STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

TEAMSTERS "GENERAL" LOCAL UNION NO. 200, affiliated with the INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, Complainant,	Case XVIII No. 15690 MP-142 Decision No. 11486
vs.	
CITY OF WAUKESHA (WATER UTILITY), Respondent.	

Appearances:

Goldberg, Previant & Uelmen, Attorneys at Law, by Mr. Alan M. Levy, appearing on behalf of Complainant.

Mr. William C. Lawler, City Attorney, appearing on behalf of the Respondent.

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 a hearing on said complaint having been held at Waukesha, Wisconsin, on August 2, 1972, Marshall L. Gratz, Hearing Officer, being present, and the Commission having considered the evidence and the arguments 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 Teamsters "General" Local Union No. 200, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, hereinafter referred to as the Complainant, is a labor organization with its principal offices located at 6200 West Bluemound Road, Milwaukee, Wisconsin 53213.

2. That the City of Waukesha (Water Utility), hereinafter referred to as the Respondent, is a municipal employer and maintains an office at 115 Delafield Street, Waukesha, Wisconsin 53186.

3. That on June 1, 1972, Patricia Danielson was hired for a regular, full-time position as a computer operator at the Delafield Street office of Respondent by Respondent's General Manager, Joseph Kurantz, and that at the time of her hire, Danielson was not advised that her position was of a temporary nature or that Respondent had in its employ a second computer operator who was, as of June 1, 1972, on maternity leave.

4. That in October, 1972, said second computer operator, Jane Winter, returned to the active employ of Respondent; that thereafter Danielson and Winter shared the work formerly done solely by Danielson; that Respondent did not provide additional office equipment for Winter's use, but rather required Danielson and Winter to share equipment formerly used solely by Danielson; and that Winter was not provided with her own desk, but instead was provided with a card table at which to work during times when Danielson was utilizing her own desk.

5. That Respondent's office personnel on and after October 31, 1972 consisting of Kuranz, Helen Price (Business Manager), Blanche Wellstein ("Executive Secretary" and Kuranz' private secretary), Marcelline Snider, Dolores Farrar, Mary Johnson, Winter and Danielson.

6. That on April 14, 1972, the Waukesha Water Utility Commission, Respondent's governing board, failed to approve certain requested salary increases previously submitted by Kuranz for Snider, Farrar, Johnson, Winter and Danielson; and that Kuranz announced said failure at a meeting of his office personnel on April 18, 1972.

7. That on April 20, 1972, Snider, Farrar, Johnson, Winter and Danielson met in Snider's home with Kenneth Freisner, Business Representative of Complainant, at which meeting, the said participants discussed a union organizational effort with respect to the office employes and the manual employes of Respondent; and further that at said time and place, Danielson signed a card authorizing the Complainant to represent her for the purposes of collective bargaining.

8. That from and after Kuranz' announcement, on April 18, Kuranz observed considerable unrest and dissatisfaction among the office personnel which climate, Kuranz believed, was directly affecting the efficiency of Respondent's operations, especially in its office contacts with the public and with other divisions of Respondent's operations.

9. That at one coffee break some time between April 20 and May 1, 1972, Respondent's Business Manager Price asked Johns[illegible] and certain other office personnel what they were doing ". . . [illegible]r as a labor organization . . . was concerned ". . . and why?"; and that except for a few vague, and noncommittal responses, Price's question went unanswered and the subject was dropped.

10. That on the afternoon of Friday, April 28, 1972, Kuranz called Snider to a meeting in his office involving himself, Price and Wellstein; that at said meeting, Kuranz advised Snider that Kuranz had heard a rumor to the effect that certain of the office employes "were joining a union"; and that Kuranz also told Snider that as one of the "mature women" in the office, she should talk to the younger women in order to ". . . get these people calmed down . . .", to reestablish harmony and efficiency and to inform them about the problems of union membership, specifically, the dues requirement.

11. That on Monday, May 1, 1972, Kuranz called and conducted a meeting in Respondent's conference room during the last hour of the normal work day (4:00 - 5:00 P.M.); that Kuranz called Wellstein, Price, Snider, Farrar, Johnson, Winter and Danielson to said meeting and all attended; that during said meeting Kuranz stated that he would

not interfere in any way with the union organizational activities of his employes; that Kuranz pointed out to the employes that they currently enjoyed various benefits including an honor system (no time-card punching required) and unlimited sick-leave benefits and that he believed that both benefits had been increasingly abused by the employes in recent months; that Kuranz also noted that if Respondent were required to bargain collectively concerning the terms and conditions of the employes' employment, the resultant contract would be written from "scratch" and that certain of their current benefits might not be continued therein; that Kuranz also pointed out that a union could not improve the employes' lot because they had already received a 5.5% pay increase, and because they had no outstanding complaints concerning working conditions.

12. That in response to Kuranz' remarks, Danielson asserted that, on the contrary, the employes did need a union because they, in fact, had outstanding grievances and that such grievances included Danielson's required sharing of equipment with Winter, and Winter's required use of a card table as a desk, both of which were uncomfortable and undesireable working conditions; and that Danielson further asserted that Respondent had acted unfairly toward her by not informing her upon hire that there was another computer operator on maternity leave, whose return to work would require a sharing of office equipment.

13. That prior to her remarks on May 1, Danielson had never complained to supervision about her working conditions; that Winter had previously requested that Kuranz provide her with an additional adding machine; and that prior to May 1 Kuranz and Price were aware that their overstaffed situation was a major cause of their office personnel problems.

14. That upon arrival at work on May 2, 1972, Danielson was told by Kuranz that she had been treated unfairly in that she had been hired when another computer operator was on leave and that for that reason she would be "laid off" effective that day; that Danielson would receive "one month's severance pay" and that Kuranz would assist her in finding a suitable new position; that the Respondent provided the said benefits and placement assistance; and that Danielson has suffered no economic loss as a result of the termination of her employment on May 2.

15. That the reason set forth by Kuranz for the termination of Danielson was a pretext, in an attempt to disguise the real motivation for such action, namely, in reprisal for her having asserted at the May 1 meeting that the employes needed a union because there were, in her view, outstanding grievances among the office employes; and that, by said discharge, the Respondent interfered with, restrained and coerced its employes in the exercise of their right to engage in concerted activity.

16. That said May 1 statements of Kuranz, taken as a whole, could reasonably have been interpreted by Snider, Farrar, Johnson, Winter and Danielson as threats of reprisals in the event said employes were to become represented for collective bargaining purposes by Complainant or any other labor organization; and that said threats made to Snider, Farrar, Johnson, Winter and Danielson on May 1 by Kuranz, as an agent of Respondent, interfered with, restrained and

coerced Respondent's municipal employes in the exercise of their right to engage in concerted activity in and on behalf of the Complainant.

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

CONCLUSIONS OF LAW

1. That the Respondent, City of Waukesha (Water Utility), its officers and agent, by discharging Patricia Danielson in order to discourage, and in reprisal for her exercise of her right to engage in protected concerted activity, has engaged in, and is engaging in prohibited practices within the meaning of Sections 111.70(3)(a)1 and 3 of the Wisconsin Municipal Employment Relations Act.

2. That Respondent, City of Waukesha (Water Utility), by threatening its employes with loss of benefits enjoyed by them for the purpose of discouraging their concerted activities, including membership in Teamsters "General" Local Union No. 200, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, has interfered with, restrained and coerced its employes in the exercise of their rights under Section 111.70(2) of the Wisconsin Municipal Employment Relations Act, and accordingly has committed prohibited practices within the meaning of Section 111.70(3)(a)1 of the Wisconsin Municipal Employment Relations Act.

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 Respondent, City of Waukesha (Water Utility), its officers and agents, shall immediately

1. Cease and desist from:

(a) Threatening its employes with the loss of benefits enjoyed by them for the purpose of discouraging their activities on behalf of and membership in Teamsters "General" Local Union No. 200 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or any other labor organization.

(b) Discriminating against its employes in regard to hiring, tenure or other terms or conditions of employment in order to discourage activities on behalf of or membership in Teamsters "General" Local Union No. 200 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or any other labor organization.

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

(a) Offer to Patricia Danielson immediate and full reinstatement to her former or a substantially

equivalent position, without prejudice to her seniority or other rights and privileges, and make her whole for any loss of pay she may have suffered by reason of the discrimination against her, by payment to her of the sum of money equivalent to that which she would normally have earned as an employe, from the date of her termination to the date of the unconditional offer of reinstatement, less any earnings she may have received during said period, and less the amount of compensation, if any, received by her during said period, and in the event that she received unemployment compensation benefits reimburse the Unemployment Compensation Division of the Wisconsin Department of Industry, Labor and Human Relations in such amount.

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

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

Given under our hands and seal at the City of Madison, Wisconsin, this 26th day of December, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Morris Slavney, Chairman

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Zel S. Rice II, Commissioner

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Jos. B. Kerkman, Commissioner

APPENDIX "A"

NOTICE TO ALL EMPLOYES

Pursuant to an Order of the Wisconsin Employment Relations Commission, and in order to effectuate the policies of the Wisconsin Municipal Employment Relations Act, we hereby notify our employes that:

1. WE WILL NOT discourage lawful concerted activities in support of or membership in Teamsters "General" Local Union No. 200, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America or any other labor organization by discharging, laying off, suspending or otherwise discriminating against any employe with regard to his hire, tenure of employment or in regard to any term or condition of employment except as authorized in Section 111.70(3)(a)3 of the Wisconsin Municipal Employment Relations Act.

2. WE WILL NOT threaten employes with loss of benefits enjoyed by them for the purpose of discouraging their activities on behalf of or membership in Teamsters "General" Local Union No. 200, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America or any other labor organization.

3. WE WILL NOT in any other manner, interfere with, restrain or coerce our employes in the exercise of their rights to self-organization, to form labor organizations, to join or assist Teamsters "General" Local Union No. 200, Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America or any other labor organization, to bargain collectively through representatives of their own choosing and to engage in other lawful concerted activities for the purpose of collective bargaining or any mutual aid or protection.

All our employes are free to become, remain or refrain from becoming members of Teamsters "General" Local Union No. 200, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America or any other labor organization.

CITY OF WAUKESHA (WATER UTILITY)

By _____
Joseph Kuranz, General Manager

Dated this _____ day of _____, 197__.

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.

alleged that by those and other acts, the Respondent engaged in conduct prohibited by Secs. 111.70(3)(a)1 and 3 of the Wisconsin Statutes. 1/ As a remedy, Complainant sought a cease-and-desist order, and reinstatement of Danielson to her former position with reimbursement for any losses due to her improper discharge.

Respondent, in its Answer (as amended at the hearing), alleged inter alia that no officer or agent of Respondent had knowledge of the exercise of protected concerted activities by Danielson or by her four co-workers in question. Respondent further alleged, in effect, that the "layoff" of Patricia Danielson was not motivated by her protected concerted activities, and that none of Respondent's actions constituted conduct prohibited by either Sec. 111.70(3)(a)1 or 3.

Hearing was held on the matter on August 2, 1972. At that time, neither party formally stated their position on the record. Instead, the parties reserved the right to submit briefs within ten days of their receipt of transcript; neither party submitted a brief, however. Complainant stipulated that Patricia Danielson has suffered no economic loss whatever on account of Respondent's termination of her employment.

The facts in the case are set forth in the Findings of Fact above. To a limited extent, the facts are more fully stated and the findings explained in the discussion hereinafter.

DISCUSSION:

Kurant' Statements at the May 1 Meeting

Section 111.70(3)(a)1 provides as follows: "it is a prohibited practice for a municipal employer individually or in concert with others . . . to interfere with, restrain or coerce municipal employes in the exercise of their rights guaranteed in Sec. 111.70(2)." The rights guaranteed in Sec. 111.70(2) include, inter alia, the following

> ". . . 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 . . ."

1/ All references herein to numerical sections shall refer to the Wisconsin Municipal Employment Relations Act unless otherwise noted.

This Commission has held that threats by a municipal employer to deprive employes of benefits enjoyed by them for the purpose of discouraging concerted activity constitute a prohibited practice. 2/ The Commission has also held, however, that a conclusion that a prohibited practice within the meaning of Section 111.70(3)(a)1 has been committed does not require a finding of anti-union animus or motivation, but rather may be grounded on any actions which are likely to interfere with employes' rights to engage in or refrain from the activities as set forth in Section 111.70(2). 3/

In the instant case, Kuranz, an agent of the Municipal Employer Respondent, called together his office employes on May 1 during working hours and in the Respondent's conference room. Kuranz testified that he told the employes at the outset that he would not interfere with the union organizational activities of his employes. He further testified that he pointed out to the employes that they currently enjoyed the absence of timecard punching and an unlimited sick-leave benefit. Kuranz further admitted that he told the employes that both of the aforementioned benefits had been increasingly abused by the employes in recent months. The testimony of three employes, with which Kuranz' testimony was (for the most part) in accord, indicates that Kuranz also pointed out to the employes that if the employes were to be represented by a union in collective bargaining, the resultant contract would be written from scratch and that certain of their current benefits might not be continued therein. The three employes also credibly testified that Kuranz stated that union organization of the Respondent's employes could not improve the employes' lot since they had already received a 5.5% pay increase and because they had no outstanding complaints concerning working conditions.

The Commission concludes that Kuranz' statements, taken as a whole, constitute threats of loss of benefits in the event that the employes would exercise their right under Sec. 111.70(2) to bargain collectively with Respondent through a labor organization. Furthermore, we conclude that Kuranz' May 1 statements tended to interfere with the rights of municipal employes defined in Sec. 111.70(2). Under the existing precedents discussed above, said threats constitute an independent violation of Sec. 111.70(3)(a)1 without the necessity of analysis of the motivation for Respondent's conduct. The conclusion that Sec. 111.70(3)(a)1 was violated is buttressed, in any event, by the following facts indicative of Respondent's unlawful motivation. First, it was Kuranz who initiated the discussion of union organization during the May 1 meeting. Second, the fact that Kuranz spent considerable time in discussing the disadvantages of union organization and representation is indicative of his awareness of pro-union attitudes or activities on the part of his office employes. And finally, the Commission finds credible Mascelline Snider's testimony that on April 28, Kuranz told her that Kuranz had heard a rumor to the effect that certain of the office employes "were joining a union".

2/ City of Evansville, Dec. Nos. 9440-A, 9440-B, 9440-C (3/71); Green County, Dec. Nos. 10166-A, 10166-B, 10166-C (9/71).

3/ City of Milwaukee, Dec. No. 8420 (2/68) at pp. 12-13.

Kuranz' opening remark, indicating his intent not to interfere with the employes' organizational activities, was not sufficient to buffer the employes from the effects of his veiled threats of loss of benefits. The fact that Kuranz' threats were veiled by his indication that possible losses of benefits could be sustained by the employes in the give-and-take of the bargaining process makes those statements no less unlawful. For while a municipal employer may inform its employes of the disadvantages of unions, it cannot threaten employes with reprisals in the event of their exercise of rights granted in Sec. 111.70(2). "Such threats are unlawful and the responsibility for such unlawful conduct cannot be excused on the claim that the employer is merely predicting the future." 4/

The Termination of Patricia Danielson

A municipal employer may discharge an employe for any reason or for no reason, provided that the discharge is not motivated by a desire to discourage or encourage concerted activity. 5/ On the other hand, Sec. 111.70(3)(a)3 protects municipal employes from being discharged, or otherwise discriminated against, when one of the motivating factors for the municipal employer's action is the employe's concerted activity, no matter how may other valid reasons exist for such municipal employer action. 6/

Complainant has alleged that one of the three unlawful motivating factors for Respondent's decision to terminate Patrica Danielson's employment on May 2, 1972 was Danielson's exercise of her right to engage in protected concerted activities. As to that allegation, the Commission finds that Complainant has proven, by a clear and satisfactory preponderance of the evidence, that one of the motivating factors for Respondent's termination of Patricia Danielson was the fact that Danielson had asserted, in the presence of Kuranz, Price and the office employes, that the employes needed a union because there were outstanding employe grievances, which grievances she then pro-

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4/ City of Evansville, Dec. No. 9440-C (3/71).

5/ Muskego-Norway School District No. 9, 35 Wis. 2d 540, (1967); Wood County, Dec. No. 9437-A (1/71).

6/ Muskego-Norway School Dist. No. 9, Dec. No. 7247 (8/65) Aff'd 35 Wis. 2d 540 (1967); City of Oshkosh, Dec. Nos. 8381-A, 8381-B (10/68); Milwaukee Bd. of School Directors, Dec. Nos. 9242-A, 9242-B (4/71); City of Madison, Dec. Nos. 9582-B, 9582-C (7/71); Village of West Milwaukee, Dec. No. 9845-B (10/71).

Section 111.70(3)(a)3 reads, in pertinent part, as follows:

> "It is a prohibited practice for a municipal employer individually or in concert with others . . . to encourage or discourage a membership in any labor organization by discrimination in regard to hiring, tenure, or other terms or conditions of employment; . . ."

ceeded to enumerate. 7/ Danielson's express and documented contradiction (on May 1) of her employer's assertion to the employes that they did not need a union because they had no outstanding grievances constitutes lawful concerted activity for the purpose of collective bargaining or other mutual aid or protection. 8/ For by so doing, Danielson was complaining at least on behalf of herself and fellow employe Jane Winter.

It is clear that Kuranz had knowledge of Danielson's exercise of the aforementioned lawful concerted activity since Kuranz was present at the May 1 meeting when Danielson made her assertion. Whether or not Kuranz knew that Danielson's conduct constituted protected concerted activity is immaterial since any lack of such knowledge would constitute only a mistake of law and would thus not suffice as a defense to the alleged prohibited practice.

Danielson testified that Kuranz told her that she was being terminated in order to undo the injustice done her when she was hired without notice that another computer operator was on leave and expected to return. In Respondent's Answer and in Kuranz' testimony, Respondent asserted that Danielson was terminated in order to relieve overstaffing among its (two) computer operators which overstaffing arose when anticipated additional uses of computers in Respondent's operations did not materialize. The foregoing reasons do not sufficiently negate the strong inference of unlawful intent which the Commission draws from the timing of Danielson's termination and from Kuranz' threats of reprisals. Danielson engaged in the aforementioned protected concerted activity on Monday at the end of the work day. She was terminated at the beginning of work on the following day.

Kuranz attempted to explain the timing of said termination by testifying that he had been aware that he had one too many computer operators since shortly after Jane Winter returned from sick leave. Kuranz had discussed the matter of shared equipment with Price, and they decided not to invest in additional office equipment, but rather to wait and hope that attrition would eliminate one of the two computer operators, and that in the meantime the two operators' use of equipment could "somehow or other" be smoothly allocated and harmonized. When months passed and no attrition occurred, and especially when several anticipated computer utilizations did not materialize, Kuranz claims he became convinced more than ever that one of the operator positions should be eliminated. When Danielson made her assertions at the May 1 meeting, Kuranz explains, it became clear to him for the first time that Respondent's overstaffed posture was a major source of the "unrest" and "disharmony" which his office had been experiencing. Upon that realization, Kuranz thought it best to relieve Danielson of her duties immediately so that she would have a

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7/ The details about the context of Danielson's assertion may be found in Findings of Fact 11 and 12, supra. There was uncontradicted evidence to the effect that the discussion with Danielson of her complaints took about twenty minutes of the hour-long meeting.

8/ cf. Wall's Mfg. Co. v. NLRB, 321 F. 2d 753, 53 LRRM 2428 (CA DC, 1963), cert. denied, 375 U.S. 923, 54 LRRM 2576 (1963) (writing a letter complaining of sanitary conditions on behalf of fellow employes held to be lawful concerted activity under National Labor Relations Act.)

job placement advantage over the large number of technical school students in her field who would be graduating and entering the job market at the end of May.

The foregoing explanation is directly contradicted by Kuranz' Business Manager's testimony that from February 1972 on, she and Kuranz had discussed the fact that ". . . part of our problem--or a great deal of our problem was due to being overstaffed. . . ." The Commission also notes that Kuranz could have served all of his above-stated objectives by giving Danielson (e.g.) two weeks' notice and permitting Danielson to take time off for job interviews during that period. Thus, while the Commission recognizes that Respondent took care to protect Danielson from monetary loss due to her termination, Kuranz was nonetheless intent upon removing her from the workplace without even an hour's delay.

For the foregoing reasons, the Commission discounts Kuranz' explanations and concludes that in terminating Danielson, Respondent was motivated to some extent by Danielson's protected concerted activity at the May 1 meeting. By so doing, Respondent violated Sec. 111.70(3)(a)3.

The violation of Sec. 111.70(3)(a)3 found above also constitutes a derivative violation of Section 111.70(3)(a)1 since the discrimination found would reasonably tend to interfere with, restrain or coerce municipal employes in their exercise of rights guaranteed them by Sec. 111.70(2).

Since the Commission has found that Kuranz and Respondent terminated Danielson in violation of 111.70(3)(a)3, detailed analysis of Complainant's allegations of two other improper motives becomes unnecessary.

The remedy fashioned in this case is a conventional response to interference and discrimination. It is the Commission's view that said remedy will serve the purposes underlying Sec. 111.70.

Dated at Madison, Wisconsin, this 26th day of December, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney

Morris Slavney, Chairman

Zel S. Rice II, Commissioner

Jos. B. Kerkman, Commissioner