

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Respondent.

Case VIII
No. 17768 MP-345
Decision No. 12593-A

Mr. Richard D. Kelly, District Attorney, appearing on behalf of
the Respondent.

Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, having filed a complaint with the Wisconsin Employment Relations Commission, hereinafter the Commission, alleging that Juneau County (Pleasant Acres Infirmary) has committed prohibited practices within the meaning of Section 111.70(3)(a)1, 2, and 3 of the Municipal Employment Relations Act (MERA); and the Commission having appointed Sherwood Malamud, a member of its staff, to act as Examiner and make and issue Findings of Fact, Conclusions of Law and Orders as provided in Section 111.07(5) of the Wisconsin Statutes; and hearing on said complaint having been held at Mauston, Wisconsin, on May 29, 30, 31 and June 7, 1974, before the Examiner; and Complainant and Respondent having submitted briefs prior to the publication of the transcript, said transcript having been published on August 16, 1974; and the Examiner having considered the evidence and arguments and being fully advised in the premises, makes and files the following Findings of Fact, Conclusions of Law and Orders.

a. Robert Kuhn was the Superintendent of the Pleasant Acres Infirmary for a period of nine years, up to the effective

date of his resignation, February 20, 1974; Mrs. Robert Kuhn, the Superintendent's wife, was the Assistant Administrator of the Pleasant Acres Infirmary, hereinafter the Infirmary, during this same period up to the date of her husband's resignation. Mr. Kuhn 1/ administered the Infirmary, directed its staff, and executed the policies determined by the Board of Trustees of the Infirmary.

- b. Gladys Miller was Head Cook at the Infirmary for approximately four years and was employed at the Infirmary for approximately nine years, prior to her discharge on December 15, 1973.
- c. Alma Marie Bloor 2/ is an employee of the Infirmary who, during the period pertinent hereto, worked in the laundry; Bloor was discharged on December 18, 1973 and reinstated on February 25, 1974, by the new Superintendent, Dean Dickson, pursuant to the direction of the Pleasant Acres Committee of the County Board of Supervisors, hereinafter the County Board.
- d. Helen Lund is a regular part-time employee at the Infirmary. Prior to December 28, 1973, Lund worked Fridays in the laundry for a regular eight-hour shift. On December 28, she was placed "on call" and was not called back until March 15, 1974, at which time she was assigned to the kitchen for four hours per day two days per week.
- e. Darlene Kopsell was a Nurses' Aide at the Infirmary. Kopsell resigned her employment effective February 15, 1974, but her last day of employment at the Infirmary was on January 26, 1974.
- f. LaVon Duenkel was a full-time Nurses' Aide at the Infirmary. She took a 30-day leave of absence on December 17 and has not been recalled since that date.

4. On November 24, 3/ Head Cook Miller told Head Nurse Velma Rettamel that she had compiled records of Kuhn's orders for foods for the Infirmary which were unsuitable for patient consumption, but which were taken by Kuhn for his personal use. On November 28, Rettamel told Kuhn of her November 24 conversation with Miller, and she advised him that employees were unaware that food constituted part of his compensation.

5. During the summer of 1973, Mr. Gourlie, Personnel Management Consultant to Local Government for the State Bureau of Personnel of the Department of Administration of the State of Wisconsin, conducted a

1/ All further references to Kuhn are to Mr. Kuhn unless otherwise indicated.

2/ During the course of the hearing, Complainant amended its complaint to reflect that Alma Bloor and Marie Bloor were the same individual.

3/ References to the months October, November and December are to those months in 1973, and references to January, February and March refer to those months in the year 1974, unless otherwise specifically indicated.

classification and pay plan study of unorganized employees of the Respondent. As part of that study, Respondent's employees, including employees at the Infirmary, completed certain job description questionnaires. On November 25, Infirmary employees received notification of their new wage rate effective January 1, 1974. Said rates were based in part upon the classification and pay plan study noted above. After discussing the new rates with Miller and other employees at the Infirmary, Kopsell wrote the following letter, dated November 25, to Gourlie on behalf of the Infirmary employees:

"I am writing in behalf of the employees at Pleasant Acres - Juneau Co. Infirmary. We would appreciate it very much if someone from the State would visit us as a group or individually to answer many of our questions.

First, all those questionnaires [sic] we filled out we were told what we could put on them and no more. Many of us have more duties to perform and many of us know how to perform different things. One aide they keep on and just have her work in one place as she can not hold up her end of the work and this aide put down on the questionnaire [sic] that she has been employed 15 yrs. and she hasn't as she quit once for a period of time and then came back.

We would like to know if we were supposed to get our raises split up - part in Jan - part in July and 1/2 of the longtivity [sic] Dec. of 74 & the other half Dec. of 75. I started in Dec. and if the time goes for a whole yr. from the 1st to the 1st I lose a yr. Our pay time goes from Dec. 19th to Jan. 18th.

It just isn't the aides that would like to talk with someone it is also the cooks and cleaning ladies. The cleaning ladies do some jobs that are for a maintenance man to do like putting up & taking down storms & screens.

Our head cook went to school for 2 yrs. and yet they pay some ladies head cooks wages on her day off and they never went to school and don't put groceries away or have any of her responsibilities.

"We are glad the State is helping to evaluate our jobs but we would like them to have all the true facts, not just what they wanted you to know. We would appreciate an answer and if you are unable to help if you would tell us who will.

P.S. I am spokesman for the other workers until we hear from you so please don't tell our boss or I'll lose my job."

During the last week of November or first week of December, Gourlie phoned Kuhn and read to him Kopsell's letter.

6. On December 9, Kuhn interrogated Kopsell about her letter to Gourlie. He told her that her letter could create problems for him. Kuhn solicited and received an apology from Kopsell for writing the letter. Kuhn questioned Kopsell about Miller's participation in writing the Gourlie letter.

7. During the first week of December, Kuhn learned that a rumor was circulating in the community to the effect that he was allegedly "stealing" gas from the County. Kuhn did not know the source of this rumor.

8. Alice Miller, the afternoon Cook, and Head Cook Miller planned a Christmas party for December 8. They scheduled Freida Reick, a former

representative of the International Ladies Garment Workers Union, in Juneau County, to speak on the topic of employe rights and the organization of a union. Employes of the Infirmary who were invited to this Christmas party were not advised of Reick's appearance. Immediately prior to December 8, Miller canceled the party for reasons apparently unrelated to this proceeding.

9. On December 10, Kuhn called Miller to his office where he met with her for approximately two hours. Rettamel was present during the entire meeting. Kuhn apprised Miller of his contractual right to Infirmary food; and he complained about the rumor circulating in the community that he was stealing County gas. Kuhn demanded an apology and he threatened to discharge her if she refused to apologize. Miller apologized; and her apology forestalled her dismissal for that day. Kuhn informed Miller he was aware of the union organizational theme for the December 8 Christmas party. Miller told Kuhn that it was her desire that the Infirmary employes form a labor organization. Kuhn urged that employe organizational meetings be held at the Infirmary, rather than at public meeting halls outside the Infirmary.

10. On December 10, Nurses' Aide Duenkel requested a leave of absence for medical reasons, and a 30-day leave was granted. Duenkel was then advised that she would be replaced if the staffing requirements of the Infirmary made it necessary. She commenced her leave on December 17. Within a few days of December 17, Kuhn replaced Duenkel with a male aide. The aide quit after two weeks. During the subsequent hiatus between the male aide's quitting and the hiring of another replacement, Duenkel contacted Rettamel to ascertain the date she could return to her job. Rettamel advised Duenkel to call back in a few days. When Duenkel did call back, she was put off again by Rettamel. When she called back a third time, Mrs. Kuhn told Duenkel that she had been replaced. Duenkel had been a satisfactory employe during her two and one-half years' employment at the Infirmary. Duenkel was not recalled during the hiatus period described above, because she signed the December 13 petition (described below) and because she participated in a December 17 meeting to obtain Miller's reinstatement.

11. On December 13, upon the initiative of Miller, Jesse Haschke and Kopsell, a petition was circulated by Miller and Haschke among present and former employes of the Infirmary. The text of the petition was limited to the following statement, "For Better or New Management," which was printed above the signatures of Infirmary employes. The employes' signatures were solicited, primarily, off of Infirmary premises, although some signatures were solicited on Infirmary premises. By the end of the day, approximately 24 employes had signed the petition including Miller, Kopsell, Duenkel, Bloor and Lund.

12. On December 14, Mrs. Kuhn overheard employes in the kitchen discussing the petition, and so informed her husband. Kuhn then questioned employes as to the purpose of the petition. As a result of these interrogations, Kuhn learned of the heading of the petition, the approximate number of employes who signed the petition, and that Miller was one of the prime initiators and circulators of the petition. Kuhn then advised Lloyd Byington, the President of the Board of Trustees, that Miller's activities were creating problems at the Infirmary. In order to solve these problems, Kuhn told Byington that Miller had to be discharged, immediately.

13. On December 15, Kuhn discharged Miller, effective that date, by handing her a termination letter which read:

"This is to advise you that your services as Head Cook at Pleasant Acres will no longer be required effective as of today. Reason is insubordination. You will be paid through the month of Dec. in addition to all earned vacation."

Although the circulation of the petition precipitated Miller's dismissal, Kuhn's decision to discharge her was made on the basis of her involvement in the writing of Kopsell's letter to Gourlie, as well as for her desire to establish a labor organization among Infirmary employees. Miller's work up to and including the day of her discharge was satisfactory.

14. On December 15, immediately after she was discharged, Miller, along with a number of other employees went to the home of a member of the County Board, Andrew Anderson, to seek his advice in order to obtain her reinstatement at the Infirmary. On December 17, certain County Board members, including Wyss, met with approximately 18 employees of the Infirmary at Miller's home. The meeting was organized by Miller to gain her reinstatement and to provide employees at the Infirmary with an opportunity to present their complaints and grievances concerning conditions at the Infirmary. At this meeting, the members of the County Board were permitted to read the December 13 petition, and they heard various employee complaints concerning working conditions at the Infirmary, such as complaints pertaining to the training of summer employees in maintaining the Infirmary gardens, the criticism of employees by Kuhn who were required to iron his shirts, and the hazardous condition of the Infirmary heating plant. Miller did not state at this time that union activity was the basis for her discharge.

15. On December 18, Kuhn initiated a meeting with Bloor, concerning statements which Kuhn attributed to her. Kuhn demanded an apology and when Bloor refused to apologize, he discharged her for insubordination. Kuhn's decision to discharge Bloor was based on her attendance at the December 17 meeting at Miller's home. Kuhn's purpose in discharging Bloor was to discourage employee attendance at meetings conducted off of Infirmary premises where conditions at the Infirmary were discussed with members of the County Board.

16. Following Bloor's discharge, Respondent reorganized its laundry operations and as a result an employee, Lund, was laid off, subject to recall should her services become necessary. Due to other commitments, Lund could not work full-time at the Infirmary. On March 15, 1974, when Lund was recalled, she was assigned to the kitchen for four hours per day, two days per week. When Lund had been assigned to the laundry, prior to her layoff, she worked every Friday for a full eight-hour shift. During the year prior to the date of her layoff, Lund had worked 90 eight-hour days at the Infirmary.

17. On December 22, the Ways and Means Committee of the County Board and the Board of Trustees of the Infirmary met for the purpose of discussing employee complaints presented at the December 17 meeting and to determine a course of action toward the events transpiring at the Infirmary. Members of the Ways and Means Committee suggested to the Trustees that the latter initiate a grievance procedure to handle employee complaints.

18. During January, Kuhn questioned employee Nora Hollis concerning her reasons for signing the December 13 petition and asked her if she was satisfied with the working conditions at the Infirmary. When Hollis replied that she was not satisfied with her working conditions, Kuhn stated: "Why don't you quit your job." Kuhn also questioned Louise Haschke as to whether she disliked him personally. When Haschke responded that her complaint was not directed at him but at the physical conditions at the Home, Kuhn threatened Haschke by indicating that she had better watch her work. Some time in December or January, Kuhn verbally reprimanded Mary Burch for attending meetings where County Board members were in attendance and where conditions at the Infirmary were discussed.

On January 25, 1974, the County Board dissolved the Board of Trustees of Pleasant Acres Infirmary, established in its place the Pleasant Acres Infirmary Committee as a Committee of the County Board, and announced that the Infirmary Committee would establish a grievance committee and procedure to permit employees to bring their grievances directly to the County Board.

19. On the evening of January 25, Kuhn confronted Kopsell on the Infirmary premises, where he yelled at her, shook his fist in her face, and accused Kopsell of spreading rumors that he had been fired. After completion of her shift at approximately 11:00 p.m. and upon her return home, Kopsell called the Sheriff and reported a disturbance at the Infirmary. This disturbance concerned her confrontation with Kuhn earlier that evening. A Deputy Sheriff was sent to the Infirmary and remained there for several hours. At that time, there was no disturbance at the Infirmary. After this incident, the Chairman of the Infirmary Committee, Wyss, advised Kopsell that she was terminated and that she need not report to work from January 26 through the effective date of her resignation, February 15, 1974. However, the Infirmary Committee, on January 29, 1974, decided to pay Kopsell her salary, accrued vacation, and other applicable benefits, if any, through February 15, the effective date of her resignation. Kopsell was paid, accordingly, for this period, although she was not required to work to the effective date of her resignation.

20. On January 26, Kuhn submitted his resignation. The last day of Kuhn's employment as Superintendent of the Infirmary was February 20, 1974.

21. On February 7, a number of employees of the Infirmary participated in a union organizational meeting led by Walter J. Klopp, Business Representative of Complainant. The employees there authorized Klopp to demand of Respondent recognition of Complainant as the collective bargaining representative of the employees of the Infirmary.

22. On February 8, the Infirmary Committee decided to establish a grievance procedure at the Infirmary. The procedure which the Committee adopted contemplated the selection of grievance representatives through an electoral process and the establishment of a three-step grievance procedure with provision for mediation at the third and last step of this procedure.

23. On February 9, Wyss posted a notice announcing a meeting for Infirmary employees to be conducted by the Pleasant Acres Infirmary Committee. Said meeting was scheduled for, and held on February 11.

24. In a letter dated February 8, and received by Wyss on February 11, Klopp demanded that Respondent recognize Complainant as the collective bargaining representative of Infirmary employees.

25. On the afternoon of February 11, after Wyss had received Klopp's demand for recognition, the Pleasant Acres Infirmary Committee held a meeting with approximately 20 of the Infirmary's 40 employees in attendance. There, Board member Anderson, stated that if employees join a union they would only be out their union dues. And Wyss then presented the grievance procedure described in paragraph 22. A written copy of the proposed procedure was mailed to each employee within a few days of this meeting. Aside from the mailing of the above procedure to Infirmary employees, no further action was taken by Respondent to institute the above grievance procedure.

26. While said meeting was in progress, Klopp telephoned the Juneau County Clerk's office and left the following message with the Deputy Clerk:

"Mr. Klopp, Wisconsin Council of County & Municipal Employees called to inform you that the meeting conducted by the County Board this afternoon is in total violation of the Wisconsin Statutes of employees to organize, in their attempt to appoint a grievance committee.

He further stated that they (the County Board) better get within the confines of the law or they may be faced with an Unfair Labor Practice charge."

27. On February 15, the Pleasant Acres Infirmary Committee conducted an investigative hearing into the alleged discharge and layoff of Miller, Bloor, Kopsell, Duenkel and Lund. On February 25, Bloor was reinstated with full back pay and benefits to the date of her discharge, December 18; however, the Infirmary Committee decided to reaffirm its decision to sustain Miller's discharge.

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

CONCLUSIONS OF LAW

1. That Juneau County (Pleasant Acres Infirmary) is a Municipal Employer within the meaning of Section 111.70(1)(a) of the Municipal Employment Relations Act; and that Robert Kuhn was the Superintendent of the Infirmary and as Superintendent he was vested with the authority of a Supervisor as said term is defined by Section 111.70(1)(o) of MERA. In addition, Kuhn as Superintendent was an agent of said Municipal Employer acting, at all times material herein, within the scope of his authority.

2. That Respondent, Kuhn, (1) interrogated and threatened Infirmary employees for attending the December 17 meeting at the home of Gladys Miller, and (2) discharged Marie Bloor for attending said meeting. That such actions interfered with, restrained, and coerced such municipal employees in the exercise of their right to engage in concerted activity within the meaning of Section 111.70(2) of the Municipal Employment Relations Act, and has engaged in and is engaging in, prohibited practices within the meaning of Section 111.70 (3)(a)1 of the Municipal Employment Relations Act.

3. That Respondent discriminated against Gladys Miller by discharging her for her participation in the writing of a letter on November 25, and for her desire to form a labor organization, and for her circulation of a petition on December 13, in order to discourage her in the exercise of her rights and in reprisal for the exercise of said rights has interfered with, restrained, and coerced Miller and all other municipal employees of said Infirmary in the exercise of their right to engage in protected concerted activity, and is engaging in prohibited practices within the meaning of Section 111.70(3)(a)1 and 3 of the Municipal Employment Relations Act.

4. That the Respondent, by failing to reinstate LaVon Duenkel during a period when her former position was vacant and available to her, because of her signing of the December 13 petition, and because of her attendance at the December 17 meeting did so in reprisal for her exercise of her right as a municipal employee to engage in protected concerted activity within the meaning of Section 111.70(2) of the Municipal Employment Relations Act, and has engaged in and is engaging in, prohibited practices within the meaning of Section 111.70(3)(a)1 of the Municipal Employment Relations Act.

5. That Respondent, by its layoff of Helen Lund and eventual reinstatement of Lund to part-time employment in the Infirmary kitchen and by its acceptance of Kopsell's resignation and payment to her of wages from January 25 through the date of her resignation, February 15, and by presenting a grievance procedure to Infirmary employees on February 11, has not violated Section 111.70(3)(a)1 or 3 of the Municipal Employment Relations Act or any other provision of said Act.

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

ORDERS

I. IT IS ORDERED that the allegations of the complaint pertaining to alleged unlawful acts of Respondent relative to Lund, Kopsell, and the institution of a grievance procedure are, and the same hereby are, dismissed.

II. IT IS FURTHER ORDERED that Juneau County (Pleasant Acres Infirmary), its officers and agents, shall immediately:

1. Cease and desist from:

- (a) threatening employees of Pleasant Acres Infirmary with loss of employment for the purpose of discouraging their engaging in protected concerted activity in order to improve their wages, hours and working conditions.
- (b) interrogating employees of the Pleasant Acres Infirmary concerning their concerted activity or lack thereof which interfere with, restrain or coerce employees in the exercise of their right to engage in concerted activity.
- (c) discharging or failing to reinstate Infirmary employees for engaging in protected concerted activity to improve their wages, hours and working conditions.

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

- (a) Offer to Gladys Miller 4/ immediate and full reinstatement to her former position as Head Cook at Respondent, and offer to LaVon Duenkel immediate and full reinstatement to her former position or its equivalent, without prejudice to their seniority benefits or other rights and privileges previously enjoyed by them, and make them whole for any loss of benefits or pay they may have suffered by reason of the interference with their rights under Section 111.70(2) and by reason of Respondent's unlawful discharge and failure to recall Miller and Duenkel, respectively, by payment to them the sum of money equal to that which they would normally have earned or received as an employee from the date of their


4/ Bloor was reinstated on February 25, with full back pay and benefits to the date of her discharge. Therefore, the Examiner has not included a remedy for Bloor in this Order.

termination to the date of their unconditional offer of reinstatement made pursuant to this Order, less any earnings they may have received during said period and less the amount of unemployment compensation, if any, received by them during said period, and in the event that they received unemployment compensation benefits, reimburse the Unemployment Compensation Division of the Wisconsin Department of Industry, Labor and Human Relations in such amount.

- (b) Notify all employees, by posting in conspicuous places on its premises, where notices to all employees are usually posted, copies of the notice attached hereto and marked "Appendix A." Such notice shall be signed on behalf of Juneau County by the Chairman of the Pleasant Acres Infirmary Committee, and by the Superintendent of the Pleasant Acres Infirmary. "Appendix A" shall be and remain posted for sixty (60) days thereafter. Respondent shall take reasonable steps to insure that 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 hereof, as to what steps have been taken to comply herewith.

Dated at Madison, Wisconsin, this 31st day of January, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Sherwood Malamud, Examiner

APPENDIX "A"

NOTICE TO ALL EMPLOYEES

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 employees that:

1. WE WILL offer to Gladys Miller and LaVon Duenkel immediate and full reinstatement to their former positions, without prejudice to their seniority or other rights or privileges previously enjoyed by them, and will make each whole for any loss of pay or benefits each may have suffered by reason of the unlawful discharge of Gladys Miller and unlawful refusal to recall LaVon Duenkel.
2. WE WILL NOT threaten employees with loss of employment or interrogate employees concerning their concerted activities to improve their wages, hours and working conditions by discharging, laying off, or failing to recall, demoting, suspending, or otherwise discriminating against any employee with regard to hiring, tenure of employment, or any other term or condition of employment.

All our employees are free to become, remain, or refrain from becoming members of Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, or any other labor organization.

Dated this _____ day of _____, 1975.

JUNEAU COUNTY

By _____
Chairman
Pleasant Acres Infirmary Committee

Superintendent
Pleasant Acres Infirmary

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 ORDERS

INTRODUCTION:

Complainant alleges that Respondent violated Sections 111.70(3)(a)1, 2, and 3 of the Municipal Employment Relations Act (MERA) 5/ by discriminatorily discharging five employees because of their union activity, by threatening employees, by making disparaging statements concerning unions, and by attempting to initiate a grievance procedure.

Complainant waived its right to assert the allegations made in its complaint constitute a basis for overturning an election in the event an election were directed. On the basis of said waiver, the Commission directed an election at Juneau County (Pleasant Acres Infirmary) (Dec. No. 12814), 6/ 5/74, and Complainant was certified as the exclusive bargaining representative of the Infirmary's non-craft, non-professional employees at Dec. No. 12814, 8/74.

Respondent admits that Miller and Bloor were discharged but denies that union activity was the basis for their discharge. Similarly, Respondent asserts that Lund was laid off, Duenkel took a leave of absence and was replaced, and Kopsell resigned; that none of Respondent's actions relative to these employees or its attempts to initiate a grievance procedure were discriminatorily motivated or intended to interfere with the rights of municipal employees. Respondent asserts that the actions taken by its Administrator were undertaken solely under the authority vested in him by 46.19(3) of the Wisconsin Statutes.

Furthermore, at the conclusion of Complainant's case-in-chief, Respondent moved to dismiss the complaint as it pertained to Bloor. Said motion was denied by the Examiner. That motion was renewed by Respondent in its brief. Respondent asserted that Bloor had no interest in pursuing her claim before the Commission. Although Bloor did not appear at the hearing, Complainant in this matter is Wisconsin Council of County and Municipal Employees, and not Bloor. It is alleged that Respondent's conduct towards Bloor interfered not only with Bloor, but also with all employees of the Infirmary. The Examiner's discussion in the Findings of Fact and in the Memorandum, infra, establishes that even without Bloor's appearance, there is sufficient evidence in the record to sustain the Examiner's denial of Respondent's motion to dismiss.

BACKGROUND

Two separate sequences of events developed from November 25 through December 18. The first line of events concerned Kuhn's alleged improper use of Infirmary food and gasoline. The second sequence of events

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- 5/ Complainant amended its complaint during the hearing, without objection from Respondent, by specifically listing the provisions of MERA allegedly violated by Respondent.
- 6/ In the Memorandum accompanying the Direction of Election, the Commission determined that under MERA, Miller was an employee and not a supervisor. In light of that determination, Respondent abandoned its defense that Miller was a supervisor.

concerned employe concerted activity. Kopsell's letter to Gourlie marks the beginning of employe concerted effort to inquire into the manner and basis upon which employe wage rates were established for 1974. Kuhn's meeting with Kopsell on December 9, where he solicited an apology from Kopsell and inquired into Miller's involvement in writing the letter, marks the beginning of Kuhn's attempts to interfere with employe efforts to improve their wages and working conditions.

THE BLOOR DISCHARGE 7/

Chronologically, Bloor's discharge occurred three days after Miller's. However, through Kuhn's explanation of his reasons for discharging Bloor, Kuhn's motive for interrogating Kopsell, discharging Miller, as well as discharging Bloor, becomes apparent.

The stated reason for Kuhn's discharge of Bloor was insubordination. Kuhn defined insubordination to mean "unsubmissive to management." 8/ However, the facts establish that Bloor was discharged because she attended a meeting at Miller's home on December 17. Kuhn believed that the primary purpose of that meeting was to obtain his removal as Superintendent. In fact, however, the meeting was organized to achieve Miller's reinstatement. Although disparaging remarks concerning Kuhn were made by Miller and other employes at this meeting, working conditions at the Infirmary were discussed, as well. Bloor's act of insubordination precipitating her discharge was her attendance, and merely her attendance, at the December 17 meeting.

Kuhn's intent and the purpose he wished to achieve by discharging Bloor are reflected in the Transcript. Kuhn discharged Bloor because, in his words:

"... I [Kuhn] didn't feel I could keep the crew together and have them meeting with organizations outside the Institution. It was splitting the crew and causing problems." (Transcript, p. 33)

At page 63 of the transcript, Kuhn explained what he meant by unauthorized outside meetings:

"Q (By the Examiner) . . . I believe you testified, and correct me if I'm wrong, one of the reasons that you discharged Marie Bloor was her attendance at unauthorized outside meetings. By 'outside,' outside the infirmary?

A (By Kuhn) Yes.

Q Is that right?

A This is correct.

Q Now, what meetings are you referring to?

7/ Bloor was not called as a witness at the hearing. All Findings of Fact and Conclusions of Law concerning Bloor were made on the basis of the testimony of other witnesses, primarily Kuhn.

8/ Transcript, p. 37.

A I am referring to meetings with County Board members, employees with County Board members and, again, against me and what they were really trying to do, I don't know. This was a small segment of the Institution and it was growing.

Q Now, was this the reason for discharging Marie Bloor?

A Yes, this was the reason."

Bloor's attendance at the December 17 meeting where she, along with other employees, met with County Board members, was an exercise by her of her rights of free speech and her right to present complaints or grievances to elected officials; those rights were exercised by Bloor in the course of her participation in concerted activity. In Racine Policemen's Professional and Benevolent Corporation (12637), 4/74, aff'd. at (12637-A), 5/74, Examiner Fleischli stated:

"... that when municipal employees exercise their rights of free speech coincidental with their right to engage in concerted activity or refrain therefrom, that such exercise is protected from unlawful interference. West Bend Board of Education (7938-A) 4/68; City of Madison (9582-B and 9582-C) 6/71 and 7/71."

It is apparent that Kuhn's decision to discharge Bloor was not based upon any attempt on his part to stop the circulation of "rumors" or to clear his name and reputation. The purpose of the discharge was to bring an end to employee meetings with members of the County Board, where employee dissatisfaction with conditions at the Infirmary were expressed. Kuhn's discharge of Bloor interfered with Bloor's right to engage in concerted activity protected under 111.70(2) of MERA.

THE MILLER DISCHARGE

Kuhn discharged Miller on December 15, because, in his words:

"A (By Kuhn) The situation that my crew was falling apart and something was going on and I was being paid to administrate the Institution and it was my responsibility to keep a staff of employees there in harmony and peace among them and it was my feeling that this was deteriorating rapidly and I had several conversations with my Trustees which I normally don't do. I don't have to ask him to hire or dismiss but I did because this was important. It was something that never happened before and I talked to Mr. Kelly several times on the telephone and on this date I called the President of the Board and told him that it looked like this was it and he said 'Fine, dismiss her.' So, we wrote a letter of dismissal and the reason my letter of dismissal was so crude and unsigned and didn't have proper names was because it was only the second one I ever wrote." (Transcript, p. 62).

Bloor's insubordination was manifested through her attendance at the December 17 meeting. Miller's insubordination comprised several activities which were the subject of conflicting testimony.

On December 13, Miller along with Jesse Haschke, circulated a petition among Infirmary employees, the full text of which read, "For Better or New Management." Complainant's witnesses testified that the petition was circulated for the sole purpose of forming a union, and

that before each employee signed the petition, he/she was advised of the meaning of the cryptic text at the head of the petition. Respondent presented several employees who testified that they were not advised of the purpose of the petition. The circulation of the petition became the keystone of both Complainant's and Respondent's arguments. In resolving the question of credibility in this conflict of testimony, the Examiner based his credibility findings in part on such factors as the demeanor of the witnesses, the material inconsistencies and inherent probability of the testimony, as well as the totality of the evidence.

All of Complainant's witnesses who signed the petition testified that they were informed that the words For Better in the petition's text meant For Union. Miller testified that this code was employed out of fear of reprisal from Kuhn and out of her inexperience in union organizing. This theory of the petition's purpose is not credible.

It most obviously requires great exegetical leaps in textual interpretation for the words For Better to be transformed into a statement of union support. At the meeting at Miller's home on December 17, Miller did not mention union activity as the basis for her discharge nor did she attribute any union organizational activity to the circulation of the petition. It was not until February 15 that Miller charged that her union activity was the basis for her discharge. Therefore, the Examiner did not credit any of Miller's testimony as it pertained to her alleged union activity during the months of November, December and January.

However, the signing and circulation of the petition is protected activity, because it constituted another act in a course of conduct by employees to improve their working conditions. Kuhn's decision to discharge Miller was not motivated by the alleged threat the petition posed to his administration, but it was clearly motivated by his single-minded effort to prevent any appearance of employee dissatisfaction from escaping from the confines of the Infirmary. Thus, the decision to discharge Miller, in part, like the decision to discharge Bloor, was made in order to discourage Infirmary employees from exercising their rights protected by Section 111.70(2) of MERA.

Respondent, on the other hand, argues that all of Miller's activity, especially the circulation of the petition on December 13, was motivated towards one goal, namely, the removal of Kuhn from his position as Superintendent. Respondent argues that such activity is not protected, and it cites in support of its position: Joanna Cotton Mills Co. v. NLRB (C.C.A. 4, 1949) 176 F. 2d 749, 24 LRRM 2416, Dobbs Houses, Inc. v. NLRB (C.A. 5, 1963) 325 F. 2d 531, 537, 54 LRRM 2726, NLRB v. Blue Bell (C.C.A. 5, 1955) 219 F. 2d 796, Boaz Spinning Co. v. NLRB (C.C.A. 5, 1968) 395 F. 2d 512, and NLRB v. Soft Water Laundry, Inc. (C.C.A. 5, 1965) 346 F. 2d 930.

The cases cited by Respondent involve some form of defiant conduct by an employee which the Courts found constituted insubordination, and therefore, activity which was not subject to protection of the National Labor Relations Act.

Those cases are not relevant here, since Miller's acts are not those of a defiant employee whose sole purpose is the removal of her supervisor. Kuhn's decision to discharge Miller was not made solely on the basis of her attempts to have Kuhn removed, but were based upon the following factors. First, her involvement with Kopsell in the writing of the November 25 letter to Gourlie; that letter represented a concerted effort by employees to investigate the manner in which their wage rates for 1974 were determined. The writing of the letter was protected activity. The Examiner inferred that Miller was discharged,

in part, for her participation in that activity, because Kuhn's interrogation of Kopsell concerning Miller's involvement in writing the Gourlie letter formed the basis of his decision to meet with Miller on December 10 9/ when he first threatened to discharge her. Secondly, Miller's stated desire to see the formation of a labor organization at the Infirmary, was another factor in Kuhn's decision to discharge Miller. The Examiner so concluded on the basis of Kuhn's knowledge of Miller's union proclivities, his selection of Miller for discharge when others were equally involved in the circulation of the December 13 petition, and Miller's satisfactory employment record prior to the date of her discharge. Finally, as indicated above, the circulation of the petition, itself, was protected, and it was the petition's circulation which precipitated Miller's discharge.

The Commission has often stated that when only one of the motivating factors in the employer's discharge of an employee is the employee's concerted activity, no matter how many other valid reasons exist for the discharge, that action will be found to be discriminatory and in violation of Section 111.70(3)(a)3. Muskego-Norway School District No. 9 (7247) 8/65, aff'd. 35 Wis. 2d, 540, 6/67, City of Wisconsin Dells, et. al. (11646) 3/73. Based upon the above analysis, the Examiner concluded that Respondent violated 111.70(3)(a)1 and 3 by discharging Miller.

LA VON DUENKEL

On December 10, prior to the circulation of the petition, Duenkel asked for and received a leave of absence. In fact, Kuhn offered Duenkel the opportunity to obtain a replacement of her own choosing in order to assure Duenkel of a job when she returned. Duenkel commenced her leave on December 17, after she had signed the petition; Duenkel attended meetings at the Miller home, specifically the December 17 meeting at which time Miller attempted to obtain her reinstatement. Thereafter, Kuhn's interrogation of employees on December 14 and the ability of County Board members present at the December 17 meeting to view the petition, provided Respondent with the knowledge of Duenkel's involvement in employee activity during this period. The Examiner found that the uncontroverted testimony in the record supports the finding that Duenkel called the Infirmary to indicate her desire and willingness to return to work at a time when her position as a Nurses' Aide was not filled. There is no evidence that Duenkel's employment or work record was unsatisfactory. Respondent asserts that when Duenkel took her leave it was with the understanding that if she were replaced, she would no longer have a position at the Infirmary. However, in the absence of any evidence by the Employer that it failed to reinstate Duenkel for legitimate business reasons, the Examiner concludes that Duenkel was not offered reinstatement because she signed the December 13 petition and participated in the December 17 meeting at Miller's home. Therefore, the Examiner concluded that Respondent did not reinstate Duenkel because of her participation in protected concerted activity and thereby it violated Section 111.70(3)(a)1 of MERA.

HELEN LUND

Complainant alleges that Lund was discharged because she signed the December 13 petition and attended meetings at the Miller home. Respondent, on the other hand, asserts that Lund was laid off when the laundry was reorganized and expanded to three full-time employees, thus

9/ Transcript, p. 25.

obviating the need for a part-time employee in the laundry. Although the reorganization was precipitated by the unlawful discharge of Bloor, even after Bloor's reinstatement, Lund was not returned to her position in the laundry. Instead, when Lund was reinstated, she was placed on a half-time basis in the kitchen. Complainant has failed to meet its burden of proof tying Lund's layoff and subsequent reinstatement to the kitchen to an unlawful purpose or unlawful motivation by the Respondent, therefore the Examiner concluded Respondent's action did not violate any provision of MERA.

DARLENE KOPSELL

Kopsell was terminated when she reported a disturbance at the Infirmary to the Sheriff upon her return home from work on January 25. There was no disturbance at the Infirmary when the Sheriff received her report, nor had there been one which justified his presence. After this incident, Wyss advised Kopsell not to return to work up to and through the date of her resignation, February 15. Kopsell did not return to work, but on January 29, the Infirmary Committee offered to pay Kopsell up to and through the date of her resignation and offered to remove any indication from her personnel record that she was terminated from her employment. Complainant presented no evidence which would indicate that Respondent did not comply with its offer of January 29. The record is clear that Respondent did pay Kopsell up to and through the date of her resignation, and Complainant presented no testimony or evidence from which the Examiner could infer or conclude that Kopsell's employment record reflects anything other than the fact that Kopsell's discontinuation of employment was due solely to her resignation.

Although Kopsell was in the thick of events that occurred in December, she was not discharged because of those events or her participation in those events. Therefore, the Examiner concluded that Respondent's conduct towards Kopsell did not violate MERA.

THE GRIEVANCE PROCEDURE

Respondent met with its employees on February 11, after it knew of Complainant's claim of representative status through Klopp's letter demanding recognition. Not only did Respondent meet with its employees but it also presented to them at this meeting a grievance procedure which would have required elections for the purpose of selecting grievance representatives. After said meeting, Respondent distributed this grievance procedure to all the employees of the Infirmary.


The Infirmary Committee first suggested the establishment of a grievance procedure to the Board of Trustees at their December 22 meeting. On January 25, after the Board of Trustees of the Infirmary was dissolved, Infirmary Committee Chairman Wyss announced that Committee's intention to establish a grievance procedure. The decision to establish a grievance procedure was independent of and was made prior to Complainant's demand for recognition. The presentation of the procedure to employees was not made in response to Complainant's demand for recognition, but said presentation was made in furtherance of Respondent's pre-established plans to meet employee complaints. Furthermore, Respondent took no further action to institute said procedure once Complainant voiced its objection to Respondent's institution of the grievance procedure. Therefore, the Examiner concluded that Respondent did not interfere with its employees' rights when it presented its plan for a grievance procedure at the February 11 meeting.

Complainant also alleged that disparaging comments were made against Complainant at the February 11 meeting, where County Board member Andrew Anderson stated that if employees chose Complainant or any union as its

representative, they would only be out their union dues. That comment, taken by itself, did not disparage Complainant or place it in disrepute to the point of interfering with employee rights. However, Complainant alleged further that Respondent also stated that selection of Complainant as the employee representative would not obtain the reinstatement of those employees discharged prior to February 11. Norma Vierwiebe noted that statement in the notes which she compiled of the February 11 meeting on the evening of February 11. However, such notes were selectively made. Vierwiebe was unable to identify Respondent's spokesmen at the meeting due to her lack of familiarity with various members of the County Board. The Examiner credited the specific denials of Wyss and Anderson on this matter to the effect that no such remarks were made by any of Respondent's agents or members of the County Board present at the February 11 meeting. Therefore, the Examiner concluded that Respondent, by its actions on February 11, did not violate any provision of MERA.

Dated at Madison, Wisconsin, this 31st day of January, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Sherwood Malamud, Examiner