

County Sheriff's Department and other law enforcement agencies, including the St. Croix County Traffic Police; that the Respondent maintains and operates a jail; that, on and before February 22, 1974, the Respondent had in its employ six individuals classified as Dispatchers and Jailors; that said Dispatchers and Jailors were sworn law enforcement officers; that said Dispatchers and Jailors were charged with the operation and security of the aforesaid communications facility and jail; and that, prior to February 22, 1974, said Dispatchers and Jailors were not represented by any labor organization for the purposes of collective bargaining with the Respondent.

4. That, for a period commencing on or about May 6, 1972, William A. Larson was employed by the Respondent in the classification of Dispatcher; that, during the course of his employment prior to February 22, 1974, Larson was reprimanded for having failed, on or about March 4, 1973, to have properly searched and processed a prisoner; that Larson was reprimanded for having failed, on or about July 21, 1973, to respond to radio calls directed to the Dispatcher by a patrol car during a shift when Larson was on duty; that Larson was accused of, but denied having failed, on or about August 15, 1973, to interrupt a personal telephone conversation in order to provide service to a citizen waiting at the counter in the Sheriff's Department to be served; that Larson was reprimanded for having failed, on or about August 20, 1973, to make proper acknowledgement of radio calls; that Larson was suspended from duty without pay for two days on or about September 20, 1973 for having sent a teletype message to another law enforcement agency on August 28, 1973 containing extraneous material; and that, on an unspecified date subsequent thereto, Larson and another Dispatcher were reprimanded for throwing darts at a bulletin board in the offices of the Sheriff's Department and were ordered to replace said bulletin board.

5. That, on Friday, February 22, 1974, a meeting was held at the home of Dispatcher John Smith at a rural location near Hudson, Wisconsin; that John Smith, Tom Anderson, Stan Couch, Jerry Amundson and William Larson, all of whom were then employed by the Respondent as Dispatchers, attended said meeting; that the sixth Dispatcher, Tom McLaughlin, was on duty at that time and did not attend; that Stein attended said meeting on behalf of the Complainant; that, during the course of said meeting, Smith, Anderson and Larson executed applications for membership in the Complainant; that Amundson filled out a similar application for membership, but did not affix his signature thereto; that, also during the course of said meeting, Smith, Anderson, Amundson and Larson executed documents designating the Complainant as their representative for the purposes of collective bargaining; that Stein collected and gave receipt for \$40.00 representing initiating fees at the rate of \$10.00 per applicant, from employes attending said meeting; and that, on February 26, 1974, the Complainant herein filed with the Wisconsin Employment Relations Commission a petition for an election to determine a bargaining representative in a claimed appropriate unit consisting of all Dispatchers employed by the St. Croix County Sheriff's Department. 1/

6. That, at approximately 4:30 p.m. on Monday, February 25, 1974, Larson engaged Sheriff Charles A. Grant in a conversation in the offices of the St. Croix County Sheriff's Department; that, during the course of said conversation, Larson inquired as to whether anyone had told Grant that the Dispatchers had contacted a bargaining agent; that Grant responded in the negative; that Larson then advised Grant that the Dispatchers employed by the Respondent had contacted the Complainant to be their bargaining agent and that a letter demanding recognition would

1/ Docketed as St. Croix County, Case XVII, No. 17690, ME-1032.

be forthcoming from the Complainant; that Grant then expressed to Larson his dissatisfaction with said Dispatchers for their having failed to consult with Grant concerning the matter before going to a labor organization; and that Larson then indicated to Grant that he felt that the decision was up to the majority of the Dispatchers, as a group, and that it was not necessary to consult with Grant on the matter.

7. That shortly after the termination of the conversation between Larson and Grant, which is set forth in paragraph six, hereof, Grant proceeded to another area within the offices of the St. Croix County Sheriff's Department, where he engaged his Administrative Assistant, Richard B. Flynn, in a conversation; that, during the course of such conversation, Grant made statements to the effect that he was against the way the Dispatchers went about joining the Complainant and that he felt there was some trust with him that the matter should have been brought to his attention prior to negotiations with the Complainant; that Grant instructed Flynn to inform the Dispatchers that they were placed on probation for 30 days; that, at approximately 5:00 p.m. on February 25, 1974, Flynn approached Larson, who was then on duty in the offices of the Sheriff's Department, and advised Larson that the Dispatchers were on a 30-day probationary status as of that date because of the failure to tell Grant earlier about the concerted activity among the Dispatchers; and that, at approximately 7:00 a.m. on Tuesday, February 26, 1974, Flynn approached Dispatchers Smith and McLaughlin in the offices of the Sheriff's Department and advised them that Grant had ordered the Dispatchers placed on probation for 30 days because of their concerted activity.

8. That, at or about 6:00 p.m. on Monday, February 25, 1974, Dispatchers Amundson and Larson were on duty; that Amundson was compiling certain statistics concerning radio activity; that Larson was operating the Respondent's communications facility; that Deputy Sheriff Dennis Hillstead was in the field in a patrol car, engaged primarily in serving papers on various residents of the County; that one member of the St. Croix County Traffic Police who was on duty in a patrol car prior to 6:00 p.m. went off duty at approximately 6:14 p.m.; that another member of the St. Croix County Traffic Police, Officer James B. Roe, came on duty at 6:00 p.m.; that Officer Roe reported his patrol car out of service at a farm near New Richmond, Wisconsin, at 6:14 p.m.; that an officer of the New Richmond, Wisconsin, Police Department reported to Officer Roe shortly thereafter, and at or about 6:14 p.m., that an accident had been reported on the outskirts of New Richmond, Wisconsin requiring the services of Officer Roe; that, although Officer Roe had previously reported himself out of contact, he received and acknowledged the transmission from the officer of the New Richmond Police Department; that Officer Roe reported himself back in his patrol car at 6:22 p.m. and, without further instructions to do so, proceeded to respond to the aforesaid report of an accident on the outskirts of New Richmond, approximately four and one-half miles from the location where Officer Roe had reported himself out of contact; that Officer Roe reported his arrival at the scene of said accident at 6:30 p.m.; that at approximately 6:30 p.m., Lavern J. Burke, who is employed by the Respondent as Captain of the St. Croix County Traffic Police, received, by telephone, a report that a barricade which had previously been installed to close County Road "E" at Houlton, St. Joseph Township, St. Croix County, Wisconsin, had been removed by a person or persons unknown; that Burke proceeded to place a telephone call to the Patrol Superintendent of the Respondent's Highway Department to obtain information concerning said barricade, and was advised that it should be continued as placed; that Burke then placed a telephone call to the offices of the St. Croix County Sheriff's Department, where he talked to Larson; that Burke inquired as to the location of Officer Roe, and was advised that Officer Roe was dispatched to handle the accident near New Richmond, Wisconsin; that Burke then instructed Larson to contact Roe "when he came in" and to dispatch Roe to check on the barricade on County Road "E"; that, at 6:40 p.m., Officer Roe requested from the Dispatcher and was provided

with the file number and time of the accident near New Richmond, Wisconsin; that Deputy Sheriff Hillstead reported himself out of his patrol car at River Falls, Wisconsin, at 6:41 p.m. to serve papers on a resident; that Hillstead completed his activities outside of his patrol car and returned to his patrol car to write his report concerning the service of papers, but did not immediately report to the Dispatcher that he had returned to the patrol car; that, at 6:43 p.m., Larson made a radio transmission to the patrol car assigned to Officer Roe, dispatching Officer Roe to check on the barricade on County Road "E"; that Larson regarded said transmission as routine and logged it as such; that Hillstead overheard said transmission while sitting in his patrol car at River Falls, Wisconsin; that, at 6:47 p.m., Hillstead reported himself back in the car and proceeded with other duties; that Roe reported himself as having left the accident scene near New Richmond at 7:05 p.m.; and that Roe did not proceed to the vicinity of Houlton, Wisconsin, but reported himself out of the patrol car at 7:11 p.m. at a restaurant in New Richmond, Wisconsin.

9. That, following his telephone call to Larson shortly after 6:30 p.m., Captain Burke attempted to monitor radio transmissions on the frequencies commonly used by the Respondent and related agencies, using receiver-only equipment in his home; that Burke did not overhear the transmission made by Larson to Roe concerning the barricade on County Road "E"; that Burke did overhear the transmission by Roe reporting himself out of the car at 7:11 p.m.; that, thereupon, Burke contacted another officer by telephone at the latter's home and instructed that officer to go on duty immediately and to check on the barricade on County Road "E"; that said officer went on duty at 7:16 p.m. and proceeded to the barricade on County Road "E", where everything was found to be in order; and that said officer then made a radio call to Burke, knowing that Burke would not be able to respond thereto, reporting that the barricade in question was in place.

10. That on February 26, 1974, Burke checked the logs maintained by Larson for radio calls made between 6:00 p.m. and 7:30 p.m. on February 25, 1974, and noted that Larson had recorded a call to Roe at 6:43 p.m. notifying Roe of the barricade situation on County Road "E"; that, on February 26, 1974, Burke confronted Roe concerning Roe's failure to respond to said dispatch; that Roe denied having received said dispatch; that Burke thereafter orally communicated to Grant a complaint to the effect that Larson had failed to transmit the message concerning the barricade on County Road "E"; that Grant requested that such complaint be reduced to written form; that, on February 27, 1974, Burke directed a letter to Grant wherein he stated his view of the facts concerning the transmission of the dispatch concerning the barricade on County Road "E" and complained of Larson's handling of the matter; that Grant then initiated an "investigation" of said complaint, wherein Grant contacted Roe and the District Attorney of the Respondent but did not contact Larson concerning the matter; and that, on March 2, 1974, Grant directed a letter to Larson notifying Larson of the termination of his employment and making reference to a complaint concerning Larson's handling of communications concerning a traffic matter in the Town of St. Joseph on February 25, 1974.

11. That, on March 6, 1974, Grant directed a letter to Larson, wherein he solicited from Larson a resignation and wherein he suggested that he would conceal from the inquiries of Larson's future employers that Larson had been discharged from employment by the Respondent.

12. That the reasons assigned by the Respondent for the discharge of William A. Larson were pretexts designed to conceal the true nature and motivation of the Respondent's actions in that regard; that Larson was discharged, at least in part, in reprisal for his activity in and on behalf of the Complainant; and that, by such discharge, the Respondent

intended to, and in fact did, interfere with, restrain and coerce municipal employes in the exercise of their right to engage in concerted activity under Section 111.70(2) of the Wisconsin Statutes.

13. That on October 7, 1974, the Wisconsin Employment Relations Commission issued its Order Determining Scope of Bargaining Unit and Granting Leave to Amend Petition for Election in St. Croix County, Case XVII, (Decision No. 13074), which proceeding was initiated upon the petition filed by the Complainant and referred to in paragraph five, hereof; that in said Order, the Commission determined that the unit there claimed appropriate by the Complainant herein was not a unit appropriate for the purposes of collective bargaining and determined that the appropriate unit is a larger collective bargaining unit consisting of all law enforcement personnel employed by the Respondent, excluding supervisors and all other employes of the Respondent; and that the Complainant has not claimed, nor has it ever held, status as the representative of the majority of the employes in said appropriate unit.

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

CONCLUSIONS OF LAW

1. That St. Croix County, Wisconsin is a municipal employer within the meaning of Section 111.70(1)(a) of the Municipal Employment Relations Act; and that, at all times pertinent hereto, Charles A. Grant and Richard B. Flynn were agents of said municipal employer, acting within the scope of their authority.
2. That the Respondent, by criticizing municipal employes for their failure to consult with Charles A. Grant, a member and agent of the Respondent's management, prior to engaging in protected concerted activity, and by notifying municipal employes that they were placed on probation for their participation in protected concerted activity, has interfered with, restrained and coerced such municipal employes 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 the Respondent, by discriminating against William A. Larson, by discharging him, to discourage and in reprisal for the exercise of the right of municipal employes to engage in protected concerted activity in and on behalf of Complainant General Drivers and Helpers Union Local No. 662, has engaged in and is engaging in prohibited practices within the meaning of Section 111.70(3)(a)3 and 1 of the Municipal Employment Relations Act.

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

ORDER

IT IS ORDERED that St. Croix County, its officers and agents, shall immediately:

1. Cease and desist from:
 - (a) Threatening law enforcement employes of St. Croix County with loss of employment or placement on probationary status, for the purpose of discouraging their activities in and on behalf of General Drivers and Helpers Union Local 662, or any other labor organization.

- (b) Discouraging membership and activity of employes in and on behalf of General Drivers and Helpers Union Local No. 662, or any other labor organization, by discharging or otherwise discriminating against any employe in regard to hiring, tenure or any term or condition of employment.


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

- (a) Offer to William A. Larson immediate and full reinstatement to his former position, or a substantially equivalent position, without prejudice to his seniority, benefits or other rights and privileges previously enjoyed by him, and make him whole for any loss of pay or benefits he may have suffered by payment to him of the sum of money equal to that which he would normally have earned or received as an employe, from the date of his termination to the date of the unconditional offer of reinstatement made pursuant to this Order, less any earnings he may have received during said period and less the amount of unemployment compensation, if any, received by him during said period, and, in the event that he 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 employes in the collective bargaining unit of law enforcement employes found by the Wisconsin Employment Relations Commission to be appropriate, by posting, in conspicuous places on its premises where notices to such employes are usually posted, copies of the notice attached hereto and marked "Appendix A". Such notice shall be signed on behalf of St. Croix County by Charles A. Grant, or his successor, if any, holding the office of Sheriff of St. Croix County, and by the Chairman of the Board of Supervisors of St. Croix County. "Appendix A" shall be posted immediately upon receipt of a copy of this Order and shall remain posted for sixty (60) days thereafter. The Respondent shall take reasonable steps to insure that said 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 6th day of December, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Marvin L. Schurke, 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 employes that:

1. WE WILL offer to William A. Larson immediate and full reinstatement to his former position, without prejudice to his seniority, benefits or other rights or privileges previously enjoyed by him, and will make William A. Larson whole for any loss of pay or benefits he may have suffered by reason of the discriminatory discharge of William A. Larson.
2. WE WILL NOT threaten employes with loss of employment or place employes on probationary status to discourage membership in or activity on behalf of General Drivers and Helpers Union Local No. 662, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or any other labor organization of our employes, by discharging, laying off, demoting, suspending or otherwise discriminating against any employe with regard to hiring, tenure of employment or any term or condition of employment.
3. WE WILL NOT in any other manner interfere with or coerce our employes in the exercise of their right of self-organization, to form labor organizations, to join or assist General Drivers and Helpers Union Local No. 662, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or any other labor organization, to bargain collectively through representatives of their own choosing and to engage, for the purposes of collective bargaining, in protected concerted activities on behalf of General Drivers and Helpers Union Local No. 662 or any other labor organization.

All our employes are free to become, remain, or refrain from becoming members of General Drivers and Helpers Union Local No. 662, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or any other labor organization.

ST. CROIX COUNTY

By _____

Sheriff, St. Croix County

Chairman, Board of Supervisors

Dated this _____ day of _____, 1974.

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 ORDER

Pleadings and Procedure:

In its complaint filed on May 20, 1974, the Teamsters alleged that they were the authorized collective bargaining representative of a majority of the County's Dispatchers and were entitled to recognition as such, that William A. Larson was discharged because of his activity and sympathetic views on behalf of the Teamsters; that the County had placed all of the Dispatchers in the claimed appropriate bargaining unit on probation; and that the County had taken action unilaterally without bargaining with the Teamsters. The course of conduct was alleged to violate Sections 111.70(3)(a)(1), (3) and (4) of MERA. The County filed an answer on June 17, 1974, wherein it denied the material allegations of the complaint and denied violation of MERA. Hearing was held on July 10, 1974 at Hudson, Wisconsin. The transcript of those proceedings was issued on July 30, 1974. Both parties filed briefs on August 19, 1974.

The Complainant herein filed a Petition with the Commission on February 26, 1974, requesting an election among the County's Dispatcher employes. After several postponements, that matter was heard on April 22, 1974. During the course of that hearing, the County took the position that the unit claimed appropriate in the petition was an inappropriate fragmentation of an appropriate County-wide unit of law enforcement employes, and the incumbent collective bargaining representative of certain criminal investigation employes of the County was permitted to intervene in that proceeding. Upon the filing of the complaint herein, the Commission regarded the representation matter as "blocked" and took no further action therein. However, during the course of the hearing held in the instant matter on July 10, 1974, the County and the Teamsters stipulated that, in view of the interest and participation of the Intervenor in the representation proceeding, the Commission should proceed with its determination on the question raised in the representation proceeding concerning the unit appropriate for collective bargaining, and that the parties to the instant proceeding would not relitigate the unit question in this case. Proceeding under that stipulation, the Commission issued its Order Determining Scope of Bargaining Unit and Granting Leave to Amend Petition For Election in the representation matter on October 7, 1974. The effect of that ruling is discussed, infra, under the heading "Refusal to Bargain".

Concerted Activity and Employer's Knowledge Thereof:

Although not charged with responsibility to do so, Dispatcher William A. Larson took it upon himself to inform Sheriff Grant that the Dispatchers had sought representation from the Teamsters. During the course of the hearing, the County appeared to make some distinction between an employe specifically authorized or charged with responsibility for notifying the Employer of the existence of concerted activity and one who did so gratuitously. The Examiner finds no persuasive value in such a distinction. The fact is that it was from the lips of Larson that Sheriff Grant first learned of the organizational activity among the Dispatchers. The fact that Larson was not under any express or implied authority to communicate such information does not negate the fact that the Employer was made aware of the concerted activity among its Dispatcher employes as of approximately 4:30 p.m. on February 25, 1974.

Employer's Response to News of Concerted Activity:

As set forth in the Findings of Fact, Sheriff Grant's immediate response to the news of concerted activity among the Dispatchers under

his supervision was to chastise Larson for the failure of the Dispatchers to consult with him (the Sheriff) before going to the Teamsters. This was not an isolated incident. After his conversation with Larson, Sheriff Grant apparently proceeded immediately to a meeting with his Administrative Assistant, Richard B. Flynn, wherein he repeated his displeasure with the Dispatchers for having failed to consult him, and ordered Flynn to place the Dispatchers "on probation" because of their approach to unionism. As noted by the County, Grant is a constitutional officer, the elected Sheriff of St. Croix County, and generally has the authority to discharge or continue employes in their employment at his pleasure. It is clear that Grant would be excluded from any bargaining unit as a supervisory and managerial agent of the County. It is equally clear that Sections 111.70(2) and 111.70(3)(a)(1) assure municipal employes, such as the Dispatchers, the right to engage in organizational activity free from any interference by agents of their employer. Sheriff Grant had no legal right to be "consulted" before the employes under his supervision embarked on a course of concerted activity and clearly had no right to be "miffed" about the procedure they followed. His responses during the conversation indicate both a lack of understanding of the legal rights of the employes and the seeds of the anti-union motivation noted in his subsequent conduct.

The County argues that the imposition of probation on the Dispatchers is a nullity, since all serve at the pleasure of the Sheriff. The County also inferred during the hearing that the imposition of probationary status had been "in the wind" because of other more sweeping revisions in the organizational structure of the Sheriff's Department. These arguments are also found to be without persuasive value. First, the timing of the probation, the testimony of Flynn and the reasons given by Flynn to the employes at the time probation was imposed, all point to the conclusion that the probationary status was directly and immediately in response to the news of unionization among these employes. Second, if it is meaningless to impose probation on employes who serve at the will of their supervisor, it is equally or more meaningless to impose "probation" on employes who, at the end of the probationary period, will acquire no status greater than they held prior to their having "served probation". The imposition of probation is found to have been intended to be, and interpreted by the employes as, a threat to their employment. The fact that the threat was effective, while not necessary to the conclusion that an interference has occurred, is demonstrated by the expressed concern of Dispatcher John Smith, one Union activist and host to the organization meeting, that the employment of Dispatcher Tom McLaughlin should not be put in jeopardy for activity in which McLaughlin had not been a part. The Examiner finds that the Employer, by imposing probation on the Dispatcher employes, has threatened those employes with loss of employment because of their participation in protected concerted activity and has, therefore, interfered with their rights under Section 111.70(2) of MERA, in violation of Section 111.70(3)(a)(1). Since the "probation" appears to have had no legal effect except as a threat to the employes, the Examiner has found no violation of Section 111.70(3)(a)(3) of MERA in this regard.

Discharge of Larson:

Of their nature, pretextual discharge cases tend to be difficult because the respondent-employer is generally able to produce some evidence showing cause for discharge and seldom admits to the full extent of its motivations. Typically, the complaining union or employe must, as they must in this case, establish part of their burden of proof through inferences drawn from circumstantial evidence. This is a difficult case, and the Examiner freely acknowledges that there is some evidence which points to a discharge for just cause. However, as noted by the Examiner on several occasions during the course of the hearing, the test to be

applied here is not whether the County had cause for the discharge of Larson, but whether any part of the County's motivation in discharging Larson was an anti-union animus. 1/ Absent the evidence of Sheriff Grant's expressed displeasure with the employes for their approach to unionism, and absent the imposition of the probationary status, this case could present a much closer question. With those items of evidence of record (most of them without contradiction) the drawing of inferences is considerably eased and the closeness of the question is removed. This is not to say that any discharge occurring during the union organizational campaign is necessarily discriminatory and illegal. Legal discharges have been sustained even in the same case where an illegal discharge has been overturned. 2/

The reasons stated for discharge in the March 2, 1974 note relate only to Larson's handling of a dispatch to a County Police Department car on February 25, 1974. The following is a chronology composed by the Examiner from the logs maintained by the Sheriff's Department and the testimony of the various witnesses for the period from 6:00 p.m. to 7:30 p.m. on February 25, 1974. It should be noted that this period commences approximately two hours after Sheriff Grant was first informed by Larson of the organization activity among the Dispatcher employes.

At 6:00 p.m.	Sheriff's Dept. car 405 (Hillstead) on duty and Traffic Police car 417 on duty.
Log Entry 6:00 p.m.	Car 411 came on duty.
Log Entry 6:08	Car 405 reported Officer out of car.
Log Entry 6:09	New Richmond Police Department car 436 returned to service.
Log Entry 6:13	Car 417 gave the Dispatcher certain information to be forwarded to car 414.
Log Entry 6:14	Car 411 reported Officer Roe out of car at Hopkins farm.
Log Entry 6:14	Dispatcher Larson overheard New Richmond Police Department car 436 advise car 411 of the accident at Hurtis Implement. Larson logged message as dispatch of car 411.
Log Entry 6:14	Car 417 went off duty.
Log Entry 6:15	Car 405 reported Officer back in car.
Log Entry 6:20	Car 405 requested a license check.
Log Entry 6:22	Car 405 reported Officer out of car.
Log Entry 6:22	Car 411 reported Officer Roe back in car.
Log Entry 6:28	Dispatcher handled communication for Hudson Police.
Log Entry 6:29	Car 405 reported Officer back in car.

1/ City of Wisconsin Dells, (11646) 3/73.

2/ Valley Sanitation, (9475-A) 1/71.

Log Entry 6:30 Car 411 reported arrived at accident at Hurtis Implement near New Richmond.

At About 6:30 Captain Burke received telephone call at his home concerning barricade on short hill at Houlton on County Road "E".

At About 6:31 Captain Burke contacted patrol superintendent regarding barricade.

Log Entry 6:32 Dispatcher handled communication for Hudson Police.

At About 6:33 Captain Burke telephoned dispatcher Larson, asked location of car 411, was told car 411 was covering accident at Hurtis Implement, and left word of the barricade on County Road "E" for transmittal to car 411.

Log Entry 6:39 Dispatcher handled communication with Hudson Police.

Log Entry 6:40 Car 411 requested and was given file number and time for accident at Hurtis Implement.

Log Entry 6:41 Car 405 reported Officer out of car at River Falls.

Log Entry 6:43 Dispatcher Larson called car 411 and reported barricade down on County Road "E". (This is the disputed call. The communication was overheard by Officer Hillstead in car 405 at River Falls).

Log Entry 6:47 Car 405 reported Officer back in car.

Log Entry 6:52 Dispatcher handled communication with Hudson Police.

Log Entry 7:01 Dispatcher handled communication with Hudson Police.

Log Entry 7:02 Dispatcher handled communication with Hudson Police.

Log Entry 7:05 Car 405 reported Officer out of car.

Log Entry 7:05 Car 411 reported leaving the scene of the accident at Hurtis Implement.

Log Entry 7:09 Car 405 reported Officer back in car.

Log Entry 7:11 Car 411 reported Officer out of car at a restaurant in New Richmond.

At About 7:12 Captain Burke, having overheard car 411 go out of service, called Officer Burch (car 414) at home, and told him to go on duty and check on the barricade on County Road "E".

Log Entry 7:13 Dispatcher handled communication with Hudson Police.

Log Entry 7:16 Car 414 reported on duty.

Log Entry 7:19 Car 405 reported Officer out of car.

Log Entry 7:21 Dispatcher handled communication with Hudson Police.

Log Entry 7:22 Dispatcher handled communication with Hudson Police.

Log Entry 7:26 Dispatcher handled communication with Hammond Police.

Log Entry 7:28 Car 405 obtained information from Dispatcher.
Log Entry 7:28 Car 405 reported Officer back in car.
At About 7:30 Car 414 called Captain Burke "in the blind" reporting that the barricade on County Road "E" was in place.

There are several items of evidence which support the County's claim that Larson was discharged for cause and without illegal motivation: Larson had a mixed employment record, including misconduct incidents of varying degrees of severity. It is curious that Larson passed up a clear opportunity to relate the message to Officer Roe in Car 411 at 6:40 p.m., when Roe asked for and was given the file number and time of the accident at Hurtis Implement. Larson cannot definitely recall receiving a response to a call concerning the barricade on County Highway "E". Deputy Sheriff Hillstead, in car 405, testified that he recalled hearing Larson's transmission to car 411 concerning the barricade, but he too could not definitely recall a response by Officer Roe. It is perhaps suspicious that the log was terminated on the middle of a page and that the call in question was the first call on a fresh sheet, but this situation was explained by Dispatcher Amundson and his testimony is uncontradicted. Officer Roe denies having heard or acknowledged the disputed call. Captain Burke, who was attempting to monitor the calls at his home on home equipment while eating dinner, does not recall hearing the disputed transmission.

On the other hand: Larson testified that he did make the call in question; Larson recalls the call as having been routine and logged the call in question before any complaint was made concerning his handling of the call. His conduct in this regard lends veracity to the log and to the conclusion that it is a coincidence that the disputed entry was the first entry on a fresh page. The log was examined by Burke on the morning of February 26, 1974, and Larson's entry for 6:43 p.m. was noted by Burke at that time, so that it is apparent that the log was not falsified some time after Burke's complaint to serve as evidence in this or some other proceeding. Also viewed as significant by the Examiner is the testimony of Hillstead to the effect that he heard the call in question and considered covering the situation himself. The County attempted to impeach Hillstead's testimony on the basis of log entries which show him as having been out of his car from 6:41 p.m. until 6:47 p.m. However, the evidence indicates that Hillstead was in the habit of returning to his patrol car to complete his paper work before reporting himself back in service. His habit in this regard is confirmed by the transmissions at 6:28 p.m. on the same date, when he received information over the radio before reporting his unit back in service. Additionally, if Hillstead had been aware of the 6:43 p.m. call to Roe going unanswered, he might have followed through on taking care of the barricade on County Road "E" himself, while a response to Larson's call from Roe would clearly have cut off his interest in this regard. Other evidence demonstrating that the procedures followed by officers have some flexibility is noted in the fact that Officer Roe received the call from the New Richmond Police Department reporting the accident at Hurtis Implement even though Officer Roe was already logged out of service at that time and did not come back into service until six minutes later. This would indicate that Roe was not really out of communication during all of the time that he reported his car out of service. Captain Burke was attempting to monitor the channels customarily used by St. Croix County on a scanning device at his home. However, the evidence would indicate that Burke did not necessarily hear all of what was going on over the County's radio bands. Although at least five radio calls involving Roe were logged by the Dispatcher during the preceding half hour (including the dispatch to the accident and Roe's report of arrival at the scene), Burke found it necessary to ask Larson

where Roe was when he telephoned the Dispatcher to forward the message concerning the barricade. Further, Roe testified that he and the New Richmond officer communicated at the scene of the accident using an auxiliary channel, and apparently none of that was overheard by Burke. Burke's attention during this period of time was subject to distraction, since he was off duty, at his home, during the dinner hour. He did hear Roe go out of service at a restaurant in New Richmond, indicating that Roe was within range, but not guaranteeing that all transmissions were picked up by Burke's scanning device.

Habitually informal Sheriff Grant indicated to Captain Burke that he would not act against Dispatcher Larson on the basis of Burke's informal oral complaint. Instead, Grant insisted on a more formal written complaint before taking action with respect to Dispatcher Larson. When he did take action, Grant interviewed Officer Roe and checked the log for the night in question, but never interviewed the alleged guilty party before acting on the termination of Dispatcher Larson. This manner of investigation tends to indicate a biased view of the facts or a leap by the investigator at an opportunity to act rather than to fully investigate. Grant's offer of a hearing was gratuitous, in the sense that no hearing was required by County resolutions, and is viewed by the Examiner as a fairly good bet on the Sheriff's part, since it is likely that the hearing tribunal would view the evidence on a "for cause" standard rather than under the tests applied by this agency.

In the context of an employment relationship, discharge has often been compared to capital punishment, in that it represents the final and irreversible termination of the relationship. However, in this case, the evidence indicates that the discharge penalty was readily imposed instead of some lesser penalty, and that it was imposed hurriedly, on a Saturday, without allowing the affected employe any opportunity to account for his actions or answer the charges against him. For an employer who was so positive in its actions on Saturday to come back during the following week with a solicitation for a resignation with a recommendation rings a false note. Examining all of the evidence, the Examiner is persuaded that the Complainant has carried its burden of proving that the discharge of William A. Larson was motivated at least in part by an anti-union animus and that such discharge therefore violated Sections 111.70(3)(a)(3) and (1) of the Municipal Employment Relations Act.

Refusal to Bargain:

During the original meeting held at the home of one of the Dispatchers, the Teamsters obtained authorization from four of the employes (representing a majority of that claimed unit) for the purposes of representing those employes in collective bargaining. It is clear that three of the employes signed applications for membership. Four of the employes paid initiation fees to the Union. While there may be some doubt as to the number of "members", there is no doubt that the Union represented a majority of the employes in the unit in which it sought an election. One of those employes was Larson, the dischargee whose discharge is found in this case to be in violation of the Act. Another of the employes who designated the Teamsters as his bargaining representative subsequently voluntarily left the employment of the County. Based on its assumption that the unit in which it claimed representation status was an appropriate unit, the Teamsters have asked the Examiner in this proceeding to issue a "bargaining order remedy", as was done in the City of Wisconsin Dells case, supra, and in other cases where the Commission has found that a union majority has been dissipated by illegal action on the part of the employer, making the conduct of a fair election impossible. In view of the conclusion reached by the Commission in St. Croix County, Case XVII,

(13074) 10/74, the Examiner need not proceed on this portion of the case. It is clear from the evidence that the Teamsters have never held a majority status among the employees in the County-wide unit of law enforcement employees, and is not entitled to a bargaining order remedy in this case.

Dated at Madison, Wisconsin this ^{6th} day of December, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Marvin L. Schurke

Marvin L. Schurke, Examiner