

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

DRIVERS, SALESMEN, WAREHOUSEMEN, MILK	:	
PROCESSORS, CANNERY, DAIRY EMPLOYEES,	:	
AND HELPERS UNION LOCAL NO. 695,	:	
AFFILIATED WITH THE INTERNATIONAL	:	
BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,	:	
WAREHOUSEMEN AND HELPERS OF AMERICA,	:	
	:	
Complainant,	:	Case IV
	:	No. 15971 MP-162
vs.	:	Decision No. 11646
	:	
CITY OF WISCONSIN DELLS, HANS MICKELSEN,	:	
ROY KELLY, BERNARD OLSON, CARL SLOCUM,	:	
AND WILBER WALLUKS,	:	
	:	
Respondents.	:	
	:	

Appearances:

Goldberg, Previant & Uelmen, Attorneys at Law, by Mr. John S. Williamson, Jr., for the Complainant.
Kramer, Nelson & Azim, Attorneys at Law, by Mr. John N. Kramer,
and Mr. Ray C. Feldman, Jr., City Attorney, for the
Respondents.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The above named Complainant having, on August 30, 1972, filed a complaint with the Wisconsin Employment Relations Commission wherein it alleged that the above named Respondents had committed prohibited practices within the meaning of the Wisconsin Municipal Employment Relations Act; and hearing on said complaint having been held at Wisconsin Dells, Wisconsin, on September 28, 1972, the full Commission being present, and on September 29, 1972, Chairman Morris Slavney and Commissioner Zel S. Rice II being present; and the Commission having considered the evidence, arguments and briefs of Counsel, and being fully advised in the premises, makes and issues the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. That Drivers, Salesmen, Warehousemen, Milk Processors, Cannery, Dairy Employees and Helpers Union Local No. 695, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, referred to herein as the Complainant, is a labor organization having its principal offices at 1314 North Stoughton Road, Madison, Wisconsin; and that at all times pertinent hereto Glen Van Keuren and Elmer Vandre have been agents of the Complainant.

2. That the City of Wisconsin Dells, referred to herein as Respondent City, is a Wisconsin municipality having its principal offices at City Hall, Wisconsin Dells, Wisconsin; that Respondent City operates a police department, referred to herein as the Wisconsin

Dells Police Department; and that, at all times material herein, Respondent City has employed a Chief of Police, one Assistant Chief of Police, two Sergeants and eleven other employees in the Wisconsin Dells Police Department.

3. That Hans Mickelsen, referred to herein as Respondent Mickelsen, was, at all times material herein, employed by Respondent City as its Chief of Police; and that, in such capacity, Respondent Mickelsen was authorized to act, and did act, on behalf of Respondent City in matters and relationships involving Respondent City and its employees.

4. That Roy Kelly, referred to herein as Respondent Kelly, was, at all times material herein, the Mayor of Respondent City, and that, in such capacity, Respondent Kelly was authorized to act, and did act, on behalf of Respondent City in matters and relationships involving Respondent City and its employees.

5. That Bernard Olson, Carl Slocum and Wilber Walluks were, at all times material herein, members of the Common Council of Respondent City and members of the Police and Fire Committee of Respondent City; that Bernard Olson was the chairman of said Police and Fire Committee; and that, in such capacity, the three individual Respondents named in this paragraph were authorized to act, and did act, on behalf of Respondent City in matters and relationships involving Respondent City and its employees.

6. That, on an unspecified date prior to December 30, 1971, Dean E. Willard, a municipal employee employed in the position of Patrolman in the Wisconsin Dells Police Department, contacted the Complainant to seek representation by the Complainant for certain employees of the Wisconsin Dells Police Department for the purpose of collective bargaining with Respondent City; that Willard thereafter engaged in activities directed at soliciting support for the Complainant among the employees of Respondent City; that Willard, William L. Jax, Marion Bailey, Jon J. Jensen, Ruth Brenson and Linda L. Matrick, all of whom were employed in non-supervisory positions in the Wisconsin Dells Police Department, executed documents authorizing the Complainant to represent them for the purposes of collective bargaining with Respondent City; that, on December 30, 1971, the Complainant, by Van Keuren, mailed letters to the City Clerk of Respondent City, to Respondent Mickelsen and to Respondent Kelly, wherein the Complainant stated its claim that it represented a majority of the employees in the Wisconsin Dells Police Department, and wherein the Complainant requested Respondent City to recognize it as the exclusive collective bargaining representative for employees in such unit; and that, on December 31, 1971, the Complainant herein filed a petition with the Wisconsin Employment Relations Commission ^{1/} wherein it requested the Commission to conduct a representation election among the employees in the following claimed appropriate unit: "All patrolmen, matrons and dispatchers excluding Chief of Police, Assistant Chief of Police, Sergeants and all other supervisory employees" employed by Respondent City.

7. That the City Clerk of Respondent City, Respondent Mickelsen and Respondent Kelly received, in due course of the mails, the letters from the Complainant described in the immediately foregoing paragraph; that Respondent Olson and Respondent Slocum were advised of the receipt of said letters and of their contents; that, on January 3, 1972, Respondent Kelly, Respondent Olson and Respondent Slocum met with the City

^{1/} City of Wisconsin Dells, Case I, No. 15192, ME-739

Clerk of Respondent City concerning the request for recognition made by the Complainant; that, on or before January 3, 1972, Respondent Mickelsen called a meeting of employees of the Wisconsin Dells Police Department and posted a notice in the office of the Wisconsin Dells Police Department, as follows:

"NOTICE

"A special meeting will be held at this
P.D. Jan. 3rd at 1:00 P.M. for Police
Personnel.

"The following persons are to be there
without fail.

Dean Willard
Wm Jax
Wm Bailey
John Jensen
Ruth Brenson
Linda Matrick

"H. Mickelsen
Chief of Police";

that all of the employees so listed had previously indicated their support for the Complainant herein, and no employee who had previously declined to support the Complainant was so listed; and that, on the morning of January 3, 1972, Respondent Mickelsen caused a telephone message to be left for Matrick at her home, informing her that she was to be present at such meeting.

8. That on January 3, 1972, Respondent Mickelsen conducted a meeting of employees in the offices of the Wisconsin Dells Police Department; that said meeting was a special meeting and was not a part of a regular series of meetings held according to any established schedule; that Patrolman Dean E. Willard, Patrolman William L. Jax, Patrolman Jon J. Jensen, Patrolman Elmer Fisher, Patrolman Fred Pearson, Sergeant Frank Schoeninger, Dispatcher Linda L. Matrick, Dispatcher Ruth Roberts, Dispatcher Frances Trojan and Respondent Kelly were in attendance at said meeting; that, during the course of said meeting, Respondent Mickelsen read portions of the Complainant's letter requesting recognition; that Respondent Mickelsen made statements, during the course of said meeting, to the effect that: "the Complainant did not represent all members of the department", "unethical procedures were used in getting the union", "the union was bulldozed through and underhanded", "pressure was put on other people to do things that they didn't want to do", "he didn't think everyone was behind it and that he didn't believe there was a need for a union", "the union would not hold a majority of the employees in the department when he [the Chief of Police] and the Assistant Chief of Police were included", and that "if it was for the benefit of all that he would be one hundred percent behind it but didn't think it would be"; that, during the course of said meeting, Respondent Mickelsen identified Willard as the instigator and principal activist on behalf of the Complainant, and asked Willard to stand up and say something; that Willard responded to such request by stating that he was, in fact, the instigator of the union activity; that, during the course of said meeting, Respondent Mickelsen made statements to Jax to the effect that: Jax "had the most to lose because he was still on probation", Jax was "jeopardizing his Veteran's Administration benefits", and that he [Mickelsen] "was checking to see if Jax was allowed to

join the union or not"; that Jax had previously been removed from probation by Respondent City, but was, at that time, receiving supplemental payments, in addition to the wages paid to him by Respondent City, from the Veteran's Administration for on-the-job training in connection with his employment by Respondent City; that, during the course of said meeting, Respondent Mickelsen reiterated certain previously existing rules and warned the employees attending of the future strict enforcement of such rules, including: employees to make good written reports, no unnecessary loitering in the office, no unauthorized persons to be permitted in the office, no unauthorized riders in squad cars, no employee to leave the City while on duty except for a reasonable distance and at the officer's discretion in an emergency, and employees to report on time for scheduled shifts; that, during the course of said meeting, Respondent Mickelsen imposed certain new rules, including: a full written report to be made on the same shift and left on Respondent Mickelsen's desk by any officer leaving the City while on duty, written requests to be made for vacation and compensatory time off, all illnesses of more than three work days to be verified by a physician, and pay to be docked for tardiness; and that, during the course of said meeting, Respondent Mickelsen announced certain shift changes and the implementation of a full time foot patrol.

9. That, on January 3, 1972, Respondent Mickelsen posted the following notice in the office of the Wisconsin Dells Police Department:

"January 3, 1972

"Wisconsin Dells Police Squad Meeting

"Required rules for all employees.

"1-All Officers must make good written reports, completed at end of each shift, Better dailey (sic) logs.

"2-No unnecessary loitering in the Office.

"3-Dispatchers not to allow unnecessary loitering in office by unauthorized (sic) persons.

"4-Officers not to have unauthorized (sic) riders in the squad car.

"5-A full written report must be made by Officer if he goes (sic) outside of City Limits, Which must be an emergency, To assist (sic) another Officer and within a reasonable distance, To return to his own area of patrol soon as possible.

"6-Make written request for vacation and comp. time.

"7-Must have note from the Doctor when one is off on sick leave for over 3 days.

"8-Be to work on time or be docked accordingly.

"9-A training course on handling the 12 Ga. roit (sic) guns will be held at the Wisconsin Dells Rifle Clubs (sic) Range soon, Weather permitting, All Officers must qualify. Time and date will be posted.

"10-Next squad meeting to be held Febuary (sic) 7,
at 4:00 P.M. A refresher course of fingerprinting
to be held.

/s/ Hans Mickelsen
Hans Mickelsen
Chief of Police"

10. That, at all times material herein, Respondent City owned and operated two police squad cars; that, prior to January 7, 1972, police officers assigned to patrol duty on any shift would normally drive or ride in one of said squad cars, but were under standing orders to leave the squad cars and patrol on foot at their discretion; that, prior to January 7, 1972, police officers employed by Respondent City had been permitted to wear their Wisconsin Dells Police Department uniforms while performing foot patrol duties in the business area of Wisconsin Dells as employes of certain private individuals and/or groups, but that, prior to January 7, 1972, police officers had not been regularly assigned to full duty shifts on foot patrol as employes of the Wisconsin Dells Police Department; that certain shift and assignment changes announced by Respondent Mickelsen at the aforesaid meeting held on January 3, 1972, became effective on January 7, 1972; that, effective January 7, 1972, Jon J. Jensen was removed from his previous and preferred assignment on a 3:00 P.M. to 11:00 P.M. or 4:00 P.M. to 12:00 Midnight shift and was assigned a less desirable 11:00 P.M. to 7:00 A.M. or 12:00 Midnight to 8:00 A.M. shift; that, effective January 7, 1972, Dean E. Willard was removed from his previous assignment on an 11:00 P.M. to 7:00 A.M. shift and assigned to a 6:00 P.M. to 2:00 A.M. shift, and was ordered by Respondent Mickelsen to work exclusively as a foot patrol officer; that such foot patrol was instituted during that portion of the year when activity in the resort area in the City of Wisconsin Dells is at a low level, and when weather conditions included frequent episodes of sub-zero temperatures; that Willard was equipped by Respondent City with a portable radio unit, but was issued no other equipment or protective clothing for use on such assignment; that Respondent Mickelsen granted Willard permission to wear certain non-uniform cold weather clothing personally owned by Willard while he was performing said assignment; that Respondent Mickelsen refused an offer by Jensen to relieve Willard from foot patrol for a portion of the time; that, in response to the order of Respondent Mickelsen, Willard engaged in foot patrols, as assigned, on a schedule of six nights on duty and two nights off duty, commencing on January 7, 1972 and continuing until March 2, 1972; that, during the period of such foot patrols, no arrests were directly attributed to the assignment of an officer to foot patrol; and that, during the period of such foot patrols, no officer was assigned to foot patrol duty on the nights when Willard was scheduled off duty.

11. That Respondent City maintains a police log in the office of the Wisconsin Dells Police Department, wherein police activities are recorded and other entries are made pertaining to said department; that all employes of the Wisconsin Dells Police Department are required to read said log on a daily basis; that, on or about January 3, 1972, Respondent Kelly visited Respondent Mickelsen at the office of the latter, at which time they discussed the request for recognition made by the Complainant herein and the concerted activities among the employes; that, subsequent to such conversation and on or about January 3, 1972, Respondent Mickelsen made an entry in the police log to the effect that: Respondent Kelly "had been in and advised that due to the union there would have to be a reorganization of the department and a layoff"; that, on or about January 3, 1972, Daniel R. Koch, an individual employed at that time as a Deputy Sheriff-Lieutenant in the Columbia County, Wisconsin, Sheriff's Department, visited the

office of the Wisconsin Dells Police Department, at which time he was shown the aforesaid log entry; and that, on or about January 5, 1972, Daniel E. Hiller, an individual employed at that time as a Deputy Sheriff-Patrolman in the Sauk County, Wisconsin, Sheriff's Department, visited the office of the Wisconsin Dells Police Department, at which time he was shown the aforesaid log entry.

12. That, on or about January 5, 1972, Respondent Mickelsen had a conversation with Linda L. Matrick, during which Respondent Mickelsen made statements to Matrick to the effect that: Respondent Kelly "had been in, that the police department was to be reorganized, and that layoffs were possible"; and that Respondent Mickelsen stated to Matrick: "See what your Union has done for you."

13. That, on an unspecified date during the month of January, 1972, Respondent Mickelsen solicited William L. Jax to withdraw from the Complainant, and made statements to Jax to the effect that: "if he [Mickelsen] were in Jax's shoes he would withdraw".

14. That, on January 20, 1972, the Complainant herein filed a complaint with the Wisconsin Employment Relations Commission, 2/ wherein it alleged that Respondent City had committed prohibited practices within the meaning of Sections 111.70(3)(a)(1) and (3) of the Municipal Employment Relations Act, in connection with the foregoing conduct; that the Commission appointed John T. Coughlin, a member of its staff, to act as Examiner pursuant to Section 111.07(5), Wisconsin Statutes; that Examiner Coughlin set the matter to be heard on February 15, 1972; that a copy of said complaint and the notice of hearing pertaining thereto were served on Respondent City on January 27, 1972; that hearing in the matter was subsequently postponed; and that, on February 18, 1972, Examiner Coughlin issued notice setting the matter to be heard on March 3, 1972.

15. That, on an unspecified date prior to February 22, 1972, Jon J. Jensen announced his impending resignation from the Wisconsin Dells Police Department; that, on February 22, 1972, a newspaper editorial cartoon was received at the office of the Wisconsin Dells Police Department; that such cartoon contained a caption stating: "Higher Wages Come Before the Public Interest", and depicted a large human figure labeled "LABOR UNIONS" holding back a railroad locomotive, a small child figure labeled "STRIKERS", and a small child or doll figure sitting on the railroad tracks in the path of the locomotive and labeled "HIGHER WAGES"; that certain typewritten material had been added to said cartoon, by a person or persons unknown; that the words "ALL BRAIN NO BRAIN" and "D. WILLARD" had been typewritten on the large human figure in said cartoon; that "J. JENSEN" had been typewritten alongside that cartoon figure labeled "STRIKERS"; that "W. JAX" had been typewritten under the cartoon figure labeled "HIGHER WAGES"; that a typewritten message had been added at the top of said cartoon, as follows:

"TO CHIEF MICKELSEN

"You got rid of one skunk, let's
get rid of the rest of them.

"A CONCERNED CITIZEN";

and that, taken as a whole, said cartoon was derogatory towards labor organizations and each of the three employees named therein.

2/ City of Wisconsin Dells, Case II, No. 15256, MP-112

16. That, on or about February 22, 1972, Respondent Mickelsen posted the cartoon described in the immediately foregoing paragraph hereof for public display in the offices of the Wisconsin Dells Police Department; that such cartoon was displayed in manner and location where it would be likely to be seen, and was seen, by employees of the Wisconsin Dells Police Department; and that, on or about February 22, 1972, Respondent Mickelsen made an entry in the police log of the Wisconsin Dells Police Department calling attention to said cartoon.

17. That, on an unspecified date subsequent to the date on which he made the log entry referred to in paragraph 11 hereof, and prior to February 23, 1972, Respondent Mickelsen altered the police log of the Wisconsin Dells Police Department by removing the log entry referred to in paragraph 11, hereof; that, on or about February 23, 1972, Respondent Mickelsen requested the Sheriff of Columbia County, Wisconsin, to direct Daniel R. Koch to meet with Respondent Mickelsen at the offices of the Wisconsin Dells Police Department; that, in response to such request, on February 23, 1972, Koch visited the offices of the Wisconsin Dells Police Department and engaged in a conversation with Respondent Mickelsen; that, during the course of such conversation, Respondent Mickelsen questioned Koch concerning the latter's knowledge of the log entry referred to in paragraph 11 hereof and concerning the manner in which Koch came to have such knowledge; that, during the course of such conversation, Respondent Mickelsen solicited Koch to commit to perjury by refusing to testify or by giving false testimony, with respect to the original log entry, in the proceedings scheduled before Examiner Coughlin; that Koch advised Respondent Mickelsen that he would not give false testimony or withhold evidence if called to testify as a witness; that Respondent Mickelsen thereupon made threats to the effect that he would initiate proceedings against any person who testified against him; and that, during the course of such conversation, Respondent Mickelsen made statements to the effect that: "all this was Officer Willard's fault and that when all this was over, Officer Willard would not have a job".

18. That, on March 3, 1972, a consolidated hearing was held at Wisconsin Dells, Wisconsin, on the aforesaid petition for election and complaint of prohibited practices, John T. Coughlin presiding; that, prior to the opening of said hearing, representatives of the Complainant and representatives of Respondent City met and resolved the issues existing between them; that, during the course of such hearing, the Complainant and Respondent City placed a collective bargaining agreement on the record, by stipulation; that, as a part of such agreement, Respondent City recognized the Complainant as the exclusive collective bargaining representative of employees in the following bargaining unit:

"All full time and part time patrolmen, matrons and dispatchers, excluding Chief of Police, Assistant Chief of Police and all other supervisory employees.";

that such agreement provided further that:

"All working conditions, including, but not limited to, shift assignments and foot patrols, shall be the same as they were in December, 1971 and shall so remain during the time the parties bargain in good faith over these conditions. Upon the completion of these good faith negotiations this agreement shall terminate and be null and void.";

. . .

"Both parties shall respect the rights of the bargaining unit employees granted by Section 111.70, Wisconsin Statutes, and more particularly agree to refrain from the harassment, coercion, interference or restraint of any employee covered by this agreement.",

. . .

"In the event either party to this agreement shall charge the other with a violation of its terms, the charge shall be served upon the other party and filed with John Coughlin, whom the parties designate as arbitrator, and he shall promptly hold a hearing on the charge and rule on it within a reasonable time after the close of the hearing. The parties agree his decision on the charge shall be final and binding on both of them.";

that such agreement became effective immediately, except that shift assignments were to be changed in accordance with the foregoing on March 5, 1972; and that, on the basis of said agreement, the Complainant herein withdrew its petition for election and complaint of prohibited practices, and both such proceedings were dismissed by the Commission in due course.

19. That, on March 3, 1972, subsequent to the close of the proceedings before Examiner Coughlin, Respondent Mickelsen left orders at the office of the Wisconsin Dells Police Department to the effect that Dean E. Willard was to continue on full time foot patrol; that Willard reported for duty at 6:00 P.M. on the same date dressed in a standard winter uniform, without his cold weather clothing, anticipating, on the basis of the agreement reached by the parties, to patrol using a squad car; that, upon being advised of the order of Respondent Mickelsen, Willard, who had been present during the proceedings before Examiner Coughlin, questioned the validity of such order; that Respondent Olson was contacted; and that, following discussion, Respondent Olson countermanded the order of Respondent Mickelsen and ordered Willard to patrol in a squad car, and not on foot.

20. That, on March 6, 1972, Respondent Mickelsen wrote a letter to the Sheriff of Sauk County, Wisconsin requesting that Deputy Sheriff-Patrolman Daniel E. Hiller, who had been present in the room during the proceedings before Examiner Coughlin on March 3, 1972, under subpoena to appear as a witness on behalf of the Complainant, be ordered never to come into the Wisconsin Dells Police Department office unless for business reasons.

21. That, on or about April 2, 1972, at about 3:00 A.M., the Wisconsin Dells Police Department received a complaint concerning an intoxicated individual at Indian Heights, a community located approximately 4 miles outside of the city limits of Respondent City; that such complaint was referred to the Juneau County, Wisconsin, Sheriff's Department, the law enforcement agency having jurisdiction over the area in which the complaint arose; that, at about 3:31 A.M. on the same date, the Wisconsin Dells Police Department received a request from the Juneau County Sheriff's Department to have an officer stand by to assist in handling of said complaint; that, in

response to such request, William L. Jax proceeded in his squad car to the city limits of Respondent City and stood by for further orders; that, at about 3:37 A.M. on the same date, the Juneau County officer responding on said complaint requested assistance from the Wisconsin Dells Police Department; that, in response to such request, Jax proceeded to Indian Heights; that, upon his arrival at Indian Heights, Jax was advised by the Juneau County officer that he was not needed and that he could return; that Jax immediately returned to his patrol area within the city limits of Respondent City, having been out of the city approximately 15 minutes and having traveled approximately 8 miles while out of the city; and that Jax made a log entry concerning the foregoing.

22. That, on April 3, 1972, Respondent Mickelsen wrote a letter to Jax concerning the events described in paragraph 21, hereof, wherein he stated, inter alia:

"I have given orders to all befor (sic) that an Officer was not to leave the City while on duty, and then only for an extreme emergency and a written report made on that same shift and left on my desk.",

and wherein he reprimanded Jax and demanded an immediate full written report concerning said incident; that, on April 4, 1972, in response to Respondent Mickelsen's letter of April 3, 1972, Jax filed a full written report concerning the events described in paragraph 21 hereof; and that, thereafter, Respondent Mickelsen was critical of Jax for having filed too long a report concerning said incident.

23. That, on April 6, 1972, representatives of the Complainant met with representatives of Respondent City, including Respondent Mickelsen, Respondent Kelly, Respondent Olson and Respondent Slocum, for the purpose of collective bargaining; and that, during the course of such meeting, an agreement was reached between the parties concerning one Darrell Smith, whereby Smith was to continue in the employ of Respondent City as a part time dispatcher and was to have preference, conditioned upon qualification, for any full time vacancy in the Wisconsin Dells Police Department.

24. That, in connection with the on-the-job training program established with the Veteran's Administration involving William L. Jax, Respondent City was required to file monthly report forms with the Veteran's Administration to verify the continuation of such program; that such forms provided for remarks regarding the progress of the trainee; that no remarks were made regarding Jax's work performance on the reports filed by Respondent City for the months of December, 1971, January, 1972 and February, 1972; and that, on or about April 10, 1972, Respondent Mickelsen signed and submitted a report to the Veteran's Administration concerning Jax for the month of March, 1972, wherein he stated: "very unsatisfactory with his work".

25. That, on April 24, 1972, representatives of the Complainant met again with representatives of Respondent City, including Respondent Mickelsen, Respondent Kelly, Respondent Slocum and Respondent Walluks, for the purpose of collective bargaining; that, during the course of such meeting, William L. Jax inquired as to why police officers were no longer being supplied by Respondent City with flash-light batteries and similar supplies which had been provided by Respondent City prior to the commencement of concerted activity among the employees;

that, during the course of such meeting, the representatives of the Complainant presented proposed language for a collective bargaining agreement, and such language was reviewed item-by-item by the representatives of both parties; that the language proposed by the Complainant included, inter alia:

"Article VI. SENIORITY

. . .

"c. Part time employees shall be given preference in the filling of vacancies in the department, before hiring from outside the department.";

and that, during the course of such meeting, representatives of Respondent City indicated their assent to the inclusion of such language in the collective bargaining agreement being negotiated.

26. That, on or about April 26, 1972, Respondent Mickelsen and William L. Jax had a conversation, during which Respondent Mickelsen asked Jax why certain subjects, regarded by Mickelsen as petty, had been brought to the attention of the Complainant; that Jax advised Respondent Mickelsen that he didn't think the subjects were petty; that Respondent Mickelsen made statements to the effect that: if Jax "didn't like it around here he should quit"; and he "had a friend in Madison who had advised him [Mickelsen] that the Teamsters were a bunch of goops and that they were trying to gather up all the police departments around the area so they could have their own gestapo".

27. That Jon J. Jensen voluntarily terminated his employment with Respondent City creating a vacancy in the Wisconsin Dells Police Department for a full time patrolman; that Respondent City opened such vacancy for applications in April, 1972; that Darrell Smith applied for said position; that certain other individuals, whose names and qualifications were not disclosed in the record, applied for said position; that, during the period when the Police and Fire Committee of Respondent City was considering applications for said position, Respondent Mickelsen had a conversation with Patrolman Fred Pearson, during which Respondent Mickelsen made statements to the effect that: he "didn't think that Darrell Smith would be hired by the Committee because Smith had voted for the Union"; and that, thereafter, Respondent City failed to offer Smith employment in said position and offered said full time position to another individual.

28. That, on May 11, 1972, representatives of the Complainant met again with representatives of Respondent City for the purpose of collective bargaining; that no agreement resulted from such meeting; and that said meeting was the last such meeting held between the parties.

29. That, on or about May 13, 1972, Respondent Mickelsen signed a Veteran's Administration report concerning Jax for the month of April, 1972, wherein he made the following remark: "Very unsatisfactory as an officer".

30. That, on Sunday, May 21, 1972, the Wisconsin Dells Police Department received a complaint concerning a group of individuals sitting in the doorway and laying on the floor of a business establishment within the City of Wisconsin Dells owned by George E. Willard, the father of Dean E. Willard; that the one patrolman then on duty was busy elsewhere and no police officer was dispatched on

said complaint; that, thereupon, George E. Willard called the home of Respondent Mickelsen and, finding that Respondent Mickelsen was not at home, left a message for Respondent Mickelsen to return the call; that, later on the same date, Respondent Mickelsen called George E. Willard and a conversation ensued between them concerning police protection on Sundays and Holidays; that, during the course of the same conversation, Respondent Mickelsen made statements to the effect that: "until we get rid of your son [Dean E. Willard] and the rest of the troublemakers, we won't have any better conditions.", and "We're going to dispense with the night dispatchers; that way we'll get rid of Linda Matrick, who's another troublemaker".

31. That, on or about May 22, 1972, George E. Willard had a conversation with Respondent Kelly concerning the events described in paragraph 30, hereof; that, during the course of such conversation, George E. Willard disclosed to Respondent Kelly the statements made to him on May 21, 1972 by Respondent Mickelsen; that Respondent Kelly made no response to the statements attributed to Respondent Mickelsen; and that Respondent Kelly made statements to the effect that: "if it only were some different union, not the Teamsters', they're the worst union in the world".

32. That, during the week beginning on May 21, 1972, Dean E. Willard was scheduled on duty between the hours of 11:00 P.M. and 7:00 A.M., and William L. Jax was scheduled on duty between the hours of 12:00 Midnight and 8:00 A.M.; that, on May 24, 1972, at approximately 3:00 A.M., Willard was on duty patrolling on foot, having parked his squad car; that, on the same date and at the same time, Jax was on duty patrolling in a squad car; that Willard and Jax met at an intersection in the business district within Respondent City, whereupon they observed a vehicle bearing license plates identifying it as belonging to a local automobile dealer; that such vehicle was occupied at that time by two negro males; that Willard joined Jax in the squad car and they pursued said vehicle; that, upon overtaking said vehicle, Willard and Jax found that the occupants had abandoned same; that Willard and Jax subsequently apprehended two negro male juveniles approximately one block from the abandoned vehicle; that Willard and Jax escorted said juveniles to the office of the Wisconsin Dells Police Department, questioned them, investigated the incident, and concluded that there was insufficient evidence to charge said juveniles with a crime; that, upon learning that said juveniles were camping in the Wisconsin Dells area with a group, Willard made contact with the group counselor responsible for said juveniles during their stay in the area; that said group counselor advised that he could not come to the office of the Wisconsin Dells Police Department at that time due to the illness of another member of the same group; that said group counselor made a request to Willard that the Wisconsin Dells Police Department provide housing for said juveniles until the following morning, when he would pick them up; that, upon the basis of the foregoing, neither Willard nor Jax attempted to contact the parents of said juveniles, who resided outside of the Wisconsin Dells area; that, in response to the request made by the group counselor and in compliance with standing orders concerning the detention of persons, Willard and Jax confined said juveniles in the jail operated by Respondent City; that Willard and Jax did not arrest said juveniles and did not process them as criminal suspects by fingerprinting, photographing, completing all forms and papers normally completed to record an arrest or referring them to the Columbia County, Wisconsin, juvenile officer; that the presence of said juveniles in the jail operated by Respondent City and the reason for their detention thusly were made known to the dispatcher on duty; that Willard and Jax completed a written report

concerning the incident; that Respondent Mickelsen came on duty on May 24, 1972 after Willard had completed his scheduled shift and gone off duty, but prior to the time that Jax went off duty; and that Respondent Mickelsen made no effort to contact Willard or Jax for any further explanation of the situation with regard to said juveniles.

33. That, on May 24, 1972, at or about 11:23 P.M., the Wisconsin Dells Police Department received an emergency call concerning a traffic accident, wherein a woman pedestrian had been struck by an automobile on U.S. Highway 12 - 16 approximately 4 miles north of the city limits of Respondent City; that such emergency was referred to the Juneau County, Wisconsin, Sheriff's Department, the law enforcement agency having jurisdiction over the area in which the emergency arose, and to the Wisconsin Dells Fire Department for ambulance service; that the Juneau County Sheriff's Department reported that it had no squad car in the area and requested the Wisconsin Dells Police Department to cover the emergency; that, in response to such request, and at or about 11:25 P.M. on the same date, Dean E. Willard proceeded in a squad car to the city limits of Respondent City and requested Dispatcher Linda L. Matrick to call William L. Jax to request Jax to report to duty early; that Matrick placed such call and Jax reported to duty early; that, thereupon, at or about 11:28 P.M., Willard left the city limits and proceeded to the scene of the emergency call; that, upon his arrival at the scene, Willard placed warning flares to control traffic, covered the victim and assisted the ambulance crew; that, at or about 11:40 P.M., Willard reported to the Police Department dispatcher that he was leaving the scene of the emergency call, enroute back to the city limits of Respondent City; that, at or about 11:44 P.M., Willard returned to his patrol area within the city limits of Respondent City, having been out of the city approximately 16 minutes and having traveled approximately 8 miles while out of the city; and that Willard made, and left for Respondent Mickelsen, a written report concerning the foregoing.

34. That, on May 24, 1972, at or about 11:48 P.M., the Wisconsin Dells Police Department received an emergency call concerning a fire under the dashboard of the Wisconsin Dells Fire Department ambulance, encountered while enroute to Baraboo, Wisconsin, transporting the victim of the emergency call referred to in paragraph 33, hereof; that, in response to such emergency call, William L. Jax left the city limits of Respondent City in a squad car and proceeded to the location of said ambulance, overtaking it at or about 11:51 P.M.; that, upon overtaking said ambulance, Jax observed that the lights on said ambulance were not functioning properly, and, thereupon, Jax proceeded ahead of said ambulance, escorting it to a hospital at Baraboo, Wisconsin; that, immediately following the arrival of said ambulance at said hospital, Jax left Baraboo, Wisconsin enroute back to Respondent City; that, at or about 12:17 A.M. on May 25, 1972, Jax returned to his patrol area within the city limits of Respondent City, having been out of the city approximately 29 minutes; that Dean E. Willard was on duty within the city limits of Respondent City during the entire time Jax was out of the city; and that Jax made, and left for Mickelsen, a written report concerning the foregoing.

35. That, on May 25, 1972, Respondent Mickelsen posted a notice in the office of the Wisconsin Dells Police Department, as follows:

"May 25, 1972

"Notice

Notice

Notice

"To all Police Personnel: (sic)

"No Officer while on duty is allowed to leave or take a squad car out-side of the City limits with-out first obtaining permission from the Chief of Police.

/s/ H. Mickelsen
"Hans Mickelsen
Chief of Police".

36. That, on an unspecified date prior to May 25, 1972, representatives of the Complainant and representatives of Respondent City had mutually agreed to meet on May 25, 1972, principally to engage in a discussion concerning the unsatisfactory reports made by Respondent Mickelsen to the Veteran's Administration, referred to in paragraphs 24 and 29 hereof; that, on May 25, 1972, representatives of the Complainant met with representatives of Respondent City, including Respondent Mickelsen and Respondent Kelly; that, during the course of such meeting, Respondent Mickelsen stated his intention to bring charges against Dean E. Willard and William L. Jax on certain matters not fully disclosed at that time; that Willard and Jax offered to place themselves on voluntary suspension, without pay, pending the resolution of any charges filed by Respondent Mickelsen; that Respondent Kelly declined the offer of Willard and Jax to place themselves on voluntary suspension and placed them on involuntary suspension, with pay.

37. That, as a result of his suspension on May 25, 1972, William L. Jax ceased to receive Veteran's Administration benefits for on-the-job training in connection with his employment by Respondent City.

38. That, on or about June 16, 1972, Respondent Mickelsen filed and served charges on Dean E. Willard, as follows:

"The following is a written statement of the charges which were taken into consideration in the decision to suspend you on May 25, 1972:

- "1. Failure to obey the orders, rules and regulations of the Department by leaving the City of Wisconsin Dells, with a Department vehicle, without permission or authority, while on duty and going five miles North of the City on Highway 12, disregarding the fact that you were the only policeman on duty and under circumstances not warranting you doing so.
- "2. Gross neglect of duty by failure to make a detailed officer's report on a juvenile felony case in violation of the orders, rules and regulations of the Department.
- "3. Gross neglect of duty by failure to process two juveniles charged with a felony in violation of the order, rules, and regulations of the Department.
- "4. Gross neglect of duty by failure to notify or make any attempt to notify the

parents of two juveniles who were confined in the City of Wisconsin Dells jail on a felony charge in violation of the orders, rules and regulations of the Department and Wisconsin Statutes.

"Item (1) occurred on May 24, 1972 and the other items on May 23, 1972.

/s/ Hans Mickelsen
"Hans Mickelsen
Chief of Police";

and that a hearing on such charges was set for June 26, 1972 before the Police and Fire Committee of Respondent City.

39. That, on or about June 16, 1972, Respondent Mickelsen filed and served charges on William L. Jax, as follows:

"The following is a written statement of the charges which were taken into consideration in the decision to suspend you on May 25, 1972:

1. Failure to obey the orders, rules and regulations of the Department by leaving the City of Wisconsin Dells with a department vehicle without permission or authority while on duty and unnecessarily traveling to Baraboo, Wisconsin, disregarding the fact that you were the only policeman on duty and under circumstances not warranting you doing so.
2. Gross neglect of duty by failure to make a detailed officer's report on a juvenile felony case, in violation of the orders, rules and regulations of the Department.
3. Gross neglect of duty by failure to process two juveniles charged with a felony in violation of the orders, rules and regulations of the Department.
4. Gross neglect of duty by failure to notify or to make any attempt to notify the parents of two juveniles who were confined in the Wisconsin Dells jail on a felony charge, in violation of the orders, rules and regulations of the Department and the Wisconsin Statutes.
5. Gross neglect of duty by failure to notify the Chief of Police at the end of your shift that two juveniles had been confined in the City of Wisconsin Dells jail for over five hours without having processed them or notifying their parents.

Item (1) occurred on May 24, 1972, and the other items on May 23, 1972.

/s/ Hans Mickelsen
Hans Mickelsen
Chief of Police";

and that a hearing on such charges was set for June 26, 1972 before the Police and Fire Committee of Respondent City.

40. That, on an unspecified date on or before June 26, 1972, Respondent Mickelsen solicited Patrolman Fred Pearson to appear and give testimony before the Police and Fire Committee of Respondent City to the effect that standing rules of the Wisconsin Dells Police Department restricted police officers to a maximum distance of one and one half miles outside of the city limits; that, in response to such request, Pearson advised Respondent Mickelsen that he knew of no such limitation and that he would not testify to the existence of such a limitation; and that Pearson's statements to Respondent Mickelsen were made within range of hearing of Respondent Olson and Respondent Slocum.

41. That, on June 26, 1972 and July 7, 1972, hearing was held at Wisconsin Dells, Wisconsin, before the Police and Fire Committee of Respondent City, in the matter of the suspensions of Dean E. Willard and William L. Jax; that Respondent Olson presided over said hearing; that Respondent Slocum and Respondent Walluks were present at said hearing as members of said Committee; that Respondent Kelly was present at said hearing as an ex-officio member of said Committee; that Respondent Mickelsen was present at said hearing; and that evidence and argument were taken during the course of said hearing on the charges set forth in paragraphs 38 and 39, hereof.

42. That, on an unspecified date subsequent to the hearing described in paragraph 41, hereof, and on or before July 18, 1972, Respondent Olson signed a document entitled: "RECOMMENDATIONS OF THE POLICE AND FIRE COMMITTEE OF THE COMMON COUNCIL OF WISCONSIN DELLS" wherein it was stated, inter alia:

"After considering all of the testimony, the Committee is of the opinion that with regard to Charge 1 against both men, the evidence at the hearing was in conflict as to exactly what the rules of the Department were as to leaving the City with a City-owned squad car. However, the evidence produced indicates that officers Jax and Willard did not make any attempt whatsoever to either notify the Chief or to obtain permission to leave the City. However, because of the uncertain nature of the testimony produced at the hearings, the Committee recommends that the charges regarding Count 1 be dismissed against both men.

"The officers testified repeatedly that they had no intention of filing charges against the juveniles but in their written report they specified that felony charges were pending against the incarcerated juveniles. Further, the officers detained the juveniles in a jail which was not approved as a juvenile detention facility. The officers also failed to notify the Chief of Police at the end of their shift that they had two children in jail.

"Recommendation: The conduct on the part of officers Willard and Jax reflects an uncooperative and uncommunicative attitude which is contrary to the best interests of the Police Department and the citizens of Wisconsin Dells. It is therefore the recommendation of the Police and Fire Committee that officers Dean Willard and William Jax be dismissed";

and that such recommendation was directed to Respondent Kelly for further action.

43. That, on July 18, 1972, Respondent Kelly wrote identical letters to Dean E. Willard and to William L. Jax, as follows:

"I have received the recommendation of the Police and Fire Committee concerning the charges filed against you by Wisconsin Dells Chief of Police Hans Mickelsen.

"As Mayor of the City of Wisconsin Dells, in accordance with Wisconsin Statutes 62.09, para 8, it is my decision that your employment with the Wisconsin Dells Police Department is terminated immediately.

"Respectfully,

"Roy E. Kelly
Mayor-City of Wisconsin Dells"

44. That, on July 20, 1972, the Complainant, by Vandre, sent a telegram to Respondent Kelly, wherein the Complainant stated its desire to meet immediately to negotiate a collective bargaining agreement, and requested Respondent Kelly to contact the Complainant concerning the time and place for such a meeting; that, on July 21, 1972, the Complainant received, from the Western Union Telegraph Company, a copy of said telegram on a form captioned "Telegram Received by Telephone"; that neither Respondent Kelly nor any other person acting on behalf of Respondent City contacted the Complainant in response to said telegram; that there is no evidence that Respondent Kelly failed to receive said telegram; and that no meetings have been held between representatives of the Complainant and of Respondent City subsequent to July 20, 1972 for collective bargaining in the bargaining unit described in paragraph 18, hereof.

45. That, on or about July 27, 1972, the Complainant herein filed charges with Respondent City and with John T. Coughlin, wherein it alleged that Respondent City had violated the agreement of the parties entered into on March 3, 1972, by filing charges against, and discharging, Dean E. Willard and William L. Jax, by charging Jax with unsatisfactory conduct, by failing to maintain all working conditions as they were in December, 1971, by refusing to meet for negotiations, and by other actions designed to coerce, interfere and restrain employees covered by said agreement in the exercise of their rights granted under Section 111.70, Wisconsin Statutes.

46. That, pursuant to the agreement described in paragraph 18, hereof, and the charges filed by the Complainant herein, and described in the foregoing paragraph hereof, the Wisconsin Employment Relations Commission appointed John T. Coughlin as an impartial arbitrator ^{3/} to determine the dispute existing between the parties on said charges; that, on or about August 16, 1972, Arbitrator Coughlin set the matter to be heard on August 25, 1972 and furnished notice of said hearing to counsel for both parties; that, thereafter, a number of telephone conversations were had between Arbitrator Coughlin and counsel for both parties concerning said arbitration proceeding; that, on August 22, 1972, counsel for Respondent City directed a letter to Arbitrator Coughlin, wherein Respondent City stated its objection to the appointment of an arbitrator; that Respondent City failed and refused to proceed to arbitration before Arbitrator Coughlin on August 25, 1972; and that, at all times subsequent to August 25, 1972, Respondent City has

^{3/} City of Wisconsin Dells, Case III, No. 15937, MA-204.

failed and refused to proceed to arbitration pursuant to the collective bargaining agreement entered into by it on March 3, 1972, on the charges filed by the Complainant herein on July 27, 1972.

47. That the reasons assigned by Respondent City and Respondent Mickelsen for shift changes implemented on January 7, 1972 affecting Jon J. Jensen and Dean E. Willard, and for the assignment of Willard to foot patrol, as noted heretofore, were pretexts designed to conceal the true nature and motivation of the Respondents' actions in that regard; that Jensen and Willard were so rescheduled and assigned in reprisal for their activity and membership in the Complainant; and that, by such rescheduling and assignment, the Respondents intended to, and in fact did, interfere with, restrain, coerce and discriminate against Jensen and Willard in the exercise of their right to engage in concerted activity.

48. That the reasons assigned by Respondent City and Respondent Mickelsen for the unsatisfactory remarks submitted to the Veteran's Administration concerning the work performance of William L. Jax were pretexts designed to conceal the true nature and motivation of the Respondents' actions in that regard; that such remarks were made concerning Jax to adversely affect his participation in a training program directly related to his employment by Respondent City, in reprisal for his activity and membership in the Complainant; and that, by such unsatisfactory remarks, the Respondents intended to, and in fact did, interfere with, restrain, coerce and discriminate against Jax in the exercise of his right to engage in concerted activity.

49. That the reasons assigned for the failure of Respondent City to offer Darrell Smith a full time position as patrolman in the Wisconsin Dells Police Department, following the resignation of Jon J. Jensen from such position, were pretexts to conceal the true nature and motivation of the Respondent's action in that regard; that the Respondents failed and refused to hire Smith in reprisal for his activity and membership in the Complainant; and that, by said discrimination against Smith with regard to hiring, the Respondents intended to, and in fact did, interfere with, restrain, coerce and discriminate against Smith in the exercise of his right to engage in concerted activity.

50. That the reasons assigned by Respondent City, Respondent Mickelsen, Respondent Kelly, Respondent Olson, Respondent Slocum and Respondent Walluks for the filing of charges against, the suspensions of, the issuance of recommendations against and the discharges of Dean E. Willard and William L. Jax were pretexts to conceal the true nature and motivation of the Respondents' actions in that regard; that Willard and Jax were charged, suspended, recommended against and discharged in reprisal for their activity and membership in the Complainant; and that, by said charges, suspensions, recommendations and discharges, the above named Respondents intended to, and in fact did, interfere with, restrain, coerce and discriminate against Willard and Jax in the exercise of their right to engage in concerted activity.

51. That the Respondents' acts of interference, restraint, coercion and discrimination, as found heretofore, committed after the Complainant had been authorized by a majority of the employees of the Wisconsin Dells Police Department to represent them for the purpose of collective bargaining and after the Complainant had been recognized by Respondent City as the exclusive collective bargaining representative of the employees in said bargaining unit, were engaged in for the purpose of undermining the prestige and authority of the Complainant as the representative of the majority of the employees of Respondent City in

said bargaining unit; and that thereby, and by unilaterally making changes in working conditions after March 3, 1972, without notice to or consultation with the Complainant, and by failing or refusing to meet with representatives of the Complainant after July 20, 1972, the Respondent City refused, and continues to refuse, to bargain in good faith with the Complainant.

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

CONCLUSIONS OF LAW

1. That the City of Wisconsin Dells, Wisconsin, is a municipal employer within the meaning of Section 111.70(1)(a) of the Municipal Employment Relations Act; and that Hans Mickelsen, Roy Kelly, Bernard Olson, Carl Slocum and Wilber Walluks were agents of said municipal employer acting, at all times material herein, within the scope of their authority.

2. That all full time and part time police officers, matrons and dispatchers employed by the City of Wisconsin Dells, excluding the Chief of Police, Assistant Chief of Police and all other supervisory employes, constitutes a unit appropriate for the purposes of collective bargaining within the meaning of Sections 111.70(1)(e) and 111.70(4)(d)(2)(a) of the Municipal Employment Relations Act; and that, at least since March 3, 1972, and continuing at all times thereafter, the Complainant, Drivers, Salesmen, Warehousemen, Milk Processors, Cannery, Dairy Employees, and Helpers Union Local No. 695, has been, and is, the exclusive representative of the employes in said unit, for the purposes of collective bargaining within the meaning of Sections 111.70(1)(d) and 111.70(4)(d)(1) of the Municipal Employment Relations Act.

3. That the City of Wisconsin Dells and Hans Mickelsen, by making statements calculated to discredit and undermine the prestige and authority of, and to induce employes to forego their activity and membership in Drivers, Salesmen, Warehousemen, Milk Processors, Cannery, Dairy Employees, and Helpers Union Local No. 695, by threatening William L. Jax with loss of employment and loss of Veteran's Administration benefits received directly in relation to his employment by Respondent City, by threatening employes with strict enforcement of previously existing rules, by the imposition of new rules, by threatening employes with reorganization of the Wisconsin Dells Police Department, by threatening employes with loss of employment, by posting and calling attention to a cartoon containing implied threats to the employment of certain employes, by making inflammatory statements to employes concerning the nature and purpose of Drivers, Salesmen, Warehousemen, Milk Processors, Cannery, Dairy Employees, and Helpers Union Local No. 695, and by making threats of loss of employment to the father of an employe, which threats were calculated to be, and were, communicated to said employe, all for the purpose of attempting to induce employes to cease their support of the Complainant, Drivers, Salesmen, Warehousemen, Milk Processors, Cannery, Dairy Employees and Helpers Union Local No. 695, have interfered with, restrained and coerced municipal employes in the exercise of their right to engage in concerted activities within the meaning of Section 111.70(2) of the Municipal Employment Relations Act, and have engaged in, and are engaging in, prohibited practices within the meaning of Section 111.70(3)(a)(1) of the Municipal Employment Relations Act.

4. That the City of Wisconsin Dells and Roy Kelly, by failing to repudiate threats of loss of employment, made by Respondent Mickelsen to the father of an employe, and by making statements to

said father of an employee, which statements were calculated to be, and were, communicated to said employee, and which statements were calculated to discredit and undermine the prestige and authority of the Complainant, all for the purpose of attempting to induce employees to cease their support of the Complainant, Drivers, Salesmen, Warehousemen, Milk Processors, Cannery, Dairy Employees, and Helpers Union Local No. 695, have interfered with, restrained and coerced municipal employees in the exercise of their right to engage in concerted activities within the meaning of Section 111.70(2) of the Municipal Employment Relations Act, and have engaged in, and are engaging in, prohibited practices within the meaning of Section 111.70(3)(a)(1) of the Municipal Employment Relations Act.

5. That the City of Wisconsin Dells and Hans Mickelsen, by discriminating against Jon J. Jensen and Dean E. Willard, by changing their shift assignments and assigning Willard to foot patrol to discourage, and in reprisal for, the exercise of the right of employees to engage in concerted activity in and on behalf of the Complainant, Drivers, Salesmen, Warehousemen, Milk Processors, Cannery, Dairy Employees, and Helpers Union Local No. 695, have engaged in, and are engaging in, prohibited practices within the meaning of Sections 111.70(3)(a)(3) and (1) of the Municipal Employment Relations Act.

6. That the City of Wisconsin Dells and Hans Mickelsen, by discriminating against William L. Jax, by causing the discontinuance of Veteran's Administration benefits received by Jax directly in connection with his employment by Respondent City to discourage, and in reprisal for, the exercise of the right of employees to engage in concerted activity in and on behalf of the Complainant, Drivers, Salesmen, Warehousemen, Milk Processors, Cannery, Dairy Employees, and Helpers Union Local No. 695, have engaged in, and are engaging in, prohibited practices within the meaning of Section 111.70(3)(a)(3) and (1) of the Municipal Employment Relations Act.

7. That the City of Wisconsin Dells, by its authorized agents, by discriminating against Darrell Smith in regard to hiring to discourage, and in reprisal for, the exercise of the right of employees to engage in concerted activity in and on behalf of the Complainant, Drivers, Salesmen, Warehousemen, Milk Processors, Cannery, Dairy Employees, and Helpers Union Local No. 695, has engaged in, and is engaging in, prohibited practices within the meaning of Section 111.70(3)(a)(3) and (1) of the Municipal Employment Relations Act.

8. That the City of Wisconsin Dells, Hans Mickelsen, Roy Kelly, Bernard Olson, Carl Slocum and Wilber Walluks, by discriminating against Dean E. Willard and William L. Jax, by the filing of charges against, the suspensions of, the issuance of recommendations against, and the discharges of Willard and Jax to discourage, and in reprisal for, the exercise of the right of employees to engage in concerted activity in and on behalf of the Complainant, Drivers, Salesmen, Warehousemen, Milk Processors, Cannery, Dairy Employees, and Helpers Union Local No. 695, have engaged in, and are engaging in, prohibited practices within the meaning of Section 111.70(3)(a)(3) and (1) of the Municipal Employment Relations Act.

9. That the City of Wisconsin Dells, by its authorized agents, since March 3, 1972, and at all times thereafter, has, by unilaterally making changes in the conditions of employment of its employees and by failing or refusing to meet with the Complainant, Drivers, Salesmen, Warehousemen, Milk Processors, Cannery, Dairy Employees, and Helpers Union Local No. 695, following a request made by said Complainant on July 20, 1972 for a meeting, has engaged in, and is engaging in, prohibited practices within the meaning of Section 111.70(3)(a)(4) and (1) of the Municipal Employment Relations Act.

10. That the City of Wisconsin Dells, by its authorized agents, by reinstating, after March 3, 1972, rules and conditions of employment which had not been in effect during the month of December, 1971, by failing to provide, after March 3, 1972, supplies for employee use which were provided by Respondent City during the month of December, 1971, by imposing, after March 3, 1972, new rules and conditions of employment which had not been in effect during the month of December, 1971, and by refusing on and after August 25, 1972 to proceed to arbitration on the charges filed by the Complainant, Drivers, Salesmen, Warehousemen, Milk Processors, Cannery, Dairy Employees, and Helpers Union Local No. 695, on July 27, 1972, has violated and continues to violate the terms of the collective bargaining agreement entered into on March 3, 1972, by and between the City of Wisconsin Dells and the Complainant, Drivers, Salesmen, Warehousemen, Milk Processors, Cannery, Dairy Employees and Helpers Union Local No. 695, and, by such violation of a collective bargaining agreement, has committed and is committing prohibited practices within the meaning of Section 111.70(3)(a)(5) 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 the City of Wisconsin Dells, its officers and agents, including specifically Hans Mickelsen, Roy Kelly, Bernard Olson, Carl Slocum and Wilber Walluks, shall immediately:

1. Cease and desist from:

- (a) Threatening employees in the Wisconsin Dells Police Department with loss of employment or changes in wages, hours or conditions of employment for the purpose of discouraging their activities on behalf of Drivers, Salesmen, Warehousemen, Milk Processors, Cannery, Dairy Employees, and Helpers Union Local No. 695, or any other labor organization.
- (b) Making and communicating statements to employees in the Wisconsin Dells Police Department which interfere with, restrain or coerce employees in the exercise of their right to engage in concerted activity and are calculated to discredit and undermine the prestige and authority of Drivers, Salesmen, Warehousemen, Milk Processors, Cannery, Dairy Employees, and Helpers Union Local No. 695 in its capacity as the exclusive collective bargaining representative of such employees, or any other labor organization having such status.

bargaining unit, without prior consultation with Drivers, Salesmen, Warehousemen, Milk Processors, Cannery, Dairy Employees, and Helpers Union Local No. 695, or any other labor organization the employees may select as their exclusive collective bargaining representative.

- (e) Refusing to bargain collectively with Drivers, Salesmen, Warehousemen, Milk Processors, Cannery, Dairy Employees, and Helpers Union Local No. 695, as the exclusive collective bargaining representative of all full time and part time police officers, Matrons and dispatchers employed by the City of Wisconsin Dells, excluding the Chief of Police, the Assistant Chief of Police and all other supervisory employees, or any other labor organization said employees may select as their exclusive collective bargaining representative.
 - (f) Violating the collective bargaining agreement entered into on March 3, 1972 by and between the City of Wisconsin Dells and Drivers, Salesmen, Warehousemen, Milk Processors, Cannery, Dairy Employees, and Helpers Union Local No. 695, covering the employees in the Wisconsin Dells Police Department.
2. Take the following affirmative action which the Commission finds will effectuate the policies of the Municipal Employment Relations Act:
- (a) Offer to Dean E. Willard and William L. Jax immediate and full reinstatement to their former positions, without prejudice to their seniority, benefits or other rights and privileges previously enjoyed by them, and make them whole for any loss of benefits or pay they may have suffered by reason of the discrimination against them, by payment to each of them the sum of money equal to that which he would normally have earned or received as an employee, from the date of his termination to the date of the unconditional offer of reinstatement made pursuant to this Order, less any earnings he may have received during said period, and less the amount of unemployment compensation, if any, received by him during said period, and, in the event that he received unemployment compensation benefits, reimburse the Unemployment Compensation Division of the Wisconsin Department of Industry, Labor and Human Relations in such amount.
 - (b) Offer to Darrell Smith immediate employment as a full time employee in the position of Patrolman in the Wisconsin Dells Police Department, and make him whole for any loss of pay he may have suffered by reason of the discrimination against him, by payment to him of the sum of money equal to that which he would normally have earned as a Patrolman in the Wisconsin Dells Police Department from the date on which an

offer of employment was extended to another employe to fill the vacancy created by the resignation of Jon J. Jensen, to the date of the unconditional offer of employment made pursuant to this Order, less any earnings he may have received during said period, and less the amount of unemployment compensation benefits, if any, received by him during said period and, in the event that he received Unemployment Compensation benefits, reimburse the Unemployment Compensation Division of the Wisconsin Department of Industry, Labor and Human Relations in such amount.

- (c) Take whatever steps as are necessary to re-establish with the Veteran's Administration an on-the-job training program for William L. Jax on the same basis or a substantially equivalent basis as the program which was discontinued as a result of the discrimination against Jax, without prejudice to or limitation on his eligibility for benefits under said program, or, in the event that such program cannot be re-established or full eligibility cannot be reinstated, make William L. Jax whole for any loss he may have suffered by reason of the discrimination against him, by payment to him of the sum of money equal to that which he normally would have received from the Veteran's Administration for the on-the-job training in connection with his employment by the City of Wisconsin Dells.
- (d) Upon request, bargain collectively with Drivers, Salesmen, Warehousemen, Milk Processors, Cannery, Dairy Employees, and Helpers Union Local No. 695, as the exclusive representative of all employees in the aforesaid appropriate unit with respect to wages, hours and other terms or conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement.
- (e) Reinstate all working conditions, including but not limited to, shift assignments and foot patrols to the same as were in effect in December, 1971, and continue same in effect until such time as such conditions are changed through collective bargaining with Drivers, Salesmen, Warehousemen, Milk Processors, Cannery, Dairy Employees, and Helpers Union Local No. 695.
- (f) Notify all employees, by posting, in conspicuous places on its premises, where notices to all employees are usually posted, copies of the notices attached hereto and marked "Appendix A" and "Appendix B". Appendix A shall be signed by Roy Kelly on behalf of the City of Wisconsin Dells and on behalf of himself, individually, and shall be signed by Bernard Olson, Carl Slocum and Wilber Walluks. Appendix B shall be signed by Hans Mickelsen. Appendix

A and Appendix B shall be signed and posted immediately upon receipt of a copy of this Order and shall remain posted for sixty (60) days thereafter. Reasonable steps shall be taken by each of the Respondents herein named, to insure that said notices are not altered, defaced or covered by other material.

- (g) Notify the Wisconsin Employment Relations Commission, in writing, within ten (10) 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 *1st* day of March, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Thomas Slavney
Morris Slavney, Chairman

Ed S. Rice II
Ed S. Rice II, Commissioner

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

APPENDIX "A"

NOTICE TO ALL 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 employees that:

1. WE WILL offer to Dean E. Willard and William L. Jax immediate and full reinstatement to their former positions, without prejudice to their seniority, rights or privileges previously enjoyed by them, and make Dean E. Willard and William L. Jax whole for any loss of pay which they may have suffered by reason of the discriminatory discharges of Dean E. Willard and William L. Jax.
2. WE WILL offer to Darrell Smith immediate employment as a full time employe in the position of Patrolman in the Wisconsin Dells Police Department, and make him whole for any loss of pay he may have suffered by reason of the discrimination against him with respect to hiring.
3. WE WILL take whatever steps are necessary to re-establish with the Veteran's Administration an on-the-job training program for William L. Jax on the same basis or a substantially equivalent basis as the program which was discontinued as a result of the discrimination against William L. Jax, without prejudice to or limitation on the eligibility of William L. Jax for benefits under said program.
4. WE WILL NOT threaten employees with loss of benefits previously enjoyed by them to discourage membership in or activity on behalf of Drivers, Salesmen, Warehousemen, Milk Processors, Cannery, Dairy Employees, and Helpers Union Local No. 695, or any other labor organization.
5. WE WILL NOT discourage membership in Drivers, Salesmen, Warehousemen, Milk Processors, Cannery, Dairy Employees, and Helpers Union Local No. 695, or any other labor organization of our employes, 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.
6. WE WILL, upon request, bargain collectively with

Milk Processors, Cannery, Dairy Employees, and Helpers Union Local No. 695, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or any mutual aid or protection.

All our employees are free to become, remain, or refrain from becoming, members of Drivers, Salesmen, Warehousemen, Milk Processors, Cannery, Dairy Employees, and Helpers Union Local No. 695, or any other labor organization.

City of Wisconsin Dells

By _____
Roy Kelly, as Mayor and Individually

Police and Fire Committee

By _____
Bernard Olson

Carl Slocum

Wilber Walluks

Dated this _____ day of _____, 1973.

This notice must remain posted for sixty (60) days from the date hereof and must not be altered, defaced or covered by any material.

APPENDIX "B"

NOTICE TO ALL EMPLOYEES

Pursuant to an Order of the Wisconsin Employment Relations Commission, and in order to effectuate the policies of the Municipal Employment Relations Act, I hereby notify all Police Department employees that:

1. I WILL NOT threaten employees with the loss of benefits previously enjoyed by them to discourage membership in or activity on behalf of Drivers, Salesmen, Warehousemen, Milk Processors, Cannery, Dairy Employees, and Helpers Union Local No. 695, or any other labor organization.
2. I WILL NOT make statements which will discredit and undermine the prestige and authority of Drivers, Salesmen, Warehousemen, Milk Processors, Cannery, Dairy Employees, and Helpers Union Local No. 695, to discourage membership in or activity on behalf of Drivers, Salesmen, Warehousemen, Milk Processors, Cannery, Dairy Employees, and Helpers Union Local No. 695, or any other labor organization.
3. I WILL NOT impose new rules, threaten stricter enforcement of existing rules, enforce existing rules more strictly or change any condition of employment to discourage membership in or activity on behalf of Drivers, Salesmen, Warehousemen, Milk Processors, Cannery, Dairy Employees, and Helpers Union Local No. 695, or any other labor organization.
4. I WILL NOT order shift changes and implementation of foot patrols, or otherwise discriminate against employees, to discourage membership in Drivers, Salesmen, Warehousemen, Milk Processors, Cannery, Dairy Employees, and Helpers Union Local No. 695, or any other labor organization.
5. I WILL NOT make unfavorable reports concerning employees, or otherwise discriminate against employees, to discourage membership in or activity on behalf of Drivers, Salesmen, Warehousemen, Milk Processors, Cannery, Dairy Employees, and Helpers Union Local No. 695, or any other labor organization.
6. I WILL NOT file charges against employees with the Police and Fire Committee of the City of Wisconsin Dells or otherwise discriminate against employees to discourage membership in or activity on behalf of Drivers, Salesmen, Warehousemen, Milk Processors, Cannery, Dairy Employees, and Helpers Union Local No. 695, or any other labor organization.
7. I WILL NOT in any other manner interfere with, restrain, coerce, or discriminate against employees in the exercise of their right to self-organization, to form labor organizations, to join or assist Drivers, Salesmen, Warehousemen, Milk Processors, Cannery, Dairy Employees, and Helpers Union Local No. 695, to bargain collectively through representatives of their own choosing and to engage in other concerted activity for the purpose of collective bargaining or any mutual aid or protection.

All employees are free to become, remain, or refrain from becoming members of Drivers, Salesmen, Warehousemen, Milk Processors, Cannery,

Dairy Employees, and Helpers Union Local No. 695, or any other labor organization.

By _____
Hans Mickelsen, Chief of Police

Dated this _____ day of _____, 1973.

This notice must remain posted for sixty (60) 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

THE PLEADINGS AND SUBMISSION OF THE CASE

On August 30, 1972, the Union filed an "Amended Complaint" with the Commission alleging that the Municipal Employer and its agents, named individually therein, had committed numerous prohibited practices commencing on or about December 31, 1971 and continuing through August 25, 1972. The Union's Amended Complaint alleged facts concerning the filing, hearing and dismissal of the original Complaint filed with the Commission 4/, and alleged that the collective bargaining agreement entered into by the parties leading to the stipulated dismissal of that Complaint had been entered into by the Municipal Employer as a sham. Notice was issued on September 5, 1972 setting the Amended Complaint to be heard on September 28, 1972.

The Municipal Employer and the individual Respondents filed a joint answer on September 19, 1972, wherein they denied having committed any prohibited practices. Numerous issues of fact were joined in the pleadings. Hearing was held before the Commission on September 28 and September 29, 1972. In addition to testimony of witnesses and exhibits produced by the parties, the parties stipulated during the course of the hearing before the Commission, to the admission in evidence of two volumes of testimony, totaling 295 pages, transcribed from proceedings before the Police and Fire Committee of the City of Wisconsin Dells, relating to certain allegations in the pleadings. Both parties filed post-hearing briefs, the last of which was received on October 17, 1972. The transcript of the hearing before the Commission was received on October 24, 1972.

JURISDICTION OF THE COMMISSION AND HARMONIZATION OF STATUTORY POWERS

Citing Chapters 17 and 62 of the Wisconsin Statutes, Counsel for the Respondents argues that Mayor Kelly, as the statutory head of the Police Department and appointing authority for all policemen had, and continues to have, a completely unfettered right and authority to remove or suspend police officers. Citing McQuillin's treatise on Municipal Corporations and certain cases decided by the Wisconsin Supreme Court, Counsel contends that the power of removal is an inherent part of the power to appoint, that a municipal corporation may not limit its power to remove by contract, and that a municipal corporation may be divested of its absolute power to remove employees only by limiting charter or statute. Translating the cited line of authority to the facts of the instant case, Counsel asserts that the Commission has no authority or jurisdiction to review the discharges of Willard and Jax, made within the claimed absolute authority of the Mayor.

Section 111.70(3)(a)(3) of the Municipal Employment Relations Act, referred to herein as M.E.R.A., prohibits discrimination against municipal employees in regard to hire, tenure or other terms or conditions of employment to encourage or discourage membership in a labor

4/ Case II, supra.

organization. The statutes cited by Counsel for the Respondents are in conflict with the Municipal Employment Relations Act. Our Supreme Court faced a similar statutory conflict in Muskego-Norway Joint School District #9, 35 Wis. 2d 540 (1967), and therein set guidelines for statutory construction which are applicable in the instant case:

"Construction of statutes should be done in a way which harmonizes the whole system of law of which they are a part, and any conflict should be reconciled if possible." 35 Wis. 2d 540 at 556.

The arguments advanced by the Respondents require the complete preference of the Mayor's right to appoint and remove employees over any employee rights granted in the Municipal Employment Relations Act. These arguments would not harmonize the statutes in any way and clearly ignore the previous decisions of this Commission and of the Wisconsin Supreme Court. Chapter 40 of the Wisconsin Statutes grants Boards of Education the apparent absolute right of hire, rehire or refuse to rehire public school teachers. Other general statutes grant authority to fire chiefs to regulate their fire departments, including the right to discharge or suspend. However, in the face of arguments similar to those advanced by the Respondents herein, this Commission has found that such authority is not absolute and is mitigated by the restrictions of the M.E.R.A. See Muskego-Norway Joint School District #9 (7247) 8/65, aff. 35 Wis. 2d 540 (1967); Kenosha Board of Education (6986-D) 2/66, aff. Dane Co. Cir. Ct. (1967); Mercer School Board (8449-A) 8/68; City of Milwaukee (8420) 2/68; City of Madison (9582-B) (9582-C) 7/71. The Municipal Employment Relations Act applies not only to cities of all classes, but to counties, villages, towns, metropolitan sewerage districts, school districts and all other political subdivisions of the state which engage the services of an employee. In view of the recent re-enactment of the rights of municipal employees and the expansion of the prohibited practices provisions covering the employment of municipal employees 5/, the Commission reaffirms its prior rulings and holds that the authority granted to municipal employers under general statutes to hire and remove municipal employees is not absolute, but is subject to the statutory restrictions of Section 111.70(3)(a), of M.E.R.A.

We are dealing here with allegations of prohibited practices in a collective bargaining context. The Wisconsin Supreme Court cases cited and relied upon by the Respondents are not controlling, nor are they persuasive. Richmond v. Village of Lodi 227 Wis. 23 (1939) and State ex rel Wattawa v. Manitowoc Public Library Board 255 Wis. 492 (1949) were both decided long before municipal employees had any collective bargaining rights granted by statute 6/, and have no bearing, on a collective bargaining relationship or on the prohibited practices set forth in Section 111.70(3)(a) of M.E.R.A. Counsel for the Respondents notes that the decision of the Supreme Court in Adamczyk v. Town of Caledonia, 52 Wis. 2d 270 (1971) does not include any reference to Section 111.70, Wisconsin Statutes, but argues that the case nevertheless constitutes an interpretation of Section 111.70. We reject this contention. The plaintiff in the Town of Caledonia case was a police officer, whose employment was terminated by the municipal employer in 1966. Compare:

"SUBCHAPTER IV. RIGHT OF MUNICIPAL EMPLOYER TO ORGANIZE AND JOIN LABOR ORGANIZATIONS: BARGAINING IN MUNICIPAL EMPLOYMENT.

5/ Chapter 124, Laws of 1971, effective November 11, 1971.

6/ The first enactment of Section 111.70 was in 1959.

"111.70 Municipal Employment. (1) DEFINITIONS. When used in this section:

. . . .

"(b) "Municipal employe" means any employe of a municipal employer except city and village policemen, sheriff's deputies, and county traffic officers." Laws, 1961, Ch. 663.

with the following:

"SUBCHAPTER IV. MUNICIPAL EMPLOYMENT RELATIONS ACT

"111.70 Municipal Employer. (1) DEFINITIONS. As used in this subchapter:

. . . .

"(b) "Municipal employe" means any individual employed by a municipal employer other than an independent contractor, supervisor, or confidential, managerial or executive employe." Laws, 1971, Ch. 124.

Since he was a police officer, the employe involved in the Town of Caledonia case was not covered by the provisions of the municipal employment labor relations law in effect at the time of his discharge, and the lack of mention of Section 111.70, Wisconsin Statutes, in the Supreme Court's decision is likely due to the irrelevance of Section 111.70 to that decision. The Municipal Employment Relations Act became effective on November 11, 1971, granting police officers, for the first time, the rights granted to municipal employes in Section 111.70(2), Wisconsin Statutes. The entire course of conduct alleged in the complaint filed in the instant matter occurred following the effective date of the Municipal Employment Relations Act, and is regulated by its provisions.

The Respondents also cite The Board of Regents of State Colleges v. Roth, (71-162), 405 U.S. _____ (1972) in support of its position, claiming that the right to discharge employes is unfettered even by due process considerations. However, the case before the Commission is not decided on due process considerations, and the Roth case therefore has no bearing on the result.

The Respondents argue that the Commission has no authority to review or overrule the action of the Mayor in the discharges of Willard and Jax, and assert that review of the discharges is available only through the Circuit Court for Columbia County. The jurisdiction of the Circuit Court and the jurisdiction of the Commission in the matter involved are separate and distinct from one another. The complaint filed with the Commission in the instant matter alleges various conduct prohibited by Section 111.70(3)(a) of M.E.R.A., including interference with, restraint and coercion of employes, discrimination against employes, refusal to bargain collectively and violations of a collective bargaining agreement. One aspect of the remedy requested is that Dean Willard and William Jax be reinstated and made whole for the loss of pay suffered by reason of the alleged discrimination against them. Proceedings before the Circuit Court for direct review of the Mayor's decision could potentially result in a determination that Willard and Jax were improperly discharged, and the remedy in the Circuit Court might also include reinstatement and/or back pay. However, a decision in favor of Willard and Jax in

review proceedings in the Circuit Court would not remedy the prohibited practices alleged in the instant case and would not render the instant case moot. The standards for review and the standards for a decision on the complaint of prohibited practices are also different. Whereas the Circuit Court would be making a review of the merits of the discharge, it is well established in this Commission's decisions that an employer may discharge an employee for any reason, or for no reason, provided that the discharge is not motivated by a desire to discourage or encourage concerted activity. Muskego-Norway, supra; Wood County (9437-A) 1/71. Put another way, an employee may not be discharged or otherwise discriminated against when one of the motivating factors for the employer's action is the employee's concerted activity, no matter how many other valid reasons exist for such employer action. 7/ The Commission has jurisdiction in this case to make a determination as to whether Willard and Jax were discharged in discrimination for their activity in and on behalf of the Union.

RESOLUTION OF ISSUES OF FACT AND QUESTIONS OF CREDIBILITY

The facts determinative in this case are detailed in the Findings of Fact, and the Commission reviews those facts in this Memorandum only to the extent necessary to resolve issues of fact joined by the pleadings which warrant further comment, and to dispose of questions of credibility arising from the testimony of witnesses.

KNOWLEDGE OF UNION ACTIVITY

The Commission is completely satisfied that Chief Mickelsen, and others acting on behalf of the Municipal Employer, had full knowledge of the concerted activities among the employees in the Police Department before embarking on the course of conduct which we have found to be in violation of the Municipal Employment Relations Act. Mickelsen testified (R. 134) that he detected some dissention among the employees in the Police Department as early as October, 1971. The date on which Willard first became active on behalf of the Union is not clearly established in the record, but the evidence does indicate that the Union activists contacted some employees who declined to support the Union during the initial stage of organization. Even as of the date, two months later, on which an informal poll of the employees was conducted by Examiner Coughlin, at least four of the employees declined to support the Union. Considering the small size of the Police Department and the close working relationship between the employees and their supervisors, substantial opportunity existed for Chief Mickelsen to discover, or be advised of, Union activity and to identify the Union sympathizers. The hard facts are that the Chief scheduled a "special" meeting of the employees, posted a notice requiring the only six Union activists (most of whom were off duty at the time of the meeting) to attend, followed up with his notice by a telephone call to the home of one of the Union activists to notify her of the meeting, and openly identified the principal Union activists as such during the course of that meeting.

By way of Answer, the Respondents allege that the meeting was a "normal periodic meeting", but the evidence is clearly to the contrary. Even the notice posted by Chief Mickelsen (Exhibit 3) refers to the meeting as a "special" meeting. Squad meetings had been

7/ Muskego-Norway School Dist. #9 (7247) 8/65, aff. 35 Wis. 2d 540 6/67; City of Oshkosh (8381-A, 8381-B) 10/68; Milwaukee Board of School Directors (9242-A, 9242-B) 4/71; City of Madison (9582-B, 9582-C) 7/71; Village of West Milwaukee (9845-B) 10/71.

infrequent and irregular prior to the meeting in question, and if the January 3, 1972 meeting was any part of a scheduled series, it was clearly only the first meeting in the series.

The Respondents also allege that the Chief had no knowledge of the Union activity at the time the meeting was scheduled, and that the Union's letters requesting recognition were received 4 to 16 days after they were mailed. The Union mailed its election petition to the Commission on the same day on which the letters requesting recognition were mailed to the Employer, and that petition was received by the Commission on the following day, December 31, 1971. Alderman Olson testified (R. 172) as being present at a meeting on January 3, 1972 at which the recognition demand was read and discussed. Mayor Kelly was also present at said meeting. Chief Mickelsen testified that he was on vacation during the week between Christmas and New Years, but he did not establish the date on which he claims the notice concerning the meeting was posted. Patrolman Jensen (who had been working on a 4:00 P.M. to Midnight shift) testified that he learned of the meeting via the notice posted by the Chief, and this would indicate that the notice was posted prior to January 3, 1972, but the evidence does not substantiate the claim that the Chief scheduled the meeting and posted the notice before going on vacation. The letters from the Union did not necessarily provide the Employer with its first or exclusive notice of the concerted activity among the employees. A fair inference can be drawn from the evidence that the meeting was scheduled and the names of the six Union activists were posted after the Employer became aware of the Union activity, and that all of the action taken in connection with that meeting was taken with full knowledge of the concerted activity among the employees.

THREATS MADE TO EMPLOYEES AND ANTI-UNION ANIMUS OF EMPLOYER

The Respondents argue in their brief that the Union has failed to carry the burden of proving that the Respondents' actions were motivated by anti-Union animus, and they would dispose of the evidence showing threats made to the employees, as follows:

"The writer of this brief submits that the actions and words of the Police Chief and the Mayor when they first heard about the attempt at unionization were not abnormal when viewed at their time and place."

. . .

"As to allegation 16 [of the Complaint, alleging the statements concerning reorganization of the Police Department] the Mayor made certain admissions in his answer. None of these things are unusual. It cannot be anticipated that when the Mayor for the first time heard that the department for which he had responsibility was going to be unionized that he would jump for joy and become very enthusiastic. At this time and place he possibly made a statement unfriendly to the Union. Does this indicate that forever after he can be charged as having anti-union animus. This is simply not realistic."

. . .

"...the testimony as to happenings claimed by the Complainants to be evidence of anti-union animus happened months before the occurrence of the problems ending

in the discharge of Willard and Jax. As pointed out before these happenings occurred at a different time and place and under an entirely different set of circumstances. These were happenings occurring within the first few days after the notice to the City of the desire to unionize. In fact some of the statements were the first off the cuff remarks made by the Mayor and the Chief within a few minutes after notification. They are the first blush type of reaction. It is vigorously contended by the Respondents that these matters do not constitute probative evidence as far as the charge of anti-union animus and motivation then, and particularly five or six months later."

The Commission is satisfied that the Employer's conduct throughout the period covered by the Complaint was motivated by anti-union animus. The reaction of Mayor Kelly and Chief Mickelsen to the news of concerted activity among the employees went far beyond a "normal" lawful reaction. They reacted with strong talk of reorganization of the Department and the possibility of a layoff, they imposed some new rules and promised strict enforcement of the old rules, they threatened one Union activist with loss of VA benefits, and they indicated their attitude as to the concerted activity to the employees. This conduct, taken alone, would warrant a finding of prohibited interference under Section 111.70(3)(a) of M.E.R.A.

Contrary to the finding which the Respondents would have us make, the Respondents' course of anti-Union conduct did not end with the initial reaction to the news of concerted activity among the employees. Later in the month of January, 1972, Chief Mickelsen approached Jax and attempted to persuade Jax to withdraw from the Union. The testimony of Jax concerning this incident is not contradicted, and the evidence indicates a threat by the Chief which bore only the thinnest of veils. The Chief testified that he was concerned about the restoration of "harmony and efficiency" in the Police Department, but he proceeded, late in February, 1972, to display a cartoon which could only be inflammatory and disruptive. In the face of impending proceedings before an Examiner appointed by the Commission, Mickelsen attempted to conceal his past deeds by altering the Police Department log and by soliciting a member of another law enforcement agency to commit perjury. The threats made concerning Willard by Mickelsen during his February 23, 1972 conversation with Lt. Koch clearly indicate that Mickelsen was motivated by anti-Union animus, and there is no reason whatever for the Commission to question the credibility of Koch in this regard. In March, upon discovering that Officer Hiller had knowledge of the offending log entries, Mickelsen reacted in a similar manner. This response is interpreted as a further attempt to conceal evidence of past deeds and to prevent disclosure of evidence of anti-Union motivation to persons in sympathy with the Union. During one of the negotiation meetings held in April, Jax raised a grievance against Mickelsen. Following that meeting Mickelsen again displayed his adversity to Jax and to the Union and invited Jax to resign or accept the method in which Mickelsen was operating the Police Department.

The testimony (R. 75) indicates that there was definite conflict between the Chief of Police and the Union sympathizers by April 1972, and the testimony concerning the conversations between Mickelsen and Pearson indicates that part of the conflict was based on the anti-Union

motivation of the Employer. Pearson's testimony concerning Mickelsen's statements with regard to Darrell Smith is not contradicted, and clearly shows that the anti-Union motivation of the Employer was directed at Smith, as well as at Willard and Jax. It also establishes that the motivation of the Chief was shared by other agents of the Employer.

The Commission does not agree with the Respondents' assertion that the testimony of George E. Willard is self-serving. George Willard testified, without contradiction, as to statements made by the Chief and the Mayor, which are clearly against their interests as Respondents in this proceeding. Wisconsin Dells is a community of less than 4,000 persons, and both father and son live in the community. Under such circumstances, anyone making statements of the nature involved here should have had a reasonable expectation that the message would be communicated to the employee and that, when so communicated, the statements constituted threats to the employment of Dean Willard because of his concerted activity. The anti-Union motivation of the Chief is thusly established again as of a date in May of 1972. The evidence is conclusive that Chief Mickelsen was not acting alone. The Mayor's failure to disavow the statements made by the Chief, and the Mayor's own statements to George Willard, indicate that Kelly joined with Mickelsen in the anti-Union animus. The anti-Union motivation of the Chief and of the members of the Police and Fire Committee in June, 1972 is indicated by the conversation between Mickelsen and Pearson, held in the presence of two members of the Committee. Here, again, Mickelsen is found attempting to put the "right" words in the mouth of a witness to substantiate the Employer's allegations against Willard and Jax.

There is some testimony in the record concerning a conversation between Mickelsen and Jax some time subsequent to the suspension of Willard and Jax. If accepted as true, Jax's testimony concerning that conversation would tend to establish anti-Union motivation on the part of Mickelsen as of the date of that conversation. Mickelsen gave testimony concerning that conversation which contradicts the testimony given by Jax. In that it is admitted that Jax was under the influence of alcohol before he went to see Mickelsen, the Commission has not made findings and conclusions on the basis of Jax's testimony in this regard.

The entire course of conduct engaged in by the Respondents was interspersed with evidence of anti-Union animus, and the Commission rejects the contention that the Employer's anti-Union words and actions were limited to the initial period following the commencement of Union activity.

SHIFT CHANGES AND ASSIGNMENT OF FOOT PATROL

Prior to the concerted activity among the employees in the Police Department, Jensen had been working an afternoon - evening shift which he described (R. 23) as "comfortable". On January 7, 1972, Jensen was reassigned to the late night - early morning shift which, for lack of a characterization, the Commission interprets as having been regarded by Jensen as something less than comfortable. The change was first announced at the January 3, 1972 meeting at which Chief Mickelsen made numerous anti-Union statements. From the notice announcing the meeting and the Chief's awareness, during that meeting, of the number of votes favoring the Union, the inference drawn is that Mickelsen was well aware that Jensen was a Union supporter. The Commission is satisfied that the reassignment of Jensen was made in reprisal for his Union activity. It is clear that when he posted

the cartoon late in February, 1972, the Chief was aware of Jensen's Union activity, and the continued assignment of Jensen in this manner indicates a continuing desire on the part of the Chief to discriminate against Jensen on the basis of his Union activity.

There is no question that Willard was the principal Union activist, that he was identified as such by the Chief, and that Willard openly acknowledged his activity in and on behalf of the Union. Willard had previously performed foot patrol duties within the City of Wisconsin Dells, but that duty had been performed during the summer months when the tourist season is in full swing. There is no evidence that foot patrols had ever before been implemented during the winter months. The Respondents assert that there had been numerous requests for a foot patrol and that Mickelsen had had difficulty in obtaining the cooperation of the police officers in leaving their squad cars and patrolling on foot for part of their scheduled shifts. The Commission is disinclined to accept the Respondents' testimony concerning the requests for foot patrol. The Respondents did not bring forward even a single resident or businessman to give testimony of having made such a request. Further, the action of the Chief of Police in this instance appears to be quite inconsistent with his actions in connection with other claimed rule violations indicated in the record. Whereas the Chief was prompt in his reprimand of Jax for failing to file a written report in April, and was prompt in his filing of charges against Willard and Jax for alleged violations in May, the Chief appears to have conceded defeat in his effort to get compliance with his orders in January. Rather than disciplining the officers who failed to comply with previous orders concerning part time foot patrol, the Chief claims to have relented on the orders given to all officers and placed the entire burden of foot patrol duty on Willard. Weather conditions during the period when Willard was assigned to foot patrol include one episode where the temperature was 22° below zero to 30° below zero during Willard's duty shift. Willard testified that his health was adversely affected, and that he lost a significant amount of weight during the two month period while he was assigned to foot patrol. The Commission is not making a determination in this case on the question of whether there is wisdom to having foot patrols. However, we have examined the reasons asserted by the Respondents, and have concluded that their action in this regard was not based on the reasons asserted but, rather, was a discriminatory action in reprisal for Willard's leadership on behalf of the Union. Very significant in this decision are the facts that on two nights out of every eight, when Willard was scheduled off duty, no employee was assigned to perform foot patrol, and that Jensen, whose shift overlapped with Willard's by two to three hours, was refused when he offered to relieve Willard on foot patrol for a portion of Willard's shift.

VETERAN'S ADMINISTRATION PROGRAM

Jax and Chief Mickelsen had cooperated prior to the commencement of Union activity in establishing an on-the-job training program, through which Jax received monetary benefits from the federal government above and beyond the salaries paid to him by the Employer. This benefit was directly related to Jax's employment, and the program and benefits were discontinued immediately upon his suspension. As such, it was a condition of his employment, and discriminatory action by the Respondents adversely affecting this condition of employment falls within the proscriptions of Section 111.70(3)(a) of M.E.R.A. The Respondents argue that the Chief was obligated to give his honest opinion concerning Jax and that, accordingly, the statements made on the March and April reports submitted to the Veteran's Administration are not subject to challenge in this proceeding. Based on the

extensive evidence of the anti-union animus of the Chief throughout the period relevant to this proceeding, the Commission does not accept the Respondents' assertion that the statements of the Chief were fully an honest opinion. While the statements may well have reflected Mickelsen's opinion about Jax, it is clear to the Commission that Mickelsen's opinion was tainted with his anti-union animus, and that the statements made on the reports were made with the intention that they adversely affect Jax's Veteran's Administration benefits. By causing the discontinuance of the program through the suspension and discharge of Jax, the Employer has caused Jax to suffer a real financial loss. Jax could not be made whole as a result of the discrimination against him unless he is able to receive the full benefit to which he otherwise would have been entitled from the Veteran's Administration. Since the Veteran's Administration benefits were received periodically for on-the-job training, and Jax has not received such training during the months since his suspension, the primary remedy ordered in this regard is for the Respondents to re-establish the on-the-job training program for Jax, with eligibility fully equal to that which he had remaining as of the date of his suspension, and to carry out that program. In the event that the Veteran's Administration declines to participate or that, for some other reason, Jax is no longer eligible for benefits which he would have received but for the discrimination against him, the Respondents are ordered to make Jax whole by paying him the sum equal to that which he otherwise would have received.

HIRING OF SMITH

The list of employees posted by the Chief for the January 3rd meeting does not contain the name of Fred Pearson. Pearson is an older, somewhat more experienced officer than Willard or Jax, and he had received some preferential treatment from Mickelsen. It appears that Pearson was not among the Union activists at the outset of concerted activity, and that he continued to enjoy a favorable working relationship with Mickelsen during April, May and June, 1972. Possibly for that reason, Mickelsen confided in Pearson that Smith would not be hired because Smith had voted for the Union. The fact that this may have been made as a statement in confidence or between friends does not alter the fact that this statement establishes motivation for the Respondents' failure to employ Smith. There is no evidence whatever to contradict the testimony of Pearson in this regard. The Respondents claim that there were a number of other applications for the position vacated by Jensen, but no evidence was offered as to the qualifications of the other individuals or of any impediments to the qualifications of Smith for the full time position of Patrolman. During collective bargaining the parties had reached some understanding concerning Smith, and the Respondents had not resisted moves by the Union to insure Smith preferential status for employment in a full time position. Lacking any credible testimony to explain the Respondents' failure to hire Smith for the position vacated by Jensen, the Commission concludes that Smith was discriminated against with respect to hiring because of his support for the Union, and that, regardless of any contractual commitment to him, he is entitled to an offer of employment in a full time position as patrolman and to be made whole for any loss he may have suffered by reason of the discrimination against him.

DISCHARGE OF WILLARD AND JAX

Willard and Jax were suspended by Mayor Kelly on May 25, 1972, on the assertion that Chief Mickelsen would soon file charges against Willard and Jax with the Police and Fire Committee of the

City. Upon hearing of the impending but unspecified charges, Willard and Jax offered to place themselves on suspension, an action which would have denied them pay and other benefits during the period of their suspension. Mayor Kelly refused to accept that alternative and, instead, suspended them. The charges which Mickelsen spoke of on May 25 were not actually served on Willard and Jax until somewhat later. The charges are based on the incidents described in paragraphs 32, 33 and 34 of the Findings of Fact.

There is substantial testimony in the record that standing orders in the Police Department, prior to the concerted activity among the employees, prohibited police officers from leaving the City while on duty except in an emergency, but that the officer had discretion to determine what was an emergency and no arbitrary mileage limit was imposed. The only recording requirement during that period was the making of an entry in the officer's daily log. After the commencement of Union activity the Chief imposed, for the first time, the requirement that a full written report be submitted. The agreement entered into on March 3, 1972, indicated the return of all working conditions to those in effect prior to the commencement of Union activity. It is apparent, however, that by early April, contrary to said agreement, the Chief had reinstated the full report requirement. On the day on which Willard and Jax were suspended, the Chief imposed yet another new rule, this one requiring advance permission from the Chief prior to leaving the City. On or before the day of the hearing before the Police and Fire Committee, Mickelsen sought to make his case stronger by obtaining testimony from Pearson that an arbitrary one and one half mile limit had existed during the entire period. The Commission is satisfied that the Chief's charges in this regard were pretextual and were directed at Willard and Jax in reprisal for their activity in and on behalf of the Union. After hearing the evidence, the members of the Police and Fire Committee saw through the Chief's charges in this regard. The Commission has noted, and the Police and Fire Committee also recognized, that the claimed rule varied from time to time during the period relevant in this case, and the Police and Fire Committee exonerated Willard and Jax from any wrongdoing for leaving the City.

Respondent Olson was, at one time, a police officer employed in the Wisconsin Dells Police Department, and during that time certain forms were used in the Police Department to record arrests. The various forms used provided parallel records which were, to some extent, a cross-reference to one another. During the proceedings before the Police and Fire Committee on the charges against Willard and Jax, Respondent Olson raised questions with Chief Mickelsen concerning the use of those forms. Other testimony was adduced on this subject and the evidence indicates that, contrary to the assertions of the Chief, some of the forms familiar to Olson were still in use in May, 1972. Consistent with their decision not to arrest the two juveniles or charge them with a crime, Willard and Jax did not complete the forms familiar to Olson. Willard and Jax filed a written report concerning the incident, and Mickelsen interpreted this as an arrest report. The report filed by Willard and Jax is sufficiently ambiguous to be subject to that interpretation. However, it appears that Mickelsen did not bother to check the available cross-references in reaching his conclusion. Olson ferreted out these facts during the hearing before the Police and Fire Committee.

Statutes and regulations concerning juveniles dictate that juveniles should not be photographed and fingerprinted unless they are being arrested and charged with a crime. Again, consistent with their decision not to charge the juveniles with a crime, Willard and

Jax did not photograph or fingerprint them. On the morning of May 24, 1972, Mickelsen proceeded to photograph and fingerprint the juveniles, on the assumption that they had been arrested, without confirming whether or not they had been arrested. The Dispatcher had been advised of the status of the juveniles, Mickelsen's shift overlapped with Jax's shift, and there is no indication that either Willard or Jax was out of contact by virtue of being off duty. There is no evidence of an affirmative effort on the part of Willard and Jax to conceal the reason for the confinement of the juveniles in the Wisconsin Dells jails, and some of the responsibility for the incorrect assumptions made by Mickelsen appears to rest with Mickelsen himself. Olson's inquiry also revealed this, but the Committee nevertheless recommended the ultimate penalty of discharge.

Another of the charges against Willard and Jax concerned the confinement of the juveniles in an unapproved facility (the City jail) and their failure to notify the County juvenile officer and the parents. The recommendation of the Police and Fire Committee is sufficiently general that it does not disclose what weight, if any, was given to these allegations, but the evidence on these issues warrants some comment. The juveniles told Willard and Jax that they were camping in the area with a group. The police officers checked out the story, found their blankets, and made contact with the person responsible for the boys in the Wisconsin Dells area. Having determined that no arrest would be made and having made contact with the adult responsible for the boys in the immediate area, there is some question as to what further obligation Willard and Jax had with respect to contacting the parents of the juveniles. The Wisconsin Dells jail is not approved for detention of juveniles on criminal charges, and the two juveniles were detained in the Wisconsin Dells jail. However, this must be kept in context. It is clear from the testimony before the Police and Fire Committee that the confinement of the juveniles was not on the basis of an arrest on a criminal charge. Rather, the confinement was in response to a specific request from the camp counselor, and appears to the Commission to be responsible action on the part of the police officers. Clearly, the camp counselor, who had other problems on his hands at the moment, would not have desired that the two juveniles be turned loose at 3:45 A.M. in an unfamiliar community. For the protection of the dispatchers, Mickelsen had issued standing orders that any person confined or detained at the offices of the Police Department was to be kept in a locked cell. Accordingly, Willard and Jax locked up the juveniles when they returned to their patrol duties. Since no arrest was made there is another question here as to what, if any, obligation the police officers had to contact the juvenile officer or transport the juveniles for confinement in a facility approved for the confinement of juveniles on criminal charges.

It may appear that Chief Mickelsen either acted on false assumptions concerning the two juveniles, without checking out the situation with one of several available sources, or that he second-guessed Willard and Jax on their determination that there was insufficient evidence to prosecute. The Commission is not persuaded that such factors were the sole reason for the filing of charges. Only days before, Mickelsen had advised George Willard that action was impending against Dean Willard. Lieutenant Koch had received the same message in February, and the other evidence of anti-Union motivation, discussed heretofore, leads precipitously to the conclusion that the filing of charges against and the issuance of recommendations against Willard and Jax were motivated by the Respondents' anti-Union animus. The last step in the procedure, the discharge letters issued by the Mayor, is completely in keeping with Mayor Kelly's anti-Union animus, displayed in his conversations with George Willard on May 22, 1972.

REFUSAL TO BARGAIN

The evidence does not show clearly that the Union held a majority in the bargaining unit prior to the March 3, 1972 proceedings before Examiner Coughlin. However, during those proceedings an informal vote of the employees was held and Respondent City recognized the Union as the exclusive bargaining agent for the employees in the bargaining unit. Following that recognition agreement, several meetings were held between representatives of the parties during which they engaged in collective bargaining. No final agreement was reached during said bargaining sessions, but there is no indication that the parties had reached a complete impasse in their bargaining. The Union requested further negotiations shortly after the discharge of Willard and Jax. There is an allegation by the Employer that the telegram was never received by the Mayor, but Kelly did not testify, and there is no evidence in the record that the telegram was not delivered to some agent of the City. On the other hand, the Union provided evidence to show that it did send the telegram and received confirmation from the telegraph company of the contents of the telegram. Based on the foregoing, the Commission presumes that the telegram was received. The Respondents' inaction constitutes a refusal to bargain since July 20, 1972. The changes of working conditions which occurred subsequent to March 3, 1972, without consultation with the Union, add an additional count of refusal to bargain.

VIOLATION OF CONTRACT

The counsel which represents the Respondents in this proceeding also represented the City in the proceedings before Examiner Coughlin on March 3, 1972. During those proceedings the parties entered into a collective bargaining agreement. That agreement was specifically described as a collective bargaining agreement by counsel for the Union, and no objection was made at that time by counsel for the City. Part of the consideration for said agreement was the Union's withdrawal of its original complaint of prohibited practices. Counsel for Respondents now argues that the collective bargaining agreement entered into on March 3, 1972 is invalid, for want of formal acceptance by the City Council, and for want of formality and signature. The first argument only reinforces the claim on the part of the Union that the City's actions on March 3, 1972 were a sham. Counsel for the City acted on March 3, 1972 on behalf of the City and the result of his action was the dismissal of formal legal action against the City. We find that the City is now estopped from raising a defense concerning the authority of its negotiator, and reject that portion of the argument. As to the second point, we do not find the "definition" asserted by Counsel among the provisions of Section 111.70, Wisconsin Statutes. Collective bargaining agreements are commonly reduced to writing and signed by the parties. The statutory definition of "Collective Bargaining", Section 111.70(1)(d), of M.E.R.A., includes the obligation to reduce any agreement reached to a written and signed document, but there is no prohibition on oral collective bargaining agreements where the parties waive a written agreement either affirmatively or passively. The collective bargaining agreement entered into by these parties on March 3, 1972 was, in fact, reduced to writing in the transcript of those proceedings, and the Commission is completely satisfied that such agreement was a valid collective bargaining agreement enforceable under Section 111.70(3)(5) of M.E.R.A. The agreement entered into by the parties on March 3, 1972 was an interim agreement, designed to protect the status quo ante during the period when the parties would bargain for new terms and conditions of employment.

During an April, 1972 negotiation meeting, Jax inquired as to why the City was no longer providing flashlight batteries and similar

supplies. The Respondents offered no testimony to establish that Jax's grievance was not based in fact, and the Commission is therefore obligated to accept the only inference which can be drawn from Jax's testimony; namely, that the City had failed to provide supplies subsequent to March 3, 1972 which had been supplied to police officers during December, 1971. Whether or not the item is petty, as Chief Mickelsen appeared to believe, is not a question which affects the results on this issue, since the function of the Commission under Section 111.70(3)(a)(5) of M.E.R.A. is to enforce the agreement of the parties.

The Commission is making no determination in this case as to whether there is wisdom to the implementation of foot patrols. The Respondents argue that the concerted activities among the employees have prevented the City from implementing foot patrols, which it determines to be a worthy objective. This ignores the fact that the City has, for the time being, bargained away that right in a valid and enforceable collective bargaining agreement.

There is clear evidence that, after March 3, 1972, the Chief first reinstated the rule concerning full written reports on leaving the City while on duty, and then imposed a completely new rule requiring prior permission before leaving the City. Both changes occurred during the period while the March 3, 1972 collective bargaining agreement was in effect. In that such work rules have, in fact, been used to affect the conditions of employment of employees, including the reprimand of Jax and charges against Willard and Jax, the Commission finds that the imposition of those rules also violated the March 3, 1972 collective bargaining agreement between the parties.

Dated at Madison, Wisconsin, this *1st* day of March, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Morris Flannery
Morris Flannery, Chairman

Zel S. Rice II
Zel S. Rice II, Commissioner

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