STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MILWAUKEE DISTRICT COUNCIL 48, AFSCME, AFL-CIO and GEORGIA JOHNSON, STAFF REPRESENTATIVE, Complainants, vs. GOODWILL INDUSTRIES - MILWAUKEE AREA, INC. Respondent	:	Case VI No. 18259 Ce-1561 Decision No. 12985-B

Appearances:
Goldberg, Previant & Uelmen, S.C., Attorneys at Law, by Mr. Thomas J. Kennedy, for the Complainants.
Foley & Lardner, Attorneys at Law, by Mr. George Cunningham, for the Respondent.

FINDING OF FACT, CONCLUSIONS OF LAW AND ORDER

Milwaukee District Council 48, AFSCME, AFL-CIO, herein referred to as Complainant, and Georgia Johnson, having filed a complaint on August 26, 1974 with the Wisconsin Employment Relations Commission wherein they alleged that Goodwill Industries - Milwaukee Area, Inc.,[1/] herein referred to as Respondent, has committed unfair labor practices within the meaning of the Wisconsin Employment Peace Act; and the Commission having by Order dated September 3, 1974 appointed Stanley H. Michelstetter II, a member of its staff, to act as Examiner to make and issue findings and orders as provided in Section 111.07(5) [2/] of the Wisconsin Statutes; and Respondent having on September 18, 1974 filed its Answer to said complaint and having at the same time filed a motion to dismiss on the basis that Complainant and Georgia Johnson were not parties in interest within the meaning of Section 111.07(2)(a); and the Examiner

---

1/ During the course of the hearing Complainant amended its complaint to reflect Respondent's correct name without objection of Respondent.

2/ All statutory citations are to Wis. Rev. Stat. (1973) unless otherwise noted.

having by Order dated September 20, 1974 provided for hearing on said motion; and Complainant and Georgia Johnson having filed an amended complaint on October 17, 1974; and Respondent having on November 5, 1974 filed its answer to said amended complaint and having renewed its motion to dismiss on the same basis; and Complainant having by letter dated November 11, 1974 waived the effect of the instant complaint on the then pending election cases [3/]; and the Examiner having reserved determination of Respondent's motion to dismiss; and hearing having been conducted on December 6, 1974, January 3 and 16, 1975 before the Examiner in Milwaukee, Wisconsin; and the Examiner having considered the evidence and arguments and being satisfied that Complainant is a party in interest and being fully advised in the premises makes and files the following Findings of Fact, Conclusions of Law and Order .

FINDING OF FACT

1. That Complainant Milwaukee District Council 48, AFSCME, AFL-CIO, is a labor organization with offices at 3427 West St. Paul Avenue, Milwaukee, Wisconsin; and that Complainant Georgia Johnson is an employe of Complainant.

2. That Respondent Goodwill Industries - Milwaukee Area, Inc. is an employer engaged in vocational rehabilitation with its principle place of business at 6055 North 91st Street, Milwaukee, Wisconsin.

3. That Complainant's agents met with three of Respondent's employes as late as December, 1973 during the course of which meeting the employes executed cards authorizing it to represent them for purposes of collective bargaining and during the course of which they received instructions as to the methods of organizing employes; that commencing in January, 1974 and continuing at all relevant times thereafter, Complainant's agents and certain of Respondent's employes both openly and covertly distributed leaflets on Respondent's premises to its employes advocating Complainant's representation of certain of Respondent's employes for the purposes of collective bargaining; and that at all relevant times since January, 1974 all relevant agents of Respondent were aware of Complainant's organizational efforts.

4. That in 1971 or 1972 Respondent adopted a plan of increasing certain positions' wage rates to those of similar positions of the Wisconsin Department of Health and Social Services, Division of Vocational Rehabilitation, herein referred to as DVR, and that on July 1, 1972 made limited adjustments pursuant to that plan, but lacked funds suf-

---

3/ Goodwill Industries - Milwaukee Area, Inc., (13424 and 13425) 3/75 (Direction) and 7/75 (Certification).

ficient to make the entire series of adjustments.

5. That on May 9, 1972 Respondent adopted and caused to be circulated among its employes a plan for improving fringe benefits which states in relevant part as follows:

"

. . .

Phase III, Effective July 1, 1974

Service Employees

Health Insurance - Agency pays 75% of cost of family plan Blue Cross - Blue Shield.

Staff Employees

Health Insurance - Same as for Service employees.

Life Insurance - Agency pays for a straight life policy of $5,000."

6. That prior to July 1, 1973 Respondent sought and obtained an exemption from federal wage and price controls on the basis that it had the aforementioned plans in existence prior thereto; that, because it had lost a federal training services grant and was uncertain as to the amount it would be granted by the DVR, Respondent implemented only a five and one-half percent wage increase on July 1, 1973.

7. That as a result of the aforementioned economic uncertainties Respondent reduced its staff during the period July 1-December 31, 1973 by the elimination of twenty positions primarily through attrition; that during that period similar agencies in the same employment market were also reducing total staff.

8. That after January 1, 1974 Respondent experienced increasing difficulty in attracting and retaining employes in certain positions and that its agents again considered implementing the plan described in Finding of Fact 4; that by early February Respondent submitted its proposed budget to DVR; that by the end of February Respondent realized that it had experienced increased revenues in the previous year as a result of the effects of inflation and staff reduction; that in March or April, 1974 Respondent realized that it could receive an increased budget from DVR; that thereafter Respondent's Personnel Director Reedich obtained the DVR's classification and compensation plan for the use of Respondent's then Associate Executive Director for Fiscal Management Postrana from which Postrana compared Respondent's existing positions with respect to training, previous experience requirements and other qualifications to those of similar positions of DVR; that by comparison of years of service for each such position Postrana determined the wage difference in such positions; that in May, 1974 Respondent submitted the

full amount necessary to equate the wage rates of said positions and included an amount necessary to provide employes a five percent minimum wage increase and submitted that total amount in its final budget to DVR.

9. That in May, 1974 Respondent's Associate Executive Directors for various departments met with supervisors under their individual direction to determine whether each employe under their individual direction who was allocated with the wage adjustments in accordance with the aforementioned plan merited any or all of said increase in wages; and that thereafter on July 1, 1974 Respondent instituted a five percent minimum wage increase with the wage level adjustment approved by the aforementioned Associate Executive Directors; that the average wage increase was eleven and one-half to twelve percent; that at the same time Respondent implemented the planned health insurance benefit as listed in Finding of Fact 5 above, but failed to implement the life insurance benefit listed therein for economic reasons.

10. That on June 20, 1974 Complainant's agent Nick Ballas met with Respondent's Director of Industrial Operations Frank Pappas with the knowledge of Pappas' superiors for a lunch during which the two discussed their previous employment and acquaintance together, the type of campaign tactics Complainant might use and the circumstances under which they would be used; that during the course thereof Pappas stated that he was there with Respondent's management's knowledge but not on their behalf, and he also said that Respondent's employes had a generally high level of wages and benefits and claimed that that fact would have a negative effect on the campaign; that Ballas testified that Pappas stated "we generally give out wage increases on July 1st, and you can bet your bottom dime we'll scrape up every red cent we can lay our hands on and put them in the form of wage increase and make some fringe benefit improvements, and that's going to buy off your majority." [4/] ; that Pappas testified that he told Ballas ". . . that with our limited funds that this year, like in any other year, we would take all the money that was available and distribute every dollar we had to the employes in general wage increases and fringe benefits." [5/] ; that

thereafter Ballas stated that there were a lot of wage inequities among Respondent's employes which would be a factor enabling Complainant to organize Respondent's employes; that Pappas stated he had always tried to correct inequities himself; that Ballas stated that he believed Pappas would do so but that he did not have the degree of control in Respondent's affairs to effectuate his viewpoint; and that Ballas stated that he didn't believe Respondent could gather the funds for a large enough wage increase to offset the cost of living or to adjust all the inequities.

11. That at all relevant times prior to May or June, 1974 Respondent employed Lloyd Robinson as a janitor at two dollars and sixty two and one-half cents per hour; and that Respondent employed Stephanie Palmer as Lead Janitor with leadperson authority over Robinson; that Robinson's name appeared on Complainant's literature dated April 29, 1974 openly distributed to Respondent's employes as a member of the Goodwill Workers Organizing Committee, Complainant's entity for Respondent's employes' assistance.

12. That during May or June, 1974 Palmer was promoted to a different position and Robinson and employe Richard Debny applied for the position thus vacated.

13. That thereafter Robinson's supervisor Mel Longrie told Robinson that he wanted Debny to have the position because Debny had experience in that position and that Robinson stated that it would be all right with him but that he wanted a wage increase anyway; that Longrie asked how much; that Robinson answered fifty cents; that Longrie stated that "if I can get you the fifty cents, would it be all right?" that thereafter Debny's supervisor refused to permit him to take the position; and that thereafter in May or June, 1974 Robinson was promoted to the position of Lead Janitor with a wage rate of four dollars per hour; and that in informing Robinson of his promotion to that position Longrie stated to Robinson "Now you won't need the ___. . . Now I'm not supposed to talk to you about that."; and that Robinson responded "No."

14. That at all relevant times Respondent employed James Williams as a Lead Pressman in its printshop; that Williams' name appeared on the literature mentioned in Finding of Fact 11 above; and that all relevant agents of Respondent were aware of Williams' activity on behalf of Complainant at all relevant times.

15. That Williams testified at the hearing herein that after his June, 1974 appointment to the Staff and Service Council, that Respondent's agents Correy and Reedich called him into Reedich's office and

congratulated him for accepting appointment to the Staff and Service Council, asked him whether he was participating in the union and told him they would give him one hundred percent support if he decided to forget the union; that Williams testified that if he were not appointed to the Staff and Service Council in June, 1974 that the aforementioned conversation never took place; that Williams was appointed to the Staff and Service Council in June, 1973.

16. That in May or June, 1974 Williams attended a meeting of employes also attended by Respondent's chief executive officer Priest whereat Williams addressed the meeting and stated that Complainant's representation of certain of Respondent's employes would also be beneficial to Respondent because in the past it had helped other agencies get out of financial difficulty by soliciting contributions.

17. That thereafter, but during June, 1974 that James Williams attended a Town Hall Meeting, a regularly scheduled meeting of substantially all the employes of the Respondent, chaired by Priest and that after the meeting and out of the presence of other employes Priest stopped Williams in the hallway and stated that if Williams brought the information back to him concerning any situation in which Complainant was able to help Goodwill out of financial difficulties that he would present that information himself to a meeting of either the Staff and Service Council or a Town Hall Meeting; and that at no other time has any of Respondent's agents discussed Williams' union activities with him.

18. That commencing April 1, 1974 Miss L_ R_, a then sixteen year old mentally retarded client of Respondent commenced an industrial training program in Respondent's printshop and came to know Williams and Miss C_ A_, another client.

19. That Miss L_ R_ testified on several occasions that James Williams took C_ A_ and her for several automobile rides during working hours and lunch hours and that on one of these occasions prior to July 12, 1974 he took the two of them to a tavern known as the Hi-Lite Club located at about Fond du Lac Avenue and North Avenue in Milwaukee, Wisconsin; and that at all relevant times Williams told Respondent's agents that he had only once driven L_ R_ and C_ A_ to a bank, at their request, and that he similarly testified herein.

20. That Williams testified that on July 12, 1974 he went to the Hi-Lite Club at around 11:00 a.m. and saw L_ R_ and C_ A_ there with two men, one of whom he knew, that he went to his sister's apartment and that the four came to that apartment, stayed forty-five minutes and left without any improprieties having occurred; and that L_ R_ testified

that on July 12, 1974 Williams telephoned C_ A_ and her at the printshop and arranged to meet them, that they met Williams and that he took them to the Hi-Lite Club where they met two of his friends; that she testified that he and one of the friends drove them to Williams' sister's apartment, that she denied that she and Williams went into the bedroom; that she testified that the friend left and Williams arranged with the other friend to pick them up which he did.

21. That on July 26, 1974 Respondent's Personnel Director John Reedich, Training Supervisor Ghocha, L_ R_'s Counselor Grant Wilson, Milwaukee Public School Representative Bierman, Director of Counseling and Social Services Lloyd Ball, Supervisor of Printshop Edward Mueckl, and Director of Industrial Operations Frank Pappas met to discuss allegations previously made by L_ R_'s mother to a Milwaukee Public School teacher and thereafter communicated to Respondent's agent that James Williams was having a "relationship" with L_ R_ by having taken her for rides and being with her in an apartment.

22. That immediately thereafter on July 26, 1974 Reedich and Mueckl called Williams into Reedich's office and stated that L_ R_ had accused him of having taken her for rides and being in an apartment with her and that Williams admitted having driven the girls on one occasion to a bank but denied having taken them to an apartment.

23. That on July 31, 1974 Reedich and Wilson met with L_ R_ and her mother at L_ R_'s home during which meeting L_ R_ stated that on July 12, Williams had picked C_ A_ and her up and had driven them to the Hi-Lite Club whereat Williams met two of his friends and that shortly thereafter Williams, L_ R_, C_ A_ and Williams' friend named Robert went to Williams' sister's apartment where they stayed for about one hour during which stay Williams invited her into the bedroom and that while the two were in the bedroom Williams "told her that he wanted to give her a good fuck" and that she asked to leave and Williams told her not to say anything about this because he would tell where she was and that he could probably get fired from his job if she did say anything to anybody.

24. That Reedich directed Wilson to talk to C_ A_ to determine if she confirmed those allegations and that Wilson talked to C_ A_ who told him that on three different occasions Williams had taken she and L_ R_ for rides and that they had been at Williams' sister's apartment and that Wilson informed Reedich of those statements; that on August 5, 1974 Reedich called Williams into his office in the presence of Frank Pappas and stated that L_ R_ and C_ A_ had verified the charges to Wilson and that the charges were serious and that Williams stated his

version as found in Finding of Fact 20 above; that thereafter during the course of the meeting Reedich asked Williams if he would submit to a polygraph test; that Williams agreed but requested the opportunity to confront his accusers.

26. That pursuant to the aforementioned request Respondent arranged a meeting for August 6, 1974 attended by L_ R_, her mother, Wilson, Pappas, Reedich and Williams and that during the course of the meeting L_ R_ reiterated substantially what had been told to Respondent's agents previously except that she asked to leave the room and was excused therefrom prior to any discussion of what took place in the apartment and when she returned to the room no inquiry was made into what had happened at the apartment; that Reedich testified that Williams stated at that meeting "Yes, it happened, but I didn't do anything wrong."; that Williams testified that he admitted only a ride to the bank and that they had been in the apartment.

27. That on Wednesday, August 7, 1974, Pappas and Reedich met, reviewed the situation and decided that the allegations against Williams were true and thereafter called Williams into the meeting; that they explained to Williams that they had reviewed the allegations and asked him if he would still agree to a polygraph test; that Williams agreed to take the polygraph test, but after that meeting Williams contacted Respondent's agents and stated that he would decline to take a polygraph test on the basis of advice of counsel.

28. That thereafter Respondent's agents Pappas and Reedich determined that the allegations were true and decided to terminate Williams for the violation of a policy against outside relationships with clients and that on August 8, 1974 Respondent by its agents Pappas and Reedich discharged Williams solely for violating its policy with respect to outside relationships with clients.

29. That at all relevant times Respondent employed Richard Best as a Work Evaluator I; and that Best was active on behalf of Complainant commencing approximately May 1.

30. That for at least the past five years and at all relevant times the Staff and Service Council herein referred to as SASC, has been an organization of Respondent's employes including supervisory

hours and working conditions; that at all relevant times Best has been president thereof and SASC has officially maintained a neutral policy as to the question of whether or not Complainant should represent certain of Respondent's employes for collective bargaining; and that SASC is a labor organization.

31. That on September 10, 1974 Complainant distributed leaflets to which Best's name was affixed, among others, and that on or before that date all relevant agents of Respondent became aware of Best's activity on behalf of Complainant.

32. That on the morning of September 11, 1974, Kenneth Lofgren engaged in their customary morning conversation with his secretary, Elizabeth Harder, who also was the secretary of the SASC, during which he stated that it was his personal opinion that Best should not be serving in two areas, that as head of SASC he was head of an organization which has as its purpose many of the same things that Complainant has.

33. That thereafter on September 11, 1974 Harder called the Director of Volunteer Services Dasgupta, an employe, who concurred in Harder's expressed view that the issue of conflict of interest warranted exploration and that the two decided to call an extraordinary meeting of the executive committee of the SASC; that thereafter on September 11, 1974, other members of the executive committee were notified of a meeting thereon and that in that regard Harder called Best and stated that she wished to have the meeting because Lofgren had raised the conflict issue to her; that that meeting was held during the course of which the issue of conflict was discussed; that although members thereof had expressed agreement with Best's position the executive committee refused to formalize that viewpoint in a resolution.

34. That Best subsequently caused the next regularly scheduled meeting of the SASC to be held for the express purpose of debate with respect to members of the SASC being part of Complainant's organizing committee and caused a notice to be circulated in Respondent's internal mail to that effect.

35. That on September 19, 1974 the SASC held the aforementioned meeting attended by forty five to fifty employes of whom twelve to eighteen were supervisors; that specifically the following were present:

Acting Associate Executive Director in Charge of Resource Development Kenneth Lofgren
Deputy Executive Director Daniel Paulsen (acting as management's liason with SASC)
Supervisor Rose Piatek
Supervisor Mel Longrie
Supervisor Malczewski
Richard Best
Elizabeth Harder;

that Best opened the meeting by reading a prepared statement to the effect that although the SASC had passed a resolution declaring its neutrality in the representational matter, that he had the right to personally participate in union activities without restriction; that Piatek read a statement that she could not be represented by the SASC if its Chairman was union and that one cannot serve two masters and serve them well; that Malczewski restated this latter theme and that the people present should be fair as guests of the SASC and let them iron this thing out by itself, but that if they didn't do anything, then the people represented by SASC should have a meeting; that Malczewski also stated that whenever the SASC had a meeting the union would invariably find out what was said and who said it; that Best restated his position; that Lofgren then asked Best if he thought it was a conflict of interest or could justify the opposite viewpoint; that Lofgren thereupon stated that no employe who signed a union card should be represented by the SASC and that the SASC should represent only those employes who were opposed to a union; that during the course of the foregoing someone suggested a plant-wide referendum on the issue.

36. That thereafter the SASC voted to have a referendum of all employes with respect to the conflict issue, but no specific plan therefore was ever drafted; and that thereupon Best tendered his resignation as president of the SASC; that he failed to function in that capacity for approximately one month and then resumed his function.

37. That Respondent employed Cleveland Braden, Gerald Wyss and John Reed as janitors on a 3:00 p.m. to 11:00 p.m. shift; that on April 25, 1974 Wyss and Braden were listed on literature openly distributed as members of Goodwill Workers Organizing Committee; that in July, 1974 supervisor Mel Longrie questioned Wyss and Braden as to why they were interested in the union; that supervisory employe Thomas Harris began employment as their supervisor on September 16, 1974; that on either that or the following two days his supervisor, Mel Longrie, told him there was an organizational campaign in existence; that thereafter on the evening of September 18, 1974, Harris asked employe Braden to stop his work and meet with him and that Harris also at least called employe Reed into the conversation; that during the course of the conversation Braden implied that the three night shift janitorial employes were more interested in economic improvement than in being represented by Complainant; that Harris in response thereto inquired whether a night shift premium theretofore desired by said employes would be acceptable implying that said night shift premium might be approved by Respondent if the employes abandoned union activity; that Harris then approached Wyss and made a similar inquiry.

38. That prior to November 1, 1974 Georgia Johnson distributed leaflets on Complainant's behalf on premises known by her to be owned by Respondent and which in part are used for parking lots for its management personnel, employes in all of its departments, clients and customers; that she placed leaflets under the windshield wipers of automobiles parked in the aforementioned parking lots.

39. That Respondent's agents received complaints about possible damage therefrom, other complaints from employes responsible for cleaning up the litter and statements that certain employes would not use the parking lots if their cars would be leafletted; that Respondent contacted its legal counsel and obtained advice as to the necessity of allowing that conduct; that Respondent determined to forbid that activity on its property; and that it adopted a rule to that effect, but did not communicate its existence to Complainant.

40. That on November 1, 1974 Johnson again appeared at the aforementioned parking lots and began placing literature under the windshield wiper blades of the automobiles parked there; that Respondent's security guards ordered her to stop but that she refused; that at about the time she had placed leaflets on seventy-five percent of the automobiles parked there Respondent's agents Longrie and Paulsen told her that she was littering and trespassing and that she should leave and never return; that Johnson refused; and that in response to her refusal, Paulsen effectively told Longrie to call the police in Johnson's presence; that Johnson continued to distribute literature; and that Paulsen then directed the security guards to remove the literature from the automobiles and that posted at the employe entrance; that the security guards and Paulsen then began to remove the literature in Johnson's presence; and that, at Respondent's request, police came and persuaded Johnson to leave; that Johnson left and distributed the copies of the same literature to employes from the public sidewalk; that Paulsen ordered the removal of the literature to effect enforcement of Respondent's rule against non-employe distribution of literature on its premises.

Based on the above and foregoing Findings of Fact, the Examiner makes and files the following

CONCLUSIONS OF LAW

1. That Complainant Milwaukee District Council 48, AFSCME, AFL-CIO and the Staff and Service Council are labor organizations within the meaning of the Wisconsin Employment Peace Act.

2. That Complainant Milwaukee District Council 48, AFSCME, AFL-CIO is a "party in interest" within the meaning of Section 111.07(2)(a)

of the Wisconsin Employment Peace Act and therefore a proper party to this proceeding.

3. That since no reason has been advanced as to why Complainant Georgia Johnson should be retained as a party to this proceeding and no remedy has been requested on her behalf, that Complainant Johnson is not a "party in interest" within the meaning of Section 111.07(2)(a) of the Wisconsin Employment Peace Act.

4. That Respondent Goodwill Industries - Milwaukee Area, Inc. by having on July 1, 1974 increased wages and benefits and by making adjustments in wage rates on its customary date for making similar adjustments solely for economic purposes in an amount commensurate with that purpose did not and is not violating the Wisconsin Employment Peace Act.

5. That Respondent by having promoted employe Lloyd Robinson to the position of Lead Janitor in May or June, 1974 solely for legitimate economic purposes did not violate the Wisconsin Employment Peace Act.

6. That Respondent by its authorized agent Longrie having in May or June, 1974 implied that future benefits could, and would, be obtained by its employe Robinson if and only if he abandoned his union activity violated and is violating Section 111.06(1)(a) of the Wisconsin Employment Peace Act.

7. That Respondent by its authorized agents Pappas and Reedich having discharged its employe James Williams on August 8, 1974 solely for cause did not, and is not, violating the Wisconsin Employment Peace Act.

8. That Respondent by its authorized agents having appeared and participated in a meeting called by the Staff and Service Council on September 19, 1974 with the intent to interfere with its employe Best's rights under Section 111.04 of the Wisconsin Employment Peace Act and having interfered with his rights and those of the employes present thereat for no legitimate reason violated and is violating Section 111.06(1)(a) of the Wisconsin Employment Peace Act.

9. That Respondent by its authorized agent Harris having on September 18, 1974 implied to its employes Wyss, Braden and Reed that it would pay them a night shift premium if they abandoned union activity, interfered with their Section 111.04 rights and thereby has violated and is violating Section 111.06(1)(a) of the Wisconsin Employment Peace Act.

10. That Respondent by its authorized agents having on November 1, 1974 removed literature distributed by Complainant Johnson on behalf of Complainant Milwaukee District Council 48, AFSCME, AFL-CIO to enforce

its rule against non-employe distribution of literature on its premises did not violate the Wisconsin Employment Peact Act.

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

ORDER

IT IS ORDERED that Respondent Goodwill Industries - Milwaukee Area, Inc., by its officers and agents, shall immediately:

1. Cease and desist from:
   (a) Implying that it will grant, or granting employes improvements in their wages, hours and working conditions to discourage their activity on behalf of Milwaukee District Council 48, AFSCME, AFL-CIO, or any other labor organization.
   (b) Interfering in the affairs of the Staff and Service Council for the purpose of interfering in the rights of employes to form, join or assist Milwaukee District Council 48, AFSCME, AFL-CIO, or any other labor organization, or to refrain therefrom.
2. Take the following affirmative action which the Examiner finds will effectuate the policies of the Wisconsin Employment Peace Act:
   (a) Notify all of its employes by posting in conspicuous places on its premises, where notices to all its employes are usually posted, a copy of the Notice attached hereto and marked "Appendix A." Such copies shall be signed by Roger Matthews and shall be posted immediately upon receipt of a copy of this Order, and shall remain posted for thirty (30) days thereafter. Reasonable steps shall be taken by Goodwill Indistries - Milwaukee Area, Inc. to insure that said Notice is not altered, defaced, or covered by other material.
   (b) Notify the Wisconsin Employment Relations Commission, in writing, within twenty (20) days of the receipt of a copy of this Order what steps it has taken to comply herewith.

Dated at Milwaukee, Wisconsin this 18th day of November, 1975.

By Stanley H. Michelstetter II
Stanley H. Michelstetter II
Examiner

APPENDIX "A"

NOTICE TO ALL EMPLOYES

Pursuant to an Order of an Examiner appointed by the Wisconsin Employment Relations Commission and in order to effectuate the policies of the Wisconsin Employment Peace Act, we hereby notify our employes that:

1. WE WILL NOT promise or grant improvements in wages, hours or working conditions to discourage membership in or activity on behalf of Milwaukee District Council 48, AFSCME, AFL-CIO, or any other labor organization.

2. WE WILL NOT interfere in the affairs of the Staff and Service Council to interfere in any employe's right to form, join or assist Milwaukee District Council 48, AFSCME, AFL-CIO, or any other labor organization.

3. WE WILL NOT interfere with our employes' exercise of their rights guaranteed under Section 111.04 of the Wisconsin Statutes which consist of the right of self-organization and the right to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection; and the right to refrain from any or all such activities.

Goodwill Industries - Milwaukee Area, Inc.

By_____
Roger Matthews, Executive Director

Dated this _____ of _____, 1975.

THIS NOTICE MUST REMAIN POSTED FOR THIRTY (30) DAYS FROM THE DATE HEREOF AND MUST NOT BE ALTERED, DEFACED OR COVERED BY ANY OTHER MATERIAL.

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The Complainant commenced a campaign to become the collective bargaining representative of Respondent's employes in November or December, 1973. On August 26, 1974 and by amendment October 17, 1974 and again at a hearing herein, Complainant alleged that Respondent committed certain unfair labor practices during that campaign. The Examiner will discuss Respondent's motion to dismiss and the various allegations in their approximate order of occurence.

Party in Interest

Based on its reading of Chauffers, Teamsters and Helpers "General" Union Local No. 900 vs. Wisconsin Employment Relations Commission (Gerovac Wrecking Company), 51W. 2d 391, 187 N.W. 2d 369 (1971), Respondent contends that Complainant is not a "party in interest" within the meaning of Section 111.07(2)(a) because Complainant did not represent or claim to represent a majority of Respondent's employes in an appropriate unit until after the filing of the instant complaint. Thus, it effectively seeks a requirement that individual employes verify a labor organization's complaint in representational matters where no election petition has been filed.

In Teamsters the Wisconsin Supreme Court held that it was for the Commission to reasonably construe Section 111.07(2)(a) in the light of the policies of the Wisconsin Employment Peace Act to determine whether the particular relationship of the parties in a complaint proceeding and the violations alleged warrants Commission assertion of jurisdiction, provided the Commission's interpretation does not frustrate the purposes of the WEPA.

In the underlying decision, Gerovac Wrecking Company, Inc. [8334] 12/67, the Commission held that a union which never engaged in any organizational activity among that employer's employes, was not involved in a "controversy as to employment relations" within the meaning of Section 111.06(1)(l) and, thus not a "party in interest" within the meaning of Section 111.07(2)(a). In making its decision the Commission noted at p. 8: "It is not necessary that a labor organization be a majority representative for it to be a proper party in a case such as the present one." In affirming the Commission's decision the Wisconsin Supreme Court at p. 403 noted approvingly: "Further, the WERC, under some circumstances, extends 'party in interest' status to a labor union

that is seeking representation."

Unlike the aforementioned matter the evidence herein reveals that Complainant commenced a campaign to organize Respondent's employes as late as December 1973 which ended after the filing of the complaint. 6/ It is the authorized representative of many of Respondent's employes including Williams, Best, Braden and Wyss and employs Complainant Johnson. It appears that employe Williams has specifically authorized the prosecution of this matter on his behalf. 7/

Also, unlike the aforementioned matter, the instant complaint alleges Section 111.06(1)(a) and (c)(1), so-called "traditional unfair labor practices", against Johnson and the employes named above. The alleged violations include the offer and/or granting of wage increases, night shift premiums and promotion to discourage union activity, removal of its leaflets from employe possession, discriminatory discharge, alleged surveillance of an employe meeting and interference in the enjoyment of Section 111.04 rights of an employe active on Complainant's behalf. These allegations all relate to conduct affecting its organizational campaign and the above-named employes rights therein.

If the Examiner were to adopt Respondent's proposed requirement that a labor organization file an election petition in order to have standing to litigate the instant allegations the Examiner would undermine the policies of the Wisconsin Employment Peace Act. Whatever may be the merits of Respondent's assumption that employes are less likely to file frivolous complaints, it is clear that an employer may convince its employes by an aggressive campaign of unfair labor practices that it would not be in their best interests to file or sign unfair labor practice complaints. Therefore, if a union becomes involved in a serious effort to organize an employer's employes but does

---

6/ The Examiner takes into account all factors properly before him; Milwaukee Cheese Company, at pp. 5-6 (5792) 8/61; Snap-On Tools, Corp., at p. 5 (5762) 6/61; and therefore takes administrative notice of the Commission's records in Goodwill Industries - Milwaukee Area, Inc., (13424 and 13425) 3/75 (Direction) and 7/75 (Certification). Note that the filing of an election petition does not require any showing of interest; see cases cited at note 321 of the Commission's Wisconsin Employment Peace Act digests. Thus, the existence of an election petition does not necessarily establish the existence of a bona-fide organizational campaign, though it may itself create a representational dispute.

7/ Reed's testimony established that he was a union adherent at the relevant times.

not immediately attain majority status, an employer may engage in an aggressive campaign to dissuade its employes from joining or assisting the union (and thereby prevent them from filing their own complaints or associating themselves with the union's complaints). Thus, if an employer can successfully do so, it may do so with impunity. The Examiner rejects Respondent's proposal and concludes from the facts and circumstances of this case that Complainant is engaged in a campaign to organize Respondent's employes, is the representative of certain of those employes including those directly involved herein and that the conduct alleged herein arguably affects the rights of all of the represented employes and the success of that campaign. Therefore, Complainant is a "party in interest" within the meaning of Section 111.07 (2)(a).

Complainant Johnson was not directly involved in any of the incidents alleged except an allegation that Respondent violated Section 111.06(1)(a) by removing leaflets Johnson had placed on automobiles in its parking lot. No remedy has been requested on Johnson's behalf and no reason has been advanced as to why she should be retained as a separate Complainant. Therefore, her complaint is dismissed. 8/

Wage Increase

On July 1, 1974 Respondent raised its employes' wages by five percent while implementing a plan of increasing certain employes' wages to the wage rates of similar positions in the Wisconsin Department of Health and Social Services, Division of Vocational Rehabilitation (DVR). The latter action had an additional average impact of six and one-half to seven percent over the general wage increase. Respondent also implemented one of two planned benefit improvements, an increase in the proportion of health insurance premium payment it paid, while it failed to implement the planned life insurance benefit for staff employes.

Complainant contended that Respondent's agent Pappas told its agent Ballas that Respondent would implement the largest wage increase it could to affect the organizing campaign. It argues that the failure to implement the planned life insurance benefit, the context of other alleged unfair labor practices and the large size of the increase establishes that Respondent did just that. It must be noted that it did not argue that the timing, allocation plan or implementation thereof were evidence of, or violative of the Act in themselves.

However, an analysis of the June 20, 1974 Ballas-Pappas conversation indicates that Ballas told Pappas of the existence of certain wage in-

---

8/ City of Milwaukee, at p. 5 (13093) 10/74.

equities and that Pappas denied knowledge thereof. If, as Ballas testified, Pappas bluntly stated that he believed Respondent would scrape together every red cent it could find to make a wage increase that would buy off Complainant's majority, it appears unlikely that he would conceal his knowledge, if any, of the inequities or Respondent's plan to deal therewith. Ballas also told Pappas that he believed that Pappas did not have enough input or authority to do so and the record as a whole establishes that Pappas was not privy to any of Respondent's wage planning. Thus, Pappas merely was giving his view of what Respondent would do and not expressing what he had been told was Respondent's policy.

Respondent followed its past practice for implementing wage increases and its selected date did not have an unusual impact on Complainant's year and one-half campaign. The general increase was equal to or less than the previous year's. Complainant submitted no evidence that would indicate that the overall wage increase impact was inconsistent with that given by other similar employers. [9/] The method of distribution selected and the implementation of one of the two planned benefits tended to establish that Respondent had economic rather than unlawful intent. The Examiner concludes that Respondent did not violate Section 111.06(1)(a) by its July 1, 1974 increases.

Lloyd Robinson

Complainant contends that employe Lloyd Robinson was promoted to the position of Lead Janitor in June or July, 1974 to discourage his union activities. It also contends that a statement made in conjunction with the announcement of his promotion was a subtle, sophisticated promise of benefit if Robinson abandoned union activity and threat of reprisal if he persisted.

Respondent contends that the promotion was granted because Robinson was the only available person. It asserts that Longrie did not speak the word "union" and was expressing mere opinion without threatened reprisal or implication of benefits.

In May or June, 1974 employe Robinson requested that he be assigned to the recently vacated Lead Janitor position. For some reason his supervisor, Longrie, cleared his decision to prefer employe Debny for the position with Robinson. Robinson predictably stated that it would

---

[9/] Complainant's propaganda indicates a "cost of living" increase of 9.4% for that period and a comparable employer settlement of 10.5% (wage level), Respondent's exhibit 1.

be acceptable to him, but that he wanted a wage increase anyway. Despite Respondent's coordinated wage policy, Longrie asked Robinson how much he wanted. When Robinson replied fifty cents, Longrie said if I get you the wage increase "would it be all right". [10/] (emphasis supplied) In later informing Robinson of his promotion, Longrie effectively communicated the thought that now you don't need the union.[11/] Thus, in the context of the foregoing discussion Longrie could foresee that he was implying to Robinson that future advancement would be related to his abandoning union activity and that future requests for advancement would be honored without intervention of a union. [12/] The foregoing violates Section 111.06(1)(a).

James Williams' Discriminatory Discharge

On December 18, 1973 Respondent adopted a written policy as follows:

> "Staff and service employees may have to interact with clients in the course of performing their assigned duties. Such relationships shall be professional in nature and employee's interaction with clients shall be viewed as a means to help them in achieving their rehabilitative goal.
>
> Any relationship that may adversely affect the client's welfare can be cause for disciplinary action or termination of the employee."

Prior thereto Respondent had discharged an employe for having sexual relations with a client and had once dismissed another employe for having given a ride to a client to and from a tavern during the lunch hour. Thus, it has recognized its undeniable economic interest in preserving its reputation for protecting young, vulnerable clients entrusted to its care from influences arguably unacceptable.

A substantial and undisputed portion of the testimony herein indicates that after L_ R_'s mother complained about Williams' conduct, Respondent launched an extensive investigation into the merits of that

---

10/ Transcript at p. 24.

11 The statement that he wasn't supposed to talk to Robinson about the subject left the implication that nonetheless Longrie was motivated in past decisions by his union activity and would be motivated in future decisions affecting Robinson's wages, hours and working conditions. Thus, the effect of the foregoing statement enhanced rather than eliminated the effect of the unlawful statement.

12/ See Dane County (11622-A) 10/73; Merrill Motor Service (10844-A,B) 12/72.

complaint, during which L_ R_ and Williams presented conflicting stories about the underlying circumstances. 13/ If it believed Williams, the circumstances would have been mere coincidence. If on the other hand, it believed L_ R_, it could well conclude that Williams acted intentionally, out of sexual motivation and was fully aware at that time that his actions constituted grounds for discharge. Respondent contends that on the bases thereof it discredited Williams.

Complainant asks that the Examiner attribute anti-union animus to the discharge on the basis of Williams' testimony with respect to the alleged incident, Respondent's undisputed knowledge of Williams' union activity and his testimony concerning two alleged conversations. The first conversation allegedly occurred immediately after his appointment to Staff and Service Council: Respondent's agents Correy and Reedich allegedly called him into Reedich's office, congratulated him on his acceptance of the appointment, asked him whether he was participating in the union and told him that if he accepted the appointment and ran for another term that they would give him one hundred percent support if he decided to forget the union. Williams was uncertain as to whether he was appointed to the Staff and Service Council in June, 1973 or June, 1974. He admitted that the above incident could not have taken place if he had been appointed in June, 1973 because Complainant began its campaign in November or December, 1973. Further evidence revealed that he was appointed in June, 1973 not June, 1974. On the basis of the above, and Williams' testimony as a whole, The Examiner concludes that the aforementioned conversation never took place.

The second occurred after meeting of substantially all the employes of Respondent. Respondent's then Executive Director Priest, met Williams in a hallway after that meeting (apparently out of the presence of any other person) and told Williams that if he could provide information as to any situation in which Complainant was able to help Respondent raise money he would present the information to a meeting of substantially all the employes. 14/ Priest was merely responding to a statement Williams made to assembled employes in his presence that Complainant could help Respondent in financial crises by raising money. The Examiner is satisfied that his statement carried with it no implied threat or promise of benefit, but was merely an effort to cause him to

---

13/ See Findings of Fact Nos. 21 - 27 inclusive.

14/ Complainant has not asserted that that this statement itself interfered with protected rights or otherwise violated the WEPA.

rethink his position. Priest was not directly involved in the decision to discharge Williams. The Examiner concludes that in this context, the foregoing statement is insufficient to establish any anti-union motivation with respect to the Williams discharge. The Examiner is satisfied from the record herein that Respondent discredited Williams' version, but that had Respondent concluded that Williams' version was credible it would not have disciplined him. Thus, it is clear that Respondent's motivation for the discharge was its belief that Williams damaged its image of trustworthiness by violating its policy against outside relationships. 15/

Richard Best

Complainant contended that Respondent's supervisors' attendance at the September 19, 1974 meeting of the SASC and participation therein interfered with Best's rights and the rights of the employes thereat in violation of Section 111.06(1)(a). 16/ Respondent contends that it has no responsibility for the supervisors' participation in their own economic interest in an organization which is not a labor organization.

Twelve to eighteen supervisors, constituting twenty four to forty percent of the total attendance, attended the September 19, 1974 meeting called for the following purpose:

> "We are extending this invitation to those who would like to express their views on members of the Staff and Service Council being part of the organizing committee for the Union."

At p. 269 Lofgren testified as to his purpose in attending the meeting and his expression thereof thereat:

> "Q. And was that the extent of the conversation?
>
> A. No. I said that it was my personal opinion that Mr. Best should not be serving in two areas, that as the head of the staff and service council he was head of an organization within Goodwill whose purpose I thought was much the same as the union's would be; and I went on to say that I felt it was anybody's perogative in Goodwill to choose any side they would like to but in this particular case I thought it was a conflict of interest to be on both sides.
>
> Q. Did you express that same opinion at the September 19 meeting?
>
> A. Yes I did."

Thus, Lofgren intended to interfere with Best's Section 111.04 rights

---

15/ Ernie Hutchinson, d/b/a/ Larsen Bakery (10872-A), 9;72, p.7.

16/ Complainant made no mention of its surveillance claim in its brief and the Examiner concludes that the aforementioned allegation is abandoned.

to form or assist a labor organization by intending that Best be forced to abandon his union activity or lose his prestigious position as chairman of the SASC and intending that the SASC change its announced policy of neutrality with respect to the representational campaign. The discussion of other supervisors indicates that they shared the same intent.

Supervisor Malczewski testified at p. 199-200 of the transcript that he addressed the meeting and stated that Best could not serve two masters and that:

> "I made a statement at that meeting that in order to be fair to the Staff and Service Council that we should be fair as guests of the Staff and Service Council at this meeting to let the Staff and Service Council iron this out by themselves; and if they couldn't do anything, then we should have a meeting." (emphasis supplied)

Since the SASC exercised the authority to call a meeting, employes present could view this statement as Malczewski's threat to act in concert with the supervisors and employes who shared his viewpoint to call a separate similar meeting if the SASC did not adopt his viewpoint. The timing of this statement and its tenor indicate that Malczewski was certain that all the supervisors shared his viewpoint. No other superviosr disclaimed this reliance or spoke in support of Best. Best described the tenor of the meeting at p. 110 of the transcript as follows: "Well, the meeting got pretty much out of control, became more or less of a shouting match . . ." Employe Harder stated at p. 121: "I could see where there might be a conflict of interest; but I also felt that I, at that meeting, hearing all of the rebuttal of all the participants in the meeting, that it was no longer the issue involved, but it was to get Dick Best." The Examiner is satisfied that the actions of the supervisors in concert was foreseeably likely to deter the employes in their exercise of their rights to determine what course of action the SASC should take on Best and the representational question.

Nor can Respondent deny its responsibility for the actions of supervisory personnel. Lofgren was not then represented by the SASC, yet he participated in this action. Thus, it appeared that he was acting in management's interest and behalf to urge employes to adopt this position. Despite Lofgren's participation and supervisory vehemence, Deputy Executive Director Daniel Paulsen, acting as management's official liason sat by silently, doing nothing to dispel that viewpoint. The circumstances of the meeting; work time, employer property, employer distribution of notices and the requirements for employes to seek routinely granted permission to leave their work station tended to in-

crease the likelihood that this would appear to be a management action.

Piatek expressed a position that she was interested in her representation by the SASC, and this is the only expression of any arguably legitimate interest for the aforementioned actions. However, protection of this interest would violate the policy of the Act. Respondent has recognized SASC as a non-exclusive representative of both employe and supervisory personnel with respect to their grievances and suggesting improvements in wages, hours and working conditions. It has established a grievance procedure without final and binding resolution of those grievances. Thus, SASC is a labor organization. 17/

Under the policy of Section 111.06(1)(a) and 111.06(1)(b) (not specifically alleged), the following factors establish that supervisors interests in the selection of the officers of the SASC not be given any weight:

1. The supervisors present had a high level of authority.
2. There is no evidence of interchange from supervisory back to non-supervisory status.
3. The interest sought to be protected involved the choice of agents of a representative of both supervisory and non-supervisory personnel as opposed to an interest which supervisors could maintain in a certified employe representative. 18/

By the attendance and conduct of its supervisory employes at the September 19, 1974 meeting of the SASC, Respondent violated, and is violating Section 111.06(1)(a).

Thomas Harris Offer of Benefit

Determination of the allegation that Harris overtly or impliedly offered employe Wyss, Braden and Reed a night shift premium rests solely on the credibility of the witnesses. Crediting arguendo Harris' testimony, he testified that when he first started his employment with Respondent on September 16, 1974 his supervisor Mel Longrie told him that there was a union organizational drive in progress and that he should stay out of it. Harris denied that Longrie had told him then, or that on September 18, 1974 he knew, that Wyss, Braden and Reed were union adherents. Longrie knew that two of the three were union adherents and

---

17/ Cf. Thompson Radio Woolridge, Inc., 132 NLRB No. 80, 48 LRRM 1470 (1961); NLRB v. Cabot Carbon Co., 360 U.S. 203, 44 LRRM 2204 (1959).

18/ Cf. See Nassau & Suffolk Contractor's Association, 118 NLRB 174, 40 LRRM 1146 (1957), Local 636, Plumbers v. NLRB, 287 F. 2d 354, 47 LRRM 2457 (C.A.D.C., 1961) under the pertinent provisions of the Federal Labor Management Relations Act.

had previously questioned them with respect to their union adherence. It is improbable that Longrie did not tell Harris that he knew two of the three employes Harris was supervising were union adherents.

Harris then testified that on September 18, 1974 he met with the three concerning an idea to have night shift janitors wear uniforms. During that conversation he alleges that Braden suggested that the night shift janitors should receive more than day shift janitors and that the conversation ended after he characterized the suggestion as a night shift premium. He testified that he left saying "I'll get back to Mel" and that when he did so he meant with respect to the uniform idea. He testified that he took the night shift premium idea back to Longrie anyway who didn't say anything other than stay "out of it." Even under this version, it appears that Longrie understood Harris to have become involved in the employe's union views.

At p. 266 on further direct examination the following exchange took place:

> "Q. Was the --- when Cleveland Braden started talking about the union, was that the first time that you had talked to these three?
>
> A. The first time they ever said anything to me was during this week."

However, Harris' immediately preceeding testimony indicates that he never discussed the union with the three. On the basis of his acceptance of his counsel's suggestive question, his testimony as a whole, his interest in the outcome and demeanor as a witness, the Examiner discredits Harris' testimony insofar as it contradicts relevant portions of Reed, Braden and Wyss' testimony.

On the other hand, and despite minor inconsistencies as to who was present, the timing of the relevant and the timing and number of subsequent conversations, the demeanor, overall consistency and lack of interest establishes that Wyss', Reed's and Braden's testimony is a product of their intent to tell the truth to the extent of their capability to remember and to understand the questions of counsel. On that basis the Examiner concluded that Harris approached Braden on the evening of September 18, 1974, asked if he could speak to him and called Reed into that conversation. Reed and Braden testified during that conversation Harris asked them whether they were talking about a union and when Braden said "no", Harris asked them what they were talking about. Both testified that Braden responded "money". Because neither was engaged in any conversation when Harris first approached them, the Examiner concludes that whether he intended to or not, Braden implied that economic benefits might dissuade them from engaging in union

activity. Harris asked whether or not they would accept a ten cent or fifteen cent night shift premium. This context makes it immaterial as to whether this "offer" was expressly conditioned on abandonment of union activities: Harris knew Braden and Reed could understand it that way.

Harris then separately asked Wyss if he would accept a ten or fifteen cent night shift premium. This carried a similar implication. By offering to obtain for employes a benefit impliedly conditioned on abandonment of union activities Harris violated, and is violating the Section 111.04 rights of Wyss, Braden and Reed in violation of Section 111.06(1)(a).

Georgia Johnson

Complainant has not contended that the promulgation or enforcement in this matter of Resopndent's policy against the non-employe distribution of literature on its premises is unlawful. [19/] It does contend that the removal of literature placed before Johnson knew that the rule was adopted and that placed after she was asked to leave is violative of Section 111.06(1)(a).

Respondent contends that to accept Complainant's theory would encourage its violation of law. [20/] In the alternative it contends that the action taken is reasonable and necessary to achieve the purposes of the policy and/or its enforcement.

Prior to November 1, 1974 Respondent adopted its rule forbidding non-employe distribution which it did not communicate to Complainant in any way. On November 1, 1974 Johnson appeared and began to leaflet parked cars on the lots she knew to be Respondent's. Apparently immediately Respondent's guards approached her and, in Johnson's words, the following took place: [21/]

"A. I asked them, you know, on what authority they were telling me that, you know, I had to stop doing it, and completely refused not, you know, to stop, because I didn't think they had any right to tell me I couldn't.

Q. What did the security guards do?

A. They said they were going to go in and check with the director of security or whatever it was, verify their instructions."

19/ NLRB v. Babcock & Wilcox, 351 U.S. 105, 76 S. Ct. 679, 38 LRRM 2001 (1956).

20/ See Section 111.06(2)(j) and Wis. Rev. Stat. (1973) Section 943.13 (1)(b), (2) and (4).

21/ Transcript at p. 131.

The Examiner is satisfied from the foregoing testimony and Johnson's later conduct that she evinced an intent to defy the guards' direction, presenting them with a fait accompli to her continued distribution. When Longrie and Paulsen approached Johnson (she had then leafletted about three-fourths of the cars), Johnson steadfastly refused to leave. At this point, Paulsen effectively told Longrie to call the police. Johnson still refused to leave and, then, continued her distribution. Only then did Paulsen direct the guards to remove the literature.

Paulsen testified at p. 277 of the transcript as to his reasons for directing the removal:

> "Q. Why did you direct the security guard and why did you participate in removing the leaflets?
>
> A. Well, I had received a number of calls and, complaints, if you call it that, from people who indicated that, No. 1, they were concerned with the possible damage that might occur to their windshield wipers; and some people just flatly said: I don't want any of that stuff on my ear; why don't you do something about it. And others both in the employes' and in our store lot would just discard the flyer on the ground, and the grounds keepers were complaining about the litter.

These expressed reasons were merely Respondent's rationale for adopting the no distribution rule, not the reason for the removal. [22/] Paulsen's demeanor and testimony as a whole do not indicate that he concealed another set of conceptualized motives. Instead, it appears that he reacted under the stress of the situation created by Johnson's refusal and continued distribution without expressly considering his reasons. Johnson's and his testimony do indicate three possible concerns:

1. Undoing the effects of the distribution before and after notice to effectuate the purpose of the rule (deny this method of access to the union and all other non-employes).
2. Mere retaliation against Johnson for having refused Respondent's direction.
3. Enforcement of the rule by causing Johnson to realize that continued and future violation of the no distribution rule would be ineffective anyway (removal of literature in Johnson's presence).

However, the circumstances indicate that the latter was its purpose. Thus, Johnson presented Paulsen with a situation requiring a decision as to how to enforce the rule. Paulsen's conduct of requesting Johnson to leave and then effectively indicating that the police would

---

[22/] The risk of damage to vehicles had already passed; there existed little likelihood of litter from the literature posted at the doors; and that same literature would not affect employes who did not want to receive literature at their automobiles.

be called if she did not leave establish that he was acting for this purpose. Respondent's overall conduct similarly tends to establish that he was acting in a restrained manner to effect enforcement of his rule: previously allowing distribution; carefully ascertaining its legal obligations before implementing its rule; and failure to take any action against Johnson physically during her refusal and failure to interfere with her distribution of the same literature from the public sidewalk. Under these precise circumstances Paulsen could believe that when Johnson refused to leave, despite the call to police, that she would intrude in a similar fashion in the future unless action were taken to convince her that such was useless. Thus, in this context Paulsen took a reasonable and necessary step to deter continued and future violations by ordering the removal of the literature. Therefore, the Examiner concludes that Respondent's action taken to enforce its rule outweighs the possible interference herein.

REMEDY

Respondent requested that we order Complainant to pay its legal fees apparently on the basis of its position that this complaint is frivolous. The Commission has steadfastly declined to award attorney's fees in any matter. 23/ Respondent's request is denied.

Dated at Milwaukee, Wisconsin, this 18th day of November, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stanley H. Michelstetter II
Stanley H. Michelstetter II
Examiner

23/ See Family Hospital at p. 13 and cases cited in footnotes 5 (12616-B) 7/75.