

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

WISCONSIN PROFESSIONAL POLICEMEN'S
ASSOCIATION and DONALD MOBERG,

Complainants,

vs.

CITY OF MARINETTE, MARINETTE COUNTY,
WISCONSIN and JAMES C. KREI,

Respondents.

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: Case VI
: No. 16572 MP-223
: Decision No. 11674-A
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Appearances:

Lawton & Cates, Attorneys at Law, by Mr. Bruce M. Davey,
appearing for the Complainants.
Mr. Emmet McCarthy, City Attorney, City of Marinette,
appearing for Respondent City of Marinette.
Topel, Jabas, Heath & Murphy, Attorneys at Law, by Mr. James
E. Murphy, appearing for Respondent James C. Krei.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Wisconsin Professional Policemen's Association and Donald Moberg having, on March 5, 1973, filed a complaint with the Wisconsin Employment Relations Commission, wherein they alleged that the City of Marinette, Wisconsin, and James C. Krei had committed prohibited practices within the meaning of the Wisconsin Municipal Employment Relations Act; and the Commission having appointed Marvin L. Schurke, a member of its staff, to act as Examiner and to make and issue Findings of Fact, Conclusions of Law and Order as provided in Section 111.07(5) of the Wisconsin Employment Peace Act; and, pursuant to notice, hearing on said complaint having been held at Marinette, Wisconsin on June 14, 1973, June 20, 1973, and June 21, 1973, before the Examiner; and the Examiner having considered the evidence and arguments and being fully advised in the premises, makes and files the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. That Wisconsin Professional Policemen's Association, hereinafter referred to as Complainant Association, is a labor organization having its principal offices at c/o Harold Johnson, 3545 Concord Avenue, Madison, Wisconsin.
2. That Donald Moberg, hereinafter referred to as Complainant Moberg, is an individual residing at Marinette, Wisconsin; and that, at all times pertinent hereto, Complainant Moberg has been employed by the City of Marinette, Wisconsin, as a police officer.
3. That the City of Marinette, Marinette County, Wisconsin, hereinafter referred to as Respondent City, is a Municipal Employer having its principal offices at City Hall, Marinette, Wisconsin; that, among other municipal services, Respondent City maintains and operates a

police Department; that Edward J. Parsak is the Mayor of the City of Marinette; and that, pursuant to Section 62.13, Wisconsin Statutes, the City of Marinette has a Police and Fire Commission.

4. That James C. Krei, hereinafter referred to as Respondent Krei, is an individual residing at Marinette, Wisconsin; and that, at all times pertinent hereto, Respondent Krei has been employed as the duly appointed Chief of Police of the Marinette Police Department.

5. That during each year since at least 1968, negotiations have occurred between representatives of Respondent City and representatives of employes of the Marinette Police Department, resulting in the establishment of wages, hours and conditions of employment for said employes; that the interests of said employes were represented in such negotiations by a committee of employes or by an attorney hired collectively by said employes; that, on January 17, 1972, a formal collective bargaining agreement was entered into by and between Respondent City and the Marinette Police Association, wherein Respondent City recognized the Marinette Police Association as the exclusive collective bargaining representative for all employes of the Marinette Police Department, excluding only the Chief of Police; that said agreement establishes wages, hours and conditions of employment for the year 1972 for the employes in the bargaining unit specified therein; and that said agreement contains job descriptions specifying the duties of patrolman, sergeant, lieutenant, and captain.

6. That Complainant Moberg was assigned by Respondent Krei to attend a training course for police officers during the month of January 1972 at the Wisconsin State Patrol Academy at Camp McCoy, Wisconsin; that, during the course of his training at Camp McCoy, Complainant Moberg came in contact with members of Complainant Association and obtained information concerning Complainant Association; and that upon his return to duty in Marinette, Complainant Moberg arranged for a meeting between himself, Officer Christnagel and a representative of Complainant Association, at which time organization of the employes of the Marinette Police Department as an affiliate of Complainant Association was discussed.

7. That Complainant Moberg commenced an organizational campaign among certain employes of the Marinette Police Department; that Complainant Moberg contacted all of the patrolmen employed by the Marinette Police Department, either by phone or in person, and arranged a meeting of said patrolmen; that a meeting was held on February 17, 1972, which was attended by 11 of the 14 patrolmen; that, during said meeting, Complainant Moberg presented information concerning Complainant Association, information concerning the Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, and information concerning the organization of an independent benevolent association; that, following discussion, a secret ballot was held among the employes attending at which time said employes voted unanimously to exclude sergeants from their organization and voted by a plurality of 7 to 4 to create an independent labor organization among patrolmen employed by the Marinette Police Department; that the name "Marinette Patrolmen's Association" was adopted as the name of said organization; that a date was set for another meeting of said organization; and that the election of three members to a committee to represent the Marinette Patrolmen's Association was placed on the agenda for such subsequent meeting.

8. That, on February 19, 1972, a meeting of the Marinette Patrolmen's Association was held, at which time ten of fourteen eligible members were present; that Complainant Moberg was absent from said meeting; that the results of the previous meeting were reviewed; that nominations were opened; that Complainant Moberg, Officer Patenaude and Officer Ravet were nominated and elected to serve as committeemen to represent the Marinette Patrolmen's Association; and that, during the course of such meeting, the Marinette Patrolmen's Association designated a monthly dues amount and limitations on the use of funds collected in the treasury of the Marinette Patrolmen's Association.

9. That, on or about February 25, 1972, a meeting occurred between Respondent Krei and Officer Ravet, at which time the Marinette Patrolmen's Association was a subject of discussion; that, on or about February 26, 1972, Complainant Moberg, Officer Patenaude and Officer Ravet, acting as representatives of the Marinette Patrolmen's Association, met with Respondent Krei and informed him of the formation, nature, and purpose of the Marinette Patrolmen's Association; and that, during the course of said meeting, Respondent Krei expressed no opposition to the exercise, by employes of the Marinette Police Department, of their right to engage in concerted activity.

10. That, on March 6, 1972, a meeting of the Marinette Patrolmen's Association was held; that, during the course of said meeting, Officer Patenaude reported to the membership concerning the meeting held between the Committee of that organization and Respondent Krei; and that during the course of said meeting Complainant Moberg proposed a constitution and by-laws for the Marinette Patrolmen's Association, which were discussed and accepted by the membership.

11. That, during an unspecified period prior to March 27, 1972, disputes or disagreements arose between Complainant Moberg and other members of the Marinette Police Department holding the rank of patrolman and/or sergeant; that, in some instances, an acrimonious relationship resulted therefrom among the employes involved; that, on or about March 27, 1972, Complainant Moberg met with Respondent Krei, at which time Moberg's performance as a police officer was discussed; that, during the course of such discussion, Complainant Moberg admitted that his performance had been substandard; and that, at the conclusion of said conference, Respondent Krei advised Complainant Moberg to consider the question of whether he should continue in employment as a police officer.

12. That, on or about April 2, 1972, a dance was held at Catholic Central High School in Marinette, Wisconsin; that, during the course of such dance, disruptions occurred; that Complainant Moberg was dispatched to assist other police officers in control of such disruptions; that Officers LaBombard, Faucett, and Ravet made reports to Respondent Krei, to the effect that Complainant Moberg's actions in response to the dispatch to the dance were improper; that, relying upon the information reported to him by Officers LaBombard, Faucett, and Ravet, and on April 4, 1972, Respondent Krei suspended Complainant Moberg from his employment by the Marinette Police Department; that, thereafter, such suspension was extended pending a hearing before the Marinette Police and Fire Commission on charges of misconduct; and that, on April 26, 1972, Respondent Krei filed charges against Complainant Moberg with the Marinette Police and Fire Commission and recommended to said Commission that Complainant Moberg be terminated as an employe of the Marinette Police Department.

13. That a hearing was held before the Marinette Police and Fire Commission on the charges filed by Respondent Krei against Complainant Moberg; that Complainant Moberg was represented by counsel during such hearings; that, on May 12, 1972, the Marinette Police and Fire Commission issued its decision completely exonerating Complainant Moberg of any wrong doing; that, thereupon, Complainant Moberg was reinstated to his employment by the Marinette Police Department, with full pay and benefits for the period of his suspension; and that Complainant Moberg incurred legal fees and expenses of \$822.00 for his defense in that proceeding.

14. That, on the date of Complainant Moberg's reinstatement to duty with the Marinette Police Department, Respondent Krei convened a meeting of members of said department, at which time Respondent Krei instructed all members of said department that Complainant Moberg was to be reinstated to duty and accepted back as a member of the department, without harassment or recrimination; that Respondent Krei ordered that any action against Complainant Moberg by other employes be reported to him for action; that, subsequent to his reinstatement, the previous acrimonious relationship between Complainant Moberg and certain other employes of said department holding the rank of patrolman and/or sergeant continued; that some of the incidents resulting therefrom were reported to Respondent Krei, while others were not; and that Respondent Krei took action to investigate and respond to such incidents as were called to his attention by Complainant Moberg.

15. That, on an unspecified date during the suspension of Complainant Moberg, Officer Ravet posted a notice on an employe bulletin board in the offices of the Marinette Police Department, wherein he announced his resignation from the Marinette Patrolmen's Association; that other patrolmen affixed their signatures to said document below that of Ravet's; that, following his reinstatement to employment, Complainant Moberg called a meeting of the Marinette Patrolmen's Association; that no employes other than Complainant Moberg attended such meeting; and that the Marinette Patrolmen's Association subsequently ceased to operate as an organization.

16. That on or about January 8, 1973 Teamsters and Chauffeurs Union Local #328, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, filed a petition with the Wisconsin Employment Relations Commission for an election among employes of the Marinette Police Department; that Respondent City stipulated to the description of the appropriate bargaining unit and to the list of eligible voters for an election to be held pursuant to such petition; and that, following an election conducted by the Commission, and on May 2, 1973, Teamsters and Chauffeurs Union Local #328 was certified as the exclusive collective bargaining representative of all employes of the City of Marinette Police Department, excluding the chief, captain, lieutenant, and meter maids.

17. That any disagreements, disputes or acrimonious relationship between Complainant Moberg and members of the Marinette Police Department holding the rank of patrolman and/or sergeant was, and is, an internal dispute among members of the bargaining unit, not motivated by expressed or implied order of Respondent Krei or any other agent of Respondent City; and that the suspension of and filing of charges against Complainant Moberg by Respondent Krei was not motivated to interfere with the function or administration of the Marinette Patrolmen's Association or to discourage membership in any labor organization.

Based upon the above and foregoing Findings of Fact, the Examiner makes the following

CONCLUSIONS OF LAW

1. That Respondents, City of Marinette and James C. Krei, have not interfered with, restrained, or coerced municipal employes in the exercise of their rights as specified in Section 111.70(2) of the Municipal Employment Relations Act, and have not committed prohibited practices within the meaning of Section 111.70(3)(a)(1) of the Municipal Employment Relations Act.

2. That the Respondents, City of Marinette and James C. Krei, have not interfered with the formation or administration of any labor or employe organization, and have not committed prohibited practices within the meaning of Section 111.70(3)(a)2 of the Municipal Employment Relations Act.

3. That the Respondents, City of Marinette and James C. Krei, have not engaged in any action motivated to discourage membership in any labor organization by discrimination in regard to tenure, hiring or other conditions of employment, and have not committed prohibited practices within the meaning of 111.70(3)(a)3 of the Municipal Employment Relations Act.

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

ORDER

IT IS ORDERED that the complaint filed in the instant matter be and the same hereby is dismissed.

Dated at Madison, Wisconsin, this 7th day of June, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Marvin L. Schurke
Marvin L. Schurke, Examiner

MEMORANDUM ACCOMPANYING
FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

PLEADINGS AND PROCEDURE

On March 5, 1973 the Complainants filed a complaint of prohibited practices with the Commission wherein, following identification of the parties, they alleged that Officer Moberg initiated an organizational campaign among employes of the Marinette Police Department which resulted in the formation of a labor organization; that the Chief of Police was informed of the concerted activity among the employes; that, thereafter, Moberg was suspended from duty because of his participation in the organizational campaign; that hearings were held before the Marinette Police and Fire Commission; that the charges against Moberg were dismissed; that by the aforesaid suspension by other actions, the Chief of Police interfered with Moberg's rights under Section 111.70(2); that Moberg incurred substantial legal expenses in making good his defense against the charges before the Police and Fire Commission; and that the City has refused and continues to refuse to reimburse Complainant Moberg for those legal expenses. The complaint was initially set for hearing on April 10, 1973, but was thereafter postponed indefinitely due to the unavailability of Counsel for the City. On May 10, 1973 notice was issued setting a new hearing date for June 14, 1973. The City Attorney filed an answer on March 22, 1973 on behalf of both Respondents, wherein they substantially admitted the factual allegations of the Complainant, but deny that the suspension of Moberg was designed to discourage concerted activity among the employes and deny that the Chief of Police and his subordinates have engaged in any pattern of harassment or discrimination against Moberg. Hearing was opened before the Examiner at Marinette, Wisconsin, on June 14, 1973, at which time Respondent James C. Krei was represented by separate Counsel. The hearing was continued on June 20, 1973, and was completed and closed on June 21, 1973. A transcript of those proceedings was issued on October 9, 1973. The deadlines for the filing of briefs originally established at the close of the hearing were extended at the requests of both parties, and the last brief was received by the Examiner on February 19, 1974.

SCOPE OF ISSUES

Section 62.13(1), Wisconsin Statutes, mandates the appointment of a Board of Police and Fire Commissioners; and Section 62.13(5) provides for disciplinary actions against subordinates, wherein charges are heard by the Board of Police and Fire Commissioners for the purpose of determining whether the suspension be for cause. The question of whether "cause" existed for the suspension and proposed discharge of Officer Moberg has previously been fully litigated before the Marinette Police and Fire Commission. That question has been answered in the negative by that body, resulting in the reinstatement of Officer Moberg to employment with full back pay and benefits for the period of his suspension, pursuant to Section 62.13(5)(h), Wisconsin Statutes.

The charges brought against Officer Moberg by Chief Krei do not indicate on their face that the suspension and proposed discharge were motivated by a desire to discourage Moberg's union organizing activity. It is clear that, while there may have been some limited reference to Moberg's concerted activity, Moberg's organizing efforts were not litigated before the Police and Fire Commission. Even if the issue of

concerted activity had been raised in the proceedings before the Police and Fire Commission, this Examiner is of the opinion that the Wisconsin Employment Relations Commission would nevertheless have jurisdiction to make a de novo determination on that issue. It is well established that the test applied in determining whether a prohibited practice has been committed is not one of "cause" or "reasonableness", but whether any part of the motivation for an employer's action is an anti-union animus. See: City of Wisconsin Dells (11646) 3/73.

In his opening statement, Counsel for Chief Krei, made a comment to the effect that the Chief welcomed the opportunity to litigate in this forum, and to demonstrate his innocence of any wrong doing. The facts that were raised before the Police and Fire Commission were raised by the Respondents in their defense in this proceeding, and testimony was taken in this record concerning the incidents on which the charges against Officer Moberg were based. Much as the Respondents herein might welcome an opportunity to relitigate those charges on their merits (and possibly to obtain a finding more satisfactory to them than was obtained from the Police and Fire Commission) it is not the function, nor has it ever been the intention, of the Examiner to engage in such an exercise. The Examiner accepts as established the proposition that the charges brought against Complainant Moberg were without merit. The question here is whether any part of the motivation for the filing of those charges was an anti-union animus.

CONCERTED ACTIVITY

The complaint and answer filed in this case would seem to indicate that Officer Moberg introduced the concept of collective bargaining among the employes of the Marinette Police Department. However, the evidence indicates that those employes had been engaged in some form of collective bargaining activity for several years prior to the commencement of Moberg's organizational efforts. While Moberg was away from Marinette for training at the State Patrol Academy, a formal, detailed collective bargaining agreement was entered into on January 17, 1972 by and between the City of Marinette and the "Marinette Police Association". That agreement was scheduled to be effective for the calendar year 1972 and establishes wages, hours and conditions of employment for all employes in the Police Department with the exception of the Chief of Police. That agreement resulted from negotiations between representatives of the City and a committee composed of employe members of the Police Department bargaining unit. The record herein indicates that negotiations occurred during at least the four years preceding the aforementioned agreement, wherein the interests of the employes were represented by a similar committee of employes or by an attorney hired collectively by the employes. There is no evidence of a bitter labor-management relationship between the parties to those negotiations, nor is there any evidence of any effort by the City or by the Chief to interfere with or discourage the concerted activity. The degree of cooperation and the extent of development of collective bargaining in this unit during this period is particularly significant in view of the absence, during most of that period, of any duty to bargain imposed on the City by Statute, and the exclusion of police officers from the protections provided to other municipal employes prior to the enactment of the Municipal Employment Relations Act (MERA) on November 11, 1971.

While the concept of concerted activity among employes was not new, it might be conceded that Moberg introduced new concepts regarding for-

mal organization and formal affiliation. The "Marinette Police Association" was not affiliated with any other labor organization. It was informally structured, held meetings only as necessary for the purposes of annual negotiations, and collected dues only as assessments were made to pay the cost of legal assistance for negotiations. The patrolmen attending the first meeting called by Moberg in February, 1972 rejected the concept of formal affiliation with other labor organizations, but did express interest in a more formally structured independent organization. Moberg's concepts of formal organization were given further development at the meetings which ensued, as the "Marinette Patrolmen's Association" held somewhat formal elections, established fixed dues, and adopted a constitution and by-laws.

Contrary to the position asserted herein by the Complainant, the Examiner does not find that the evidence indicates that the formation of the "Marinette Patrolmen's Association" brought on a different reaction from the City or from the Chief of Police than was received by the incumbent "Marinette Police Association". Shortly after the second meeting of the "Marinette Patrolmen's Association", the three members of that organization's elected committee met with the Chief of Police and informed him of the existence, nature and purpose of the organization. All three of the employes who participated in that meeting acknowledged that the Chief of Police received the news in a spirit of cooperation. There is no allegation or evidence of any action against the other members of that elected committee.

The City asserts that it has maintained a neutral stance with respect to concerted activity among its police officers, and its position is substantiated when the facts concerning the formation of the current collective bargaining representative are taken into consideration. The majority of the patrolmen, led by their elected committeeman, Officer Ravet, abandoned the "Marinette Patrolmen's Association" after its third meeting. The employes apparently also abandoned the "Marinette Police Association" and turned to the Teamsters Union (which was not among the formal affiliation choices considered at the initial meeting of the "Marinette Patrolmen's Association") for representation. Upon the filing by the Teamsters of a petition for an election among the employes, the "Marinette Police Association" disclaimed interest and the City stipulated on all questions preliminary to the conduct of the representation election by the Commission. The Teamsters Union was later certified as the representative of the employes. Some of the employes now active on behalf of the Teamsters Union were also active on behalf of the "Marinette Police Association" and/or the "Marinette Patrolmen's Association". There is no allegation or evidence of any action on the part of the Respondents which might be viewed as part of an effort by the City to discourage the most recent efforts to obtain formal organization or formal affiliation by the employes of the Marinette Police Department.

DESCRIPTION OF BARGAINING UNIT

The primary allegations of the complaint in this case relate to the suspension of Officer Moberg and other actions by Chief Krei. Officer Moberg conceded in testimony that the captain and the lieutenant were not "against him". However, apart from the allegations of direct action by the Chief of Police, the Complainants sought to show a pattern of harassment of Officer Moberg by individuals holding the rank of sergeant. During the course of the hearing, an issue arose as to whether the sergeants were agents of the Municipal Employer or fellow members of the same bargaining unit with Officer Moberg.

Officer Moberg commenced his organizational campaign among employees of the Marinette Police Department by inviting all available patrolmen to an initial meeting. The "Marinette Patrolmen's Association" was formed and the employees voted unanimously to exclude sergeants and other senior officers of the Police Department from membership in the "Marinette Patrolmen's Association". While nobody questions the right of a labor organization to set its own non-discriminatory standards for admission to membership, the scope of the membership does not necessarily establish or reflect the description of the appropriate bargaining unit. In this case, at least two different groupings of employees are noted in the record.

It is clear that the City of Marinette - Marinette Police Association collective bargaining agreement for 1972 covers the individuals holding the ranks of sergeant, lieutenant and captain, as well as employees holding the rank of patrolman. The testimony of record also indicates that certain of the individuals holding the rank of sergeant were active in the "Marinette Police Association" and in its collective bargaining negotiations with the City of Marinette.

The petition of Teamsters and Chauffeurs Union Local #328 for an election among employees of the Marinette Police Department was docketed as City of Marinette, Case V, and was scheduled for hearing on February 12, 1973. The Direction of Election issued by the Commission in that case 1/ indicates that, at the outset of the hearing, the City and the petitioner stipulated to the description of the appropriate bargaining unit and to the list of eligible voters. The Commission conducted an election and the Teamsters Union was certified as the exclusive collective bargaining representative of "all employees of the City of Marinette Police Department, excluding the chief, captain, lieutenant and meter maids". Seventeen employees were eligible to vote in that election, of whom four hold the rank of sergeant.

The Complainants contend that they should not be bound by the stipulation entered into in January, 1973, and testimony was taken concerning the claimed supervisory status of the sergeants during the portion of 1972 when other incidents relevant to this case occurred. That evidence indicates that the sergeants act as shift commanders on some shifts, serving generally as a "desk man" or dispatcher. The chief, the captain or the lieutenant assume supervisory responsibilities when they are on duty, and the authority of the sergeant is limited by comparison to the authority of the more senior officers. One of the sergeants acts as plain clothes investigator and does not act as the supervisor of the uniformed officers. Patrolmen are assigned to duty as desk and dispatcher officer on occasions when no sergeant is available to fill such assignment. Upon review of these facts and the past bargaining history, the Examiner concludes that the stipulation accepted by the Commission in 1973 accurately reflects the situation as it existed in 1972, and that the sergeants were not, and are not, supervisors within the meaning of Section 111.70(1)(o)(1) of the MERA. Accordingly, disputes arising between Officer Moberg and members of the sergeant rank cannot be attributed to the Chief or to the City without evidence that the sergeant's participation in the dispute was pursuant to an order of the Chief or some other person acting on behalf of the City.

1/ Decision No. 11616, 2/73.

INTRA-BARGAINING UNIT RELATIONSHIPS

Officer Moberg had his supporters as well as his detractors among the employes in the department at and prior to the time of his suspension. The evidence of record in this case strongly indicates that Officer Moberg's difficulties can be attributed in large part, if not entirely, to an acrimonious relationship existing between him and certain other members of the bargaining unit. Only a small portion of this would appear to be associated with Officer Moberg's organizing activities, that being a suggestion in the record that the sergeants, who had previously been active in the Marinette Police Association, may have resented their exclusion from the "Marinette Patrolmen's Association". Of all of the various relationships indicated in this record, it is apparent that the relationship between Officer Moberg and Officer Ravet is a key element.

Officer Ravet had been assigned to duty as an "assistant investigator" and appears to have sometimes served as the functional equivalent of a sergeant. Ravet had been one of the activists in the Marinette Police Association. He was selected by his fellow patrolmen as a committeeman to represent the "Marinette Patrolmen's Association" and was one of the moving forces in the organization of the bargaining unit by the Teamsters Union. Ravet also claims to have been elected as the chairman of the "Marinette Patrolmen's Association". However, against this history of union-oriented activity, it was Ravet who led the list of resignees from the "Marinette Patrolmen's Association", and this incident is viewed as inconsistent with Ravet's claim to leadership in that organization. Ravet testified as a witness called on behalf of the Complainants in this case but, as noted by the Counsel for the Complainants, freely volunteered information which would tend to support the position of the Respondents. Upon review of Officer Ravet's testimony and his demeanor as a witness, the Examiner concludes that the testimony of the other witnesses should be accepted as persuasive where conflicts appear. Conflicts of testimony are found, for example, in the testimony concerning the time of the meeting between Chief Krei and the elected committee of the "Marinette Patrolmen's Association". While both Officer Moberg and Officer Patenaude recalled that as an afternoon incident, Officer Ravet would place the meeting early in the morning. While Officer Patenaude's minutes of the May 19 meeting and his recall of that meeting would indicate that the three members of the committee had been elected as committeemen rather than as chairman, secretary and committeeman, Officer Ravet contends that he was elected as chairman of the organization. Ravet's claim in this regard is in conflict with the minutes of the February 17 meeting, when the election of "three men to be on committee" was placed on the agenda for the subsequent meeting, and the minutes of the March 6 meeting, when the meeting was called to order and conducted by Officer Moberg. Ravet's testimony conflicts with that of Officer Evans concerning Ravet's presence at Catholic Central High School at the time of the incident which precipitated the suspension of Officer Moberg. Finally, Ravet's testimony conflicts with the testimony of Officers Evans, LaBombard and Moberg concerning the number of requests for assistance and period of time involved in the dispatch of Officer Moberg to the disturbance at the dance.

Whatever the source of the difficulties existing between Officer Ravet and Officer Moberg, that acrimonious relationship was reflected in the complaints about Moberg made by Ravet and others to the Chief of Police. The case made by Moberg's detractors was sufficient to

mislead Chief Krei, whose professional investigative prowess failed him in this instance. The Marinette Police and Fire Commission apparently discovered the conflicts in testimony noted here by the Examiner as it found no merit to the charges against Officer Moberg. The conclusion that the Chief's actions were misguided and in error does not lead directly to a conclusion that the Chief's actions were motivated by an anti-union animus. While the evidence establishes several of the elements of proof necessary for the Complainants to prevail on the allegations of violation of Section 111.70(3)(a)3 of the MERA, namely: union activity on the part of the alleged discriminatee, knowledge of that activity by the employer, action against the alleged discriminatee, and a lack of cause for such action, the Complainants have failed to prove another key element. In reviewing the entire transcript, the Examiner concludes that the Complainants have not sustained their burden of proving the existence of an anti-union animus.

Officer Moberg was under the impression that the Chief had "jumped on" Officer Ravet concerning the formation of the "Marinette Patrolmen's Association", but the evidence does not support Moberg's impression in that regard. Certainly, the meeting between the Chief and the "Marinette Patrolmen's Association" committee was cordial, and that meeting concluded with the Chief expressing the view that the organization would benefit the department and make his job easier. Moberg contended that the Chief was cooler to him after the commencement of his organizational campaign, and attributes this to his organizational efforts. However, it is clear that, during the same period, the differences between Moberg and his fellow officers were accumulating and that the Chief, though misguided in doing so, was being affected by the views of Moberg's detractors. Several of Officer Moberg's assertions, such as those concerning the denial of overtime or the denial of participation in investigatory work subsequent to his reinstatement, have been disproved or have been shown to be the result of a continued intra-unit dispute between Officer Moberg and his fellow employes.

COMPLAINANT'S REQUESTED REMEDY

Although the conclusions reached above require the dismissal of the complaint in the instant case, the Examiner deems it appropriate to comment on the somewhat unusual remedy requested herein by the Complainants. The Complainants do not seek reimbursement for the legal expenses of the instant case. However, Officer Moberg incurred substantial legal fees (\$822) in making good his defense to the charges filed against him before the Police and Fire Commission. A claim for payment of those fees was filed with the City, pursuant to Section 62.25, Wisconsin Statutes, and that claim was disallowed by the City Council. It appears that no action was commenced in the courts to collect that claim.

The Complainants' theory here is that the alleged discrimination against Officer Moberg was manifested in the legal fees. Discriminatory actions against employes more typically result in a loss of pay or a loss of employment, but it is not beyond contemplation that an employer might repeatedly do economic harm to an employe in reprisal for union activity by forcing the employe to expend substantial sums of money to defend himself against frivolous or unfounded charges, to the point where the employe might succumb to the harassment and terminate his employment rather than incur the expense of defending himself. Such a tactic might be particularly applicable in law enforcement where, under Section 62.13(5)(h), Wisconsin Statutes, the employe may not be deprived of compensation while suspended pending

the disposition of charges. For reasons which are not made clear in this record, the City Council has denied payment of Officer Moberg's legal defense fees before the Police and Fire Commission. Those proceedings, and the results thereof, should be of some embarrassment to both the City and the Chief of Police, as even the Mayor appears to have been taken in by the assertions of Officer Moberg's detractors. If faced with a claim by Chief Krei for payment of his legal fees in this proceeding, the Marinette City Council might well, regardless of its legal obligation to do so, look to the source of all of these difficulties and reconsider its determination to deny payment of Officer Moberg's legal fees. The Examiner does not intend that the dismissal of the complaint in this case should imply that denial of payment of Moberg's legal fees was just, or that the unique remedy sought here by the Complainants is unavailable as a remedy for discriminatory prohibited practices in violation of Section 111.70(3)(a)3 of the MERA.

Dated at Madison, Wisconsin this 7th day of June, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Marvin L. Schurke
Marvin L. Schurke, Examiner