

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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WISCONSIN COUNCIL OF COUNTY AND MUNICIPAL EMPLOYEES, AFSCME, AFL-CIO,  Complainant,  vs.  JUNEAU COUNTY (PLEASANT ACRES INFIRMARY);  Respondent.	Case VIII No. 17768 MP-345 Decision No. 12593-B
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ORDER REVISING EXAMINER'S FINDINGS OF FACT, CONCLUSIONS  
OF LAW AND ORDER, AND MEMORANDUM ACCOMPANYING SAME

Examiner Sherwood Malamud having, on January 31, 1975, issued his Findings of Fact, Conclusions of Law and Order, with Accompanying Memorandum, in the above entitled proceeding; wherein the above named Respondent was found to have committed prohibited practices within the meaning of Sections 111.70(3)(a)1 and 3 of the Municipal Employment Relations Act, and wherein the Respondent was ordered to cease and desist therefrom, and to take certain affirmative action with respect thereto; and the above named Respondent having, pursuant to Section 111.07(5) Wisconsin Statutes, timely filed with the Commission a petition for review and brief in support thereof, and the above named Complainant having filed a statement in opposition to the petition for review; and the Commission having reviewed the entire record in the matter, including the petition for review, the brief in support thereof, and the statement in opposition thereto, and being fully advised in the premises, and being satisfied that the Examiner's Findings of Fact, Conclusions of Law and Order, as well as the Memorandum Accompanying same, should be revised;

NOW, THEREFORE, the Commission issues the following:

REVISED FINDINGS OF FACT

1. That Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, hereinafter referred to as the Complainant, is a labor organization representing employees for the purposes of collective bargaining and has its principal offices at Madison, Wisconsin.
2. That Juneau County (Pleasant Acres Infirmary), hereinafter referred to as the Respondent, maintains a skilled care nursing home facility in New Lisbon, Wisconsin; hereinafter referred to as the Infirmary; and that the Respondent's principal address is the Juneau County Courthouse, Mauston, Wisconsin.
3. That Robert Kuhn, hereinafter referred to as Kuhn, was the Superintendent of the Infirmary for a period of nine years up to February 28, 1974, and that for the same period of time, his wife, hereinafter referred to as Mrs. Kuhn, occupied the position of Assistant Administrator of the Infirmary; that Kuhn was responsible for the execution of the policies, as determined by the Board of Trustees of the Infirmary, appointed by the County Board; and that in that regard Kuhn, among other responsibilities, was primarily responsible for the direction and supervision of Infirmary employees.

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4. That during the summer of 1973, David Gourlie, Personnel Management Consultant to local governments for the State Bureau of Personnel of the Department of Administration of the State of Wisconsin, conducted a classification and pay plan study of employees of the Respondent; and that as part of that study, Respondent's employees, including employees at the Infirmary, completed certain job description questionnaires.

5. That Gladys Miller, hereinafter referred to as Miller, who was an employee of the Infirmary for approximately nine years through December 15, 1973, and Head Cook for the last four years of her employment, on November 24 1/ informed Head Nurse Velma Rettammel that she had maintained a record of food not suitable for patients, which Kuhn appropriated for his own use.

6. That on November 25 Infirmary employees received notification of their new wage rates to be effective January 1; that said new rates were based, in part, upon the study which had been conducted by Gourlie; that after discussing the new rates with Miller and other employees at the Infirmary, employee Darlene 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 cannot 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 longevity [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."

and that the employee activity leading to the writing of said letter, and the contents of said letter, constituted concerted activity by

1/ 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.



Infirmaries employees for their mutual aid and protection with respect to wages and working conditions.

7. That on November 28, Rettammel informed Kuhn of Miller's conversation with Rettammel regarding Kuhn's taking of Infirmary food for his personal use, and at the same time advised Kuhn that Infirmary employees were not aware that Kuhn's employment contract included food for personal use as part of Kuhn's compensation; that during the last week of November, or the first week of December, Gourlie phoned Kuhn and in said conversation read to Kuhn the letter which Gourlie had received from Kopsell; and that sometime during the first ten days of December Kuhn learned of a rumor being circulated in the community that he was allegedly "stealing" gasoline from the Respondent for his personal use.

8. That prior to December 8 employee Alice Miller 2/ and Miller had planned an employee Christmas party to be held on December 8, not on the premises of the Infirmary; that said plan included the extension of an invitation to Freida Reick, a former representative of the International Ladies Garment Workers Union, to speak on employee rights and the organization of a union; that Infirmary employees, who were invited to attend said party, were not advised of the planned appearance of Reick; but that immediately prior to December 8, Miller cancelled said party.

9. That on December 9 Kuhn interrogated Kopsell concerning her letter to Gourlie and advised Kopsell that said letter would create problems for him; that, during said conversation Kopsell apologized for writing the letter; that also during said conversation, when Kuhn questioned Kopsell with regard to Miller's possible participation with respect to the letter, Kopsell informed Kuhn that Miller had participated in developing the contents thereof; and that during said conversation Kuhn told Kopsell that he knew Miller was trying to get a union, that he knew about the abortive December 8 party, its connection with a union, and Kuhn laughed because of its cancellation.

10. That, believing Miller was instrumental in writing the letter to Gourlie, notwithstanding Kopsell's claim that Miller's role was minor, and further believing that Miller was responsible for the rumors that he was stealing, Kuhn decided to meet with Miller; that in that regard Kuhn, on December 10, called Miller into his office, where he met with her for approximately two hours, in the presence of Rettammel; that Kuhn apprised Miller of his contractual right to Infirmary food and complained about the rumor with respect to stealing gasoline; that Kuhn informed Miller that she would be terminated unless she apologized for claiming that he had called her names; that thereupon Miller so apologized; that thereafter, during said meeting, Miller advised Kuhn that the employees desired a union to represent them for the purpose of collective bargaining and indicated that an individual having union experience had been invited to speak at the cancelled Christmas party; that in response Kuhn indicated that the employees could have their meeting on the infirmary premises and that he would furnish coffee; and that at no time during this meeting did Kuhn threaten to discharge Miller because of her union activity.

11. That on December 10 LaVon Duenkel, a Nurses Aide, a satisfactory employee for the two and one-half years of her employment, requested a leave of absence, to commence later in the month, for medical reasons; and that on said date she was advised that a 30 day leave would be granted to her with the understanding that

2/ Apparently not related to Gladys Miller.

she could return to work, unless she was replaced prior to the termination of her leave of absence.

12. That on December 13, Miller, Kopsell, and Jesse Haschke, also an Infirmary employe, prepared a document captioned "For New Or Better Management", which was circulated by Miller and Haschke, both on and off the Infirmary premises, among the present and former employes of the Infirmary, and during such activity Miller and Haschke requested that said present and former employes support said document by affixing their signatures thereto; that in the latter regard approximately 24 employes affixed their signatures, including Miller, Kopsell, Jesse Haschke, Alma Maries Bloor, Duonkel, Helen Lund, Nora Kollis and Louise Haschke; that Miller, in preparing, signing, and circulating said document did so for all of the following reasons, while other employes who affixed their signatures thereto did so for one or more of the following reasons: (a) to organize a union, (b) to seek improved wages and working conditions, and (c) to seek the removal of Kuhn so as to improve working conditions; and that such activity by said employes constituted concerted activity for their mutual aid and protection with regard to their working conditions.

13. That on December 14 Mrs. Kuhn overheard employes in the Infirmary kitchen discussing the document noted above, and thereupon notified Kuhn thereof; that Kuhn then began questioning employes regarding same, and as a result learned of the caption thereof, the approximate number of employes who had signed same, and that Miller was one of the prime instigators and circulators thereof; that, after gaining such knowledge, Kuhn telephoned District Attorney Richard C. Kelly and inquired whether an employe could be discharged for insubordination; that Kelly, in response, advised Kuhn that an employe could be discharged for any reason except union activity; that Kuhn thereafter, either on December 14 or 15, informed Lloyd Byington, President of the Infirmary Board of Trustees, that Miller's activities were creating problems at the Infirmary, and that, in order to resolve said problems, Miller had to be discharged; that thereupon Kuhn discharged Miller on December 15; and that Kuhn discharged Miller because (a) she participated with Kopsell in writing the letter to Gourlie, (b) she prepared, circulated and signed the document "For New Or Better Management", (c) she sought a union among Infirmary employes, and (d) he believed she sought to discredit him to obtain his removal as Superintendent.

14. That on December 15, after her discharge, Miller, along with a number of other employes, visited the home of Andrew Anderson, a member of the County Board, where they protested Kuhn's action in discharging Miller, and where they voiced complaints concerning Kuhn and the working conditions at the Infirmary; that on December 17 Miller and 17 other employes met with members of the County Ways and Means Committee, and the Chairman and Vice-Chairman of the County Board, at the County courthouse; that at said meeting Miller protested her discharge, accused Kuhn of stealing, called him a "raving maniac" and complained that Kuhn was harsh on the employes and the patients; that at said meeting said members of the County Board read the December 13th document, signed by the employes, and heard various employe complaints concerning working conditions at the infirmary; that various employes set forth that the purpose of the document was to indicate support for better or new management, and urged that Kuhn be replaced; that during the meeting Miller did not contend that she was discharged for union activity, nor was there any discussion by anyone present with regard to union activity; and that the employes in meeting with County Board member Anderson, and in meeting with the various County Board members at the courthouse, despite the lack of discussion regarding union activity, engaged in concerted activity for their mutual aid and protection with regard to their working conditions.



15. That on December 17 Duenkel commenced her leave, pursuant to the arrangements made on December 10; that on December 18 Kuhn initiated a conversation with Bloor at the latter's work station; that, noting Bloor's silence, Kuhn inquired as to the reason therefor; that Bloor advised Kuhn that the latter had called employee names; that during said conversation Kuhn informed Bloor that he was aware that she had been in attendance at the courthouse meeting on December 17; that thereupon Kuhn requested that Bloor accompany him to his office, where he demanded that Bloor apologize for her remarks regarding name-calling, and for attending unauthorized meetings, including said December 17 meeting; that Bloor refused to so apologize; and that thereupon, while giving "insubordination" as a reason therefor, Kuhn discharged Bloor because she refused to apologize for attending said meeting and for saying that he had called employee names.

16. That 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, which had been presented at the December 17 courthouse meeting, and also for the purpose of determining a course of action with respect to the events transpiring at the Infirmary; and that the Ways and Means Committee suggested to the Board of Trustees that the latter initiate a grievance procedure to handle complaints of the Infirmary employees.

17. That, as a result of Bloor's discharge, Mrs. Kuhn changed the work schedule of laundry department employees, and as a result, Mrs. Kuhn laid off employee Lund on December 20.

18. That, within a few days after Duenkel had commenced her leave, her position was filled by an Aide, who quit employment after two weeks; that approximately three weeks after she commenced her leave, and during the hiatus between the aide's quitting and the hiring of a replacement, Duenkel contacted Rettammel to advise that she was able to return to work; that Rettammel did not advise Duenkel that the position had been filled, but informed her to call back within a few days to permit Rettammel the opportunity to discuss the matter with Kuhn; that thereafter Duenkel called Rettammel again, and Rettammel advised that she had not as yet talked to Kuhn, and that Duenkel should "forget it for a few days"; that when Duenkel called again on January 21, Mrs. Kuhn informed Duenkel that she had been replaced; and that, under such circumstances the failure to permit Duenkel to return to active employment constituted a discharge.

19. That on a date, either in December or January, Kuhn verbally reprimanded employee Mary Burch for attending meetings with County Board members, during which working conditions of the Infirmary were discussed; that during January Kuhn interrogated employee Nora Hollis concerning the latter's reasons for affixing her signature to the December 13th document, and whether Hollis was satisfied with the working conditions at the Infirmary; that, in response, Hollis indicated that she was not satisfied with said working conditions; that thereupon Kuhn suggested "Why don't you quit your job?"; that also during January Kuhn interrogated Louise Haschke as to whether Haschke disliked him personally; that Haschke responded that her "complaint" was not directed at Kuhn, but at the physical conditions of the Infirmary; and that Kuhn then informed Haschke that she was dismissed, but immediately thereafter relented and warned her that she had better watch her work.

20. That on January 25, the County Board, in regular meeting, dissolved the Board of Trustees of Pleasant Acres Infirmary, and established, in its place, the Pleasant Acres Infirmary Committee, hereinafter referred to as the Infirmary Committee, as a committee of the County Board; and that at the same meeting it was determined that the Infirmary Committee would establish a grievance committee and a procedure by which Infirmary employees could bring their grievances directly to the attention of the County Board.

21. That prior to January 25 Kopsell gave Respondent written notice that she intended to resign effective February 15; that on the evening of January 25 Kuhn confronted Kopsell on the Infirmary premises, while the latter was on duty, and shouted at her, shook his fist in her face, and accused Kopsell of spreading rumors that he had been fired; that Kuhn also accused Kopsell of "starting it all" by her letter to Goullie; that Kopsell became extremely upset by Kuhn's conduct, and at the completion of her shift at 11:00 p.m., upon return home, Kopsell called the County Sheriff's department, and informed a Deputy Sheriff of Kuhn's harassment of her, and indicated that, because of Kuhn's overwrought condition, a disturbance might occur at the Infirmary; that thereupon a Deputy Sheriff went to the Infirmary and remained there for approximately two hours, during which no disturbance occurred; that Kopsell did not work on January 26 and 27, as said dates were her days off; that during the evening of January 28 Kopsell called County Board member Anderson to determine whether she should report for work the following day; that Anderson advised Kopsell to call the Chairman of the County Board in regard thereto; that thereupon Kopsell called George Klinker, the Chairman of the County Board, who advised Kopsell that she had been terminated as of January 25; that on January 29 the Infirmary Committee determined to pay Kopsell her salary, accrued vacation, and other applicable benefits, if any, through February 15, the effective date of her resignation; that Kopsell was paid accordingly; but that however her attempts to remove the termination from her personnel record, and to correct same to indicate that she had quit her employment were unsuccessful.

22. That on January 26 Kuhn submitted his resignation to the Respondent; that February 20 was the final day of his employment as Superintendent of the Infirmary; and that in a letter, dated January 31, over the signatures of the members of the Infirmary Committee, Miller was advised that said committee voted to sustain Kuhn's discharge of Miller.

23. That on February 7, a number of employees of the Infirmary met with Walter J. Klopp, a Business Representative of the Complainant, and authorized Klopp to request that the Respondent recognize the Complainant as the collective bargaining representative of the infirmary employees; that on February 8, the Infirmary Committee, unaware of the employee meeting with Klopp, established a procedure which contemplated the selection, by Infirmary employees, of grievance representatives and the establishment of a three-step grievance procedure, which provided for mediation at the third and last step thereof; that on February 9, Wyss posted a notice at the Infirmary announcing a meeting of Infirmary employees for February 11, to be conducted by the Infirmary Committee; that in a letter, dated February 8, over the signature of Klopp, and received by Wyss on February 11, Klopp requested that the Respondent recognize the Complainant as the collective bargaining representative of the Infirmary employees; that during the afternoon of February 11, after Wyss had received the aforementioned letter, the Infirmary Committee held a meeting with approximately 20 of the 40 Infirmary employees in attendance, wherein one or more members of the County Board said that employees had the privilege of joining a union, that the County was providing all the benefits that it could possibly provide, and that since the County could not improve those benefits the employees would only be out their union dues; that if they did not perform their work they could be fired, and that a union could not get their jobs back for them; that at said meeting Wyss presented the grievance procedure prepared on February 8; that while said meeting was in progress, Klopp telephoned the County Clerk's office and left the following message for the Infirmary Committee, which was delivered to Wyss at the conclusion of the meeting:

"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."

24. That, despite the aforementioned message, the Infirmary Committee, a few days later, mailed a copy of said grievance procedure to Infirmary employees, and that said grievance procedure was set forth as follows:

"GRIEVANCE PROCEDURE FOR  
PLEASANT ACRES EMPLOYEES"

"Any grievance of an employee involving his employment at Pleasant Acres shall be settled in the following manner:

"1. The aggrieved employee or a committee of employees shall file the grievance in writing with the superintendent within three (3) working days following the date of the occurrence of grievance or the employee's knowledge of its occurrence. The Superintendent shall attempt to adjust the matter and shall respond to the employee in writing within three (3) working days following the filing of the written notice. Failure to respond shall constitute a denial of the grievance.

"2. If the grievance has not been settled to the employee's satisfaction, the employee or the committee of employees shall file the grievance in writing with the Pleasant Acres Infirmary Committee by mailing the written grievance in an envelope addressed to the Chairman of the Pleasant Acres Infirmary Committee within three (3) working days following the denial or response of the Superintendent. The Pleasant Acres Infirmary Committee shall respond to the employee or committee of employees in writing within thirty (30) days following the postmark of the envelope containing the written grievance. Failure to respond shall constitute a denial of the grievance.

"3. If the grievance remains unsettled to the employee's satisfaction, the employee or committee of employees may, within seven (7) working days following the denial or the response of the Board of Trustees, refer the grievance to mediation provided by the Wisconsin Employment Relations Commission.

"No grievance shall be entertained or processed unless it is filed within the time limits set forth above. If the grievance is not appealed within the time limits set forth above, it shall be determined to be settled on the basis of the last answer of the County."

25. That attached to the copy of the above grievance procedure was the following letter, over the signature of Wyss:

"Enclosed please find a copy of the grievance procedure for Pleasant Acres Employees enacted by the Pleasant Acres Infirmary Committee. The Committee has been advised by the District Attorney for Juneau County that the Committee should not participate in the organization of an employee grievance committee. The Wisconsin Council of County and Municipal

Employees has objected to our participation in forming such a committee and have accused us of engaging in an unfair labor practice. We, therefore, have decided that the employees themselves will have to decide whether or not to form a grievance committee, what shape such a committee should have and who should serve on the Committee.

"We can assure you that we intend to administer this grievance procedure in the fairest manner possible. We hope that you study the procedure and utilize it whenever you have a grievance. We believe that complete, fair and prompt hearings on grievances will assist the orderly administration of the Infirmary.

"Thank-you for your service to Juneau County."

and that, however, the Respondent took no further action with respect to said grievance procedure.

26. That, at the suggestion of the County Board, the Infirmary Committee, after it had invited Miller, Duonkel, Bloor, Kopsell and Lund to be present, on February 15, conducted an investigation hearing with respect to the discharges of Miller, Duonkel and Bloor, the termination of Kopsell, and the layoff of Lund; that during said meeting Miller informed the Infirmary Committee that the December 13th document signed by the employees was intended to indicate support for a union; that it was only after Miller raised the possibility that she may have been discharged for such union activity that members of the Infirmary Committee inquired into her involvement with the union and Kuhn's knowledge thereof.

27. That on February 25 Bloor was reinstated with full back pay and benefits from the date of her discharge to the date of her return to work; that, however, the discharges of Miller and Duonkel, and the layoff of Lund, were not rescinded by any agent or agents of the Respondent; and that, however, Lund was returned to work on March 15 to a less desirable job with less desirable hours.

28. That the actions of Kuhn with respect to the discharge of Miller and Bloor, as well as the resultant layoff of Lund; and the action of Mrs. Kuhn in the discharge of Duonkel, as well as the termination of Kopsell by the County Board, as found heretofore, were motivated, in part, to discourage said employees, as well as other employees of Pleasant Acres Infirmary, from engaging in concerted activity, for their mutual aid and protection with respect to their conditions of employment; and thus interfered with the right of said employees to engage in concerted activity, for their mutual aid and protection with respect to their conditions of employment.

29. That Kuhn's interrogation of Kopsell, Hollis and Louise Maschke, and the activity of Kuhn with respect to the reprimand of Burch, the suggestion that Hollis quit her employment, his warning to Louise Maschke, and his harassment of Kopsell, all as found heretofore, were motivated to discourage said employees, as well as other employees of the Infirmary, from engaging in concerted activity for their mutual aid and protection with respect to their conditions of employment; and that said activity interfered with, restrained, and coerced said employees from engaging in such concerted activity.

30. That the activity of the Infirmary Committee, after learning that the Complainant had requested recognition as the collective bargaining representative for the Infirmary employees, by the mailing of copies of its proposed grievance procedure, and the letter accompanying same to infirmary employees, as found heretofore, interfered with the right of said employees to engage in concerted activity on behalf of the Complainant.



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

REVISED CONCLUSIONS OF LAW

1. That the activity of the employees of Pleasant Acres Infirmary with respect to:
  - (a) the participation of Darlene Kopsell and Gladys Miller in the letter written on November 25 to David Courlio;
  - (b) the participation of Darlene Kopsell, Gladys Miller, and Jesse Haschke in the preparation and distribution of the December 13 document entitled "For New or Better Management", and the signing of same by Darlene Kopsell, Gladys Miller, Jesse Haschke, Alma Marie Bloor, Helen Lund, Louise Haschke, Nora Hollis, and other employees;
  - (c) employee meetings on December 15 at the home of County Board member Andrew Anderson, and on December 17 at the County courthouse with the members of the County Ways and Means Committee, the Chairman and Vice-Chairman of the County Board, during which employees present voiced complaints with respect to their working conditions at Pleasant Acres Infirmary;

constituted the exercise of the right, as set forth in Sec. 111.70(2) of MERA, to engage in concerted activity for their mutual aid and protection with respect to their wages and conditions of their employment.

2. That Respondent Juneau County, by the action of its agents, in discharging Gladys Miller, Alma Marie Bloor, and LaVon Duenkel, by terminating Darlene Kopsell prior to the effective date of her resignation, and by laying off Helen Lund, has engaged in, and is engaging in, prohibited practices within the meaning of Sec. 111.70(3)(a)3 and 1 of MERA.

3. That Respondent Juneau County, by the action of its agent Robert Kuhn, in interrogating Darlene Kopsell, Nora Hollis and Louise Haschke, in his coercive conduct toward Kopsell, Hollis and Haschke, by requiring Alma Marie Bloor to apologize for attending meetings, and by reprimanding Mary Burch, all in order to discourage said employees from participating in concerted activity for their mutual aid and protection, has engaged in, and is engaging in, prohibited practices within the meaning of Sec. 111.70(3)(a)1 of MERA.

4. That Respondent Juneau County, by its agents, interfered with employees in the exercise of their right to engage in concerted activity on behalf of Complainant Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, by mailing copies of its proposed grievance procedure and the covering letter to its employees, and thereby engaged in and is engaging in prohibited practices within the meaning of Sec. 111.70(3)(a)1 of MERA.

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

REVISED ORDER

IT IS HEREBY ORDERED that Respondent Juneau County, its officers and agents, shall immediately:

1. Cease and desist from:

- (a) Discharging, laying off, or otherwise discriminating against employees, in order to discourage them from engaging in concerted activity for their mutual aid and protection with respect to the conditions of their employment.
- (b) Reprimanding employees, suggesting that employees quit their employment, warning employees to watch their work, and harassing employees, or in any other manner interfering with, restraining and coercing employees in order to discourage them from engaging in concerted activity for their mutual aid and protection with respect to the conditions of their employment.
- (c) Interfering with its employees in the exercise of their right to engage in concerted activity on behalf of Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO or any other labor organization.

2. Take the following affirmative action, which is found will effectuate the purposes of the Municipal Employment Relations Act:

- (a) Offer to Gladys Miller immediate and full reinstatement to her former position as Head Cook, and further immediately offer LaVon Duenkel and Helen Lund reinstatement to their former positions, or their equivalent, without prejudice to their seniority or other rights and privileges previously enjoyed by them, and make said individuals whole for any loss of pay or benefits they may have suffered by reason of the termination of their employment, by payment to them the sum of money equal to that which each of them would have normally earned or received as employees, from the date of their terminations to the date of the unconditional offers of reinstatement, 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 Department of Industry, Labor and Human Relations in such amount.
- (b) Expunge from the records of the employer any reference to the actions of the Respondent which have been found herein to have constituted prohibited practices.
- (c) Notify all employees, by posting in conspicuous places on its premises, where notices to all infirmity 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 County Board. "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.



(d) 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.

Given under our hand and seal at the  
City of Madison, Wisconsin this 17th  
day of January, 1977.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

*Morris Slavney*  
Morris Slavney, Chairman

*Herman Torosian*  
Herman Torosian, Commissioner

I concur in part and dissent in part  
as set forth in the attached memorandum:

*Charles D. Hoornstra*

Charles D. Hoornstra, Commissioner

APPENDIX "A"

Pursuant to a Revised Order issued by the Wisconsin Employment Relations Commission, and in order to effectuate the purposes of the Municipal Employment Relations Act, we hereby notify our employees that:

1. WE WILL offer to Gladys Miller, LaVon Duenkel, and Helen Lund immediate and full reinstatement to their former positions, without prejudice to their seniority and other rights or privileges previously enjoyed by them, and we will make said individuals whole for any loss of pay or benefits each may have suffered by reason of the unlawful termination of their employment.
2. WE WILL expunge from our records any reference, (1) to the discharge of Gladys Miller, Alma Marie Bloor and LaVon Duenkel, (2) to the termination of Darlene Kopsell prior to the effective date of her resignation, (3) to the lay-off of Helen Lund, and (4) to any activity of any employee which concerned protected concerted activity.
3. WE WILL NOT discharge, layoff, or otherwise discriminate against employees, for the purpose of discouraging them from engaging in concerted activity for their mutual aid and protection with respect to their conditions of employment.
4. WE WILL NOT reprimand employees, nor suggest that they quit their employment, nor warn employees to watch their work, nor harass employees, nor in any other manner interfere with, restrain or coerce employees, in order to discourage them from engaging in concerted activity for their mutual aid and protection with respect to the conditions of their employment.
5. WE WILL NOT interfere with employees in the exercise of their right to engage in concerted activity on behalf of Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, or any other labor organization.

All of our employees are free to engage or not to engage, in concerted activity for their mutual aid and protection with respect to the conditions of their employment, and are also free to become, or not to become members of Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, or any other labor organization, subject to the conditions of a valid fair share agreement, if any, between Juneau County and Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, or any other labor organization.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 1976.

JUNEAU COUNTY

By \_\_\_\_\_  
County Board Chairman

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



JUNEAU COUNTY (PLEASANT ACRES INFIRMARY), VIII, Decision No. 12593-B

MEMORANDUM ACCOMPANYING ORDER REVISING EXAMINER'S FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER, AND MEMORANDUM ACCOMPANYING SAME

The Examiner's Decision

The Examiner, in his decision, made the following Conclusions of Law with respect to the alleged prohibited practices:

"2. That Respondent, Kuhn, (1) interrogated and threatened infirmity employees for attending the December 17 meeting at the home of Gladys Miller, and (2) discharged Marie Dloor 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 Koppeil'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."

The Examiner ordered the Respondent to cease and desist from the activity found to be violative of the Municipal Employment Relations Act and to offer reinstatement to Gladys Miller and LaVon Duenkel and to make them whole for wages and other benefits lost by them as a result of their termination.

The Petition for Review

The Respondent timely filed a petition, as well as a brief in support thereof, requesting the Commission to review the Examiner's decision. The Respondent contends that the employees who were discharged, and ordered to be reinstated by the Examiner, were discharged for cause.

The Respondent argues that the Examiner erred in his finding that Duenkel was not recalled from a leave of absence because she had executed the December 13 petition and because she participated in the December 17 meeting to obtain Miller's reinstatement. Respondent contends that the record was lacking in sufficient evidence to establish that Kuhn was aware of such activity by Duenkel.

With respect to Miller, Respondent contends that Miller's attitude and conduct were not satisfactory, contrary to such a finding by the Examiner. The Respondent alleges that the record establishes that Miller was terminated because of her circulation of rumors and accusations with respect to Kuhn, thus undermining his authority.

The Respondent also takes issue with respect to the Examiner's conclusions that Miller was terminated because of her participation in the letter to Courlie and because of her desire to establish a labor organization. In that regard the Respondent argues that, although Kuhn was aware of Miller's participation therein, Kuhn did not object to Miller's activity in that regard, or that he considered such activity in reaching his determination to discharge Miller.

Respondent also contends that the Examiner erred in concluding that Bloor was discharged for the purpose of discouraging employee meetings. The Respondent argues that the record supports a finding that Bloor was attempting to undermine and to discredit Kuhn before the County Board. The Respondent also contends that the document "For New or Better Management" did not involve protected employee concerted activity since it was "a clear attempt to intervene into the management functions of the County Board and its chosen supervisor."

The Respondent would have the Commission reverse the Examiner's Conclusions of Law wherein he found the Respondent to have committed prohibited practices.

#### The Revised Findings of Fact

The Commission has extensively revised the Examiner's Findings of Fact in order to set forth the events more chronologically, to add findings deemed material to the issues, and to delete findings deemed erroneous, or otherwise inappropriate, as more fully discussed herein.

#### Kuhn's Acts of Interference, Restraint and Coercion

An employer may not make an inquiry of employees concerning the exercise of rights protected by MERA, except under exceptional circumstances. Such interrogation ordinarily will be treated as violative of Sec. 111.70(3)(a)1 of MERA. 3/ In City of Evansville, cited below, a supervisor inquired of an employee whether he belonged to the union. The employee inquired as to whether it made any difference. The supervisor responded, "You might just as well tell me because if you don't I'll find out anyway." The Commission held that such inquiry constituted an interrogation prohibited by Sec. 111.70(3)(a)1. In sustaining our conclusion the Wisconsin Supreme Court said:

"\* \* \* [T]he polling of employees in respect to union membership would be considered a restraint upon the employees' right to organize and [is] considered coercive unless the following safeguards [are] observed:

3/ Green Lake County (6061) 7/62; Rock County Home (6655) 3/64; Marathon County (6826) 8/64; City of Evansville (9440-B) 3/71  
1 (Aff. Wis. Sup. Ct., 69 Wis. 2d 140, 1975).



"(1) the purpose of the poll is to determine the truth of a union's claim of majority, (2) this purpose is communicated to the employees, (3) assurances against reprisal are given, (4) the employees are polled by secret ballot, and (5) the employer has not engaged in unfair labor practices or otherwise created a coercive atmosphere."

The Supreme Court's holding cannot be confined to employer inquiries about unions. It includes inquiries concerning the exercise of any right protected by sec. 111.70(2), MERA, which includes the right:

"... to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection : : :"

The Interrogation of Kopsell on December 9.

We have concluded that Kopsell's letter of November 25 to Gourlie constituted lawful, concerted activity for the mutual aid and protection of infirmity employees with respect to wages and working conditions. Miller participated in writing said letter, as quoted in full in paragraph 6 of the Findings of Fact. It was written shortly after Gourlie had done a wage survey for the county which affected the employees' wage levels. In essence the letter questions the accuracy of the wage survey, asks how the raises are to be paid, notes that some women are doing maintenance work which men perform, like placing and removing storms and screens, notes that substitutes for the head cook receive the same pay, though they lack the schooling of the head cook and do less work, and concludes that the employees want him to have the true facts, "not just what they wanted you to know."

We have found that Kuhn unlawfully interrogated Kopsell about the letter. The Examiner made no finding relative to the conversation between Kuhn and Kopsell on December 9 about the letter. Paragraph 8 of the Findings of Fact resolves conflicts in testimony and makes other findings material to the issues.

Kuhn claimed to be indifferent about the letter. He testified that Kopsell approached him to apologize for writing the letter to Gourlie, saying that Miller had influenced her, but he told her to forget it. Kopsell, on the other hand, testified that Kuhn "started in first" about the letter to Gourlie and then about the allegedly stolen gas and food, that he said the letter could get him into a lot of trouble and that Miller was the instigator, and that Kopsell responded that Miller only asked to have something included in the letter.

We have credited Kopsell. Kuhn's assertions that she approached him to apologize and that he said to forget it are inconsistent with the weight of other testimony on similar occurrences where Kuhn approached an employee and interrogated relative to participation in various activities relating to their working conditions, as set forth in our Findings of Fact, paragraphs 15, 19 and 21. His professed relative indifference to the letter is inconsistent with Kopsell's uncontradicted testimony that on January 25 Kuhn told her she had started it all by her letter, and his admission that, after learning of Miller's involvement in the letter from Kopsell, he decided it was time to talk with Miller and called her into his office the next day, December 10. To be sure, Kuhn was very concerned about the rumors of stealing gasoline and food. However, as evidenced by Kopsell's testimony (Tr. 91), Kuhn was aware of the rumors about stealing prior to his conversation

with Kopsell tying Miller to the letter. Further, Rattammel on November 28 had told Kuhn of her conversation of November 24 with Miller during which Miller stated Kuhn was taking county food for his own use. Thus, such timing and series of events discredit Kuhn's professed nonchalance with respect to the letter.

Accordingly, we have found that Kuhn interrogated Kopsell regarding her letter to Gourlis and then decided to meet with Miller because he believed the latter was instrumental in writing the letter and was responsible for the rumors of stealing food and gasoline.

There are no exceptional circumstances excusing Kuhn from the rule that an employer may not interrogate an employee concerning the exercise of protected rights. Kuhn did not seek to treat the grievances contained in the letter. Rather, he complained that the letter could cause him trouble. In this atmosphere of coercion, the implication was clear that it also might cause Kopsell trouble. His purpose was to find out who was behind it, as evidenced by his calling Miller into his office on learning of her involvement.

Given the absence of exceptional circumstances justifying the interrogation, the absence of the Evansville safeguards, such as secrecy and assurances against reprisal, and the generally coercive atmosphere, the Commission must conclude that the interrogation of Kopsell violated sec. 111.70(3)(a)1.

#### The Interrogations of Hollis and Maschke in January

After the interrogation of Kopsell, on December 13 a number of employees circulated and signed a petition calling for new or better management. We have concluded that the circulation and signing of this petition constituted protected concerted activity.

We have found that in January Kuhn asked employees Nora Hollis and Louise Maschke why they had signed the petition. 4/ These interrogations violated sec. 111.70(3)(a)1, because there are no exceptional circumstances justifying requesting reasons for exercising protected rights. In addition, the atmosphere of coercion had become particularly heavy, especially as a result of the previous discharges of Miller and Kopsell.

#### Kuhn's Coercive Conduct Toward Employees

We have also found that, after asking Hollis for her reasons in signing the December 13 petition, Kuhn also inquired whether she was satisfied with her working conditions. To her negative answer, he asked why she did not quit her job. After Kuhn asked Maschke why she had signed the petition and whether she disliked him, Maschke said her "complaint" was directed at the faulty physical conditions at the employment site. Kuhn then discharged Maschke, but immediately relented and told her to watch her work. Finally, Kuhn reprimanded Mary Burch and demanded that Marie Bloor apologize for attending meetings with the County Board members during which complaints concerning working conditions were discussed. Kuhn's statements were inherently coercive in violation of Sec. 111.70(3)(a)1. Inquiring as to why an employee does not quit employment if dissatisfied with working conditions coerces the employee in the exercise of that employee's protected right to engage

4/ This finding is substantially identical to the Examiner's finding, except that the Examiner failed to find that Kuhn asked Maschke why she signed the petition.



in concerted action to improve working conditions. Discharging an employee for objecting to working conditions due to the physical condition of the working environment totally destroys the freedom of choice an employee enjoys under NLRBA to make a concerted protest, by petition, or other lawful activity, with respect to those physical working conditions. An immediate reinstatement cures the discharge, but does not necessarily cure the coercion for having exercised such right. Similarly, reprimanding or requiring an apology from an employee for participating in a group complaint concerning working conditions frustrates the legislative purpose to permit employees to collectively air their grievances with impunity.

Kuhn's coercive propensities reached physical intimidation on January 25, when he confronted Kopsell, shouted at her, shook his fist in her face and accused her of having "started it all" by her November 25 letter to Courlie. Although Kuhn apparently had become exercised in the belief that Kopsell had reported incorrectly that Kuhn had been discharged, his coercion equally embraced Kopsell in the exercise of her protected right to write the letter to Courlie on behalf of herself and other infirmity employees.

Accordingly, we have concluded that Kuhn's conduct with respect to Hollis, Rauschko, Burch, Bloor and Kopsell, as set forth above, constituted interference, restraint and coercion in violation of sec. 111.70(3)(a)1 of NLRBA.

Modifications of the Examiner's Findings with Respect to the December 10 Meeting with Kuhn, Miller and Rottammol

On December 9 Kuhn learned from Kopsell that Miller had some involvement in the letter written on November 25 to Courlie. On the next day, December 10, Kuhn called Miller into his office for a two hour meeting, which was attended throughout by Rottammol, the infirmity's head nurse. We have affirmed the Examiner's findings as to what transpired during said meeting, with certain modifications. Although in that meeting the union organizational theme of the planned December 8 party was discussed, we have deleted the Examiner's finding that Kuhn advised Miller he was aware of that theme. There is no record evidence to support this finding.

We agree with the Examiner that during this meeting Kuhn complained to Miller concerning the rumors that he was stealing, that he apprised Miller of his contractual right to infirmity food, that Miller told Kuhn she desired a labor organization to represent infirmity employees, and that Kuhn responded that employees could meet on infirmity premises if they desired, and that he would furnish the coffee.

The Examiner found that Kuhn demanded an apology from Miller and threatened to discharge her if she refused to do so. We have modified that finding to indicate that Kuhn informed Miller that she was terminated unless she apologized to him for alleging that he had called her names and that Miller apologized. Said revision more accurately reflects the testimony, especially that of Rottammol.

Our revised finding also sets forth that Kuhn did not threaten to discharge Miller because of her union activity, contrary to Miller's testimony. The Examiner made no finding on this point. We have credited Rottammol's testimony that Kuhn did not threaten to discharge Miller because of her union activity. We credit Rottammol because of her relative neutrality at the time of the hearing, since she had already resigned from employment, and there is nothing in the record, or in the Examiner's rationale to otherwise impeach her reliability.

#### Circulation of the Petition

The Commission has found that the employees on December 13 circulated and signed a petition headed "For New or Better Management" for the purposes of (a) organizing to form a union, (b) seeking to improve their working conditions by concerted action, and (c) concertedly seeking the removal of Kuhn as superintendent. The Commission has concluded that such activity was protected by sec. 111.70(2), MERA.

The Examiner found that the petition was not designed to elicit support for a union. He reasoned: (a) "For better" did not naturally import "for union", (b) Respondent presented several employee witnesses who testified that they were not advised of the purpose of the petition at the time of their signing same, and he resolved the "credibility" issue in their favor, and (c) Miller's testimony of purpose must be discredited, since on December 17, during the meeting with the County Ways and Means Committee, Miller failed to attribute a union organizational purpose to the petition. Nevertheless, the Examiner concluded that the signing and circulation of the petition was protected activity, because "it constituted another act in a course of conduct by employees to improve their working conditions." (Memorandum, p. 14)

The Commission disagrees with the Examiner's finding that the petition was not designed for a union organizational purpose. Undoubtedly "for better" does not mean "for union". We are not confined, however, to the words on a piece of paper in ascertaining the signers' purposes. We may review their testimony in making that determination. The Examiner conceded as much in finding that the purpose was to improve working conditions, since "for better or new management" itself does not imply "for better working conditions". Only testimonial evidence can support his finding of purpose to improve working conditions.

Reviewing the testimony to find purpose, twelve employees testified that they signed the petition for a union organizational purpose. 5/ The Examiner discarded this majority in favor of the testimony of a minority of employees. Drunasky testified that the purpose was to have Kuhn dismissed. Another employee, Vinz, testified that she signed the petition to indicate that she was Miller's friend, while a third employee, Lindley, testified that she signed the petition to obtain a meeting with the County Board to straighten things out. We can credit the testimony of said three employees without discrediting the testimony of the twelve employees. While the purposes of signing differed, such a difference does not impeach the testimony of the majority of employees any more than the majority impeaches that of the minority of the employees. We can perceive no reason to discredit the avowed union organizational purpose of the majority of the employees.

Nor can the Commission accept the Examiner's decision to discredit Miller's testimony that she had a union organizational purpose in circulating and signing the petition. The Examiner relied on the fact that Miller, in the December 17 meeting, failed to reveal such a purpose. In addition, the Examiner might have noted that, promptly following her discharge, in the December 15 meeting with County Supervisor Anderson, Miller made no mention of union. Her failure to do so is understandable because of the atmosphere of coercion which caused the employees to conceal their organizational purpose.

5/ Ropsell, Lund, Duenkel, Hollis, Josse Haschke, Louise Haschke, Verwiebe, Carey, Burch, O'Connor, Bird and Miller.