STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

LOCAL 133, AFSCME, AFL-CIO, DISTRICT COUNCIL 48, Complainant, vs. CITY OF OAK CREEK, Respondent.	Case X No. 17096 MP-274 Decision No. 12105-A

Appearances:
Goldberg, Previant & Uelmen, Attorneys at Law, by Mr. John S. Williamson, Jr., appearing on behalf of the Complainant.
Spacek, Miller & Rinzel, Attorneys at Law, by Mr. Frederick A. Miller, appearing on behalf of the Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The above-named Complainant having on August 17, 1973 filed a complaint with the Wisconsin Employment Relations Commission wherein it alleged that the above-named Respondent has committed prohibited practices within the meaning of the Municipal Employment Relations Act; and the Commission having appointed Stanley H. Michelstetter II, a member of the Commission's staff, to act as Examiner and to make and issue Findings of Fact, Conclusions of Law and Orders as provided in Section 111.07(5) of the Wisconsin Statutes; and a hearing on said complaint having been held at Milwaukee, Wisconsin on September 21, 1973 before the Examiner; and the Examiner having considered the evidence 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 Local 133, AFSCME, AFL-CIO, District Council 48, herein referred to as Complainant, is a labor organization having its principal office at 3427 West St. Paul Avenue, Milwaukee, Wisconsin.

2. That the City of Oak Creek, herein referred to as Respondent, is a municipal employer with principal offices at 8640 South Howell Avenue, Oak Creek, Wisconsin.

3. That at all relevant times Respondent employed Orpha Kwasny as a regular part-time cleaning lady for five and one-half hours on each day, Monday through Friday, throughout the year.

4. That at all relevant times Respondent employed Dorothy Kazmierski as a regular part-time cleaning lady for approximately five and one-half hours per day, Monday through Friday, during the school year and eight hours on such days not in the school year and also employed her as a crossing guard during the school year for four hours on such days.

5. That at all relevant times Respondent employed Clara T. Witkowski as a regular part-time cleaning lady, four and one-half to six hours per day, Monday through Friday, at its Recreation Center twenty hours per week during the entire year and as a crossing guard two hours per day, Monday through Friday, during the school year.

6. That on February 14, 1973 the Respondent's Common Council met with all relevant department heads during which meeting the Common Council announced its intention to end the practice of allowing Respondent's employes to hold more than one job for the Respondent, but that no action was taken thereon by the Common Council or its department heads.

7. That during the month of April, 1973, but prior to April 22, Dorothy Kazmierski, Orpha Kwasny, and the part-time engineer employed by Respondent at that time all signed and returned to the Complainant authorization cards stating:

> "I, the undersigned, hereby designate the American Federation of State, County and Municipal Employees, AFL-CIO, as my duly chosen and authorized representative on matters relating to my employment in order to promote and protect my economic welfare."

8. That after April 22, but before May 21, 1973, Kwasny's supervisor called her and asked her why she joined Complainant and, after she had responded that she joined because she was worried about job security, stated that he could not be responsible for what happened if she joined Complainant because Respondent's Library Board did not want a union in the library, and further stated that the matter must be taken up with such Board.

9. That on May 21, 1973 Complainant's business representative, Nick Ballas, mailed a letter to Respondent's Mayor which was received

by him, claiming to represent a majority of the part-time cleaning personnel and part-time engineer and offering to undergo a "card check".

10. That thereafter but before May 28, 1973 said business representative asked Respondent's Attorney, Frederick A. Miller, if there was any response to said letter from the City; that said Attorney stated that Respondent had received and discussed said letter and was reviewing the jobs that the part-timers were performing; and that at all relevant times said Attorney was an authorized representative of Respondent for purposes of collective bargaining.

11. That during the aforementioned conversation Respondent through its Attorney learned that Complainant represented three of the four employes involved herein and Respondent unequivocally accepted that statement as true and has never since challenged it.

12. That on or about June 1, 1973, Respondent's Attorney told said business representative during a phone conversation that Respondent was reviewing voluntary recognition, but that after reviewing the situation it was going to make a decision on policy that would end the holding of multiple jobs by Respondent's employes; and that Respondent was considering laying off the least senior employe.

13. That on June 13, 1973, said business representative complained to Alderman Milo Schocker about the conversation referred to in Finding of Fact 8 and other conversations by other municipal employes with the part-time cleaning personnel; that Alderman Schocker stated that he would do what he could to correct such although no corrective action was ever undertaken by Respondent; and that Alderman Milo Schocker at all relevant times was a member of Respondent's Personnel Committee and an authorized representative for purposes of collective bargaining.

14. That on July 26, 1973, Clara Witkowski signed an authorization card with the aforementioned statement; and that on or about that same date said business representative informed Respondent that it had all four authorization cards.

15. That on July 26, 1973, Alderman Schocker mailed a letter to all of Respondent's department heads which stated in relevant part:

> "The Council is presently reviewing all part-time jobs that fall under the City's jurisdiction. In order to more fully evaluate the jobs in question, we hereby request the following:
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> . . .

6) Does employee work for City in another capacity or department? If so, where? (including school system)."

16. That on or about August 3, 1973, without cause, Respondent discharged Kwasny and distributed the work previously performed by her between Kazmierski and Witkowski.

17. That on or about August 14, 1973, said business representative reiterated to Attorney Miller its demand for recognition and objected to the coercive activities of Respondent; that during said conversation he also demanded to bargain with respect to the institution of a rule concerning multiple-job holding; and that Attorney Miller thereupon admitted that it was withholding recognition pending unilateral institution of that rule, asserted that such rule was not a condition of employment of the instant unit and asserted a question as to the appropriateness of the unit sought by Complainant.

18. That on August 16, 1973 and at all times thereafter, Respondent by letter recognized Complainant as the exclusive bargaining representative for the part-time cleaning personnel, but denied representation of the part-time engineer in view of the fact that the position was then vacant and would not be filled.

19. That after the letter referred to in Finding of Fact 18 was mailed, Complainant's business representative called Alderman Schocker and objected to the delaying of recognition and accused Respondent of trying to unilaterally change the wages, hours and working conditions in order to avoid bargaining with respect thereto; that Complainant's business representative also demanded to bargain with respect to the rule regarding multiple-job holding; and that Alderman Schocker stated that he was exploring the multiple-job holding of employes in order to decide what to do about it and refused to bargain with respect thereto.

20. That on August 30, 1973, Alderman Schocker sent a letter to the Police Chief which stated among other things:

> ". . . you are hereby directed to cease and desist in the practice of allowing your employees to work for more than one department immediately.
>
> "This can be accomplished by bringing in substitute crossing guards or working of on-duty patrolmen or of working off-duty patrolmen if need arises. . . ."

21. That on August 30, 1973, both Kazmierski and Witkowski worked as crossing guards as they had done in previous school years.

but that on September 1, 1973 and continuously thereafter Respondent did not allow either to hold any job other than regular part-time cleaning lady.

22. That between August 3 and approximately September 1, 1973, Hallberg, the immediate supervisor of Kazmierski and Witkowski had a series of discussions with each wherein he attributed the dismissal of Kwasny, the change in working hours and duties of the part-time cleaning personnel and the loss of their other part-time employment with Respondent to the Complainant's organizational activities described below.

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

CONCLUSIONS OF LAW

1. That Respondent, City of Oak Creek, Wisconsin, is a municipal employer within the meaning of Section 111.70(1)(a) of the Municipal Employment Relations Act.

2. That Orpha Kwasny, Clara Witkowski and Dorothy Kazmierski are municipal employes within the meaning of Section 111.70(1)(b) of the Municipal Employment Relations Act.

3. That Complainant, Local 133, AFSCME, AFL-CIO, District Council 48, is a labor organization within the meaning of Section 111.70(1)(j) of the Municipal Employment Relations Act and the exclusive collective bargaining representative of part-time cleaning personnel employed by Respondent, an appropriate collective bargaining unit.

4. That Respondent, by its authorized agents, having discharged Orpha Kwasny because she engaged in concerted activity in and on behalf of the Complainant has engaged in, and is engaging in, prohibited practices within the meaning of Sections 111.70(3)(a)(1) and 111.70(3)(a)(3) of the Municipal Employment Relations Act.

5. That the rule adopted by Respondent forbidding the holding of multiple jobs by all of its employes and implemented with respect to the positions occupied by Clara Witkowski and Dorothy Kazmierski August 31, 1973 is a condition of employment of the voluntarily recognized bargaining unit consisting of part-time cleaning personnel.

6. That Respondent, through its authorized agents, having received on August 16, 1973 a request from Complainant to bargain with

respect to such rule and by having failed and refused since August 16, 1973 and at all times thereafter to bargain with respect thereto has committed, and is committing, prohibited practices within the meaning of Section 111.70(3)(a)4 of the Municipal Employment Relations Act.

7. That Respondent, through its authorized agents, by having unilaterally implemented such rule by discharging Clara Witkowski and Dorothy Kazmierski from all employment for it except part-time cleaning lady has committed, and is committing, prohibited practices within the meaning of Sections 111.70(3)(a) 4 and 111.70(3)(a) 1 of the Municipal Employment Relations Act.

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

ORDER

IT IS ORDERED that the City of Oak Creek shall immediately:

1. Cease and desist from:

   (a) Discouraging membership and activity of municipal employes in and on behalf of Complainant, Local 133, AFSCME, AFL-CIO, or any other labor organization, by discouraging or otherwise discriminating against any municipal employe in regard to hiring, tenure of employment, or in regard to any term or condition of employment.

   (b) Taking any action which interferes with, restrains or coerces municipal employes in the exercise of their right to engage in concerted activity and is calculated to discredit and undermine the prestige and authority of Local 133, AFSCME, AFL-CIO, District Council 48 in its capacity as the exclusive collective bargaining representative of such municipal employes, or any other labor organization having such status.

   (c) Unilaterally changing wages, hours or other terms or conditions of employment of municipal employes in the bargaining unit, without prior consultation with Local 133, AFSCME, AFL-CIO, District Council 48.

(d) Refusing to bargain collectively with Local 133, AFSCME, AFL-CIO, District Council 48 as the exclusive bargaining representative of the part-time cleaning personnel over the full wages, hours and conditions of employment of said municipal employes.

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

(a) Offer Orpha Kwasny immediate and full reinstatement to her former position as part-time cleaning lady, without prejudice to her seniority, benefits or other rights and privileges previously enjoyed by her, and make her whole for any loss of benefits or pay she may have suffered by reason of the discrimination against her, by payment of the sum of money equal to that which she would normally have earned or received as an employe, from the date of her termination to the date of the unconditional offer of reinstatement made pursuant to this Order, less any earnings she may have received during said period, except such as would have been earned by other part-time employment which she maintained while in the employ of Respondent, and less the amount of unemployment compensation, if any, received by her during said period, and, in the event that she received unemployment compensation benefits, reimburse the Unemployment Compensation Division of the Wisconsin Department of Industry, Labor and Human Relations in such amount.

(b) Offer to Clara Witkowski and Dorothy Kazmierski immediate and full reinstatement to their former positions, without prejudice to their seniority, benefits or other rights and privileges 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 she would normally have earned or received by virtue of her employment in each such position, from the date of her termination to the date of the unconditional offer of reinstatement made pursuant to this Order, less any earnings she may have received during said period from work in excess of the hours normally worked by said employes prior to the instant discharge which conflict with the hours of work of such former positions, and less the amount of unemployment compensation, if any, received by her during said period, and, in the event that she received unemployment compensation benefits, reimburse the Unemployment Compensation Division of the Wisconsin Department of Industry, Labor and Human Relations in such amount.

(c) Upon request, bargain collectively with Local 133, AFSCME, AFL-CIO, District Council 48 as exclusive representative of all part-time cleaning personnel, in good faith, with respect to wages, hours and other terms or conditions of employment, and if no understanding is reached, embody such understanding in a signed agreement.

(d) Notify all municipal employes, by posting in conspicuous places on its premises, where notices to all employes are usually posted, copies of the Notice attached hereto and marked "Appendix A". Appendix "A" 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 the Respondent to insure that said Notice is not altered, defaced or covered by other material.

(e) 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.

Dated at Milwaukee, Wisconsin, this 7th day of February, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stanley H. Michelstetter II
Stanley H. Michelstetter II
Examiner

APPENDIX "A"

NOTICE TO ALL EMPLOYES

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

1. WE WILL offer to Orpha Kwasny immediate and full reinstatement to her former position, without prejudice to her seniority, rights or privileges previously enjoyed by her, and make her whole for any loss of pay which she may have suffered by reason of her discriminatory discharge.

2. WE WILL offer to Clara Witkowski and Dorothy Kazmierski immediate and full reinstatement to their former part-time positions, without prejudice to their seniority, rights or privileges previously enjoyed by them, and make Clara Witkowski and Dorothy Kazmierski whole for any loss of pay which they may have suffered by reason of our unilateral implementation of a rule forbidding the holding of multiple jobs by our employes without having first given notice to Local 133, AFSCME, AFL-CIO, District Council 48 of such rule and having bargained with respect thereto upon the demand of such labor organization.

3. WE WILL upon request bargain collectively in good faith with Local 133, AFSCME, AFL-CIO, District Council 48, as the exclusive representative of all part-time cleaning personnel with respect to wages, hours and other conditions of employment.

4. WE WILL NOT discourage membership in Local 133, AFSCME, AFL-CIO, District Council 48 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.

5. WE WILL NOT refuse to bargain collectively with Local 133, AFSCME, AFL-CIO, with respect to wages, hours or working conditions of employes represented by said labor organization.

6. WE WILL NOT refuse to bargain collectively with Local 133, AFSCME, AFL-CIO, by unilaterally changing working conditions of employes represented by said labor organization without notifying said labor organization that changes are contemplated.

7. WE WILL NOT in any other manner interfere with, restrain or coerce our employes in the exercise of their right of self-organization, to form labor organizations, to join

or assist Local 133, AFSCME, AFL-CIO, District Council 48, 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 employes are free to become, remain, or refrain from becoming, members of Local 133, AFSCME, AFL-CIO, District Council 48, or any other labor organization.

City of Oak Creek

By _____
Mayor Elroy C. Honadel

Dated this _____ day of _____, 1974.

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

On February 14, 1973, the Respondent by its Common Council met with various supervisors and discussed a rule forbidding the holding of multiple jobs, but such was never enforced. During the month of April, 1973, the Complainant solicited three signed cards authorizing it to collectively bargain for such municipal employes. Sometime in the period April 22, 1973 to May 21, 1973, Kwasny's supervisor interrogated her with respect to her union activity and threatened her with the loss of her job if she selected the Complainant to represent her. On May 21, 1973, Complainant mailed a letter requesting recognition in a unit consisting of the part-time cleaning personnel and the part-time engineer. On August 14, 1973, Complainant again sought recognition and demanded to bargain about Kwasny's discharge and the rule. On August 16, 1973, Respondent recognized Complainant but again refused and continues to refuse to bargain about such rule. On August 30, 1973, Respondent sent a letter to its Police Chief directing implementation of the rule. On August 30 and 31, 1973, Respondent unilaterally eliminated the assignment of Witkowski and Kazmierski to other jobs for Respondent. During the relevant period, Respondent admitted that it was delaying recognition to review the conditions of employment and make unilateral changes.

POSITIONS OF THE PARTIES

The Complainant's position may be summarized as follows: that the Respondent on May 21, 1973, and at all times thereafter, knew and accepted the fact that Complainant represented at least three of the four employes then employed in an appropriate bargaining unit. On that date or as soon thereafter as Respondent realized such was true, Respondent had a duty to recognize and bargain with Complainant. Thereafter Respondent made unilateral changes in the right of unit members to hold other jobs with Respondent. Finally, it instituted such changes by discharging Kwasny and, after recognizing Complainant, preventing Kazmierski and Witkowski from holding jobs outside the unit.

In the alternative, the discharge of Kwasny and implementation of such rule were part of a program of coercion, intimidation and

other anti-union activity. Complainant seeks the following remedies: An order that the Municipal Employer cease and desist from refusing to bargain over full terms and conditions of employment including the right of employes to work in other departments as a condition of employment, and an affirmative order that, upon demand, the Municipal Employer bargain in good faith with respect to such terms and conditions of employment, reinstate Kwasny with full back pay and re-establish the terms and conditions of Kazmierski and Witkowski without loss of pay.

Respondent admits that it accepted as true the Union's representation that it represented three of the four employes (and later the fourth) in question. However, it contends that until approximately July 26, 1973 it had a good-faith doubt about the appropriateness of the unit which possibly affected the Complainant's majority status and thereafter until August 16, 1973 about the appropriateness of the unit (although such doubt did not raise questions as to majority status). Therefore until August 16, 1973, there existed no duty to bargain with Complainant. The rule with respect to multiple-job holding was unilaterally created prior to the request for recognition although it was implemented over a period extending from prior to recognition until after recognition. Therefore, there was no unilateral change during a period when there existed a duty to bargain with Complainant. In any case, no duty to bargain exists over such rule after recognition because such affects wages, hours and conditions of employment in units other than the instant one for which only representatives of such units should bargain.

Kwasny was a probationary employe and subject to discharge for any or no reason. No reason is set forth for her discharge.

Respondent's Motion to Dismiss

Respondent by brief sought to have the complaint dismissed for failure to set forth the requested relief. [1/] Although the instant complaint did not do so, Complainant stated its request for relief at the hearing. Respondent made no objection prior to hearing, did not object or make any request during hearing and did not object when Complainant stated its request for relief. The Examiner concludes

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[1/] Wisconsin Administrative Code Sec. ERB 12.02(2)(d).

that no prejudice has been shown to justify dismissal at such a late point.

Discrimination and Interference

Section 111.70(2) [2/] states in relevant part: "Municipal employes shall have the right of self-organization, and the right to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing. . . ." Sections 111.70(3)(a)1. and 3. state:

> "It is a prohibited practice for a municipal employer individually or in concert with others:
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> 1. To interfere with, restrain or coerce municipal employes in the exercise of their right guaranteed in sub. (2)." (Emphasis supplied.)
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> . . .
>
> 3. To . . . discourage a membership in any labor organization by discrimination in regard to . . . tenure . . . of employment. . . ."

(No distinction is made between probationary and nonprobationary employes.)

The uncontradicted evidence indicates that the immediate supervisor of Orpha Kwasny called her at home, prior to Complainant's request for recognition, and asked her why she had joined a union, and when Kwasny responded that she wanted to protect her job, he said that he could not be responsible for what happened to her if she joined the Union because the City of Oak Creek and the Library Committee did not want a union in Oak Creek. On June 13, 1973, the Complainant's business representative called a member of Respondent's Personnel Committee, an authorized agent for collective bargaining, and informed him of the aforementioned telephone conversation. No challenge was made to the existence of the conversation and, on the other hand, said Alderman agreed that he would do what he could to put a stop to it. However, there is no evidence that Respondent took any action to counteract the supervisor's statement and the Examiner concludes that none was taken. The supervisor's status, the actions of said Alderman and subsequent inaction of Respondent indicate that Kwasny's supervisor acted within his authority on behalf of Respondent to discourage both Kwasny and other employes who learned of his state-

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[2/] All citations herein are to the Municipal Employment Relations Act, Wis. Rev. Stat. (1971) unless otherwise noted.

ment in their union activities by implying that her job would be less secure if she persisted in such activities.

On August 3, 1973, Kwasny was discharged. No evidence was presented by the Respondent as to the motivation for discharge. However, in addition to the foregoing, evidence given by Complainant indicates that as early as June 13, 1973, Respondent entertained the idea of laying off Kwasny to provide extra work to replace that which would be lost if it adopted a rule prohibiting multiple-job holding by its employes. After the discharge, such work was in fact divided between the two remaining part-time cleaning women. If one of the motivating factors for a discharge is the municipal employe's union activity, such discharge is discriminatory in violation of Section 111.70(3)(a)3.[3/] Although such discharge may have been effected in part in relation to the rule forbidding multiple jobs by Respondent's employes under consideration by Respondent, the statement of Kwasny's supervisor, in addition to the other evidence, indicates that at least one part of the motivation for selecting this method of implementation was the union activity of Kwasny and the discouraging of such activity by other employes.

Refusal to Bargain

Respondent's contention, that its rule forbidding multiple-job holding is not a condition of employment of the instant unit because it is related to jobs for which Complainant does not bargain, cannot be sustained. Section 111.70(1)(d) in relevant part defines the subjects of collective bargaining as ". . . wages, hours and conditions of employment. . . ." (Emphasis supplied.) The rule itself is literally a condition of employment in that to maintain employment as a part-time cleaning woman, one loses her right to hold other jobs for Respondent. [4/] The rule is a condition attached to each of Respondent's jobs and therefore is a subject of bargaining for each such job.

On approximately August 14, 1973, Complainant again demanded recognition and requested that Respondent bargain on such rule.

[3/] Muskego-Norway School Dist. No. 9 (7247) 8/65 affd. 35 Wis. 2d 540 (6/67).

[4/] The interpretation of "condition" as "conditional upon" in addition to the familiar "status" (or surrounding circumstances) is found in residency requirement cases; City of Brookfield (11406-A) 7/73, Milwaukee Sewerage Commission (11228-A) 10/72.

Respondent refused to bargain thereon. On August 16, 1973, Respondent recognized Complainant, and Complainant thereupon reiterated its demand to bargain about such rule, which was again and continuously thereafter refused. It is unnecessary to reach the parties' contention about the duty to bargain prior to August 16. On August 16, 1973, Respondent recognized Complainant and at least at such time had a duty to bargain upon demand with Complainant about such rule and its implementation to the instant bargaining unit. The timing of the adoption of such rule does not affect the duty to bargain thereon. The uncontroverted evidence establishes that Complainant demanded to bargain about the rule and its method of implementation, and Respondent unlawfully refused to bargain thereon in violation of Section 111.70(3)(a)4.

Unilateral Change

Complainant seeks in addition to the customary cease-and-desist order, an order reinstating Kazmierski and Witkowski to all their jobs with full back pay and other benefits as such would have been had said rule not been implemented. The evidence establishes that on February 14, 1973, Respondent discussed the adoption of a rule forbidding multiple-job holding by its employes. Nonetheless, the rule was never implemented in any way. On June 1, 1973, Attorney Miller told Nick Ballas that Respondent was reviewing the duties of the part-timers, their holding of multiple jobs and considering the possibility of laying off one of the low seniority part-timers. Respondent mailed a letter July 26, 1973 requesting information with respect to the functions and multiple jobs of part-timers for its evaluation. On August 14, 1973, and August 16, 1973 (after recognition had been granted) Respondent, through its responsible agents, indicated that such was still under consideration. The evidence further establishes that Witkowski and Kazmierski were permitted to commence their other part-time jobs on or about August 30, 1973. On August 30, 1973, Respondent sent a letter to the Police Chief, directing him to implement such policy and suggesting ways to accomplish implementation. From the evidence the Examiner concludes that the decision to implement the rule, the choice of methods of implementation and actual implementation were accomplished on August 30, 1973.

Respondent cites Milwaukee County (11306) 9/72 for the proposition that where a decision is made prior to the existence of a duty to

bargain, such may be implemented unilaterally after such duty arises. However, in that case the County adopted an ordinance decreasing the authorized number of deputy sheriffs before there existed a statutory duty to bargain and implemented said ordinance by layoffs after such duty came into existence. Though the union therein actually knew of such ordinance and layoffs, it never requested to bargain thereon. It is the latter fact upon which the Commission relied.

In the instant case, the facts are quite dissimilar: The Complainant has made ample requests to bargain, all of which have been refused. If, in fact, it may be said that the rule forbidding multiple-job holding was adopted at the February 14, 1973 meeting for the instant unit, it is clear that there was no intention to implement same. Whether or not adopted prior to August 16, 1973, the matter was under study until then. Precise decisions as to terminating Kazmierski's and Witkowski's other jobs and as to doing so in the precise manner done herein were made August 30, 1973. Secondly, the fact that Respondent studied the matter from February 14, 1973, to, at the earliest, August 16, 1973, indicates that there was no urgency to implement such rule. Finally, Respondent openly admitted that its primary aim in delaying recognition was to avoid bargaining with respect to such rule. The Examiner concludes from all the facts and circumstances that with the instant subject and the instant factual situation, there was ample time and opportunity for Respondent to bargain with Complainant on implementing the rule forbidding the holding of multiple jobs. [5/] Therefore, Respondent, by its unilateral change, violated Section 111.70(3)(a)4. [6/] The Examiner also concludes that in the context of this case such actions could reasonably undermine the prestige of the Complainant in violation of Section 111.70(3)(a)1.

Remedy

The Examiner has confined discussion in this case to that necessary to rule with respect to the specific remedies sought by Complainant. Such remedies are: (1) Cease and desist from refusing to bargain over full terms and conditions of employment; (2) Direction to bargain, in good faith, with respect thereto; (3) Reinstate Kwasny with full back pay; (4) Reinstate Kazmierski and Witkowski to all

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[5/] Crown Tar & Chemical Works v. NLRB 365 F. 2d 588, 63 LRRM 2067 (C.A. 10, 1966).

[6/] City of Wisconsin Dells (11646) 3/73.

positions held with full back pay; and (5) Find that the elimination of the job of Kwasny and the addition of her work to that previously performed by Witkowski and Kazmierski be found to be a violation.

With respect to the first three remedies, the Examiner finds no reason not to grant such as they are in accord with precedent. With respect to the fourth, there arises a question as to the right of Respondent to an offset for additional hours worked. Since such hours were added August 3, 1973 and apparently continued while both Kazmierski and Witkowski worked their other part-time jobs on August 30, 1973, none should be allowed. Finally with respect to the fifth, the evidence presented herein indicates that the motivation for elimination of Kwasny's job with the restructuring of the remaining two was to provide extra work to replace that which might be lost by the implementation of the rule forbidding multiple-job holding or there was no economic motivation for such changes. In either case, the reinstatement of Kwasny to her former position is proper and obviates the need for discussion of the addition of work to the other two positions.

Dated at Milwaukee, Wisconsin, this 7th day of February, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stanley H. Michelstetter II

Stanley H. Michelstetter II
Examiner