STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

CITY OF SUPERIOR,		
Complainant,	:	Case XXIX No. 17621 MP-328
vs.	:	Decision No. 12468-C
CITY OF SUPERIOR EMPLOYEES, LOCAL NO. 244, AFSCME, AFL-CIO,		
Respondent.		

Appearances:

Mr. Charles Ackerman, Labor Negotiator, appearing on behalf of the Complainant.

Lawton & Cates, Attorneys at Law, by Mr. Bruce F. Ehlke, appearing on behalf of the Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

City of Superior, having filed a complaint with the Wisconsin Employment Relations Commission, hereinafter the Commission, alleging that the City of Superior Employees, Local No. 244, AFSCME, AFL-CIO, has committed a prohibited practice within the meaning of Section 111.70 (3)(b) of the Municipal Employment Relations Act (MERA); and the Commission, having originally appointed Herman Torosian, then a member of its staff, to act as Examiner; and the Commission thereafter having substituted Sherwood Malamud to so act as Examiner 1/, and make and issue Findings of Fact, Conclusions of Law and Orders pursuant to Section 111.07(5) of the Wisconsin Employment Peace Act, as made applicable to municipal employment by Section 111.70(4)(d) of MERA; and hearing on said complaint having been held at Superior, Wisconsin, on September 11, 1974; and Respondent having moved to dismiss Complainant's complaint at the conclusion of Complainant's case-in-chief; and the Examiner having adjourned the hearing to consider Respondent's motion; and the parties, having completed their briefing schedules by December, 1974; and the Examiner having considered the evidence, arguments and briefs of the parties, 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 City of Superior, hereinafter Complainant or the City, is a Municipal Employer as defined by Section 111.70(1)(a) of MERA; that the Executive officer of the City is the Mayor, Charles Deneweth, and that the Legislative body of said City is the Common Council; that the City's Labor Negotiator, Charles Ackerman, is privy to confidential matters with respect to labor relations between the City and its employes.

2. That City of Superior Employees, Local No. 244, AFSCME, AFL-CIO, hereinafter Respondent, is a labor organization as defined by Section 111.70(1)(j) of MERA, and it is the certified collective bargaining representative of employes employed in the City's Public Works, Equipment Depot, Park and Recreation Departments for the purpose of collective bargaining

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1/ Decision No. 12468-B.

with respect to wages, hours, and conditions of employment; that Respondent maintains offices at 1110 North 22nd Street, Superior, Wisconsin; and that its Business Representative is Richard C. Erickson.

3. That on January 21, 1974, 2/ in the course of negotiating a collective bargaining agreement, Respondent convened a meeting of its membership, whereat the members of Respondent voted to authorize its bargaining committee to call a strike vote if Complainant and Respondent were unable to reach agreement on a new contract.

4. That on January 24, at a collective bargaining meeting between the parties, the City's Labor Negotiator, Ackerman, advised Erickson that prior to any agreement between the parties taking effect, such agreement would have to be approved by the City's electors in a referendum vote; that Complainant conditioned agreement on inclusion of the referendum vote in any proposed settlement between the parties; and that Erickson advised Ackerman of the January 21 resolution of Respondent's membership to take a strike vote if a settlement could not be reached.

5. That on February 5, the Common Council adopted a resolution which called for the submission of any proposed agreement between Complainant and Respondent to a referendum vote of Complainant's electors; that as a result of the adoption of said resolution, Respondent's membership voted to engage in a strike against Complainant; and that on February 6, Respondent's members did so engage in a strike.

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

CONCLUSIONS OF LAW

1. That the Mayor of the City of Superior, Charles Deneweth, the members of the City's Common Council, and the City's Labor Negotiator, Charles Ackerman, are not municipal employes as that term is defined in Section 111.70(1)(b) of the Municipal Employment Relations Act (MERA).

2. That on January 24, by communicating its intention to strike, and on February 6, by engaging in a concerted refusal to work for Complainant resulting in a strike, Respondent did not cause the Municipal Employer or any of its agents to coerce or intimidate any municipal employe in the enjoyment of their legal rights and that, therefore, Respondent did not violate Section 111.70(3)(b)1, 2 or 5 of MERA nor did Respondent violate any other subsection of Section 111.70(3)(b) of the Municipal Employment Relations Act.

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

ORDER

IT IS ORDERED that the complaint herein be, and the same hereby is, dismissed.

Dated at Madison, Wisconsin, this 28th day of April, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Sherwood Malamud
Sherwood Malamud, Examiner

2/ Unless otherwise specifically indicated, all dates refer to 1974.

CITY OF SUPERIOR, XXIX, Decision No. 12468-C

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Introduction:

Complainant alleges that Respondent coerced and intimidated the Mayor and the City Councilmen of the City of Superior by threatening and actually engaging in a work stoppage or strike against Complainant. In its brief, Complainant indicates that it is alleging that Respondent violated 3/ Section 111.70(3)(b)2 and 5 by engaging in the conduct alleged above. Respondent demurred to the original complaint and moved that the demurrer be heard prior to the Examiner's hearing any testimony on this matter; Examiner Torosian denied this motion. 4/ During the course of the hearing, Complainant further amended the amended complaint with the result that allegations pertaining to Respondent's threat to strike and its engaging in a strike constituted the basis for Complainant's charge. 5/

Discussion:

It appears from Complainant's complaint and brief that it is alleging that Respondent violated one or all of the following employe prohibited practices under MERA, namely, 111.70(3)(b)1, 2, and/or 5.

The evidence demonstrates that Respondent threatened to engage in a work stoppage if Complainant persisted in its demand for a referendum vote, and, furthermore, that Respondent did in fact engage in such work stoppage, resulting in a strike. In Walworth County, Decision Nos. 12690 and 12691, 5/74, the Commission stated that:

> ". . . although strikes are prohibited by the Act (Section 111.70(4)(l)), strikes do not constitute 'prohibited practices.' (Wauwatosa Board of Education, Dec. No. 8636, aff. Dane Co. Cir. Ct., 3/70.) It follows that a threat to engage in such conduct also is not a prohibited practice. (Brown County, Dec. No. 9537)"

In light of the above decision, it is apparent that Respondent did not commit a prohibited practice by threatening or engaging in a strike.

In order for Complainant to make a prima facie case, it must do more than prove that Respondent threatened and/or engaged in a strike. If Complainant were making a case under 111.70(3)(b)1 then it must demonstrate that Respondent embarked on a course of conduct "to coerce or intimidate a municipal employe." (Emphasis added)

Or, if Complainant were asserting that Respondent violated 111.70(3)(b)2 it would have to demonstrate that as a result of Respondent's conduct, Complainant was forced:

3/ Complainant states specifically in its brief that: "It is contrary to 111.70(3)(b)(2)(5) for the Union to coerce and intimidate an employee of the City of Superior."

4/ City of Superior, Decision No. 12468-A, 2/74.

5/ Respondent opposed Complainant's motion to amend its amended complaint and moved to strike the original complaint. The undersigned permitted Complainant to amend its complaint but reserved ruling on Respondent's motion to strike the original complaint. The Examiner's Order dismissing the complaint is dispositive of this case, thus a ruling on Respondent's motion to strike the original complaint would be redundent and unnecessary.

"To coerce, intimidate or induce any officer or agent of a municipal employer to interfere with any of its employes in the enjoyment of their legal rights, including those guaranteed in sub. (2), or to engage in any practice with regard to its employes which would constitute a prohibited practice if undertaken by him on his own initiative."

Or if a violation of 111.70(3)(b)5 were to be demonstrated, Complainant would be required to show that as a result of Respondent's conduct, Complainant was forced:

"To coerce or intimidate an independent contractor, supervisor, confidential, managerial or executive employe, officer or agent of the municipal employer, to induce him to become a member of the labor organization of which employes are members."

Yet, Complainant failed to make a prima facie case under 111.70(3)(b)1, 2, and/or 5. First, Complainant failed to prove that the alleged objects of Respondent's coercion and intimidation, namely Ackerman, Deneweth, or members of the Common Council are municipal employes as defined by the Act, and thus protected by the Act. Furthermore, Complainant failed to demonstrate that any municipal employe was coerced or intimidated by Respondent's actions. Nor did Complainant prove that any agent, supervisor, or managerial employe was required to coerce or intimidate municipal employes as a result of Respondent's threat to and its engaging in a strike. Finally, Complainant produced no evidence whatsoever from which the Examiner could infer that Respondent induced any supervisor, etc. to become one of its members.

It is noteworthy, that in its case-in-chief, Complainant did not call Deneweth, Ackerman or any member of the City Council to testify, even though the amended complaint alleges that these individuals were coerced and intimidated by Respondent's actions. Complainant called only one witness, Respondent's Business Representative, Erickson.

In light of Complainant's failure to make a prima facie case under 111.70(3)(b)1, 2, and 5, the Examiner has concluded that the complaint is totally without merit and should be dismissed.

Dated at Madison, Wisconsin, this 28th day of April, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Sherwood Malamud
Sherwood Malamud, Examiner