portion of that Special Order. It also appears from the record that the Chief subsequently returned to the practice of issuing pay checks on Thursday rather than on Friday so that no remedial order is necessary on that subject. However, it does not appear that the vacation days lost by the Chief's unilateral changes have been restored, and the order directs the Respondents to add on to the Fire Fighters' 1971 vacations the number of vacation days lost by the employees in 1970.

Reassignment of Union President Seeburch

Seeburch was the Union President during the period involved here, and it was he who took the brunt of the Chief's hostility toward the employees' concerted activities. This hostility culminated in Seeburch's reassignment for 1970 from driver of Engine No. 1 to driver of Engine No. 2.

^{4/} On November 26, 1969, Local 1417 filed a written grievance protesting the removal of Seeburch as driver of Engine No. 1 and his reassignment as driver of Engine No. 2. At approximately the same time Local 1417 also commenced an action in the Circuit Court of Milwaukee County challenging the transfer on the grounds that it was in violation of Section 111.70, Wisconsin Statutes; that the Wisconsin Employment Relations Commission filed a brief amicus curiae in the Circuit Court proceedings contending that the Circuit Court lacked jurisdiction in the matter. On July 7, 1970 the Circuit Court dismissed the action, concluding that the Wisconsin Employment Relations Commission is vested with the exclusive jurisdiction to determine alleged prohibited practices and the Court was without jurisdiction in the action. The instant proceedings were instituted following the Circuit Court's decision that it lacked jurisdiction.

The Chief and Captain Quandt claimed that the transfer was not really a transfer to a lesser position, since Seebbruch was driving the same truck in 1970 which he drove in 1969. This contention is contrary to the evidence since the truck Seebbruch was driving was also designated Engine No. 2 when the Village bought a new one and gave it Engine No. 1 status. The heart of the controversy, of course, is not which truck he drove, but what position he occupied.

There is no question from the record that the position of driver of Engine No. 1 is the most desirable position in the Fire Department below the rank of Lieutenant. The Fire Department uses three pieces of apparatus: Engine No. 1 (a pumper); Engine No. 2 (a pumper also used as a rescue squad); and a ladder truck. Historically, the driver of Engine No. 1 has been promoted to Lieutenant. Of the past six Lieutenants, four have been promoted from the position of Engine No. 1, and among the Fire Fighters a transfer to the position of driver of Engine No. 1 is considered a promotion. For at least twelve years no driver of Engine No. 1 has been transferred from that position to any position except Lieutenant. The driver of Engine No. 1 has a more responsible position than other Fire-Fighting employees. Engine No. 1 is the primary fire-fighting apparatus at a fire, and is the first to arrive at a fire and the last to leave. The driver of Engine No. 1 has the responsibility of tending to that piece of equipment at the fire, including watching the gauges and water pressure. Engine No. 1 is the principal source of water at the scene of a fire, while Engine No. 2's role at fires is that of an auxiliary or reserve piece of equipment. The driver of Engine No. 1 rarely, if ever, is required to enter a burning structure.

The Chief also claimed that Seebbruch's transfer was a routine reassignment to equalize the work load, but this contention is not supported by the evidence and we conclude it is a mere pretext. Captain Quandt's alleged reason was that he had complaints from men about the work load resulting from the fact that there were two specialists on one shift. However, Captain Quandt could not say for sure what he heard or who said it, and he made no investigation to ascertain whether there was in fact any problem. Two of the persons whom he specifically named as making such complaints denied them, and their testimony is credited over that of Captain Quandt's whose entire testimony on this question was vague and evasive. Moreover, we have thoroughly examined the alleged "problem" of having two specialists together and any problem would appear to be aggravated rather than alleviated by the reassignment. In 1969 the first platoon (with Specialist Koehn) had two specialists and ten Fire Fighters, and in 1970 the third platoon also had two specialists (including Koehn) but had only nine Fire Fighters rather than the ten Fire Fighters accompanying two specialists in 1969.

We can also give little weight to the Respondents' argument that Seebbruch's driving reassignment was just a routine change along with twenty other Fire Fighters who had their assignments changed. Seebbruch, along with Koehn who took his place, were the only persons whose assignments or fire-fighting duties were changed. Twenty Fire Fighters had their platoon assignments changed, but not their fire-fighting duties as Seebbruch did. Everyone but Seebbruch and Koehn, who switched driving assignments, had the same duties as previously, except they worked on a different platoon. We conclude that it was no coincidence that the one man whose reassignment required a change to more onerous duties was the Union President.

Respondents contend that Seebuch's performance was unsatisfactory, but an examination of the evidence leads to the opposite conclusion. The annual performance evaluation reports of the West Milwaukee Fire Department contains the four rankings of "Unsatisfactory", "Needs Improvement", "Competent" and "Outstanding". In the year 1964 Seebuch's evaluation was "Needs Improvement" but from 1965 through 1967 he was ranked "Competent." Moreover, Seebuch apparently was competent enough to be assigned the position of driver of Engine No. 1 starting in the year 1968, so evaluation reports prior to that date as ruled by the trial judge in the circuit court case, are too remote to be of any significance. In the years 1968 and 1969 Seebuch was ranked "Competent" as driver of Engine No. 1, and there was not a shred of evidence that Seebuch's performance was unsatisfactory in this position. He was never criticized nor reprimanded by his platoon Captains, and in fact he was commended by Captain Quandt and was told he was doing an efficient job. We find on the basis of the record that Seebuch was a competent driver of Engine No. 1 prior to his reassignment as driver of Engine No. 2. His driving assignment was changed, not because of his unsatisfactory performance, but because of his union activities.

The timing also demonstrates that the reassignment was taken in retaliation for the Union activity. Seebuch was an active union president, and he had constant difficulties and disagreements with the Chief and Captain Quandt since the date the first collective bargaining agreement was signed in March of 1969. On at least two occasions the Chief had made disparaging remarks about Seebuch in his role as Union President. The pay check incident involving Seebuch occurred in the latter part of 1969; on the same day Captain Quandt showed Seebuch the new vacation schedule for 1970, and Seebuch objected. On the next day Seebuch received word of his reassignment.

The Employer argues that the decision to reassign Seebuch as driver of Engine No. 2 is a management decision and is not bargainable. The question of whether such a reassignment is bargainable, however, misses the point. Regardless of whether such a reassignment is bargainable, if the reassignment was made because of the employee's union activity, it is prohibited by Section 111.70.

In view of all of the foregoing facts, and in view of the Chief's overall conduct, it can only be concluded that the reassignment of Union President Seebuch from driver of Engine No. 1 to the less desirable position of driver of Engine No. 2 was motivated primarily, and certainly at least in part 5/ by Seebuch's active role as Union President in participating in protected union activity. Testimony to the contrary, considering the record as a whole, is not credited. The reasons given by the Chief and Captain Quandt for the reassignment were pretexts. Under such circumstances we find Respondents Chief Rydlewick and Captain Quandt, by reassigning Seebuch from driver of Engine No. 1 to driver of Engine No. 2, discriminated against Seebuch because of his union activities, and accordingly committed prohibited practices within the

5/ The Supreme Court has stated that no matter how many other valid reasons exist for firing an employee, a discharge is unlawfully discriminatory and in violation of Section 111.70 if one of the motivating factors is the employee's union activities. Muskogee-Norway Consolidated Schools Joint District No. 9, et al. v. WERN, 35 Wis. 2d, 5/40, 150 N.W. 2d, 617 (1967). For a case condemning a reassignment which was wholly, or in part motivated by protected union activities, see Milwaukee Board of School Directors, Dec. No. 9242-A, 9/70 (H.E.), Aff'd. in pertinent part by Decision No. 9242-B, 4/71.

meaning of Section 111.70, Wisconsin Statutes. In addition to a cease and desist order, we are ordering herein that Seebruch be offered the position of driver of Engine No. 1, with the same rights and privileges he previously enjoyed.

To remedy the violations of Section 111.70 which have been committed, we are herewith issuing an appropriate cease-and-desist order as well as a remedial order requiring affirmative action.

Dated at Madison, Wisconsin, this 27th day of October, 1971.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Morris Slavney
Morris Slavney, Chairman

Jos. B. Kerkman
Jos. B. Kerkman, Commissioner