

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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DANE COUNTY JOINT COUNCIL OF UNIONS	:	
AFSCME, AFL-CIO,	:	
	:	
Complainant,	:	
	:	
vs.	:	Case XXXV
	:	No. 16504 MP-213
DANE COUNTY, DANE COUNTY BOARD OF	:	Decision No. 11622-A
SUPERVISORS, AND EDWARD E. GARVOILLE,	:	
	:	
Respondents.	:	
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Appearances:

Lawton & Cates, Attorneys at Law, by Mr. John C. Carlson,
 appearing on behalf of Union Complainant.
Mr. Glenn Henry, Corporation Counsel, Dane County, appearing
 on behalf of Respondent.

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND ORDER

Dane County Joint Council of Unions, AFSCME, AFL-CIO, having filed a complaint of prohibited practices on February 9, 1973, with the Wisconsin Employment Relations Commission, in which it alleged that Dane County, Dane County Board of Supervisors, and Edward E. Garvoille, had committed certain prohibited practices within the meaning of the Municipal Employment Relations Act; and an answer having been filed on February 20, 1973; and hearing in the matter having been conducted at Madison, Wisconsin on March 1, 1973, by Morris Slavney, Chairman, and Joseph B. Kerkman, Commissioner; and the Commission having considered the evidence, briefs, and arguments of the parties, and being fully advised in the premises, makes the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. That Dane County Joint Council of Unions, AFSCME, AFL-CIO, hereinafter referred to as the Union, is a labor organization and maintains its principal office at 4646 Frey Street, Madison, Wisconsin.
2. That Dane County, Dane County Board of Supervisors and Edward E. Garvoille, Personnel Officer for Dane County, herein referred to as the Respondents, have their principal address at the City-County Building, 210 Monona Avenue, Madison, Wisconsin.
3. That for the past several years, Respondent County has recognized and entered into collective bargaining negotiations and collective bargaining agreements with the Union for a county-wide unit of employes, including professional employes; that Respondent County continued such recognition after November 11, 1971, notwithstanding the fact that Section 111.70 of Wisconsin Statutes, after the latter date, prohibited the

inclusion of professional employes in units with non-professional employes; that on September 25, 1972, an organization known as the Dane County Attorneys Association petitioned the Commission for a representation election for certain attorneys employed by Respondent County; that the Wisconsin Council of County and Municipal Employes, AFSCME, AFL-CIO, intervened in that proceeding on October 12, 1972, but withdrew from participation in the matter on January 8, 1973; that on October 18, 1972, certain of Respondent County's other professional employes filed an election petition with the Commission; that the Union and Respondent County on October 31, 1972, filed a stipulation with the Commission, requesting that an election be conducted among all regular full-time and part-time professional employes in the employ of Respondent County, excluding supervisory and confidential employes, to determine whether said employes desired to be represented by the Union; that thereafter, and on January 8, 1973, the Commission issued an order amending direction of elections, wherein it directed that elections be conducted within 60 days in the following appropriate bargaining units:

"Unit No. 1

All regular full-time and regular part-time professional employes, conditionally excluding attorneys, and specifically excluding supervisory, confidential and all other employes of Dane County, who were employed on December 20, 1972, except such employes as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether a majority of such employes desire to be represented by Wisconsin Council of County & Municipal Employees, AFSCME, AFL-CIO, for the purposes of collective bargaining with the above named Municipal Employer on questions of wages, hours and conditions of employment.

Unit No. 2

All regular full-time and regular part-time attorneys in the employ of Dane County, excluding supervisory, confidential and all other employes of Dane County, who were employed on December 20, 1972, except such employes as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether a majority of such employes desire to be represented by Dane County Attorneys Association for the purposes of collective bargaining with the above named Municipal Employer on questions of wages, hours and conditions of employment.";

and that thereafter the Commission scheduled said elections for Wednesday, January 24, 1973.

4. That immediately proceeding and during the pendency of the aforementioned election proceeding, representatives of, Respondent County, including Respondent Garvoille, met with representatives of the Management Association For County Employees, hereinafter referred to as "MACE", a newly created organization initiated by certain managerial personnel of Respondent County, to discuss compensation for the non-unionized managerial personnel and also professional employes of Respondent County; that said meetings centered on requests made by MACE that

the Respondent County: (1) formally recognize MACE as the representative of Respondent's managerial personnel and professional employees; (2) establish a managerial salary plan; (3) grant a percentage increase in the wages to managerial personnel and professional employees; (4) at least grant to managerial personnel and professional employees the same percentage wage increase which Respondents had agreed with the Union to give to certain of its other employees; (5) check off the dues paid by MACE members; (6) institute a wage protection plan for managerial personnel and professional employees; and (7) establish a more formalized compensatory time system for managerial personnel and professional employees; and (8) upgrade certain employees to managerial classifications.

5. That following said meetings, Respondent County on or about December 21, 1972, unilaterally granted a 5% wage increase to its managerial personnel and professional employees, including those professionals involved in the pending elections; and that at about the same time upgraded the classification of at least one employe, established a training fund for the benefit of its managerial personnel and professional employees, and continuously considered the question of whether to formally recognize MACE as the spokesman for its managerial personnel and professional employees.

6. That prior to and during the pendency of the election proceedings involving the professional employees, the Union and Respondent engaged in collective bargaining negotiations for certain non-professional employees of the Respondent County; that during the course of said negotiations, Respondent County advised the Union that it could only grant said employees and the petitioned-for professional employees wage increases of 4 1/2% under the then existing federal wage guidelines; that the Union and Respondent County subsequently consummated a collective bargaining agreement under which the non-professional employees received a 4 1/2% raise; and that throughout said negotiations Respondent County at no time informed the Union that it had been meeting with MACE representatives, or that Respondent County intended to grant the petitioned-for professional employees a 5% raise.

7. That following Respondent County's 5% wage increase to the petitioned-for professional employees, and also following Respondent County's repeated discussions with MACE representatives, the Commission conducted the representation elections among the professional employees described in Unit No. 1 and Unit No. 2, supra; that the results of balloting in Unit No. 1 and Unit No. 2 were as follows:

UNIT NO. 1

1. Employees claimed eligible to vote.	144
2. Ballots cast	74
3. Ballots challenged	2
4. Valid ballots counted	72
5. Ballots cast in favor of the Union	19
6. Ballots cast against the Union	53

UNIT NO. 2

1. Employees claimed eligible to vote.	15
2. Ballots cast	14
3. Ballots challenged	3
4. Valid ballots counted	11

5. Ballots cast for the Union	10
6. Ballots cast for Dane County Attorneys Association	10
7. Ballots cast against Dane County Attorneys Association	1

8. That on January 29, 1973 the Union timely filed with the Commission objections to the conduct of the election conducted in Unit No. 1; and that on February 5, 1973 filed a complaint of prohibited practices initiating the instant matter.

9. That the Respondents, Dane County, Dane County Board of Supervisors, and Edward E. Garvoille, by meeting with representatives of MACE with respect to those matters reflected in paragraph 4, supra, pertaining to professional employes, during the pendency of the election proceedings above noted, interfered, restrained and coerced Respondent County's professional employes with respect to their free choice to select a collective bargaining representative.

10. That representatives of Respondent County, including Respondent Garvoille, in meeting with representatives of MACE for the purpose indicated in para. 4, supra, as said purposes affected Respondent County's professional employes, assisted in the formation and development of MACE, at least as an alleged representative of said professional employes.

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

CONCLUSIONS OF LAW

1. That MACE is a labor organization within the meaning of Section 111.70(1)(j) of the Municipal Employment Relations Act.

2. That, by interfering, restraining and coercing its employes with respect to their free choice to select a collective bargaining representative, Respondents, Dane County, Dane County Board of Supervisors, and Edward E. Garvoille have committed, and are committing, prohibited practices within the meaning of 111.70(3)(a) 1 of the Municipal Employment Relations Act.

3. That, by assisting in the formation and development of MACE, at least as an alleged representative of the Respondent County's professional employes, Respondents Dane County, Dane County Board of Supervisors and Edward E. Garvoille, have committed, and are committing, prohibited practices within the meaning of Section 111.70(3)(a)2 of the 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 Respondents, Dane County, Dane County Board of Supervisors, and Edward E. Garvoille, their officers and agents, shall immediately:

1. Cease and desist from:

(a) Unilaterally changing wages, hours and other terms or conditions of employment of its pro-

fessional employes, or any other employes, during the pendency of any election proceeding involving said employes.


- (b) Bargaining with MACE, or any other organization, for any of its employes until such time as MACE or any organization has been selected as the collective bargaining representative for said employes.
- (c) Assisting MACE in the formation or development of any other labor organization, claiming to represent employes.
- (d) In any other like or related manner, interfering with, restraining or coercing employes in the exercise of their right to self-organization, to form, join, or assist Dane County Joint Council of Unions, AFSCME, AFL-CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining, or to refrain from any and all such activities, pursuant to the provisions of the Municipal Employment Relations Act.

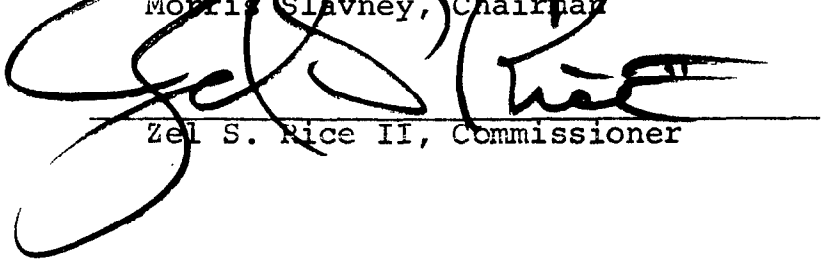
2. Take the following affirmative action which the Commission finds will effectuate the purposes of the Municipal Employment Relations Act:

- (a) Notify all professional employes, by posting in conspicuous places in its offices where professional employes are employed, copies of the notice attached hereto and marked "Appendix A" which notice shall be signed by both the Chairman of the Dane County Board of Supervisors and Edward E. Garvoille, and shall be posted immediately upon receipt of a copy of this Order and shall remain posted for thirty (30) days thereafter. Reasonable steps shall be taken by the Respondents to insure that said notices are not altered, defaced or covered by other material.
- (b) Notify the Wisconsin Employment Relations Commission, in writing, within fourteen (14) days following the date of this Order, as to what steps have been taken to comply herewith.

Given under our hands and seal at the City of Madison, Wisconsin, this 4th day of October, 1973.

WISCONSIN EMPLOYEMENT RELATIONS COMMISSION

By 
Morris Slavney, Chairman


Zel S. Rice II, Commissioner

Appendix "A"

NOTICE TO ALL PROFESSIONAL EMPLOYEES

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

1. WE WILL NOT unilaterally change wages, hours and other terms or conditions of employment of our professional employes, or any other of our employes, during the pendency of any election proceeding involving said employes.
2. WE WILL NOT bargain with the Management Association For County Employees (MACE), or any other organization, for any of our employes until such time as MACE, or any other organization, has been selected as the collective bargaining representative for said employes.
3. WE WILL NOT assist in the formation or development of MACE, or any other organization, claiming to represent employes.
4. WE WILL NOT in any other like or related manner, interfere with, restrain or coerce employes in the exercise of their right to self-organization, to form, join, or assist Dane County Joint Council of Unions, AFSCME, AFL-CIO, or any other organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining, or to refrain from any and all such activities, pursuant to the provisions of the Municipal Employment Relations Act.

By _____
Chairman, Dane County Board of
Supervisors

Personnel Director

Dated this _____ day of October, 1973.

This notice must remain posted for thirty (30) days from the date hereof and must not be altered, defaced or covered by any material.

MEMORANDUM ACCOMPANYING
FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER

In its complaint the Union primarily alleges that Respondents engaged in certain pre-election misconduct, and that such misconduct constituted prohibited practices. More specifically, the Union states that the County, inter alia, unilaterally granted a 5% wage increase to its professional employes during the pendency of an election proceeding involving said professionals, and that during this same period the County met and bargained with MACE, a rival labor organization. The Union also maintains that the County unlawfully engaged in material misrepresentation during the collective bargaining negotiations covering certain of its employes.

In reply, the County, alleges that it did not bargain with MACE, that it did not engage in any material misrepresentation during collective bargaining negotiations, and that, although conceding that it "now recognizes the technical error of raising the pay of the professional employes during the pendency of the election", the County maintains "there is not evidence that [its] motive was to induce the employes against the Union."

The material facts in the matter are set forth in the Findings of Fact. To a limited extent, the facts are more fully stated in the discussion hereinafter.

The 5% Wage Increase to Professional Employes

Section 111.70(3)(a)1 of the Municipal Employment Relations Act 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 latter right includes, inter alia:

"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."

In construing these provisions the Commission has held that the grant of benefits during the pendency of a representation election constitutes a prohibited practice. As noted in City of Waukesha (Water Utility), Dec. No. 11486 (12/72), the Commission has also ruled that a finding of anti-union animus or motivation is not necessary to establish a violation of Section 111.70(3)(a)1. Rather, that section is violated whenever acts are committed, which are likely to interfere with employes' rights to engage in, or refrain from, the activities set forth in Section 111.70(2). See City of Milwaukee, Dec. No. 8420 (2/68).

Applying the foregoing analysis to the instant matter, it is clear that the County's admitted unilateral 5% increase to the professional employes involved in the elections graphically demonstrated the futility of choosing the Union as their collective bargaining representative. For, by granting such increase when it

did, the County, in effect, succinctly demonstrated to said employes that they could rely on the County's benevolence as to matters affecting their wages, hours and working conditions, and that, therefore, there was no need for the professional employes to select the Union to bargain for them on such matters. Therefore, the Commission concludes that the action of the County in granting the 5% increase during the pendency of the election proceeding constituted a prohibited practice within the meaning of Sec. 111.70(3)(a)1 of the Municipal Employment Relations Act.

The County's Relationship with MACE

It is undisputed that representatives of the County met with representatives of MACE during the pendency of the proceeding involving the Union, a proceeding in which an election was jointly requested by the County and the Union, as evidenced by their stipulation filed with the Commission, and in which election the professional employes rejected the Union as their bargaining representative. The record established that the County, primarily through its Personnel Director, Garvoille, met with MACE representatives on September 5 and 26, and on November 7, 1972, on which occasions they discussed proposals, which MACE had advanced for the County's managerial personnel and professional employes. As noted in greater detail in the Findings of Fact, the County thereafter granted several benefits, including the 5% increase in December, 1972, to its managerial personnel and professional employes.

Defending itself against the allegations in the complaint, the County primarily asserts that it did not engage in collective bargaining with representatives of MACE, contending that it, at no time, formally recognized MACE, that it made no proposals to MACE, and that it did not enter into any agreement with MACE. Seeking to support the County's position, the President of MACE, testified that MACE is not an organization existing for the purposes of collective bargaining.

Throughout the time that it made these bargaining demands, MACE also aggressively sought to represent the County's managerial personnel and professional employes. For example, MACE on September 29, 1972 advised certain managerial personnel and professional employes of its meetings with the County's Finance and Personnel Committee and advised them, "if you are interested in this organization as the official recognized unit representing supervisory, managerial and professional employes, you should be present to hear of our progress and goals (emphasis added)". Later, just a few weeks before the election, MACE took credit for the 5% wage increase when it informed its prospective members: "it was partially due to MACE efforts that management and professional employes of Dane County were granted a 5% increase for 1973 as well as other benefits including an on-going training fund to engage speakers, etc." At the same time, MACE also made provisions in its rules to broaden its membership.

In view of the above, and particularly that fact that MACE repeatedly met with representatives of the County in an attempt to better the working conditions of not only its managerial personnel but also its professional employes, the record established,

and the Commission so finds, that MACE is a labor organization. 1/

Turning to the County's dealing with MACE, the record shows that the County and MACE did not engage in some of the more formalized aspects of collective bargaining, e.g., the grant of formal negotiations, the mutual exchange of proposals and counter proposals, and a formalized collective bargaining agreement. However, such formal accouterments need not necessarily exist in all collective bargaining relationships, as parties can jointly meet in an informal atmosphere to agree on wages, hours, and conditions of employment. Such oral agreement may be reflected in the form of a written agreement, resolution, or ordinance.

Thus, in direct response to the request made by MACE the County in December, 1972 formally adopted a 5% wage increase to its managerial personnel and professional employes, including those professional employes involved in the election. For the first time the County had ever granted a percentage wage increase to professional employes. Further, and again in response to proposals made by MACE, the County established a training and education fund, upgraded the classification of at least one employe, and indicated that it would grant formal recognition to MACE, if a proper regulation and language could be agreed upon. Additionally, although the County did not agree to such requests, the record also establishes that the County and MACE discussed requests of MACE that the County establish a more formalized system for recording compensatory time for managerial personnel and professional employes, and also to establish a wage protection plan covering managerials and professionals.

In light of the extending discussion concerning said matters, the record establishes that MACE and the County engaged in collective bargaining as their discussion centered on wages, hours, and conditions of employment. Such collective bargaining with a rival labor organization, during the pendency of the election, violated Section 111.70(3)(a)1 of the Municipal Employment Relations Act, as such conduct tended to encourage employe support for MACE, while at the same time discouraging employe support for the Union.

The County's Bargaining With The Union

During the course of the negotiations between the Union and the County covering non-professional employees, the County advised the Union that it would only grant a 4 1/2% wage increase to such employes represented by the Union as well as to the professional employes involved in the election. The Union claimed that it relied on this statement to accept such an increase for the non-professional employes represented by it. The Union asserts that since the County concealed from the Union its true intent to grant a 5% wage increase to professional employes, that such activity undermined the Union in violation of Section 111.70(3)(a)4. With regard to this allegation, the Commission first notes that the Union failed to prove that the non-professional employes were in

1/ The fact that MACE also sought such improvements for managerial personnel does not permit it to escape its labor organization status, despite the fact that such dual representation taints its "labor organization" status.

fact entitled to more than a 4 1/2% wage increase under the then existing federal wage guidelines. Further, assuming arguendo, that they were so entitled, the Union none the less had ample opportunity to determine for itself, during the negotiations, whether such information was incorrect.

In light of the foregoing, the Commission concludes that the County's statement did not constitute a prohibited practice within the meaning of Section 111.70(3)(a)4 and therefore the Commission deems the allegations and complaint with respect thereto as being dismissed.

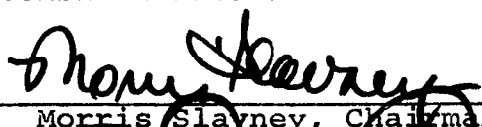
Turning to the question of remedy, the Commission's conventional remedy, the Commission has ordered the County to cease and desist from its prohibited practices and to take certain affirmative action with regard thereto. It is the Commission's view that said remedy will serve the purpose contemplated in the Act.

The Commission today is also setting aside the results of the election in the unit of professional employes sought to be represented by the Union, for the reason that the County's conduct in committing the prohibited practices interfered with the free choice of the employes in the election.

Dated at Madison, Wisconsin, this 4th day of October, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Zel S. Rice II, Commissioner