

PROFESSIONAL POLICEMEN'S PROTECTIVE
ASSOCIATION,

Complainant,

vs.

UNIVERSITY OF WISCONSIN-MILWAUKEE,

Respondent.

No. 9921-A

4. That the State Employer maintains a Department of Campus Protection and Security and in said department employs Police Officers and Security Officers; that Police Officers have powers of arrest, while Security Officers do not; that there are fourteen Police Officer positions and six positions having supervisory authority over Police Officers; that at all times material herein the two highest supervisory positions, Police Chief and Police Lieutenant, were vacant; that at all times material herein the following four persons were the supervisors of Police Officer personnel: Donald Moratz (Acting Police Chief and Police Sergeant), James Briesemeister (Police Detective), Kenneth Lawson (Police Sergeant), and Frank Springob (promoted to Police Sergeant on May 3, 1970); that of the fourteen authorized Police Officer positions, only seven to eight positions were filled at the times material herein; that the Police Officers occupying these positions were George Carey, Arvid Heimann, Jerome James, Anthony Jones (terminated as Police Officer 6-27-70), Gerald Kelly, William Kiekow, John Niemczyk, and George Panich (terminated 5-30-70).

5. That at all times material herein Local 82 was the certified exclusive collective bargaining representative of "all employees of University of Wisconsin-Milwaukee, including stock clerks and storekeepers, but excluding clerical employees, library assistants, supervisors, managerial and confidential employees, administrative assistants, professional and limited term employees, and all craftsmen, consisting of sheet metal workers, carpenters, electricians, painters, plumbers and steamfitters"; that employees classified as Police Officers are included in said unit, while the Police Sergeants and Police Detective are excluded from the unit as supervisors; that Local 82 and the State Employer are parties to a collective bargaining agreement covering employees in the aforementioned collective bargaining unit, effective March 16, 1970, through March 15, 1972.

6. That the PPPA was initiated by Police Officer Gerald Kelly and held its first meeting on Sunday, April 5, 1970; that at said meeting Officer Kelly was elected President of the PPPA, Detective Briesemeister was elected Vice President and Police Officer Springob (promoted to Sergeant on May 3, 1970) was elected Secretary-Treasurer; that at all times material herein other members of the PPPA included Acting Chief Moratz, Sergeant Lawson and Police Officer Heimann; and that Acting Chief Moratz and Sergeant Springob also were members of Local 82.

7. That on April 14, 1970, Police Officer Kelly, on behalf of the PPPA, filed an election petition with the Wisconsin Employment Relations Commission requesting an election among the eleven Police Officers and Sergeants then employed in the Department of Campus Protection and Security of the State Employer; that at the hearing on said petition on June 8, 1970, Detective Briesemeister and Officer Kelly made appearances for the PPPA and participated in its behalf; that the State Employer and Local 82 appeared in opposition to said petition; that on July 24, 1970, Detective Briesemeister and Sergeant Springob, as well as Officer Kelly, signed a brief submitted to the Wisconsin Employment Relations Commission on behalf of the PPPA; and that on September 15, 1970, the Commission dismissed the election petition on the basis that the present collective bargaining agreement between Local 82 and the State Employer constituted a bar to the election and as a result no question of representation existed.

8. That on July 10, 1970, Local 82 filed a complaint of prohibited practices against the State Employer alleging that by certain actions of its supervisors in the Department of Campus Protection and Security, including supervisory participation in the PPPA, the State Employer

violated Sec. 111.84 (1)(a), (b) and (c), Wisconsin Statutes; that hearing on said complaint was conducted on September 10, 1970, before the undersigned as Examiner; and that the undersigned, on April 30, 1971, dismissed the complaint on the basis that no prohibited practices had been committed by the State Employer.

9. That responsible labor relations representatives of the State Employer did not have knowledge of the existence of the PPPA until the receipt of the representation petition filed by the PPPA; that on August 18, 1970, following the hearing on the representation petition and following the filing of the prohibited practices complaint referred to Finding No. 7, the Coordinator of Employment Relations for the University of Wisconsin issued the following memorandum:

"TO. University Departments

FROM: G. Thomas Bull, Coordinator
University Employment Relations

DATE: August 18, 1970

Concern has been expressed with situations where supervisory, managerial, and confidential personnel are active in the same labor union of which employees they supervise are members or which is the certified bargaining agent for the employees they supervise.

Supervisors excluded from a certified bargaining unit are not covered by the State Employment Labor Relations Act (SELRA) in the definition of state employee [S. 111.81 (12)]. Therefore, they do not have the same right to 'form, join, or assist labor organizations' as employees covered by SELRA and in the bargaining unit do. S. 111.84 (1) (b) has a provision that protects the State from prohibited practice charges if a supervisor is allowed to be an 'active member or officer', but this language does not mean the State must allow the supervisor to be active in a union.

Supervisors are expected to represent the policy and person of the State as an employer in the labor-management relationship. For a supervisor to be active in a union with which he must often deal adversely is a conflict of interest that cannot be allowed to exist if the labor-management relationship is to be a sound one.

Therefore, it is the policy of the University of Wisconsin that operating units should require all supervisors and managerial personnel to be free of any active role as a member or officer of the union that is the collective bargaining agent for the employees they supervise or of any other union that alleges to represent such employees."

That on August 19, 1970, the Director of Personnel of the University of Wisconsin-Milwaukee sent copies of the above memorandum to all supervisors in the Department of Campus Protection and Security, along with the following cover letter:

"The University of Wisconsin-Milwaukee was recently charged with the violation of certain 'prohibited practices' under the State Employment Labor Relations Act, or specifically, Sec. 111.84 Wis. Stats. The filing of these charges prompted, in part, the need for the development of a University of Wisconsin policy concerning union activity by supervisory and managerial personnel of the University, a copy of which is attached.

Although the attached policy statement is not intended, in any way, to reflect the accuracy or inaccuracy of the allegations pending before the Wisconsin Employment Relations Commission, you are hereby informed that the following specific activities by supervisory and managerial personnel of the University are now prohibited:

1. The encouragement or discouragement of membership in any labor union.
2. A role in the development of policy or organization of any labor union.
3. The holding of office in any labor union.

If you have any further questions concerning this matter, please contact me at your convenience.

Sincerely,

Jack Hatzke
Director of Personnel"

10. That on August 24, 1970, Mr. Kelly sent the following letter to the Coordinator of Employment Relations for the University of Wisconsin:

"Mr. G. Thomas Bull, Coordinator
University Employment Relations
Office of University Personell (sic) Director
1670 Van Hise Hall
1220 Linden Drive
Madison, Wisconsin 53706

Dear Sir:

This is to advise you that unless the instructions contained in the letter of August 18, 1970 to all supervisory officers are withdrawn forthwith, the Professional Policemen's Protective Association of the University of Wisconsin, Milwaukee, will file unfair labor practice charges against the administration of the University of Wisconsin, Milwaukee. Kindly advise writer of your intentions within ten days.

Respectfully submitted,

Gerald F. Kelly /s/
Gerald F. Kelly, President
P.P.P.A
University of Wisconsin
Milwaukee"

On August 28, 1970, the Coordinator of Employment Relations sent the following response to Mr. Kelly:

"Mr. Gerald F. Kelly
2113 E. Alvina Avenue
Milwaukee, Wisconsin 53221

Dear Mr. Kelly:

This letter is in response to your letter of August 24, 1970 and our conversation on August 27.

You will note that Mr. Matzke's letter to Chief Moratz on August 19 indicated a prohibition against active participation in union activities. Such activity would include:

1. The encouragement or discouragement of membership in any labor union.
2. A role in the development of policy or organization of any labor union.
3. The holding of office in any labor union.

This policy does not, however, forbid a supervisor from holding 'silent' or inactive membership in an employe organization.

I hope that this clarification of my policy memo resolves the objections you have raised.

Sincerely,

G. Thomas Bull, Coordinator
University Employment Relations"

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

CONCLUSION OF LAW

That the Respondent, University of Wisconsin-Milwaukee, in the issuance of policy statements requiring all supervisors to be free of any active role as a member or officer of a union that represents or claims to represent employes they supervise, and in prohibiting supervisors specifically from encouraging or discouraging membership in any labor union; playing a role in the development of policy or organization in any labor union; and the holding of office in any labor union, did not commit, and is not committing, any prohibited practices within the meaning of Section 111.84 (1) of the Wisconsin Statutes.

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

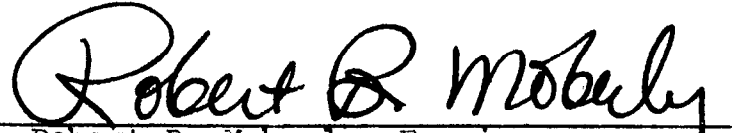
ORDER

IT IS ORDERED that the Complaint in the above matter be, and the same hereby is, dismissed.

Dated at Milwaukee, Wisconsin, this ^{13th} day of May, 1971.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Robert B. Moberly, Examiner

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

PROFESSIONAL POLICEMEN'S PROTECTIVE
ASSOCIATION,

Complainant,

vs.

UNIVERSITY OF WISCONSIN-MILWAUKEE,

Respondent.

Case XXII
No. 14067 PP(S)-9
Decision No. 9921-A

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSION OF LAW AND ORDER

Complainant, Professional Policemen's Protective Association, University of Wisconsin-Milwaukee, hereinafter referred to as the PPPA, alleged in its complaint that Respondents State of Wisconsin, University of Wisconsin-Milwaukee, hereinafter referred to as the State Employer, and its Co-ordinator of University Employment Relations and its Director of Personnel, engaged in prohibited practices within the meaning of Sec. 111.84, Wisconsin Statutes, and in particular alleged as follows:

"4. Complainants believe that the respondents have by threats and intimidations through letters and other printed material to members of the P.P.P.A. attempted to coerce said members into resigning from the P.P.P.A. all such actions contrary to and a violation of 111.84 (1) (a) (b).

5. On Tuesday August 18th, 1970, G. Thomas Bull did send to members of the P.P.P.A. a letter of transmittal in which the directive was clearly understood to mean that they could not join, be a member of or assist in the formation of the P.P.P.A. all of which is in violation of and contrary to sections 111.82 and 111.84 (1) (a) (b).

6. On Wednesday August 19th, 1970, Jack Matzke, directed a letter to members of the P.P.P.A. in which the directive intended was clearly in violation of 111.82 and 111.84 (1) (a) (b).

. . .

8. On Friday August 28th, 1970, G. Thomas Bull sent a letter to Gerald Kelly, an officer in the P.P.P.A., the contents clearly intended to intimidate and coerce the members of the P.P.P.A. to refrain from active interest in said association. Contrary to and in violation of 111.82 and 111.84 (1) (a) (b)."

Complainant requested that Respondents be ordered to cease and desist from such prohibited practices, post notices acknowledging the commission of prohibited practices and the cease and desist order,

and notify this agency in writing of its compliance with the order. The State Employer failed to file an answer, but at the hearing admitted that Respondent was a state employer as defined in sec. 111.82 (13) of the Statutes, and that G. Thomas Bull and Jack Matzke are persons who act and have acted on behalf of the State Employer. The State Employer denied paragraphs 4, 5, and 6 of the complaint "to the extent that they indicate we have coerced and intimidated police of the Professional Policemen's Protective Association." It admitted that the letters described in paragraphs 5 and 6 of the complaint were sent to supervisory personnel in the Department of Protection and Security of the State Employer. Finally, it denied paragraph 8 of the complaint.

At the hearing Local 82, Wisconsin State Employees Association, AFSCME, AFL-CIO, hereinafter referred to as the Intervenor or Local 82, was permitted to intervene as the present certified collective bargaining representative of certain of the employees in question. The Intervenor and the State Employer filed briefs, the last of which was received January 28, 1971, and the PPPA waived its right to file a brief in the matter.

FACTS

The State Employer maintains a Department of Campus Protection and Security in which it employs both Police Officers and Security Officers. Police Officers have powers of arrest, while Security Officers do not. There are fourteen Police Officer positions in the department, and six supervisory positions having supervisory authority with respect to Police Officers. The two highest supervisory positions, Police Chief and Police Lieutenant, were vacant at all times material herein. Sergeant Donald Moratz was the Acting Police Chief, and the other three supervisory employees were Detective James Briesemeister, Sergeant Kenneth Lawson and Sergeant Frank Springob (promoted to Police Sergeant on May 3, 1970). Of the fourteen authorized Police Officer positions, only seven to eight positions were filled during the period in question here.

Local 82, the Intervenor, is the certified collective bargaining representative of "all employees of the University of Wisconsin-Milwaukee," with certain exclusions. 1/ Employees classified as Police Officers are included in this unit, while the Police Sergeant and Police Detective are excluded from the unit as supervisors. Local 82 and the State Employer are parties to a collective bargaining agreement covering employees in this collective bargaining unit.

The Professional Policemen's Protective Association, University of Wisconsin-Milwaukee, hereinafter referred to as the PPPA, is a labor organization initiated by Police Officer Gerald Kelly, and whose membership consists of some of the Police Officers and supervisors employed in the Department of Campus Protection and Security. The first meeting of the PPPA was held on Sunday, April 5, 1970. At this meeting Officer Kelly was elected President of the PPPA, Detective Briesemeister was elected Vice President and Police Officer Springob, promoted to Sergeant on May 3, 1970, was elected Secretary-Treasurer. Other members of the PPPA include Acting Chief Moratz, Sergeant Lawson, and Police Officer Heimann.

1/ University of Wisconsin-Milwaukee, Decision No. 8296-C, 2/68.

On April 14, 1970, Police Officer Kelly, on behalf of the PPPA, filed an election petition with the Wisconsin Employment Relations Commission requesting an election among the eleven Police Officers and Sergeants then employed in the Department of Campus Protection and Security of the State Employer. At the hearing conducted by this agency on June 8, 1970, Detective Briesemeister and Officer Kelly made appearances for the PPPA and participated in its behalf. The State Employer and Local 82 appeared in opposition to the petition filed by the PPPA. On July 24, 1970, Detective Briesemeister, Sergeant Springob and Officer Kelly signed a brief submitted to the Commission on behalf of the PPPA. On September 15, 1970, the Commission dismissed the election petition on the basis that the present collective bargaining agreement between Local 82 and the State Employer constituted a bar to the election and as a result no question of representation existed.

On July 10, 1970, Local 82 filed a complaint of prohibited practices against the State Employer alleging that by certain action of its supervisors in the Department of Campus Protection and Security, including supervisory participation in the PPPA, the State Employer violated Section 111.84 (1) (a), (b) and (c), Wisconsin Statutes. After a full hearing and arguments by the parties the complaint was dismissed by the undersigned as Examiner on April 30, 1971, on the basis that no prohibited practices had been committed by the State Employer. 2/

Responsible labor relations representatives of the State Employer did not have knowledge of the existence of the PPPA until the receipt of the representation petition filed by the PPPA.

On August 18, 1970, following the hearing on the representation petition and following the filing of the prohibited practices complaint referred to above, the Coordinator of Employment Relations for the University of Wisconsin issued the following memorandum:

"TO: University Departments

FROM: G. Thomas Bull, Coordinator
University Employment Relations

DATE: August 18, 1970

Concern has been expressed with situations where supervisory, managerial, and confidential personnel are active in the same labor union of which employees they supervise are members or which is the certified bargaining agent for the employees they supervise.

Supervisors excluded from a certified bargaining unit are not covered by the State Employment Labor Relations Act (SELRA) in the definition of state employee [S. 111.81 (12)]. Therefore, they do not have the same right to 'form, join or assist labor organizations' as employees covered by SELRA and in the bargaining unit do. S. 111.84 (1) (b) has a provision that protects the State from prohibited practice charges if a supervisor is allowed to be an 'active member or officer', but this language does not mean the State must allow the supervisor to be active in a union.

2/ University of Wisconsin-Milwaukee, Decision No. 9800-A, 4/71 (H.E.)

Supervisors are expected to represent the policy and person of the State as an employer in the labor-management relationship. For a supervisor to be active in a union with which he must often deal adversely is a conflict of interest that cannot be allowed to exist if the labor-management relationship is to be a sound one.

Therefore, it is the policy of the University of Wisconsin that operating units should require all supervisors and managerial personnel to be free of any active role as a member or officer of the union that is the collective bargaining agent for the employees they supervise or of any other union that alleges to represent such employees."

On August 19, 1970, the Director of Personnel of the University of Wisconsin-Milwaukee sent copies of the above memorandum to all supervisors in the Department of Campus Protection and Security, along with the following cover letter:

"The University of Wisconsin-Milwaukee was recently charged with the violation of certain 'prohibited practices' under the State Employment Labor Relations Act, or specifically, Sec. 111.84 Wis. Stats. The filing of these charges prompted, in part, the need for the development of a University of Wisconsin policy concerning union activity by supervisory and managerial personnel of the University, a copy of which is attached.

Although the attached policy statement is not intended, in any way, to reflect the accuracy or inaccuracy of the allegations pending before the Wisconsin Employment Relations Commission, you are hereby informed that the following specific activities by supervisory and managerial personnel of the University are now prohibited:

1. The encouragement or discouragement of membership in any labor union.
2. A role in the development of policy or organization of any labor union.
3. The holding of office in any labor union.

If you have any further questions concerning this matter, please contact me at your convenience."

On August 24, 1970, Mr. Kelly sent a letter to the Coordinator of University Employment Relations advising that unless the instructions in the letter of August 18, 1970 to all supervisory officers were withdrawn, the PPPA would file unfair labor practice charges against the State Employer. On August 28, 1970, said coordinator sent a letter to Mr. Kelly containing the following response:

"You will note that Mr. Matzke's letter to Chief Moratz on August 19 indicated a prohibition against active participation in union activities. Such activity would include:

1. The encouragement or discouragement of membership in any labor union.
2. A role in the development of policy or organization of any labor union.

3. The holding of office in any labor union.

This policy does not however, forbid a supervisor from holding 'silent' or inactive membership in an employee organization.

I hope that this clarification of my policy memo resolves the objections you have raised."

As a result of the State Employer's policy the PPPA filed the instant prohibited practice complaint against the State Employer on September 14, 1970. At the hearing on the instant complaint, all parties agreed that the transcript of the September 10, 1970 hearing on the earlier prohibited practice complaint, referred to supra, should be made a part of this record.

ISSUE

Did the State Employer commit prohibited practices within the meaning of Sec. 111.84 (1), Wisconsin Statutes, in adopting the policies expressed in its letters dated August 18, 1970, August 19, 1970 and August 28, 1970, restricting certain forms of supervisory activity in labor organizations?

STATUTES INVOLVED

Statutes involved:

111.81 DEFINITIONS. When used in this subchapter:

. . .

(12) "State employee" includes any employee in the classified service of the state, as defined in s. 16.08, except employees who are performing in a supervisory capacity, and individuals having privity to confidential matters affecting the employer-employee relationship, as well as all employees of the board.

. . .

111.82 RIGHTS OF STATE EMPLOYEES. State employees shall have the right of self-organization and the right to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection; and such employees shall also have the right to refrain from any or all of such activities.

. . .

111.84 PROHIBITED PRACTICES. (1) It shall be a prohibited practice for a state employer individually or in concert with others:

(a) To interfere with, restrain or coerce state employees in the exercise of their rights guaranteed in s. 111.82.

(b) To initiate, create, dominate or interfere with the formation or administration of any labor or employee organization or contribute financial support to it, but the state employer shall not be prohibited from reimbursing state employees at their prevailing wage rate for the time spent conferring with its officers or agents. It shall not be a prohibited practice, however,

for an officer or supervisor of the state employer to remain or become a member of the same labor organization of which its employees are members, when they perform the same work or are engaged in the same profession, provided, that after 4 years from the effective date of this subchapter said supervisor shall not participate as an active member or officer of said organization.

(c) To encourage or discourage membership in any labor organization, employe agency, committee, association or representation plan by discrimination in regard to hiring, tenure or other terms or conditions of employment.

. . . .

111.94 TITLE OF SUBCHAPTER V. This subchapter may be cited as the "State Employment Labor Relations Act."

Section 3. This act shall become effective January 1, 1967.

POSITION OF THE COMPLAINANT PPPA

The PPPA challenges the validity of the letters and memorandum of the State Employer, quoted supra, and the PPPA representative states its position as follows:

"I would like to make specific note of Section (b) of 111.84 in that it reads: 'It shall not be a prohibited practice, however, for an officer or supervisor of the state employer to remain or become a member of the same labor organization of which its employees are members, when they perform the same work or are engaged in the same profession, provided that after 4 years from the effective date of this subchapter said supervisor shall not participate as an active member or officer of said organization.' And I might call to the Examiner's attention that the General Rules and Regulations were instituted by your Board on January 1, 1967, which would make eligible any supervisor now in the existing organization until the date of January 1, 1972. And I would also, for the record, like to introduce Sub. (a) and (c) of 111.84 and also No. (2), regarding the unfair labor practices for a state employe individually or in concert with others, and specifically (a) and (c) of that section."

POSITION OF THE STATE EMPLOYER

The State Employer argues that the State Employment Labor Relations Act, hereinafter referred to as SELRA, does not afford supervisory personnel the right of self-organization. The State Employer argues that while a four-year grace period is provided to phase out supervisory participation, the Act was never intended nor can it be construed to grant supervisory personnel the right of self-organization. If such had been the intent, it states, supervisory personnel would be included within rather than excluded from the definition of "state employe." The State Employer also argues that it is a prohibited

practice for supervisory personnel to remain an active member of a labor organization, since the State Employment Labor Relations Act became effective on January 1, 1967, and the four-year grace period set forth in Section 111.84 (1) (b) has expired. Therefore, it is contended, the directive sent out on August 19, 1970, which states that supervisory personnel shall not engage in certain union activity, was merely an attempt to conform to the State Employment Labor Relations Act, which prohibits such conduct after January 1, 1971. It also states that the issue is moot since the four-year grace period expired on January 1, 1971.

POSITION OF LOCAL 82

Intervenor Local 82 argues that the policy of the State Employer does not constitute a prohibited practice as to Supervisors Moratz, Briesemeister, Lawson and Springob, since supervisory participation in the formation and activities of a labor organization whose purpose is to raid the Intervenor's membership and erode its bargaining unit is a clear violation of the contract between the State Employer and the Intervenor. It complains that the Employer's expressed policy goes beyond restraining its supervisors from participation in the affairs of a competing labor organization, and apparently applies equally to the certified bargaining representative. As such the Intervenor believes the policy to be overbroad, and under proper circumstances such policy might interfere with the protective rights of other state employees. But the Intervenor states that such facts are not present here.

DISCUSSION

The Employer's conduct in question is its requirement that supervisors be free of any active role as a member or officer of a union that represents or claims to represent employees they supervise. The State Employer did not prohibit mere membership in a union, but it specifically prohibited supervisors from encouraging or discouraging membership in any labor union; playing a role in the development of policy or organization in any labor union; and the holding of office in any labor union.

Sec. 111.82 of the State Employment Labor Relations Act (SELRA) sets forth the rights of state employees, including the right of self-organization and the right to form, join or assist labor organizations. Under Sec. 111.81 (12), however, supervisors are expressly excluded from the definition of "state employee." Because of this specific exclusion of supervisory personnel from the definition of "state employees," supervisors do not have the same rights to organize or "to form, join or assist labor organizations" as are granted state employees by Sec. 111.82. The Wisconsin Employment Relations Commission excludes supervisors from bargaining units formed under SELRA.

Since supervisors are not employees under SELRA, they are not entitled to the protection which that Act affords state employees. It is settled that an employer is not guilty of an unfair labor practice for

restricting supervisors, upon penalty of discipline or discharge, in their union activity. 3/

The only other reference in SELRA to supervisory personnel is in Section 111.84 (1) (b), part of the prohibited practices portion of the law. Sec. 111.84 (1) (b) provides that it shall be a prohibited practice for a state employer to initiate, create, dominate or interfere with the formation or administration of any labor organization or contribute financial support to it. That section also provides that it shall not be a prohibited practice for a supervisor of the state employer to remain or become a member of the same labor organization of which its employees are members when they perform the same work or are engaged in the same profession. This provision is not in dispute, since the State Employer did not forbid supervisors from the mere holding of membership in an employee organization.

The same section goes on to provide, however, "that after 4 years from the effective date of this subchapter said supervisor shall not participate as an active member or officer of said organization." SELRA became effective January 1, 1967. The four-year period regarding the active participation by supervisors in labor organizations therefore expired January 1, 1971.

Prior to the advent of collective bargaining in state employment, the state employer and state employee organizations commonly permitted supervisors to join and participate actively in such labor organizations, including the holding of office. Because of this practice, the Legislature provided a four-year "grace" period in which there would be no statutory prohibition of supervisory participation as active members or officers of such employee organizations. The intent was to avoid undue disruption of existing relationships by providing a four-year period during which supervisory participation in labor organizations could be phased out in an orderly manner.

However, the above reference to supervisors in SELRA was not intended to grant supervisory personnel statutory rights "to form, join or assist labor organizations" or other rights of self-organization. If that were the intention, supervisors would not have been excluded from the definition of the term "state employee." Section 111.84 (1) (b) merely reiterates the fundamental concept that management representatives may not initiate, create, dominate or interfere with the formation or administration of any labor organization. Its reference to supervisors merely protects the state from prohibited practice charges if a supervisor is allowed to become an "active member or officer" of the labor organization. The language does not require the state employer to allow supervisors to be active in a union up to January 1, 1971. The language means only that if the state allows supervisors to be an active member or officer, the state shall not be subject to a prohibited practice finding. The State Employer correctly states that "this language does not mean the State must allow the supervisor to be active in a union."

3/ Lily-Tulip Cup Corp., 88 NLRB No. 170, 25 LRRM 1407 (1950). See also Oil City Brass Works v. NLRB, 61 LRRM 2319, 2320 (5th Cir. 1966), and cases cited therein. For other cases sustaining the discharge of supervisors for engaging in union activity see Vail Associates, Inc., 186 NLRB No. 23, 75 LRRM 1502 (1970); United Painting Contractors, 184 NLRB No. 19, 74 LRRM 1645 (1970); Palmer Paper Company, 180 NLRB No. 156, 73 LRRM 1239 (1970); Sopps, Inc., 175 NLRB No. 49, 70 LRRM 1555 (1969); Colo. Well Service, Inc., 163 NLRB No. 101, 64 LRRM 1458 (1967).

Thus the policy of the State Employer did not constitute a prohibited practice even before January 1, 1971.

Moreover, after the expiration of the four-year grace period on January 1, 1971, the State Employer might well be subject to prohibited practice charges if supervisors engaged in an active role as a member or officer of the union that represents or claims to represent employees they supervise. It was entitled to protect itself against such prohibited practice charges by restricting such supervisory activity.

Upon a careful consideration of all the evidence and arguments, the Examiner concludes that the State Employer has not committed prohibited practices within the meaning of Sec. 111.84 (1) of the Wisconsin Statutes.

Dated at Milwaukee, Wisconsin, this ^{13th} day of May, 1971.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Robert B. Moberly
Robert B. Moberly, Examiner