

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MILWAUKEE COUNTY, :

Complainant, :

vs. :

MILWAUKEE DISTRICT COUNCIL 48, :

AFSCME, AFL-CIO, and MICHAEL COLLOTON, :

LAWRENCE KWIECINSKI, FRED BROWN, :

ROBERT LUZINSKI, KATHRYN DOCKINS, :

BERTHA CARDWELL, LORRAINE DETTMANN, :

DOROTHY PETERSON, OTTO LOWENGART and :

RUSSELL LAMB, :

Respondents. :

Case LXIII
 No. 17694 MP-339
 Decision No. 12534-C

ORDER AFFIRMING EXAMINER'S FINDINGS OF FACT,
CONCLUSION OF LAW AND ORDER AND EXPANDING EXAMINER'S
MEMORANDUM ACCOMPANYING SAME

Examiner Marshall L. Gratz having, on December 17, 1974, issued Findings of Fact, Conclusion of Law and Order, with Memorandum accompanying same, in the above entitled matter, wherein he dismissed the complaint filed herein; and the above named Complainant having, pursuant to Section 111.07(5), Wisconsin Statutes, timely filed a Petition for Review of the Examiner's decision; and the Commission, having reviewed the entire record, the decision of the Examiner, the Petition for Review, and the briefs filed in support and opposition thereto, being satisfied that the Findings of Fact, Conclusion of Law and Order as issued by the Examiner be affirmed, but that, however, the Memorandum accompanying same be expanded;

NOW, THEREFORE, it is

ORDERED

1. That the Findings of Fact, Conclusion of Law and Order issued by the Examiner in the above entitled matter on December 17, 1974, be, and the same hereby is, affirmed; and
2. That the Memorandum accompanying the Examiner's Findings of Fact, Conclusion of Law and Order is hereby expanded as reflected in the Memorandum accompanying the instant Order.

Given under our hands and seal at the City of Madison, Wisconsin, this 20th day of March, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney —
 Morris Slavney, Chairman

Howard S. Bellman
 Howard S. Bellman, Commissioner

Herman Torosian
 Herman Torosian, Commissioner

MEMORANDUM ACCOMPANYING
ORDER AFFIRMING EXAMINER'S FINDINGS OF FACT,
CONCLUSION OF LAW AND ORDER AND EXPANDING EXAMINER'S
MEMORANDUM ACCOMPANYING SAME

Expansion of Examiner's Memorandum

For some reason not disclosed in the record, the parties stipulated that the individual supervisory employes named as Respondents were not "municipal employers" within the meaning of Section 111.70(1)(a) of the Municipal Employment Relations Act (MERA). However, it is quite clear that the definition of the term "municipal employer" includes "any person acting on behalf of a municipal employer within the scope of his authority, expressed or implied." Thus, supervisory employes are considered to constitute "municipal employers."

The complaint filed by Milwaukee County, as a municipal employer, alleges a violation of Section 111.70(3)(a)2 of MERA. If the only remaining Respondent is the Union, and it appears that it is, then the Complainant has failed to proceed under the proper section of the Act since prohibited practices involving employes, or their representatives, are set forth in Section 111.70(3)(b) of the Act.

In the decision rendered by the Commission in the Declaratory Ruling issued in City of Milwaukee,^{1/} the Commission indicated that membership in, and participation by, supervisory employes in a labor organization representing employes could constitute a prohibited practice under Section 111.70(3)(a)2. In such cases it is inappropriate for a municipal employer to complain against itself.

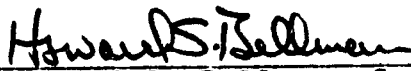
Dated at Madison, Wisconsin, this 20th day of March, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By



Morris Slavney, Chairman



Howard S. Bellman, Commissioner



Herman Torosian, Commissioner

^{1/} City of Milwaukee, Decision No. 12448-A (10/74).