STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

BARGAINING UNIT OF THE GREEN BAY POLICE DEPARTMENT, Complainant, vs. CITY OF GREEN BAY and ELMER A. MADSON, Chief of Police, Respondents.	Case XL No. 17421 MP-301 Decision No. 12352-B
BARGAINING UNIT OF THE GREEN BAY POLICE DEPARTMENT, an unincorporated association, Complainant, vs. CITY OF GREEN BAY, a municipal corporation, and ELMER A. MADSON, Chief of Police, City of Green Bay, Respondents.	Case XLII No. 17829 MP-313 Decision No. 12402-B

Appearances:

Crooks & Parins, Attorneys at Law, by Mr. Thomas J. Parins, appearing on behalf of the Complainant.

Mr. Richard G. Greenwood, City Attorney, City of Green Bay, appearing on behalf of the Respondents.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The above-named Complainant having, on December 6, 1973, filed a complaint 1/ 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 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 2/; and, prior to the conduct of the hearing on said complaint, the same Complainant having, on January 10, 1974, filed a second complaint 3/ with the Commission, wherein it alleged that the same Respondents had committed additional prohibited practices within the meaning of the Wisconsin Municipal Employment Relations Act; and the Commission having appointed the same Examiner in Case XLII as it had previously appointed in Case XL 4/; and the Examiner having

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1/ Docketed as: Case XL, captioned above.

2/ Decision No. 12352.

3/ Docketed as: Case XLII, captioned above.

4/ Decision No. 12402

ordered the matters consolidated for the purposes of hearing 5/; and hearing having been held at Green Bay, Wisconsin, on February 11, 1974 and February 12, 1974, before the Examiner; and the Examiner having considered the evidence and arguments, and being satisfied that the matters are interrelated and properly the subject of a single decision, 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 the Bargaining Unit Of The Green Bay Police Department, hereinafter referred to as the Complainant, is a labor organization having offices at c/o Jerry Parins, Jr., 1031 Devonwood, Green Bay, Wisconsin.

2. That the City of Green Bay, hereinafter referred to as Respondent City, is a Wisconsin municipality having its principal offices at City Hall, Green Bay, Wisconsin; that, among other municipal services, Respondent City maintains and operates a police department; and that Donald A. Vander Kelen is employed by Respondent City as its labor negotiator.

3. That Elmer A. Madson, hereinafter referred to as Respondent Madson, was, at all times material hereto, employed by Respondent City as Chief of the Green Bay Police Department; and that, in such capacity, Respondent Madson was authorized to act, and did act, on behalf of Respondent City in matters and relationships involving Respondent City and its employes.

4. That, at all times pertinent hereto, Respondent City has recognized the Complainant as the exclusive collective bargaining representativ in a unit consisting of all full-time law enforcement employes of Respondent City, excluding law enforcement personnel holding the ranks of Lieutenant, Captain, Deputy Chief of Police and Chief of Police; that law enforcement personnel of the City of Green Bay holding the ranks of Lieutenant, Captain, Deputy Chief of Police and Chief of Police are supervisory, confidential, managerial or executive employes of the City of Green Bay; that the Complainant and Respondent City were parties to a collective bargaining agreement effective for the period from January 1, 1973 to and including December 31, 1973; and that said agreemen contained the following provisions pertinent hereto:

"ARTICLE IV - HOURS

1. Non-shift employees will continue to work the hours in effect prior to the effective date of this agreement and generally shall consist of 8-hour days in a consecutive sequence of five work days subject to such administrative adjustments as deemed necessary except that the normal work week shall not exceed 40 hours.

2. Shift Employees. A normal work schedule shall consist of 5 duty days with 2 days off, followed by 5 duty days with 3 days off on a repeating cycle. The normal work day shall consist of 8 hours and 15 minutes per day except on Tuesday and Friday, when it shall consist of 8 hours and one-half and overtime shall commence for hours worked in any one week exclusive of roll call time. Three wheel cycle operators shall be roll call employees but shall work a schedule not to exceed the work week of other roll call employees in total time, but time may be averaged out on the basis of 5 on, 1 off; 5 on, 3 off -- or as otherwise agreed.

5/ Decision No. 12352-A and 12402-A.

In the event the department wishes to continue a 4 day work schedule consisting of nine and one-half (9 1/2) hours per day, the work schedule for such shift shall be as set forth in the 1972 agreement.

ARTICLE V - SHIFT ASSIGNMENTS

Assignments to shift positions shall be by seniority amongst those persons possessing the qualifications for the position to be filled. Assignments shall be made, and persons with appropriate qualification and seniority may bid for shift positions only when a vacancy exists in such position.

ARTICLE VI - OVERTIME

Regular Overtime: Employees will be compensated at the rate of time and one-half based on his normal rate of pay for all hours worked in excess of the scheduled work day or work week except all officers working the 5-2, 5-3 work schedule as provided in paragraph IV above shall receive overtime only after they have accumulated forty (40) hours during any given work cycle. For purposes of calculating overtime, compensation for the hourly rate shall be determined as though the work week consisted of 39.25 hours.

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ARTICLE XI - NIGHT SHIFT PAY DIFFERENTIAL

All police personnel, regardless of rank, shall be paid a night shift pay differential as follows:

4:00 PM to 12:00 Midnight Shift . . .	$15.00	per month in addition to base pay
12:00 Midnight to 8:00 AM Shift . . .	$20.00	per month in addition to base pay

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ARTICLE XIV - VACATIONS

The amount of vacation for members of the Police Department, and the method of administrating vacations will be continued as such was set forth and administered under the 1971 employment contract.

. . .

ARTICLE XXV - DISCIPLINE

For disciplinary purposes, administrative or otherwise, the substantive rules and regulations for the conduct of members of the Police Department shall be as set forth in 'City of Green Bay Police Department Rules and Regulations' (1961), and such may be amended from time to time by the City of Green Bay after negotiations with the Bargaining Unit. In the event such rules and regulations conflict with the Ordinances of the City of Green Bay, laws of the State of Wisconsin or United States, or this agreement, said Ordinances, laws or agreement shall prevail.

Suspension, dismissal and reduction in rank of employees from the Police Department shall be governed by the procedure set forth in Section 62.13 of the Wisconsin Statutes.

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ARTICLE XXXIII - NO OTHER AGREEMENT

The employer agrees not to enter into any other agreement, written or verbal, with the members of the Bargaining Unit individually or collectively, which in any way conflicts with the provisions of this agreement.

ARTICLE XXXIV - CHANGES IN THE TERMS OF THIS AGREEMENT

If either party desires to negotiate any changes in this agreement to become effective after the end of the term of this agreement or any extension thereof, they shall notify the other party in writing of its desires to enter into such negotiating prior to July 15, and shall be completed by the last Tuesday of October.

ARTICLE XXXV - TERM OF AGREEMENT

This contract shall be binding on both parties and effective from the 1st day of January, 1973, to and including the 31st day of December, 1973."

5. That the aforesaid 1973 collective bargaining agreement contained no provisions regulating the promotion of employes within the collective bargaining unit covered thereby; that the standards, qualifications and procedures used by the Respondents in making promotions within the aforesaid collective bargaining unit had never been a subject of collective bargaining between the parties hereto; that, during and prior to the period covered by the aforesaid collective bargaining agreement, such promotions were made under a system devised and administered under the supervision of Respondent Madson; that, under said promotional system, applicants for promotion were assigned a rating on the basis of a written examination accorded a weight of 45% of the total score, an oral examination accorded a weight of 45% of the total score, and a personal evaluation by Respondent Madson accorded a weight of 10% of the total score; that applicants achieving a satisfactory total score were listed as eligible for promotion; that such list of eligibles was used as the basis for promotions until all eligible employes had been promoted or a period of three (3) years had elapsed, whichever occurred first; and that certain of the eligibility lists used by the Respondents during the year 1973 were scheduled to expire on December 31, 1973 due to having then been in effect for three (3) years.

6. That, during and prior to the period covered by the aforesaid collective bargaining agreement, some portion or all of the overtime hours worked by employes in the aforesaid collective bargaining unit were credited to the records of such employes as "off-time hours coming" in lieu of payment as wages; and that, while such practice was in effect, certain disciplinary penalties imposed by Respondent Madson upon employes in the aforesaid collective bargaining unit were implemented by a reduction of "off-time hours coming" from the record of the employe being disciplined.

7. That, on December 12, 1972, Respondent Madson ordered certain changes of shift assignments in the Detective Division of the Green Bay Police Department; that such changes were made without prior notice to or consultation with the Complainant; and that such changes were implemented on or about January 1, 1973.

8. That, on or before December 15, 1972, Patrolman Michael Heraly and Patrolman Gary Smith, both of whom were then employes in the aforesaid collective bargaining unit, were involved in unspecified incidents for which Respondent Madson deemed it appropriate to impose disciplinary penalties; that Respondent Madson implemented his decision in that regard by causing "off-time hours coming" to be deducted from the accumulated records of Heraly and Smith; that, on January 5, 1973, the Complainant filed a grievance wherein it alleged that such deduction of off-time hours coming was made without authority of, and in violation of, the collective bargaining agreement between the Complainant and Respondent City; that such grievance did not challenge the validity of Respondent Madson's decision to impose a disciplinary penalty on Heraly and Smith; that said grievance was processed by the parties; that Vander Kelen and the City Attorney of Respondent City participated in the processing of said grievance; that Vander Kelen and the City Attorney advised Respondent Madson that, in their opinion, there was merit to the Complainant's claim that the deduction of "off-time hours coming" as a disciplinary measure was in violation of the collective bargaining agreement; and that said grievance was resolved by the reinstatement of the previously deducted "off-time hours coming" to the records of Heraly and Smith.

9. That, on February 2, 1973, Respondent Madson directed separate memoranda to Heraly and Smith, making reference in each to the incident for which Respondent Madson had previously attempted to impose disciplinary penalties on said employes and to the previous resolution of the grievance concerning the deduction of "off-time hours coming" as a disciplinary measure; that Respondent Madson notified said employes that, in substitution for the disciplinary penalty which had previously been imposed and withdrawn, said employes were to be suspended for periods of two (2) days and five (5) days, respectively; that such suspensions were for periods equal to the amounts of "off-time hours coming" previously deducted from and reinstated to the records of said employes; and that said disciplinary suspensions were imposed pursuant to Respondent Madson's previously unchallenged determination that some disciplinary penalty should be imposed on said employes, and not in reprisal for their successful prosecution of a grievance concerning the propriety of the form of disciplinary penalty initially imposed by Respondent Madson.

10. That, on March 29, 1973, Jerry W. Hurley, an employe in the aforesaid collective bargaining unit, was involved in a traffic accident while on duty in a police vehicle owned by Respondent City; that Respondent Madson deemed it appropriate to impose a disciplinary penalty upon Hurley for having violated a traffic regulation in connection with said traffic accident; that Respondent Madson notified Hurley of his decision in that regard and offered Hurley a choice as to whether said disciplinary penalty should take the form of a traffic citation issued to Hurley or a deduction of off-time hours coming accumulated on Hurley's record; that Hurley elected to receive a traffic citation; that, subsequently, it came to the attention of the City Attorney's office that said traffic citation had been issued to Hurley under the aforesaid circumstances and the City Attorney moved in the Municipal Court of Respondent City for dismissal thereof; and that, on June 5, 1973, Respondent Madson directed a memorandum to Hurley concerning the matter and appended a copy thereof to Hurley's personnel file.

11. That, on an unspecified date during or about the month of April, 1973, Ray Grimmett, an employe in the aforesaid collective bargaining unit, was involved in a traffic accident while on duty in a police vehicle owned by Respondent City; that Respondent Madson deemed it appropriate to impose a disciplinary penalty upon Grimmett for having violated a traffic regulation in connection with said traffic accident; that Respondent Madson notified Grimmett of his decision in that regard and offered Grimmett a choice as to whether said disciplinary penalty should take the form of a traffic citation issued to Grimmett or a deduction of off-time hours coming accumulated on Grimmett's record;

that Grimmett elected to receive a reduction of off-time hours coming from his record; that, following the dismissal of the aforesaid traffic citation issued to Hurley, Respondent Madson rescinded the disciplinary penalty issued to Grimmett, and reinstated the previously deducted off-time hours coming to the record of Grimmett.

12. That, on various occasions during the period from February 2, 1973 to June 6, 1973, the Complainant offered and requested bargaining with Respondent Madson concerning the forms of discipline to be imposed upon employes in the aforesaid collective bargaining unit; that Respondent Madson declined to enter into such negotiations; that, on June 6, 1973, Respondent Madson caused a memorandum addressed to "All Officers" to be posted in the offices of the Green Bay Police Department, as follows:

> "In conjunction with recent disciplinary problems that have arisen, I have been advised that it is no longer correct for me to deduct off-time-coming from any man as a disciplinary measure. This holds true as regards discipline for violations of department rules and regulations, and does not allow me to issue department discipline for other violations in lieu of, for example, such matters as department discipline for traffic violations instead of citing a man into Municipal Court.
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> "Apparently the only alternative that is left, since the off-time-coming method was removed after being questioned by your Negotiating Unit, is suspension from duty as a disciplinary measure. As regards traffic accidents, since again there is no alternative, whenever there is a violation committed by an officer of this department, the nature of which is similar to that for which a citizen would be cited, a citation will be issued for that officer to appear in court. Any incident, whether cited or not, can be subject to review and possible change by this office.
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> "As an example of this, I can cite recent instances of where an officer on a call failed to yield the right-of-way, and another officer who ran into the rear end of a vehicle that was stopped for a red light ahead of him. In the future, these types of instances will be handled by citations into court. If, in addition, there are violations of department rules and regulations also involved (such as not using the red light and siren under proper circumstances), then additional department discipline in the way of suspension may also be taken.
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> "I am advising every member of this department of this new procedure, since apparently there is no room for any leeway on discipline, based on the recent challenge, and it must be handled in the above manner.
>
> "/s/
>
> ELMER A. MADSON
> CHIEF OF POLICE";

that, on various occasions during 1973 and in a letter directed to Respondent Madson on November 6, 1973, the Complainant made demands upon Respondent Madson for copies of memoranda concerning, or other notice of, reprimands and/or disciplinary actions taken against employes in the aforesaid collective bargaining unit; that, at all such times, and in a letter directed to the Attorney for the Complainant on November 8, 1973, Respondent Madson failed and refused to provide the Complainant with such information; and that such information was relevant and reasonably necessary to the discharge by the Complainant of its duties as exclusive representative in the aforesaid bargaining unit.

13. That, pursuant to the aforesaid 1973 collective bargaining agreement, the Complainant notified Respondent City of the Complainant's desire to commence negotiations concerning changes of wages, hours and conditions of employment to be implemented on or after January 1, 1974; that, among its demands in bargaining, the Complainant made demands for changes of the standards, qualifications and procedures for promotions within the Green Bay Police Department; that, on September 14, 1973, the representatives of the Complainant met with representatives of Respondent City, including Vander Kelen and Respondent Madson, for the purpose of initial negotiations concerning a 1974 collective bargaining agreement, at which time the demands of the Complainant were presented to the representatives of Respondent City; and that, by letter dated September 14, 1973, the Complainant notified Respondent City of the Complainant's objection to any recommendations for promotion being made while the standards, qualifications and procedures for promotions were a subject of collective bargaining between the Complainant and Respondent City.

14. That, on September 21, 1973, representatives of Complainant and of Respondent City met for further negotiations concerning a 1974 collective bargaining agreement; that, during the course of said meeting, representatives of Respondent City questioned whether the standards, qualifications and procedures for promotions were a proper subject for collective bargaining between the Complainant and Respondent City; that, at that time, and at all times subsequent thereto, the representatives of Respondent City declined to enter into negotiations with the Complainant concerning the standards, qualifications and procedures for promotions, and suggested that the Complainant obtain a Declaratory Ruling on the matter pursuant to Section 111.70(4)(b), Wisconsin Statutes.

15. That, commencing on September 21, 1973, and at various times subsequent thereto, the Complainant demanded postponement of any promotional examinations which might be conducted for the purposes of establishing promotional eligibility lists for use after December 31, 1973, until the issues concerning standards, qualifications and procedures for promotion might be resolved through collective bargaining between the Complainant and Respondent City.

16. That, during the period commencing on September 14, 1973 and ending on December 31, 1973, Respondent Madson made recommendations for promotions to fill all existing promotional vacancies from promotion eligibility lists which were in existence prior to the time the Complainant sought to bargain with Respondent City concerning standards, qualifications and procedures for promotions; that, during the same period, the City Council of Respondent City took action to effect a budget reduction; that said budget reduction was implemented in the Green Bay Police Department by reorganizations which reduced or eliminated the prospect that promotional vacancies would exist during the early months of 1974; and that, although certain promotional eligibility lists were due to expire on December 31, 1973, Respondent Madson had no or only minimal immediate need for the creation of new eligibility lists.

17. That, on or about October 9, 1973, Respondent Madson initiated procedures for the creation of new promotional eligibility lists for use in making promotions during a period commencing on January 1, 1974 and extending not beyond December 31, 1976, that the Police and Fire Commission of Respondent City, acting at the behest of Respondent Madson, took action on or about November 1, 1973 to schedule such promotional examinations to be held on December 5, 1973 and December 6, 1973; that the Complainant made demands upon Respondent City and upon Respondent Madson for the postponement of said promotional examinations while an issue was pending in negotiations conc rning the standards, qualifications and procedures for promotions; that the Respondents declined

and refused to postpone said promotional examinations; and that, if conducted as scheduled by the Respondents, such promotional examinations would have, and were known by the Respondents to be likely to have, create within the aforesaid collective bargaining unit a class of individuals who attained high ratings on such promotional examinations and who would then hold a vested interest during the life of such eligibility lists in the preservation of the previously existing system for promotions.

18. That, on or shortly prior to December 5, 1973, the Complainant herein initiated action in the Circuit Court for Brown County, Wisconsin, wherein said Complainant sought injunctive relief preventing the Respondent herein from conducting promotional examinations; that said Circuit Court granted the relief requested by the Complainant; and that the promotional examinations previously scheduled by the Respondents were postponed indefinitely.

19. That, on various unspecified occasions during 1973, Respondent Madson engaged in discussions with various unspecified employes in the aforesaid collective bargaining unit; that, during the course of such discussions, said employes expressed interest in promotions, including the anticipated number of promotions, the scheduling of promotional examinations, and the prospects of the inquiring employes for obtaining promotion; that Respondent Madson commented thereon; that Respondent Madson made comments to some such employes to the effect that the postponement of promotional examinations would result in the postponement of any promotions which would otherwise have been based on said promotional examinations; that said discussions were held outside of the presence of the Complainant and its authorized representatives; and that no agreements resulted therefrom which were in any way in conflict with the aforesaid collective bargaining agreement.

20. That, on December 8, 1973, the Complainant, by its Attorney, filed with Respondent City a grievance concerning the change of shift assignments announced by Respondent Madson on December 12, 1972 and implemented on or about January 1, 1973, wherein the Complainant alleged that such changes of shift assignment were made without prior negotiations with the Complainant and without regard to seniority; and that, in said grievance, the Complainant requested that Respondent City post said shift positions, as re-aligned, for selection by employes according to seniority.

21. That, on December 13, 1973, Respondent Madson directed a memorandum to the Detective Division of the Green Bay Police Department, wherein he announced changes of working hours to be implemented as soon as could be conveniently worked out after January 1, 1974; that, in the same memorandum, Respondent Madson specified procedures for selection of squad assignment on the basis of seniority of date of appointment to the rank of Detective Sergeant; that such changes were announced without prior notice to or consultation with the Complainant; that, on December 26, 1973, Respondent Madson directed a memorandum to Deputy Chief of Police Jerome Queoff, wherein Respondent Madson set out squad assignments for the Detective Division to be implemented on or about January 31, 1974; that Respondent Madson subsequently rescinded his memorandum dated December 26, 1973; and that, on January 17, 1974, Respondent Madson directed a memorandum captioned "Vacation Selections - Detective Division" be posted in the offices of the Green Bay Police Department, wherein Respondent Madson set out changes of laws and squad assignments for the Detective Division to be implemented on or about January 31, 1974.

22. That, while the aforesaid 1973 collective bargaining agreement was in effect the vacation program specified therein was administered through a posted vacation schedule; that said vacation schedule contained the limitation that no more than four employes from the night shift,

four employes from the afternoon shift and three employes from the day shift were permitted to be on vacation at any one time; that, during the course of negotiations between the Complainant and Respondent City for a 1974 collective bargaining agreement, Respondent City proposed that the number of employes permitted to be on vacation at any one time be reduced to three employes from the night shift, three employes from the afternoon shift and two employes from the day shift; and that the Complainant and Respondent City reached no agreement thereon.

23. That the aforesaid 1973 collective bargaining agreement expired, according to its terms, on December 31, 1973; that the Respondent did not post a vacation schedule for 1974; that, on or before January 10, 1974, Respondent Madson conducted a staff meeting of supervisory personnel of the Green Bay Police Department; that, following the conduct of said staff meeting, supervisory personnel of Respondent City enforced the limitations on the numbers of employes permitted to be on vacation at any one time which had previously been proposed by Respondent City in collective bargaining between Respondent City and the Complainant; and that, under the limitations imposed by Respondent City, employes in the aforesaid collective bargaining unit were denied the use of vacation time during periods which would have been available to such employes under the limitations prevailing under the 1973 collective bargaining agreement.

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

CONCLUSIONS OF LAW

1. That the City of Green Bay, Wisconsin is a Municipal Employer within the meaning of Section 111.70(1)(a) of the Municipal Employment Relations Act; and that, at all times pertinent hereto, Donald A. Vander Kelen and Elmer A. Madson were agents of said Municipal Employer, acting within the scope of their authority.

2. That a unit of all full-time law enforcement employes of the City of Green Bay, excluding supervisors, confidential, managerial and executive employes, constitutes a unit appropriate for the purposes of collective bargaining within the meaning of Section 111.70(1)(e) and 111.70(4)(d)2.a. of the Municipal Employment Relations Act; that law enforcement personnel of the City of Green Bay holding ranks of Lieutenant, Captain, Deputy Chief of Police and Chief of Police are not municipal employes within the meaning of Section 111.70(1)(b) of the Municipal Employment Relations Act; and that, at all times pertinent hereto, the Complainant, Bargaining Unit Of The Green Bay Police Department has been, and is, the exclusive representative of the employes in the aforesaid appropriate collective bargaining unit within the meaning of Sections 111.70(1)(d) and 111.70(4)(d)1 of the Municipal Employment Relations Act.

3. That the Complainant, Bargaining Unit Of The Green Bay Police Department, does not have the right to bargain, and the City of Green Bay does not have the duty to bargain within the meaning of Sections 111.70(1)(d) and 111.70(2) of the Municipal Employment Relations Act, with respect to any exemption of employes in the aforesaid collective bargaining unit from arrest and prosecution under appropriate statutes and ordinances in situations where there is a violation committed by such an employe which is similar in nature to that for which a non-employe citizen would be cited; and that such an exemption or other proposal for disparate treatment of such employes is an illegal subject for bargaining.

4. That the Bargaining Unit Of The Green Bay Police Department has the right to bargain collectively, and the City of Green Bay has a mandatory duty to bargain collectively within the meaning of Sections 111.70(1)(d) and 111.70(2) of the Municipal Employment Relations Act with respect to the forms of discipline, other than exemption from arrest and prosecution, imposed upon employes in the aforesaid appropriate collective bargaining unit; that the collective bargaining agreement between the Complainant and the City of Green Bay for the year 1973, as interpreted and applied by the parties thereto in the resolution of the grievance referred to in paragraph 8 of the above and foregoing Findings of Fact, specified the forms of discipline permissible under said agreement to the exclusion of administrative deduction of off-time hours coming; that, by said collective bargaining agreement, the Complainant waived bargaining with respect to the forms of discipline to be imposed upon such employes during the life of said agreement; and that, by refusing, during the life of said agreement, to enter into negotiations with respect to changes of the permissible forms of discipline, the City of Green Bay, its officers and agents, have not refused to bargain within the meaning of Section 111.70(3)(a)(4) of the Municipal Employment Relations Act.

5. That the City of Green Bay, by its refusal to provide the Complainant, Bargaining Unit Of The Green Bay Police Department, with information concerning discipline of employes in the aforesaid appropriate collective bargaining unit which was requested by said labor organization and which was relevant and necessary to the proper discharge by said labor organization of its duties as exclusive bargaining representative, has refused to bargain collectively with the Bargaining Unit Of The Green Bay Police Department and has committed prohibited practices within the meaning of Section 111.70(3)(a)(4) of the Municipal Employment Relations Act.

6. That, by the imposition of disciplinary suspensions on Michael Heraly and Gerald Smith, in conformity with the aforesaid collective bargaining agreement and, in substitution for other discipline previously imposed and withdrawn as being improper only in form, the Respondent, City of Green Bay, has not interfered with, restrained, coerced or discriminated against municipal employes in the exercise of their right to engage in protected concerted activity, and has not committed prohibited practices within the meaning of Sections 111.70(3)(a)(3) and (1) of the Municipal Employment Relations Act.

7. That the City of Green Bay and Elmer A. Madson, by posting notice to the employes in the aforesaid appropriate collective bargaining unit, informing said employes of the intention of Respondent Madson to strictly conform to the collective bargaining agreement between the City of Green Bay and the Bargaining Unit Of The Green Bay Police Department, with respect to the forms of discipline to be imposed upon said employes, has not interfered with, restrained or coerced municipal employes in the exercise of their right to engage in protected concerted activity, and has not committed, and is not committing, prohibited practices within the meaning of Section 111.70(3)(a)(1) of the Municipal Employment Relations Act.

8. That the Bargaining Unit Of The Green Bay Police Department does not have the right to bargain, and the City of Green Bay does not have the duty to bargain within the meaning of Sections 111.70(1)(d) and 111.70(2) of the Municipal Employment Relations Act, with respect to standards, qualifications and procedures for the promotion or selection of individuals to hold positions excluded from the aforesaid appropriate collective bargaining unit as supervisory, confidential, managerial or executive.

9. That the Bargaining Unit Of The Green Bay Police Department has the right to bargain collectively, and the City of Green Bay has a mandatory duty to bargain collectively within the meaning of Sections 111.70(1)(d) and 111.70(2) of the Municipal Employment Relations Act with respect to standards, qualifications and procedures for promotions within the aforesaid appropriate collective bargaining unit; and that, by refusing to bargain with the Complainant with respect to such promotions, the City of Green Bay has committed, and is committing, prohibited practices within the meaning of Sections 111.70(3)(a)(4) and (1) of the Municipal Employment Relations Act.

10. That the Respondent, City of Green Bay, by taking action to schedule promotional examinations while refusing to bargain collectively with the Complainant, Bargaining Unit Of The Green Bay Police Department, concerning the standards, qualifications and procedures for promotions within the aforesaid appropriate collective bargaining unit, has interfered with, restrained and coerced municipal employes in the exercise of their rights secured by Section 111.70(2) of the Municipal Employment Relations Act and has committed, and is committing, prohibited practices within the meaning of Section 111.70 (3)(a)1 of the Municipal Employment Relations Act.

11. That the record herein does not establish by a clear and satisfactory preponderance of the evidence that the City of Green Bay, its officers and agents, have refused to bargain with said Complainant by bargaining collectively with individual employes in the aforesaid appropriate collective bargaining unit or with a representative of a minority of such employes.

12. That the complaint initiating City of Green Bay, Case XLII before the Wisconsin Employment Relations Commission was not timely filed within the meaning of Section 111.07(14) of the Wisconsin Employment Peace Act with respect to allegations that the Respondents refused to bargain concerning changes of shift assignments made prior to January 10, 1973.

13. That the Complainant, Bargaining Unit Of The Green Bay Police Department has the right to bargain collectively, and the City of Green Bay has a mandatory duty to bargain collectively within the meaning of Sections 111.70(1)(d) and 111.70(2) of the Municipal Employment Relations Act with respect to the hours of work or changes of the hours of work of employes in the aforesaid appropriate collective bargaining unit; and that, by announcing, on or about December 13, 1973, and by subsequently taking steps to implement changes of the hours of work of employes in the Detective Division of the Green Bay Police Department, without prior notice to or consultation with said Complainant, the City of Green Bay has committed, and is committing, prohibited practices within the meaning of Sections 111.70(3)(a)3 and 1 of the Municipal Employment Relations Act.

14. That the 1973 collective bargaining agreement between the Complainant and Respondent City of Green Bay having expired on December 31, 1973, the City of Green Bay, by failing or refusing on and after January 1, 1974 to post a vacation schedule for 1974 and to administer a vacation program in accordance with said 1973 agreement, did not violate the terms of said 1973 agreement and did not commit prohibited practices within the meaning of Section 111.70(3)(a)5 of the Municipal Employment Relations Act.

Based on the above and foregoing Findings of Fact and Conclusions of Law, the Examiner makes the following

ORDER

IT IS ORDERED:

1. That the portions of the complaints filed in the instant matters alleging that the City of Green Bay and Elmer A. Madson violated Section 111.70(3)(a)4 of the Municipal Employment Relations Act, by refusing to bargain with respect to any exemption of bargaining unit employes from arrest and prosecution for violation of applicable statutes and ordinances, with respect to changes during the life of the 1973 collective bargaining agreement between the City of Green Bay and the Bargaining Unit Of The Green Bay Police Department in the forms of discipline permitted under said agreement, with respect to standards, qualifications and procedures for promotions or appointments of individuals to supervisory, confidential, managerial or executive positions with the City of Green Bay, with respect to changes of hours of work made prior to January 10, 1973, and by engaging in discussions of subjects of bargaining with individual employes, and by refusing to provide the Bargaining Unit Of The Green Bay Police Department with information requested by said labor organization which was relevant and reasonably necessary to the discharge by said labor organization of its duties as exclusive representative 6/ be, and the same hereby are, dismissed.

2. That the portions of the complaints filed in the instant matters alleging that the City of Green Bay and Elmer A. Madson violated Section 111.70(3)(a)3 of the Municipal Employment Relations Act by imposing disciplinary suspensions on Michael Heraly and Gerald Smith, the portions of the complaints alleging that the Respondents violated Section 111.70(3)(a)1 of the Act by posting notice of compliance with the 1973 collective bargaining agreement between the Complainant and the City of Green Bay as to the forms of discipline to be used, and the portions of the complaints alleging that the Respondents violated said 1973 collective bargaining agreement and thereby violated Section 111.70(3)(a)5 of the Municipal Employment Relations Act by failing to administer a vacation program in 1974 in accordance with said agreement, be, and the same hereby are, dismissed.

3. That the City of Green Bay, its officers and agents, shall immediately cease and desist from:

   (a) Refusing to bargain collectively with the Bargaining Unit Of The Green Bay Police Department as the exclusive collective bargaining representative of all full-time law enforcement employes of the City of Green Bay, excluding supervisors, confidential, managerial and executive employes, or with any other labor organization said employes may select as their exclusive collective bargaining representative, concerning standards, qualifications and procedures for promotions within said bargaining unit, concerning

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6/ The evidence adduced at hearing is reflected in the Findings of Fact and Conclusions of Law. In its post-hearing brief, Counsel for the Complainant stated: "Since the time of the hearing, the City has complied with the demands of the Bargaining Unit as to being notified of disciplinary actions taken against members of the Bargaining Unit. The Bargaining Unit is now receiving such notification and would request that this charge be withdrawn." Accordingly, the Examiner has dismissed this allegation of the complaint and orders no remedy for any violation shown by the evidence.

changes of hours of work of employes in said bargaining unit, and concerning all other wages, hours and conditions of employment.

(b) Taking any action to make recommendations for promotions within the bargaining unit of all full-time law enforcement employes of the City of Green Bay, excluding supervisors, confidential, managerial and executive employes, or taking any action to schedule or conduct promotional examinations under the promotional system existing during and prior to 1973, until such time as the City of Green Bay shall have fulfilled its duty to bargain collectively with the Bargaining Unit Of The Green Bay Police Department concerning the standards, qualifications and procedures for promotions within said bargaining unit to be made on and after January 1, 1974.

(c) Taking any action to change the schedules of shifts or hours of work of employes in the aforesaid appropriate collective bargaining unit, until such time as the City of Green Bay shall have fulfilled its duty to bargain collectively with the Bargaining Unit Of The Green Bay Police Department with respect to any changes of hours of work to be made on or after January 1, 1974.

(d) Interfering with, restraining or coercing municipal employes in the exercise of their right to engage in protected concerted activity as specified in Section 111.70(2) of the Municipal Employment Relations Act.

4. That the City of Green Bay, its officers and agents, shall immediately take the following affirmative action which the Examiner finds will effectuate the policies of the Municipal Employment Relations Act:

(a) Upon request, bargain collectively with the Bargaining Unit Of The Green Bay Police Department as the exclusive representative of all employes in the aforesaid appropriate collective bargaining unit with respect to all wages, hours and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a written and signed agreement.

(b) Notify all 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". Such notices shall be signed by the Mayor of the City of Green Bay and by the Chief of the Green Bay Police Department, and shall be posted immediately upon receipt of a copy of this Order. Such notices shall remain posted for sixty days thereafter. Reasonable steps shall be taken by the Respondents to ensure that such notices are not altered, defaced or covered by other material.

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

Dated at Madison, Wisconsin, this 6th day of January, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Marvin L. Schurke
Marvin L. Schurke, Examiner

"Appendix A"

NOTICE TO ALL EMPLOYES

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

1. WE WILL NOT take any action to make recommendations for promotions within the bargaining unit consisting of all full-time law enforcement employes of the City of Green Bay, excluding Lieutenants, Captains, Deputy Chief of Police and Chief of Police or take any action to schedule or conduct promotional examinations for promotions within said bargaining unit until such time as the City of Green Bay shall have fulfilled its duty to bargain collectively with the Bargaining Unit Of The Green Bay Police Department concerning the standards, qualifications and procedures for promotions within said bargaining unit.

2. WE WILL NOT take any action to change schedules of shifts or the hours of work of employes in the aforesaid bargaining unit until such time as the City of Green Bay shall have fulfilled its duty to bargain collectively with the Bargaining Unit Of The Green Bay Police Department concerning changes of shift schedules.

3. WE WILL NOT interfere with, restrain or coerce our employes in the exercise of their rights as set forth in Section 111.70(2) of the Wisconsin Statutes.

4. WE WILL, upon request, bargain collectively with the Bargaining Unit Of The Green Bay Police Department with respect to all wages, hours and conditions of employment.

All employes of the City of Green Bay are free to become, remain, or refrain from becoming, members of the Bargaining Unit Of The Green Bay Police Department, or any other labor organization.

CITY OF GREEN BAY

By: _____
Mayor

_____
Chief of Police

Dated this _____ day of _____, 1975.

THIS NOTICE MUST REMAIN POSTED FOR SIXTY (60) DAYS FROM THE DATE HEREOF AND MUST NOT BE ALTERED, DEFACED OR COVERED BY OTHER MATERIAL.

CITY OF GREEN BAY, Case XL, Case XLII, Decision No. 12352-B, 12402-B

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

PLEADINGS AND PROCEDURE

The complaint in Case XL was filed with the Commission on December 6, 1973. That complaint alleges, generally, violations of Chapter 111 of the Wisconsin Statutes with respect to a refusal to bargain concerning promotions, with respect to discipline of employes, with respect to alleged discussions of bargainable subjects with individual employes, and with respect to refusals by the Respondent to provide the exclusive bargaining representative with information concerning discipline imposed upon represented employes. The Commission issued an Order on December 18, 1973 appointing an Examiner in the matter, and on the same date, the Examiner issued notice setting the matter to be heard on January 9, 1974. The Respondents filed an answer on January 4, 1974 denying the violations alleged in the complaint and, on the same date, notice was issued postponing the hearing in the matter to February 11, 1974.

The complaint in Case XLII was filed with the Commission on January 10, 1974, and also alleges, generally, violations of Chapter 111 of the Wisconsin Statutes with respect to changes in the number of represented employes permitted to be on vacation at any one time, with respect to a failure or refusal to post a vacation calendar, and with respect to unilateral changes of the hours of shifts for represented employes in the Detective Division of the Green Bay Police Department. The Commission issued its Order on January 11, 1974 appointing as Examiner in Case XLII the same Examiner as had previously been appointed in Case XL. On the same date, the Examiner ordered the matters consolidated for the purposes of hearing, and set February 11, 1974 as the date for that hearing. The Respondents filed an answer in Case XLII on January 29, 1974 denying the violations alleged in that complaint.

The matters were heard at Green Bay, Wisconsin on February 11 and 12, 1974. At the close of the hearing, provision was made for the filing of briefs two weeks after the issuance of the transcript, and for the filing of reply briefs one week thereafter. The transcript was issued and mailed to the parties on June 5, 1974. An extension of the time for the filing of briefs was granted, and the Complainant timely filed its brief with the Examiner on August 16, 1974. The brief of the Respondents was not filed with the Examiner until September 25, 1974, and was supplemented in a letter to the Examiner received on September 26, 1974. Both parties waived the filing of reply briefs.

DISCIPLINE ISSUES

The facts are detailed in the Findings of Fact. Briefly summarized, the evidence discloses that the Chief of Police had, for some time, engaged in the practice of implementing some or all of the disciplinary penalties imposed upon employes represented by the Complainant through a clerical transaction, by which amounts of accumulated compensatory time (known in the jargon of the parties as "off-time hours coming") was removed from the record of the disciplined employe on the books of the Department. The collective bargaining agreement between the Complainant and the City made no mention of the Chief's practice, referring instead only to "suspension, dismissal and reduction in rank" as forms of discipline. The Complainant filed a grievance under the collective bargaining agreement on January 5, 1973, wherein it made a frontal attack on the Chief's reduction of off-time hours coming as a method of discipline, and the processing of that grievance yielded a settlement in which the City conceded exactly the remedy requested by the Complainant: reinstatement of the compensatory time to the records of the grievant employes. That

grievance settlement established the clear meaning of the agreement to the exclusion of cancellation of compensatory time as a means of discipline, thereby setting the standard for the Chief's actions during the remaining life of the agreement and relieving the City of any duty to bargain during the life of the agreement on a matter clearly established by that agreement.

During the months which immediately followed the resolution of the January 5, 1973 grievance, Chief Madson continued to offer represented employes cancellation of compensatory time as an alternative to other forms of discipline. The Chief's actions in this regard, tending to constitute bargaining with individual employes for extra-contractual benefits in circumvention of the exclusive representative, would constitute a serious violation in the view of the Examiner, except that the City put its house in order through the actions of other officials within City government. Knowledge of the Chief's activities came to the attention of the City Attorney's office, which rectified one of the two known situations by moving for the dismissal of the traffic citation issued to that employe as the result of an individual bargain with the Chief. Thereafter, the Chief rectified the other known case of individual bargaining of discipline by causing cancelled hours to be reinstated to the record of the affected employe. Therefore, while there may have been some initial deviations, the Complainant was eventually successful in causing the discontinuance of the Chief's favored disciplinary method. Madson eventually recognized this also, and acknowledged his limitations in the notice which he posted to all employes on June 6, 1973. The Complainant would have the June 6 notice interpreted here as a calculated interference with the exercise of concerted activity, alleging that the notice tends to undermine the Complainant by raising an inference that the efforts of the exclusive representative resulted in something worse than that which existed before. The City contends that the notice shows that the practice of reducing off-time hours coming was put to rest, and that the entire matter is moot. While there are arguments to be made on each side of the question, the Examiner concludes that the answer lies somewhat closer to the position asserted by the City. It must be recalled that the entire dispute arises in a situation where the Complainant has never challenged the right or authority of the Chief of Police to impose discipline upon subordinate officers for misconduct. The entire dispute up to that time revolved around the forms of discipline to be used. The June 6 notice states the Chief's intent to comply with the previous grievance settlement by confining his future discipline to the forms legitimate under the agreement, and is interpreted as a notice of compliance rather than as a threat to the employes.

It appears that the practice of cancelling compensatory time as a means of discipline might have had some mutual benefit to the Department and to the disciplined employe, since the City would suffer none of the staffing problems which predictably attend the suspension of an employe from the work force and the employe would notice no reduction of his normal pay check during the pay period in which the discipline occurs. In the face of an ambiguous contract, it appears that some bargaining could have occurred in the context of the grievance procedure to establish the legitimate use of this form of discipline as a matter of bilateral agreement. However, that was not the approach of the Complainant in its January 5, 1973 grievance. Following the successful prosecution of that grievance the Complainant may have realized that it had killed a goose that lays golden eggs, for it shortly returned to the Chief with a request for bargaining to undo some of what it had accomplished through the grievance. In the view of the Examiner, the City's refusal to enter into such negotiations does not violate the statutory duty to bargain because the parties had, by their recently concluded grievance negotiations firmly established the meaning of their collective bargaining agreement. The City had a right to rely on that agreement during its remaining life. Additionally, there is a strong inference in the evidence that one of the matters on which the Complainant sought to bargain, particularly after the

incidents involving Hurley and Grimmett (as noted in Findings of Fact 10 and 11) and the posting of the June 6, 1973 notice, was some form of exemption of employes from arrest and prosecution. The Examiner finds that any such exemption would be an improper matter for collective bargaining, and that neither party has a right or a duty to bargain collectively under MERA with respect to such an exemption from arrest or prosecution.

The 1973 collective bargaining agreement has now long expired, and no longer poses an impediment to bargaining concerning forms of discipline. As established by the Commission in City of Sun Prairie (11703-A) 9/73, matters within the purview of a police and fire commission established pursuant to Section 62.13, Wisconsin Statutes, are not necessarily excluded from the purview of collective bargaining under MERA. The discipline of municipal employes clearly affects the conditions of employment of such employes, and is a matter for collective bargaining under MERA.

Returning to the initial grievance, the Complainant alleges that Chief Madson's imposition of disciplinary suspension on Heraly and Smith was discriminatory and in reprisal for their successful exercise of rights under the collective bargaining agreement. Here, again, the limited nature of the January 5, 1973 grievance is viewed as significant. No portion of that grievance contests the authority of the Chief to discipline subordinates, either in general or in those particular cases. The evidence discloses that the suspensions were for periods equal to the number of hours of compensatory time which had been cancelled and later reinstated, indicating that the employes suffered no greater penalty for having initially protested the form of discipline. The Examiner has therefore dismissed that portion of the complaint.

PROMOTION ISSUES

Promotions to Positions Outside of Bargaining Unit

The Complainant's proposals in bargaining, its allegations in the complaint and its arguments before the Examiner make no distinction whatever between promotions to positions within the collective bargaining unit and promotions to positions outside of the bargaining unit. The conclusion that the collective bargaining unit in which the Complainant is recognized as exclusive representative is an appropriate unit for the purposes of collective bargaining is based upon the well-established Commission policy favoring the inclusion of all law enforcement employes of a municipal employer in a single collective bargaining unit. See St. Croix County (13074) 10/74; Walworth County (11686) 3/73 and Douglas County (10993) 5/72. In those cases, and in all representation cases issued by the Commission, the term "employe" or "municipal employe" is used advisedly, not as defined in a dictionary but as specifically defined in Section 111.70(1)(b) of MERA. Supervisors and confidential, managerial or executive employes of a municipal employer are not "municipal employes" within the meaning of MERA, and persons holding such positions are not entitled to the rights and protections of the Act. The parties, by their recognition agreement, have excluded law enforcement officers of the City holding the ranks of Lieutenant and above from the bargaining unit, and the evidence of record here supports the conclusion that individuals holding those ranks are supervisors or are confidential, managerial or executive employes of the City of Green Bay. The duty to bargain under MERA does not extend to employments of individuals who are not "municipal employes" within the meaning of the Act, and the Examiner finds merit in the City's contention that it has a managerial right to select its agents aligned with management, without having a duty to bargain thereon. See City of Beloit (12606-B) 11/74.

Promotions Within the Bargaining Unit

Promotions within the collective bargaining unit have long been accepted, without question, as a condition of employment on which an

employer has a mandatory duty to bargain. In fact, the concept is so well accepted that few cases can be found, even in the private sector, in which an employer has refused to bargain with respect to promotions and has litigated the question in a reported case. Many collective bargaining agreements contain seniority provisions, posting procedures and other arrangements under which unit employes are able to express or exercise a preference for higher paid or otherwise more favorable jobs within the bargaining unit. In these cases it is clear that the employe the position from which the employe is promoted and the position to which the employe is promoted are covered by the rights and protections of MERA. Promotional positions within the bargaining unit are not management positions within the meaning of the statute, and the City's primary argument concerning management rights is inapplicable to these positions since they are not involved with the "management and direction of the governmental unit". In City of Sun Prairie, supra, the Commission ruled against an employer argument that coverage of a matter under Section 62.13, Wisconsin Statutes, automatically precluded collective bargaining as to that matter. There is clearly room for harmony between statutes where, as here, the promotions under Section 62.13 clearly affect the conditions of employment of "municipal employes" within the meaning of MERA.

The evidence of record indicates that the City did not take a position in negotiations with the Complainant that the subject of promotions was not bargainable. While it has assumed that position in this case, the City's posture at the bargaining table was merely one of "doubt" as to whether promotions were a proper subject for bargaining. The City coupled its doubts with urgings to the Complainant to obtain from the Commission a Declaratory Ruling on the question under Section 111.70(4)(b) of MERA. However, the Examiner finds that the City cannot successfully defend itself herein from a finding that it has refused to bargain (which is the essential result of its posture of doubt) by merely having such doubts. The process for determination through Section 111.70(4)(b) is equally available to both employers and to labor organizations and, in fact, the Commission's records disclose that many of the petitions processed under that provision have been filed by municipal employers. The City's conduct is viewed as a refusal to enter into negotiations with the Complainant on a subject on which the City had a mandatory duty to bargain, and a finding of a violation of Section 111.70(3)(a)(4) flows therefrom.

Scheduling of Promotional Examinations

Compounding its error of refusing to bargain with the Complainant with respect to the standards, qualifications and procedures for promotions within the collective bargaining unit, the City interfered with, restrained and coerced municipal employes in the exercise of their collective bargaining rights by taking action to schedule and conduct promotional examinations under the promotional system which the Complainant sought to change through negotiations. Anticipating City defenses, the Complainant showed that as a result of a budget cut and other circumstances, few, if any promotional vacancies existed or were anticipated during the last months of 1973 and the early months of 1974. The conduct of promotional examinations under the old system would have a divisive effect within the bargaining unit, since it would establish a class of individuals who attained high scores on those examinations, and those employes would thereafter have a vested interest in the continuation of the old system. The City states no defense for its actions, other than its general position with respect to promotions, discussed, supra, and the Examiner readily agrees with the Complainant that the City's action in this regard violated Section 111.70(3)(a)(1) of MERA.

Prior to the filing of the complaint in Case XL with the Commission, the Complainant herein sought and obtained from the Circuit Court for Brown County, Wisconsin injunctive relief preventing the City from

making promotions or conducting promotional examinations pending the resolution of the question concerning the duty of the City to bargain with respect to the standards, qualifications and procedures for promotions. Promotions during 1974 were suspended, and the Circuit Court injunction has, therefore, alleviated a question of remedy which would otherwise have arisen in this case.

BARGAINING WITH INDIVIDUALS

With the exception of two transactions, discussed above, in which the Chief bargained extra-contractual deals with individual members of the bargaining unit concerning form of discipline, all of the evidence adduced by the Complainant with respect to bargaining with individuals was adduced in cross-examination of Chief Madson. While the Chief admitted having some discussions with employes which touched on the subject of promotion and other mandatory subjects for bargaining, that evidence was extremely lacking in detail. The Chief's testimony also indicates that some, if not all, of these discussions originated from inquiries made by the employes with respect to promotions in general or the changes of that particular employe for promotion. While a full record concerning such discussions might have demonstrated conduct by the Chief constituting a violation of Section 111.70(3)(a)(4) of MERA, the Examiner finds the record made herein insufficient to base a finding in that regard.

SHIFT CHANGES

On or about December 12, 1972, the Chief of Police realigned the shift times in the Detective Division of the Police Department and realigned the shift assignments of some of the bargaining unit employes in that division. Those changes were made without prior notice to or consultation with the Complainant as the exclusive representative of the affected employes. The complaint in Case XLII contains the first mention of an allegation that the City refused to bargain with respect to unilateral changes of hours of work, and any such allegation is time barred with respect to the conduct which occurred on or about December 12, 1972 by the one-year statute of limitations contained in Section 111.07 (14) of the Wisconsin Employment Peace Act, incorporated into MERA by reference in Section 111.70(4)(a).

Contrary to the adage that lightning never strikes twice in the same place, Chief Madson took action on or about December 13, 1973 to again reorganize the Detective Division shift hours and shift assignments. In doing so, the City again attempted to accomplish such changes without prior notice to or consultation with the Complainant. While disputes concerning the bargainability of "conditions of employment" arise with some regularity, such disputes arise concerning "hours" only infrequently, and there can be little doubt that in this case the changes ordered by the Chief of Police affect the hours of work of represented employes and are a subject for collective bargaining. During the course of the hearing the City adduced evidence of the policy reasons supporting its desire to extend the hours of coverage of the Detective Division, but that evidence and those reasons are viewed by the Examiner as proper subjects for discussion with the Complainant at the bargaining table and not as persuasive evidence that the change of hours is outside of the scope of bargaining. In finding a violation and ordering a remedy with respect to a refusal to bargain concerning changes of shift hours, the Examiner confirms an interlocutory ruling made during the hearing at the request of the Complainant.

VACATION ISSUES

As noted above, both of the complaints filed herein only allege, generally, violations of Chapter 111 of the Wisconsin Statutes. These

complaints may not have precisely complied with the provisions of Chapter ERB 12.02(c) of the Wisconsin Administrative Code, in that they fail to list the particular sections of the statute alleged to have been violated. The nature of the allegation is easily discernable in most cases, and the City answered the complaints and interposed a defense at hearing without making a request that the complaints be made more definite and certain. A lingering question concerning the nature of the Complainant's allegations with respect to the vacation issues is resolved in the Complainant's brief, which makes it clear that the allegations are founded upon contractual principles.

The Complainant alleges that the City erred by failing to post a vacation schedule for 1974 and by limiting the number of employes permitted to be on vacation at any one time to the number proposed by the City in bargaining with the Complainant. The Complainant acknowledges that the parties had been unable to agree during their negotiations on the number of employes to be permitted on vacation at any one time, and the evidence discloses that the 1973 agreement expired according to its terms on December 31, 1973 and was not extended either on a day to day basis or for some specific period. The 1973 agreement having expired, and the parties been in a hiatus period, there is no basis for a claim that the Employer's conduct after January 1, 1974 violated Section 111.70(3)(a)(5) of MERA.

Dated at Madison, Wisconsin this 6th day of January, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Marvin L. Schurke
Marvin L. Schurke, Examiner