STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MILWAUKEE DISTRICT COUNCIL 48, AFSCME, AFL-CIO and NICK BALLAS, STAFF REPRESENTATIVE,	:	
Complainants,	:	Case IV No. 19026 Ce-1608
vs.	:	Decision No. 13534-C
PENFIELD CHILDREN'S CENTER,	:	
Respondent.	:	

Appearances:
Podell & Ugent, Attorneys at Law, by Ms. Nola J. Hitchcock Cross, appearing for the Complainants.
Foley & Lardner, Attorneys at Law, by Mr. Stanley S. Jaspan, appearing for the Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

On the basis of the record, and following proceedings described in the attached Memorandum, the Examiner makes the following

FINDINGS OF FACT

1. Penfield Children's Center, hereinafter the Employer, is an employer within the meaning of the Wisconsin Employment Peace Act, and has its offices in the City of Milwaukee, Wisconsin. At all material times, the following named persons have been agents of the Employer in the following supervisory positions:

Jon Osterkorn:	Executive Director
Barbara Osterkorn:	Administrator
Judith Comer:	Child Development Supervisor
Joanette Mazur:	Infant Development Supervisor

2. Milwaukee District Council 48, AFSCME, AFL-CIO, hereinafter the Union, is a labor organization and was, at all times material herein, the exclusive collective bargaining representative of certain of the Employer's employes, both professional and non-professional. The Union has its offices in the City of Milwaukee, Wisconsin, and at all material times Nick Ballas has been its Staff Representative and its agent.

3. On or about May 24, 1974, the Employer voluntarily recognized the Union as exclusive representative for purposes of collective bargaining of all employes, excluding managerial, confidential and supervisory employes. Bargaining commenced on May 30, 1974, and continued until

November 26, 1974, at which time a collective bargaining agreement was reached which provided, inter alia, that the Union would withdraw and refrain from refiling a then-pending unfair labor practice complaint.[1/]

4. On April 5, 1975, the Union filed the complaint herein, alleging that the Employer had, at various times before and after November 26, 1974, discharged three employes, constructively discharged twelve others because of their membership in and activities on behalf of the Union, and committed approximately 23 other unfair labor practices of various kinds.[2/]

5. From November 26, 1974, through the end of January 1975, the following employes left the Employer's employ after submitting a resignation on or about the following date:

Employe	Date Resignation Submitted
Betty Sydow	11-22-74
Mary Grevsmuehl	12-10-74
Margaret Perry	12-12-74
Joanne Woodford	12-12-74
Heather Leitner	12-14-74
Christine Landsverk	12-30-74
Nadine Falcon	1-03-75
Paula Tiefel	End of Jan. 1975

The Complainants have not proven by a clear and satisfactory preponderance of the evidence that any of said resignations was a constructive discharge.

6. From November 26, 1974, through December 30, 1974, the Employer discharged the following employes (perhaps among others) on the following dates:

Beth Isminger	12-10-74
Vicki Brown	12-30-74
Sharon Doughtry	12-30-74

The Complainants have not proven by a clear and satisfactory preponderance of the evidence that any of said discharges were motivated in whole or in part by the discharged employe's membership in or support of Complainant labor organization.

1/ Case II, originally filed October 29, 1974.

2/ The full text of the substantive allegations of the complaint is included in the attached Memorandum.

7. During the period November 26, 1974, through the end of January 1975, the Employer involuntarily transferred various employes from one position to another, and on occasion refused to grant employe-initiated requests for transfers. The Complainants have not proven by a clear and satisfactory preponderance of the evidence that the Employer made or refused to make any such transfer for the purpose of isolating pro-Union employes from other employes.

8. The Employer, on December 10, 1974, laid off employes Nadine Falcon and Christine Landsverk. Complainants have not shown by a clear and satisfactory preponderance of the evidence that the Employer's actions in either of those regards was motivated, in whole or in part, by any employes' WEPA protected activities.

9. The Employer prevented the employes listed in Finding 5, above, from working until the end of the applicable minimum notice period (of 14 or 30 days) required of each in the agreement. Similarly, the Employer prevented the employes listed in Finding 9, above, from working until the end of the contractual 30-day minimum period for notice to employes to be affected by a layoff. However, the Employer did not discriminate between pro and anti-Union employes in doing so and the Employer paid each of those employes full salary and benefits for the balance of such period. Complainants have not proven by a clear and satisfactory preponderance of the evidence that the Employer followed said practices, in whole or in part, because of its anti-union animus.

10. Following a period of time on layoff from her social worker position, Falcon exercised her contractual right to return to work to fill a vacant Aide position and returned to work in the latter capacity on December 31, 1974. At that time, the Employer assigned Falcon to child care aide work of the sort performed by the other aides. While newly hired aides received a training period before being assigned such duties, the Employer did not provide Falcon with orientation to the work of the Aide position beyond that which Falcon had previously received by way of orientation as an employe of the Employer. Falcon was assigned to supervise children on a bus route unfamiliar to her, but so were certain newly hired aides. Upon reporting to work in the Aide position, Falcon was called to a meeting with Mazur and Comer. During the course of that meeting, Comer informed Falcon that Falcon would be too busy in the Aide position to have personal conversations with other employes. Mazur expressed concern during said meeting that Falcon had previously advised infant aides that Mazur was not their supervisor and need not be heeded by them; Falcon assured Mazur that

Falcon had not done so. By the foregoing actions with respect to Falcon, the Employer has not been shown to have discriminated against Falcon, in whole or in part, because of her exercise of WEPA protected rights or to have committed acts reasonably likely to interfere with, restrain or coerce employes in the exercise of such rights.

11. The parties' November 26, 1974 agreement contained a modified union shop clause applicable to "any employee who is or becomes a member of the Union on or after January 1, 1975". Said union security provision was subject to the condition that the Union prevail in a WERC-conducted Referendum to be held pursuant to the parties' stipulation. After reaching said agreement with the Union, the Employer by its agents noted below, engaged in the following conduct that is reasonably likely to have undermined the Union's ability to prevail in the WERC-conducted referendum vote on Union security:

a. Jon Osterkorn, in early December, 1974, interrogated employe Ruth Leake concerning whether she had in fact executed the letter received by the Employer containing a demand for recognition of the Union;

b. Barbara Osterkorn in mid-December, 1974, interrogated employe Beverly Echols concerning her attitudes with respect to the activities of Complainant Ballas and others on behalf of Complainant Union;

c. Judith Comer, in late December, 1974 or early January, 1975, interrogated employe Beverly Echols as to Echols' attitude toward involuntary dues obligations being imposed on employes hired after January 1, 1975;

d. Judith Comer, in January, 1975, met individually with employe Beverly Echols on more than one occasion and attempted to persuade employe Beverly Echols (1) to withdraw from membership in and/or support of Complainant Union and (2) to lead other employes to do so.

By the actions of its agents noted in a-e, above, the Employer interfered with, restrained and/or coerced employes in the exercise of WEPA rights.

12. At various times in mid-December, 1974, Barbara Osterkorn met individually with numerous employes in the presence of Comer. In those conversations, Barbara Osterkorn told each employe not to speak but only to listen; acknowledged the personal kindnesses extended by the employe to Osterkorn during her prior extended illness; and informed the employe that her relationship with the employe would be on an impersonal business-like basis rather than on a more informal personal basis now that she was returning to work. In at least some of these

conversations, Barbara Osterkorn blamed the Union and its supporters' activities for having caused her recent illness and absence, but did not in that regard interfere with, restrain or coerce employes in the exercise of WEPA rights. However, in two such meetings, Barbara Osterkorn:

a. criticized employe Ruth Leake for being a part of the Union and for not apologizing to Barbara Osterkorn for the conduct of others on behalf of Respondent Union; and

b. with employe Carla Balweg, criticized the "filth" content of Union-distributed leaflets, criticized Balweg for not having previously apologized to Barbara Osterkorn with regard to said leaflets, and told Balweg that Balweg was "just as much to blame" for said leaflets as if she had written them herself.

By the conduct noted in a and b, above, the Employer, by its agent Barbara Osterkorn, interfered with, restrained and coerced employes in the exercise of WEPA rights.

13. At or near the end of January, one or more agents of the Employer requested that the United States Postal Services Investigative Office investigate the source of anonymous hate mailings received by them, some of which mailings contained human excrement. During the course of said investigation, one or more agents of the Employer identified Falcon as a possible source of such mailings. As a result, Falcon was among those questioned by the Postal authorities during the course of their investigation. The Complainants have not proven by a clear and satisfactory preponderance of the evidence that said agent(s) of Respondent initiated said investigation and/or implicated Falcon therein as a means of recriminating against Falcon for her activities in support of Complainant labor organization.

14. The Employer has not been shown by a clear and satisfactory preponderance of the evidence to have threatened or otherwise interfered with employes Debbie Milanowski, Phyllis Copeland or Beverly Echols for the purpose of discouraging said employes from giving testimony in this matter.

On the basis of the foregoing Findings of Fact, the Examiner makes the following

CONCLUSIONS OF LAW

1. The Employer, by the conduct referred to in Findings 11a-d and 12a-b, above, committed unfair labor practices within the meaning of Section 111.06(1)(a), Wisconsin Statutes.

2. The Employer, by its conduct referred to in the balance of the Findings above, did not commit an unfair labor practice within

the meaning of any subsection of Section 111.06, Wisconsin Statutes.

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

ORDER

IT IS HEREBY ORDERED that Respondent, Penfield Children's Center, its officers and agents, shall immediately:

1. Cease and desist from:

   a. interrogating employes concerning employe attitudes or activities regarding union security agreements, labor organizations in general, or Complainant Union or any other labor organization in particular;

   b. attempting to persuade employes to withdraw from membership in and/or support of Complainant or any other labor organization;

   c. criticizing employes' failures to apologize to a supervisor for the contents of labor organization leaflets or for the nature of other conduct of other employes in support of Complainant, or any other labor organization; and

   d. otherwise harassing or intimidating employes concerning their attitudes about or activities on behalf of Complainant Union or any other labor organization.

2. Take the following affirmative action that 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 such employes are usually posted, copies of the notice attached hereto. Further, notify all of its former employes who were employed by it at any time during the period November 26, 1974, through April 29, 1976, by mailing a copy of said notice to the last known address of each such former employe. (Such copies posted and mailed shall bear the signature of its chief executive officer and of the chairperson of its board of directors and those posted shall remain posted for thirty (30) days after initial posting, and reasonable steps shall be taken by it to insure that said notices are not altered, defaced or covered by other materials.)

b. Notify the Wisconsin Employment Relations Commission, in writing, within twenty (20) days of the date of this Order as to what steps it has taken to comply herewith.

IT IS FURTHER ORDERED that, except as noted above, the Complaint filed in the above matter shall be, and hereby is, dismissed.

Dated at Milwaukee, Wisconsin, this 11th day of June, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Marshall L. Gratz
Marshall L. Gratz, Examiner

NOTICE

To: All current employes of Penfield Children's Center, and to all former employes employed at any time during the period November 26, 1974 through April 29, 1976.

Pursuant to an order of a Wisconsin Employment Relations Commission examiner (in Milwaukee District Council 48, AFSCME, AFL-CIO and Nick Ballas, Staff Representative vs. Penfield Children's Center, Case IV, No. 19026, Ce-1608, Dec. No. 13534-C), and in order to effectuate the policies of the Wisconsin Employment Peace Act, you are hereby notified as follows:

1. Penfield Children's Center recognizes that its employes have 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 that such employes also have the right to refrain from any or all of such activities.

2. Penfield Children's Center will not interfere with, restrain or coerce its employes in the exercise of the rights set forth above.

Penfield Children's Center

By_____ _____
Chief Executive Officer Date

By_____ _____
Chairperson, Board of Directors Date

THIS NOTICE IS TO REMAIN POSTED FOR THIRTY (30) DAYS AND SHALL NOT BE ALTERED, DEFACED OR COVERED BY OTHER MATERIALS DURING SAID PERIOD.

PENFIELD CHILDREN'S CENTER, IV, Decision No. 13534-C

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

HISTORY OF THE CASE:

The Union's complaint in this matter was filed on April 7, 1975. The substantive allegations therein, as amended at the hearing, were as follows:

> 3. On or about April 5, 1974, Jon and Barbara Osterkorn threatened employees with reprisals because of their support for District Council 48.
>
> 4. After April 5, 1974, Jon and Barbara Osterkorn carried out and effectuated their aforementioned threats by the following acts and conduct timed and designed to harass, retaliate for, coerce and intimidate employees in the exercise of rights guaranteed by Section 111.04, Wis. Stats.
>
> a. On or about April 11, 1974, Respondent unilaterally changed and reversed prior policies regarding adult/child physical contact.
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> b. On or about April 24, 1974, Respondent wrongfully accused certain staff members of improper and excessive consumption of alcoholic beverages and threatened loss of pay and/or discharge.
>
> c. On or about April 30, 1974, Respondent unilaterally changed working conditions concerning the closing of classroom doors and then discriminatorily harassed teacher Joanne Woodford with a vicious verbal reprimand for a trivial alleged infraction thereof.
>
> d. During May and June, 1974, Barbara Osterkorn made unreasonable, contradictory and unilateral work rules regarding staff conference reports and then harassed and intimidated employees for alleged infractions thereof.
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> e. In May, 1974, Barbara Osterkorn insisted that she must approve all decisions as to children or classroom procedures but thereafter refused to respond to questions on such matters, advising selected employees to use their own judgement. [sic] Said employees were then subjected to her tirades, sarcasm and criticism and often had their decisions overruled.
>
> f. After April 5, 1974, Barbara Osterkorn, contrary to her prior practices, began to harass employees with unwarranted classroom surveillance conducted in the most embarassing, obtrusive and demeaning manner she could devise.
>
> 5. On or about May 20, 1974, Respondent through its attorney Stanley H. Jaspen and Complainant through its agent Nick Ballas entered into a verbal agreement excluding Ms. Ardith Marino from the egreed [sic] upon bargaining unit as a supervisor but also providing that Ms. Marino would not be subjected to recriminatory action and would be disciplined only for failure to perform properly as a supervisor in the future. Notwithstanding said agreement and in breech [sic] thereof, Respondent on May 27, 1974, issued a written reprimand to Ms. Marino castigating her for allegedly poor performance on at least four dates prior to May 20, 1974.

6. On or about August 9, 1974, Respondent constructively discharged Ms. Marino in violation of the aforesaid May 20, 1974 agreement and in retaliation for her exercise of rights guranteed [sic] in Section 111.04, Wis. Stats.

7. On or about the dates set forth following their names, Respondent constructively discharged the following named employees because of their exercise of rights guaranteed in Section 111.04, Wis. Stats.:

Helen Scott -- Week of August 19, 1974
Sue Sadowski -- Week of August 2, 1974
Maureen Vermiglio -- Week of September 16, 1974

8. On or about May, 1974, Respondent through its agent Barbara Osterkorn discriminately denied Maureen Vermiglio a higher paying summer school teaching job because of her exercise of rights guaranteed in Section 111.04, Wis. Stats. and by the same acts and conduct unilaterally changed conditions of employment in derogation and breach of its duty to bargain with District Council 48 as secured by Section 111.06(1) Wis. Stats.

9. During the week of August 14, 1974, Respondent through its agents Jon and Barbara Osterkorn and Judith Comer discriminated in employment terms against Helen Scott and Sheryl Benjamin because they had engaged in the protected concerted activity of filing written grievances on behalf of themselves and other employees (Infant Aides).

10. In the following week Respondent expanded the scope of its discriminatory actions regarding the grievances filed by the Infant Aides through interrogation of a number of Aides involving the use of coercion and intimidation in an attempt to suppress future grievances.

11. In early September, 1974, Respondent through its agent Judith Comer sought to undermine employee support for their statutory bargaining representative by conducting orientation sessions for newly hired employees seperate [sic] and apart from orientation sessions for established bargaining unit members.

12. During the months of June through October 1974 the Respondent through its agents Barbara Osterkorn and Judith Comer selectively oriented newly hired employees for the purpose of influencing certain employees to conduct surveilance [sic] on Union officers and members. Such employees provided on-going information to Respondent who harassed and reprimanded officers and members on numerous occasions.

13. During the month of September, 1974, Respondent attempted to undermine Complainant through supervisor Judith Comer when she told a group of employees that the Complainant was irresponsible in contract negotiations and would eventually cause layoffs and reductions in vacations.

14. Immediately after Heather Leitner became a member of Complainant's negotiating committee (August 1974) Respondent embarked upon a continuous program of harassment, intimidation and coercion in an attempt to punish her for exercising rights contained in Section 111.04 Wis. Stats.

15. During the months of September through December, 1974, Respondent deliberately and conspicuously transferred employees so as to isolate recognized Union supporters from new employees for the purpose of undermining rights guaranteed under Section 111.04, Wis. Stats.

16. During the month of October, 1974, Respondent through its supervisor Judith Comer commenced a program of on-going activities designed for the purpose of constructively discharging the remaining leaders of the successful Union organizational effort. Such efforts resulted in the constructive discharges of Nadine Falcon, Christine Landsverk, Margaret Perry, Betty Sydow, Joanne Woodford, Heather Leitner, Paula Teifel and Mary Grevschmael [sic]. Unrealistic and unreasonable work-rules and working conditions were imposed upon these workers.

17. On November 20, 1974, Complainant and Respondent reached a tentative agreement on a negotiated contract. After Compalinant [sic] received assurance from Respondent that a more harmonious relationship would be established as a result of the newly negotiated agreement Complainant agreed to withdraw unfair labor practice charges filed with the Commission on October 28, 1974 (Items 1 through 9, and item 11). After a short period of time Respondent resumed its conspicuous campaign to undermine Complainant and its organizational supporters in the following manner:

a. Immediately after Respondent agreed to an 'all-union' provision in the labor agreement on November 26, 1974, and in anticipation of the required referendum, Respondent engaged in a campaign designed to undermine a favorable vote on such provision. Judith Comer overzealously rushed to inform employees of their right to withdraw from Union membership during an agreed to 'escape period' and then proceeded to remind them occasionally of the approaching deadline of such withdrawal date.

b. Terminated the employment of known Union supporters during their probationary period for no apparent proper or justifiable cause (Vicky Brown, Beth Isminger and Sharon Doughtry) other than support for the Union.

c. Respondent refused to allow known Union supporters to continue working during 'required notice periods' of fourteen (14) and thirty (30) days prior to resignation in spite of the fact that these experienced employees were needed to provide required services to clients.

d. After a number of known Union supporters were terminated as per 'c.' above Jon Osterkorn made statements that he had 'gotten rid of the Union trouble-makers'.

e. On December 10, 1974, Respondent laid-off the two top ranking Union officers (Nadine Falcon, Unit Chairperson and Christine Landsverk, Unit Vice-Chairperson) and refused to allow them to work during the thirty (30) day (paid) notice period required by the Labor Agreement in spite of the fact that they had no replacements and their services to clients were still required.

f. [as amended] On or about December 19, 1974, Barbara Osterkorn harassed and intimidated Carla Balweg, Ruth Leake and Paul Teifel by verbally reprimanding them for their unionization efforts and involvement.

g. [as amended] At other times on or about December 19, 1974, Barbara Osterkorn continued to harass Paula Teifel and other employees by summoning them to private conferences during which she blamed the unionization efforts of employees for her physical condition and recent surgery.

h. [as amended] During a discussion with Nick Ballas and Carla Balweg early on or about December 19, 1974, Jon Osterkorn endorsed the actions of Barbara Osterkorn regarding her handling of Ruth Leake, Carla Balweg and Paula Teifel.

18. During the month of December, 1974, Nick Ballas threatened to re-file charges against the Respondent during a discussion with Respondent's legal counsel, Stanley S. Jaspan, if the conspicuous assault against the Union did not stop. The Respondent reacted in the following manner, thus continuing their efforts to undermine the Union:

a. Recalled from layoff the Union's two top officers, Nadine Falcon and Christine Landsverk during the last week of December, 1974.

b. In less than one (1) hour after return to work Respondent refused to let Christine Landsverk continue working because she gave the required thirty (30) day notice of resignation as per the provisions of the labor agreement.

c. Assigned Nadine Falcon to a Child Care Aide position without any orientation regarding job duties and assigned her to what was recognized as work to be performed by the more experienced Aides. She was also assigned to a totally unfamiliar bus route for the purpose of returning children to their homes without any orientation or instructions. She was also harassed and accused of falsehoods in a conference called by supervisors Judith Comer and Joanette Mazar. [sic]

19. Jon Osterkorn further recriminated against Nadine Falcon for her Union activities by harassing her through use of the Untied States Postal Services Investigative office by requesting them to investigate her as the source of alleged filth mailings he was receiving.

20. [as amended] That Debbie Malinowski, Phyllis Copeland and Beverly Echols who are currently employed by the Employer and have testimony relevant to certain allegations in the complaint have been harassed and intimidated by the Employer by the pattern and practice of on-going discrimination and harassment alleged in the original complaint to the extent that they will not now testify regarding those allegations because they fear their employment status with Employer will be jeopardized. That during the months of July, August and September, 1974, Malinowski, Copeland and Echols stated to Nick Ballas that they feared recrimination even if Mr. Ballas would present testimony regarding their refusal to appear based on fear of recrimination.

20. [now 21] By its conduct set forth in paragraphs 3 through 19 Respondent has violated Sections 111.06(1)(a)(c)(d) and (f).

The undersigned was appointed Examiner in this case by an order of the Wisconsin Employment Relations Commission dated April 11, 1975.

The Employer, on May 21, 1975, filed its answer, denying commission of any unfair labor practices, and it also filed a Motion to Dismiss the complaint, based on three grounds. Dismissal of all alleged unfair labor practices which occurred prior to April 7, 1974, was urged on

the basis of the Act's one year statute of limitations. Dismissal of allegations concerning acts occurring prior to November 26, 1974, was urged on the basis of language in the parties' collective bargaining agreement which allegedly waived the Union's right to file or maintain a complaint concerning such acts. And dismissal of allegations concerning acts taking place on or after November 26, 1974, was urged on the theory that statutory disposition of such allegations should be deferred to the contractual grievance and arbitration procedures.

Ten days of hearing were held in this matter between July 29 and December 23, 1975. Evidence concerning acts prior to November 26, 1974, was received only as necessary background evidence concerning motivations for actions on or after that date. In an Order dated October 31, 1975,[3/] for reasons fully set forth therein, the Examiner granted the Employer's motion noted above as regards its request for deferral to grievance arbitration, and left undetermined (pending further hearing and argument) the portion of the motion concerning conduct prior to November 26, 1974. The anticipated hearing concerning the then-unresolved section of the Motion to Dismiss was never held, however, because, following protracted settlement negotiations, the Employer and Union filed a stipulation on May 10, 1976. In that stipulation, the parties agreed that the Examiner should dismiss with prejudice all portions of the complaint alleging pre-November 26, 1974 conduct to be unfair labor practices and should proceed to a decision on the balance of the case based on the record theretofore developed. On May 14, 1976, the Examiner issued an order[4/] dismissing portions of the complaint in accordance with said stipulation. Thereafter, following additional (but unsuccessful) settlement discussions, the parties filed briefs, the last of which was received by the Examiner on September 8, 1977.

As a result of the foregoing developments, of the complaint allegations set forth above, only the following remain to be determined herein: 15 (to the extent that it relates to conduct on or after November 24, 1974), 16 (to a limited extent as regards Betty Sydow as further described below), 17 a-h, 18 a-c, and 19 and 20. The rationale for the Examiner's determinations of those remaining allegations is set forth below, preceded by a discussion of certain background facts that relate to more than one of the allegations.

3/ (13534-A)

4/ (13534-B)

BACKGROUND FACTS:

At all material times, the Employer has been a private, non-profit organization operating a facility in Milwaukee providing daytime care, instruction, and/or training to small children and infants, most of whom are retarded or emotionally disturbed, and who come from low-income families.

Prior to the summer of 1974, the Employer was known as Via Marsi Montessori School for Exceptional Children. Over that summer, while the school was closed, the Employer relocated to the building which it occupied at the time of the hearing and changed its name to Penfield Children's Center. Though there is testimony in the record that in 1974-1975 the children served by the Employer were, on average, younger than in previous years, there is no contention that the name change connoted any major change in the Employer's purposes or program.

The Employer's non-supervisory employes decided to form a union in or about April, 1974. On May 7, 1974, they so advised the Employer in a letter signed by 100 percent of the non-supervisory employes. On May 24, 1974, the Employer recognized the Union as the employes' exclusive representative for purposes of collective bargaining without an election being held.[5/] The bargaining unit for which the Union was so recognized included both professional and non-professional employes. The Employer's complement of employes varied from time to time, as will be discussed below. On May 30 the parties began negotiations which continued over a period of several months. A collective bargaining agreement was concluded on November 26, 1974. A supplementary agreement signed the same day contained the Union's promise to withdraw its then-pending unfair labor practice complaint against the Employer (in Case II) and to refrain from filing any complaint alleging that any actions of the Employer preceding the signing of the contract and its supplement constitute an unfair labor practice. The Case II complaint consisted inter alia of allegations identical to those in paragraphs 3 - 9 and 11 of the instant complaint.

Though a number of the issues in this case concern actions taken by the Employer during and shortly after its move to the new facility over the summer of 1974, the record shows, and there is no dispute, that the move itself was planned well before the employes began to organize the Union.

5/ On April 29, 1976, the Union was decertified in Case VI, wherein an employe petitioned for a decertification election and the Union submitted a disclaimer of interest, obviating a vote in the matter.

As noted above, several sets of facts in this case each relate to more than one of the individual unfair labor practice allegations. These are the degree of hostility that pervaded the parties' relationship during and after negotiations over the contract signed November 26, 1974; the history of working conditions (as perceived by the employes) and of turnover before the Union's advent, inasmuch as this provides a useful comparison for the constructive discharge aspects of the complaint; and the adverse economic circumstances cited by the Employer concerning a number of its actions in late 1974 and early 1975. Rather than address the above matters piecemeal in the discussion of individual allegations which follows, they are discussed here, at the outset.

The Parties' Relationship

The record as a whole leaves the clear impression that the relations between the Employer on the one hand and the Union and its supporters among the employes on the other were mutually hostile at least from shortly after the Union achieved recognition and throughout the entire period material herein. The record contains evidence of anti-union animus on the part of principal agents of the Employer, and it also contains indications that said hostility was mirrored toward the Employer by employes who supported the Union. For example, Employer agents accused the former Union president of being the source of anonymous mailings they received which contained human excrement; whereas, when contacted by postal authorities regarding that matter, said individual, in turn, claimed that said mailings were the work of management personnel who were allegedly bent upon stirring up revulsion against the Union. Another example of the nature of the overall relationship was revealed in the fact that Administrator Barbara Osterkorn apparently blamed the Union's Staff Representative and certain of the Union's supporters for having engaged in conduct which ultimately led to her absence due to illness (referred to in the record as colitis).

Past Turnover and Working Conditions

In view of the fact that eight of the remaining alleged unfair labor practices involve alleged constructive discharges, it is relevant to note that the Union's May 7, 1974 demand for Union recognition (which, as noted, was signed by all of the non-supervisory employes then employed) included, among other reasons why the signing employes had chosen to form a union, the statement that "since September 1973, more than 35 staff members have been replaced. This high employee turnover has resulted in constant disruption. . . ." Moreover,

Complainant Ballas claimed in a Union leaflet that "working conditions were so unbearable prior to April of '74 . . . that [this] led to unionization." The Union's descriptions, above, of high turnover and of undesirable working conditions prior to the recognition of the Union seriously blunt the significance of the numbers of employes who left the Employer's employ, and of undesirable working conditions, after November 26, 1974.

The Employer's Economic Circumstances

The Employer, contrary to the Union, contends that all of the layoffs and many changes in work assignments which took place in late 1974 and early 1975, cited by the Union either as unfair labor practices or as contributing causes of the alleged constructive discharges, were directly necessitated by a worsening economic situation. Jon Osterkorn testified that throughout 1974 there had been general community concern and rumors about a possible cutback in funding from the State Division of Mental Hygiene, a major source of the Employer's funds, to a variety of agencies and programs such as Penfield, and that in late November 1974, he had written to Durwood Egan, Deputy Program Director of the Milwaukee County Combined Community Services Board (CCSB) asking for information as to the Employer's budget expectations for 1975. Osterkorn testified that since Egan did not reply promptly, he called Egan on December 5 and repeated his question, and that Egan then told him that the Employer could expect only a three percent increase over its 1974 budget in 1975.

The Employer's 1974 budget[6/] was $242,000. Based in part on the cost of wage and benefit increases which the Employer expected would be imposed by the yet to be consummated labor agreement, the Employer had, in mid-1974, submitted to the CCSB a proposed budget of $326,000. The Union contends that this amount was so far in excess of the Employer's actual costs, with the same employes, under the labor agreement's terms that there was in fact "slack" left in the budget, and that, accordingly, the Employer did not have to lay off employes in order to stay solvent. The Employer contends that despite the admitted fact that other portions of its funding remained stable, the

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6/ Only that part of the Employer's annual budget which was, or was to be, met by the State Division of Mental Hygiene and the CCSB is listed here. The Employer also received other funding at all material times, but this was shown in contradicted testimony to be "earmarked" money which was, and could be, used only in a particular aspect, referred to as "Title I", of the Employer's program.

sudden drop in expected funding from $326,000 to approximately $249,000 necessitated all of the layoffs imposed and various of the other actions now contended to be illegal. For the reasons set forth below, the undersigned concludes that the record evidence does not support the Union's argument that the financial crisis was an illusion.

Though Jon Osterkorn did not apparently receive any written confirmation of the information Egan gave him on December 5 until January 20, 1975, it is uncontroverted in the record that when Egan did give the Employer a written guarantee of funding for 1975, it was for a dollar-for-dollar continuation of the 1974 funding. This arrangement was to continue until such time as the State Division of Mental Hygiene should pass judgment on the Employer's 1975 budget request--an event which did not take place until July 1975. By July 1975, Egan was able to guarantee the Employer $261,803, but Egan, who testified as a Union witness, confirmed Jon Osterkorn's testimony to the effect that the Employer was bound until July 1975 by the spending limitations implied by Egan's December 5 conversation with Osterkorn and by Egan's January 20, 1975 letter. In particular, the undersigned notes that since the Union had called Egan as a rebuttal witness, it was in a position to substantiate by appropriate questions its apparent contention that Osterkorn's letter and phone call of November and December 1974, to Egan never happened, but the Union did not do so. Moreover, the record also contains no contradiction of Osterkorn's and Comer's testimony to the effect that the only items in the Employer's budget which were not substantially "fixed costs" were wages and fringe benefit costs of the employes. Furthermore, to adopt the Union's basic tenet--that the Employer's cuts in personnel and related actions were unnecessary, self-inflicted wounds imposed measures--would require not only such supporting evidence which is lacking here, but also a belief that the Employer was prone to intentionally harm its own interests. For there can be no doubt that the staffing cuts implemented by the Employer in December 1974, adversely affected the qualify and viability of its program, and indeed Ballas said as much in a letter to the employes on January 22, 1975.

The Union contended at the hearing that the fact that Barbara Osterkorn drew a salary for the three months she was on sick leave in 1974 constituted an improper diversion of funds which could have been used to pay bargaining unit employes in 1975. Ballas, in testimony, relied for this argument on a personnel policy manual which was in effect prior to the Union's arrival on the scene. That manual specifies certain amounts of sick leave which were considerably less than that used by Barbara Osterkorn in 1974. Nothing in the record, however,

directly contradicts Jon Osterkorn's testimony to the effect that Barbara Osterkorn had accumulated large amounts of sick leave and unused vacation time since the Employer opened in 1969. Furthermore, there is no showing that the terms of the personnel manual were ever applied to the Employer's management personnel. Finally, uncontradicted testimony in the record from both Jon Osterkorn and Egan establishes that the Employer, though it had a surplus of funds for calendar 1974, was not permitted by the State to carry those funds over into 1975 and add them to its 1975 budget. Therefore, even if it had been the case that the sick leave paid to Barbara Osterkorn was a financial irregularity, the Union has not shown that by refraining from such payments the Employer would have improved its financial condition as of the outset of calendar year 1975, when the disputed layoffs and other cost-saving measures took practical effect. Hence, the undersigned concludes that Ms. Osterkorn's sick leave pay was not a factor in the Employer's December 1974 decision to reduce its staff.

THE ALLEGED CONSTRUCTIVE DISCHARGES: [Complaint Allegation 16; Finding 5]

The Union alleged that twelve employes quit because of unlawful discrimination, and other acts, by the Employer. Of these, the complaint was dismissed with respect to Helen Scott, Sue Sadowski, Maureen Vermiglio and Ardith Marino by Decision No. 13534-B, as each of these individuals quit before November 26, 1974.

Betty Sydow's employment ended on December 10, 1974. Sydow testified, however, that she submitted her notice of resignation on November 22, 1974. Whatever reasons impelled Sydow to resign, therefore, must have been consummated prior to November 26, 1975, the cutoff date for allegations to be material in this proceeding. The undersigned, therefore, finds that Sydow's alleged constructive discharge is also excluded by Decision No. 13534-B.

The seven remaining employes alleged to have been constructively discharged by the Employer's imposition on them of "unrealistic and unreasonable work-rules and working conditions" each gave notice of resignation after November 26, 1974. They are discussed individually below.

The Union, in its brief, argues that an unlawful constructive discharge is proven by a showing that ". . . an employee terminates because of the employer's unfair labor practices." Neither the case cited by the Union in that regard[7/] nor the cases cited in that case

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7/ Cartwright Hardware Co., 229 NLRB 781, 95 LRRM 1262 (1977) (standard of proof is whether "Respondent's actions were unlawfully designed to create conditions that made it impossible for its plumbers to maintain their union membership and continue to work for Respondent.")

stand for so broad a proposition. Rather, besides proof that the Employer unfair labor practice action caused an employe to terminate, the Union must also show that the employer intended its actions to force the employes to quit.[8/]

Christine Landsverk:

The Union contends that Landsverk quit because of various alleged acts of harassment against her by supervisors and because she was, allegedly, discriminatorily laid off in December 1974. (The layoff allegation is treated separately below.) Landsverk was Vice Chairperson of the Union and was on the negotiating committee; hence, she was a clearly visible Union activist. However, in her testimony, Landsverk did not claim that the Employer's conduct cuased her to resign her position. Instead, on cross examination, she stated that she resigned on December 30, 1974, the date she was to return from layoff, because her husband had been transferred to another city such that she would, in any event, have terminated as of the end of January 1975. For those reasons, the Examiner concludes that Landsverk was not constructively discharged.

Joanne Woodford:

Woodford was hired by the Employer in 1968 and became a classroom teacher in 1971. She was among the signers of the original April 5, 1974 demand for union recognition and also served as a member of the Union's negotiating committee. Woodford, in her testimony, cited several alleged incidents which would tend to prove that the Osterkorns, in particular, were personally hostile toward her as a result of her role in the Union. These are not repeated here, however, because assuming that officials of the Employer were strongly hostile to Woodford in late 1974, the evidence does not link such hostility to her decision to resign.

Woodford gave notice on December 12, 1974, and in her own testimony, ascribed her decision to resign to her feeling that she was "doing no good to the children."[9/] When questioned further, Woodford

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8/ City of Lake Geneva, Dec. No. 8604-A (1969) (Complainant must show that employer "intended to make [the employe's] job so intolerable that he would be forced to quit his employment" in order to prove unlawful constructive discharge). See also, Central Credit Collection Control Corp. d/b/a/ Federal Collectors, 201 NLRB 944, 949-50, 82 LRRM 1686 (1973) (although employer committed unfair labor practices with intention of frustrating employes' protected activities, no constructive discharge found because employer not shown to have done so with intention of forcing employes to quit) and Chem-Spray Filling Corp., 176 NLRB 754, 755-6, 73 LRRM 1379 (1969).

9/ Tr., 110.

stated that she felt that the departures of Sydow and Landsverk left her overburdened with work, caused her to perform more routine, non-challenging duties such as changing diapers frequently--a job previously done for the most part by aides--and diminished her ability to provide quality care to the children in her charge.[10/]

Significantly, however, Woodford did not claim in her testimony that hostility on the part of Employer's agents was in any way responsible for her resignation. The reasons which Woodford did cite all related directly or indirectly to the increased pressure on her and other employes caused by other resignations and ultimately by the Employer's December 1974 economy measures. The undersigned has concluded above that the Employer's economic woes were genuine and unrelated to its animus toward the Union, and no theory of an "indirect" constructive discharge (i.e., that Woodford quit in some manner because Landsverk and Sydow were themselves forced to do so for union-related reasons) can be supported since there is not, as noted above, the requisite record evidence to establish that either Landsverk or Sydow was constructively discharged. Therefore, the Examiner concludes that Woodford's resignation was due to work pressures increased by the Employer's economic problems rather than due to any discrimination against or hostility towards her by the Employer.

Margaret Perry:

Perry, a child care aide in the Title I program, was on the Union's negotiating committee (for a length of time not disclosed in the record) and submitted a letter of resignation on December 12, 1974. This letter refers only in general terms to the Union ("Although since unionization the physical working conditions here at this agency have changed, the attitudes of the administration have only become more difficult to understand. There is too gross a difference between theories and practices here"), but it gives as her major reason for leaving ". . . to put it simply - my heart is no longer in it. . . ." Perry did not testify, and there is no evidence from any other witness that would establish that Perry resigned for any reason related to her Union activity. At the same time, the letter itself does not cite any particular act(s) by the Employer that would lend credence to the charge that Perry was forced to quit. Accordingly, the undersigned concludes that the Complainant has failed to prove that Perry was constructively discharged.

10/ Tr., 112-113.

Paula Tiefel:

Tiefel was hired as an Infant Aide in November 1973, and gave notice of resignation at the end of January 1975. She signed the Union's May 1974 recognition demand and was a member from that time until she resigned, but the record shows no other union activity on her part. Tiefel, in direct testimony, claimed that, on several occasions in late 1974, she had been formally reprimanded for actions not her fault, and that she had never received such reprimands prior to the Union's advent. On cross examination, however, Tiefel admitted that none of these reprimands had been reduced to writing or made part of her personnel file. Furthermore, Tiefel's testimony nowhere asserts that these "reprimands" contributed to her decision to resign. Also, the Examiner notes that Tiefel moved to another city with her parents approximately one week after she gave notice of resignation, which suggests that her parents' relocation, rather than anything to do with Tiefel's work environment, was the cause of her resignation. Significantly, Tiefel's letter of resignation gives her imminent move to another city as the sole reason for her leaving the Employer.

Given the limited extent of Tiefel's union activity and the absence of evidence of any act(s) of discrimination against her by the Employer more serious than unrecorded oral criticisms, the undersigned finds lacking the proof of a relationship between Tiefel's resignation and her union activity. Hence, the undersigned concludes that there is insufficient evidence to show that Tiefel's resignation was a constructive discharge.

Mary Grevsmuehl:

Grevsmuehl, an aide, was hired in September 1971 in the Title I program and transferred in September 1973 into the "CCSB-funded" part of the Employer's operations. She joined the Union about April 1974 and signed the recognition demand, but the record shows that she had no function in the Union beyond that of member.

Grevsmuehl was advised on December 10, 1974, that she was, in the future, to take care of two children in addition to the two already assigned to her. She gave notice of resignation on the same day and testified that she resigned because of the overwork that the additional assignment would mean and also because she felt that she would, as a result, be unable to provide anything more than minimal custodial care for the children in her charge.

Other testimony by Grevsmuehl was related to the question of whether she had threatened to quit earlier if not given a requested leave to which, under the terms of the collective bargaining agreement,

she was not entitled. It is clear from the record, however, that the proximate cause of Grevsmuehl's departure was the December 10 assignment of two extra children.

There is no evidence in the record that the assignment of the two additional children was the result of any deliberate attempt by the Employer to overload Grevsmuehl. This assignment occurred at the time of cost cutting efforts that were agency-wide (except in the unaffected Title I program) and that were found above to have been caused by the Employer's legitimate economic problems. Moreover, the record does not establish that pro-Union adies were overloaded to any greater extend that their anti-Union counterparts. The undersigned, therefore, concludes that Grevsmuehl quit for reasons related to the Employer's late 1974 anticipated budget cut rather than as the result of any prohibited anti-Union action.

Heather Leitner:

Leitner, an aide, was hired May 20, 1974. Soon afterwards she joined the Union. In July or August 1974, she became a member of the bargaining committee and, hence, a visible Union adherent.

In her testimony,[11/] Leitner gave, as reasons for her resignation, the following factors: receipt in the preceding weeks of oral reprimands for "petty little incidents" about which she believed non-Union employes were not similarly criticized; a lack of communication between herself and supervisors such that contacts between them were characterized by interactions limited strictly to work directions and a few other work-related matters and by supervisors terminating or redirecting conversations between themselves or with non-Union employes when Leitner approached; the addition of a fourth child to her work load; and the reassignment to another employe of the responsibility for a child to whom Leitner had grown particularly attached.

Leitner cited a number of reprimands which she received over the weeks in question. However, as in the case of Grevsmuehl, above, none of these reprimands involved any addition to her personnel file, and none was reduced to writing. They involved incidents in which Leitner was criticized by supervision for such conduct as using the telephone during work time, failing to attend to a screaming child, being repeatedly late in returning dishes to the kitchen, and chatting 10 minutes with a fellow employe in the kitchen during work time. While

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11/ Tr., 311.

Leitner identified two instances in which supervisors observed but did not criticize similar shortcomings in non-Union member employes, the record also contains evidence that non-Union employes were reprimanded for a similar shortcoming[12/] and that Leitner had been similarly reprimanded before her bargaining committee participation.[13/] In any event, neither Leitner's testimony nor the balance of the record establishes that the Employer was engaged in a pattern of treatment of Leitner aimed at causing her to resign her position or a pattern of disparate treatment of Union employes that would reasonably force an employe to to resign.

Leither stated that she was made to feel "like I was the plague" by supervisors who would abruptly end conversations among themselves or with non-Union employes when Leitner approached. Moreover, it appears that the Employer's supervisors did maintain a fairly impersonal posture with respect to Leitner, though the record does not establish whether such behaviour developed before or only after Leitner participated on the bargaining committee. Leitner admitted that Union employes also abruptly ended conversations when supervisors approached them, although only after having received such treatment from supervisors in the first instance. In any event, there is no showing that the supervisors' abruptly-ended vonversations dealt in any way with the Union and the fact of a substantial degree of impersonality between supervision and Union employes does not warrant the conclusion that Leitner or other employes were thereby forced from their jobs.

The reassignment referred to above increased Leitner's load from 3 to 4 children and withdrew from her one child to whom she had become particularly attached. As was the case, above, with Grevsmuehl, the increase in Leitner's workload is directly attributable to the Employer's late 1974 economic woes. Comer testified credibly that the funding cut required the temporary elimination of certain positions. She further testified, without contradiction, that the reassignments of children to aides which resulted from the layoffs (and from the contemporaneous resignations of several other employes) were inevitable and equitably distributed. In fact, Leitner herself testified that "Everybody was given new children" immediately after "a lot of people were laid off."[14/] Leitner cited the facts that she was not consulted

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12/ Tr., 309-310.

13/ Tr., 295-6.

14/ Tr., 307.

in advance of the transfer of her "favorite" child to another aide despite her close relationship of several months' duration with that child and the fact that Leitner had been complimented by Mazur on the way she handled that child. However, the record also indicates that the four children assigned to Leitner were all the same age,[15/] whereas she had previously been assigned two babies in addition to her "favorite" who was two and one-half years old.[16/] Moreover, there is no evidence that any other aides had any input into the assignment decisions made by management at that time. In any event, there is no evidence that Leitner sought to convince management to reconsider its reassignment decision before she submitted her resignation.

For the foregoing reasons, the Examiner has concluded that Complainants have failed to prove that the Employer's conduct toward Leitner was intended to force Leitner to quit her employment. The allegation that Leitner was constructively discharged has, therefore, been rejected.

Nadine Falcon:

Falcon was hired as a Teacher Aide in October 1973, but she had a BA degree in social work, was hired with the expectation of moving into a social worker's job, and did so within two weeks of being hired. Falcon was one of the original Union organizers, served as President of the Union and as Chairperson of its bargaining committee, and was a highly visible Union activist as a result. She was laid off on December 10, having chosen not to bump into a (professional) motor development specialist position the holder of which was junior to Falcon. (The layoff is the subject matter of another count in the complaint, and is treated separately below.) On December 30, Falcon chose to bid for and was awarded an aide's position that became vacant. She bagan work in that position on December 31, but on January 3, 1975 Falcon submitted a letter of resignation, which is here quoted verbatim:

> Dear Persons, January 3, 1975
>
> This is a formal two week notice of resignation from my position as aide in the infant stimulation program.
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> I expected this position to be somewhat of a challenging, learning, experience, but regretfully found it to be nothing but a glorified baby-sitting service. The aides are overworked and

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15/ Id.

16/ Id.

have no time to give the infants anything but the most basic custodial care. Supervision is lacks. [sic] I was told to direct all of my questions to my supervisor, yet this person never seemed to be present at the times questions arose during the day. Chaos seemed chronic. At times, over the noon-hour particularily, [sic] there were only two aides to watch between ten and twelve children and everyday the majority of these kids had a different aide assigned to care for them. This fact is part of the reason I'm leaving as early as I am . . . there is no sense in loving four children come to know me only for them to be abondoned [sic] in a few months.

I know how different, good and effective the program at Via Marsi was and I'm extremely disturbed as to the negative turn it's taken in these new walls.

Sincerely,

Nadine Falcon

In her testimony, Falcon cited a series of actions by Employer officials throughout the fall of 1974 which the Complainants contend are related to her decision to quit. However, when asked on direct examination why she resigned, Falcon listed only the following reasons: overwork on her new aide job; lack of training in that job and a concomitant feeling of helplessness; lack of interest in the aide job; and resentment at the sitiation in which (allegedly) a former janitor was doing her former work as Social Worker while she was in a non-professional position.[17/]

The Complainant maintains that the alleged fact that Falcon was not trained for her aide's job before being actually assigned was discriminatory treatment in light of the fact that other new aides were given some training prior to actually performing work. The Examiner does not subscribe to that view, however. First, the record shows that Falcon completed the Employer's 40-hour training course for aides in the fall of 1973 and then worked in that job at least for a few days before assuming her social worker position. And second, unlike the newly hired aides who, in late-December and early-January, replaced others who quit, Falcon had the benefit of a year's exposure to many aspects of the Employer's functions, including regular supervision of children in lunch time and naptime activities and the transportation home of children who became ill during the day. Under the circumstances, for the Employer, with its operations affected by substantial turnover, to give responsibility to Falcon earlier than to brand new employes was neither suspect nor unreasonable.

17/ Tr., 193.

The overloading of which Falcon complained is the same problem that has been discussed above in connection with other employes' decisions to quit. As in their cases, there is no convincing evidence that Falcon received a significantly higher share of the work than non-Union employes, once the latter were trained. While Falcon testified that it was her understanding that no other aide was assigned to bus supervision duties both morning and evening, there is no evidence that the other aides were assigned less arduous tasks during the times they were not performing bus supervision work.

Of the Employer conduct cited in Falcon's testimony as a reason for her resignation, only the alleged assignment of social worker functions to the former janitor, Jim Echols, remains. Complainants' contentions in that regard are addressed below in connection with the discussion of Falcon's layoff. For the reasons set forth there, and the facts that no grievance was filed protesting the alleged erosion of Falcon's job and that her letter of resignation does not include that factor among her reasons for resigning, and because all of the reasons listed in her letter and most of those advanced in her testimony can be traced directly to the general economic plight of the Employer, the Examiner concludes that there is insufficient evidence to conclude that Falcon's resignation was an unlawful constructive discharge.

THE ALLEGEDLY DISCRIMINATORY ACTUAL DISCHARGES: [Complaint Allegation 17b; Finding 6]

Vicky Brown:

Brown, an aide, was hired in early December 1974, and was discharged on December 30, 1974, allegedly for poor work performance. The Employer denied knowledge of any Union activity by Brown, and though Comer admitted that "sometime in December" she received from the Union a list of its members, the list was not offered as evidence. Woodford testified that Brown (like Sharon Doughtry and Beth Isminger, discussed immediately below) was a member of the Union but that she held no other position. There is no evidence that Brown's involvement with the Union ran to anything more than passive membership, however; nor is there evidence that any Employer official harbored any hostility toward Brown in particular for her Union membership, if, indeed, the Employer knew of it.

As to Brown's work performance, the record evidence conflicts. Grevsmuehl advanced the opinion that Brown was a good employe, but supervisors Comer and Mazur testified to the contrary. Brown did not testify. Grevsmuehl's testimony was that Brown was "very good with the children" and was not reprimanded for anything more than the type

and condition of clothes she wore. Comer and Mazur, however, both contended that Brown was good with one child but was incapable of adequately caring for more than one child at a time, and that she devoted a disproportionate amount of time to one particular child, in addition to, allegedly, repeated instances of unacceptably informal attire. It is significant that, in addition to Brown, Isminger, and Doughtry, several other probationary aides whom Woodford admitted were not members of the Union were terminated during the late months of 1974. In view of the lack of direct evidence that the Employer knew of Brown's Union membership, the limited extent of her Union activity, and the lack of evidence of hostility against her or discriminatory termination of Union as compared to non-Union probationary aides, the undersigned concludes that there is insufficient evidence to find that Brown was discharged for reasons related to her Union membership.

Beth Isminger:

Isminger was hired in late September 1974, as a Motor Development Specialist. She was terminated on December 10, 1974, while still on probation. Isminger, like Brown, apparently became a member of the Union at some time after her hiring but never exercised any more active a role. There is no direct evidence that the Employer knew of her membership; the record does not establish whether or not she (or Brown or Doughtry) was a member at the time the Union's membership list was drawn up and submitted to the Employer.

Isminger did not testify, but Union and Employer witnesses alike testified that she was a good employe. Comer testified that the sole reason Isminger was terminated was because the financial cutabck discussed above required that some positions be eliminated and that Isminger's functions, though valuable, were not directly required by the funding agencies. Comer further testified that Isminger was terminated rather than laid off because she was probationary, and that she would have been rehired when funds became available in August 1975, except that she had, allegedly, left the country.

Comer's testimony that, in the Employer's period of financial distress, Isminger's job could be dispensed with, is corroborated by various exhibits and the other testimony concerning which functions were essential to retain the funding. Moreover, it is noteworthy that Isminger was not replaced for eight months after her termination. These facts, together with the limited extent of her Union activity, the lack of any apparent Employer hostility toward her personally, and the lack of direct evidence that the Employer even knew of her Union membership, convince the undersigned that Isminger's termination was unrelated to her Union membership.

Sharon Doughtry:

Doughtry, an aide, was hired in October 1974, and discharged on December 30, 1975, before she complated her probationary period. As noted above, she was a member of the Union but held no greater function in the organization, and there is no direct evidence that the Employer knew of her Union membership, for the same reasons as apply to Brown and Isminger. Landsverk, Falcon, Woodford and Sydow, in testimony, described Doughtry as being a good employe. Comer's testimony did not criticize her overall handling of the children, as such, but characterized her as difficult to supervise. Comer and Mazur testified that they discharged Doughtry because she did not seem to take seriously or comply with supervisory corrections of her conduct as regards, e.g., inappropriate attire, an overly loud voice, over-exuberance in carrying children to the bus, and permitting children (contrary to the Employer's policy) to address her by her first name. Doughtry did not testify, and the foregoing contentions of the supervisors were not directly contradicted by any witness. Indeed, Landsverk and Woodford admitted to having made at least minor complaints to supervision about Doughtry, concerning her cleaning work. According to Comer, other employes had complained that Doughtry was repeatedly failing to properly and timely prepare children for sessions with the therapist, thereby causing disruptions in scheduled periods of therapy. The undersigned finds there is insufficient evidence to relate Doughtry's discharge to her Union membership, for substantially the reasons stated above with respect to Vicky Brown.

ALLEGED TRANSFER OF UNION SUPPORTERS FOR THE PURPOSE OF ISOLATING THEM FROM OTHER EMPLOYES: [Complaint Allegation 15; Finding 7]

The subject allegation is not developed in the Union's brief. The only evidence presented at the hearing which relates to transfers and the potential for isolation of pro-Union employes involves the Employer's refusal to transfer Perry for the Title I program into the "Early Learning Center" when Perry requested such a transfer. However, even that evidence does not support the allegation in question because, although Perry was working with two other Union members in her Title I job, she would have come into contact with three other Union members had her requested transfer to the "Early Learning Center" been granted.

There is, therefore, no basis for the undersigned to find that the Employer refused to transfer Perry in order to keep her isolated, even if it is assumed that the wording of this allegation was to be read as its converse. Nor, as noted above, is there any evidence that any other transfer was made or withheld for reasons related to the Union.

ALLEGED INTERFERENCE IN CONNECTION WITH THE REFERENDUM VOTE ON UNION SECURITY: [Complaint Allegation 17a; Finding 11]

By the terms of the parties' modified union shop provision, the extent to which the Union would be benefited by that clause depended upon the continued membership of current employes through at least January 1, 1975, and the Union prevailing in the referendum vote that was to be held pursuant to stipulation.

As in a representation election situation, the Employer's rights of free speech allow it to make known to its employes its views with respect to the desirability of one or another outcome of the vote, and its reasons for so concluding. The Examiner has found, however, that certain of the Employer's agents' conduct falling fairly within the "campaign designed to undermine a favorable [referendum] vote" cited in Complaint paragraph 17a went beyond the protected area of Employer free speech and constituted acts of interference, restraint and/or coercion of employes in the exercise of WEPA rights.

Specifically, Finding 11a is based on Ruth Leake's testimony that in December, 1974, a week or week and one-half before Barbara Osterkorn returned from her lengthy absence, Leake was called to a meeting with Comer and Jon Osterkorn in the latter's office during which Jon Osterkorn inquired of Leake as to whether she had in fact signed the petition submitted to the Employer evidencing employe support of the Union.[18/] Leake's testimony in that regard is clear and not directly contradicted elsewhere in the record. Since Leake's signature could have been compared with others the Employer presumably had on file, and since the Employer had theretofore voluntarily recognized the Union, the Employer's interrogation of Leake as to whether she had signed the petition in support of Respondent Union appears reasonably likely, under the circumstances, to interfere with, restrain and/or coerce employe exercise of WEPA rights.

The Examiner, however, finds Leake's testimony regarding said conversation insufficient to warrant the additional finding, urged by the Union,[19/] that Osterkorn reprimanded Leake at that time for engaging in discussions about Union activities with other employes. In that regard, Leake testified as follows:

18/ Tr., 340-341.

19/ Union brief at p. 4, third paragraph.

. . . I think one of the initial reasons I was called in was because he said that it had come to his attention--or words to that effect--that I was causing dissension--or something--by talking to people.

Q: Talking to people about what?

A: I suppose about the Union--at least that was his understanding of what I was saying and--and that he would like to have me stop.

That testimony is sufficiently vague as to exactly waht Leake recalls that she was actually told by Osterkorn, that it is deemed by the Examiner to be an insufficient basis for the additional finding requested, even if such a finding were found to be fairly within an allegation contained in the amended complaint and even if Leake's version were credited over the relatively more clear and cohesive contradictory testimony given by Comer.[20/] Therefore, the additional finding requested by the Union based on Leake's testimony has not been made herein.

Regarding Finding 11c and d, employe Beverly Echols testified that, on several occasions from late December through January 1975, Comer called her into Comer's office, alone, and spoke to her about the Union and/or the upcoming referendum vote. On one such occasion, Echols stated, Comer showed her a leaflet referring to a Union meeting and said that Echols "was paying Nick Ballas six dollars a month to spread lies about the agency and . . . harass her and the Agency and that [Echols] was responsible for his actions."[21/] On another occasion, Echols alleged, Comer asked her if she "was aware of a certain [labor agreement] Article that said I could withdraw from the Union by a certain date . . . [and that] she went on to explain to me that if . . . [the Union security arrangement] . . . went into effect there, that . . . employees coming in behind me would be forced to join and she didn't think it was fair to them and she wanted to know how I felt about it."[22/] Besides other unremarkable Union-related matters that Echols claims to have discussed with her by Comer, Echols testified to one in late January 1975, in which Comer allegedly told Echols that other aides were just "waiting for one person . . . to start the 'ball to roll' and then perhaps . . . the rest of them would withdraw."[23/]

20/ Tr., 486.

21/ Tr., 741.

22/ Tr., 742.

23/ Tr., 745.

Comer strenuously denied ever having had any conversations with Echols as described above, adding that Jon Osterkorn had specifically instructed her to watch what she said to employes. Echols stated that no one else was present at any of the conversations.

If Echols is credited, the interrogation implied in the second of the conversations noted above would clearly be coercive, and the implicit suggestions that Echols withdraw individually and that she "start the ball rolling" toward mass withdrawal from the Union would constitute interference within the meaning of WEPA.

Neither Echols nor Comer had the demeanor of an untrustworthy witness, and the Examiner is, therefore, left with a difficult question of credibility. In deciding that Echols is telling the truth with respect to these conversations, the Examiner relies on those factors: Echols' only tie to the Union was her membership; no greater degree of involvement has been shown to have existed. Comer, on the other hand, was a relatively new supervisor who would naturally tend to be closely committed to the Employer's goals and interests. Moreover, Echols, as discussed below, was reluctant to testify at all, allegedly for fear of retailiation by the Employer. Furthermore, the fact that Echols was on a maternity leave at the time of her testimony might be expected to make her look at the whole Union-Employer relationship somewhat more dispassionately than an employe or supervisor who was reporting to work every day in what was, by all accounts, an embattled working environment. Finally, Echols seemingly had little to gain by testifying as she did in this proceeding, and a considerable amount to lose; the opposite was the likely case for Comer. The undersigned therefore concludes that Echols' testimony is to be credited in this instance, and that the Employer coerced, restrained and interfered with employe rights under WEPA by Comer's statements to Echols cited in Finding 11c and d.

Beverly Echols also testified concerning a one-on-one discussion she had with, and at the request of, Barbara Osterkorn shortly after the latter's return from an extended absence. While that testimony is dealt with generally under the discussion related to Finding 12, below, the Examiner finds that one aspect thereof falls fairly within the complaint paragraph 17a allegation concerning the "campaign designed to undermine a favorable [referendum] vote." In the latter regard, Echols testified as follows:

> . . . [t]he conversation was mostly--it mostly consisted of the Union, you know; and then she asked how did I feel about people who did these sort of things [allegedly sending unordered pizzas and taxicabs to Barbara Osterkorn's home] that Nick Ballas and

> those Union people did and--well, I didn't want to lose my job, so I told her that--something like I thought it was very ignorant and I didn't pay attention to rumors, because she told me they would probably tell me some real bad things about her; and I told her I wouldn't pay any attention; I judged a person according to how they acted toward me.

Based on that testimony, the Examiner has found in Finding 11b that Barbara Osterkorn interrogated Echols at least obliquely concerning her attitudes toward the Union. For, in the context of Comer's interactions with Echols described above, Barbara Osterkorn's questioning of Echols regarding her attitudes has the appearance of being a part of a pattern of Employer efforts to identify and cause an employe to lead other employes to withdraw from membership in and/or support of the Union in anticipation of the referendum vote.

REFUSAL TO ALLOW EMPLOYES WHO HAD GIVEN NOTICE OF RESIGNATION TO CONTINUE WORKING: [Complaint Allegations 17c and d; Finding 9]

The Union charges, and the record shows, that in each instance where one of the employes alleged herein to have been constructively discharged turned in a notice of resignation, the Employer sent home the employe before completion of the 30 day (for professional employes) or 14 day (for non-professional employes) notice period required by the labor agreement. Indeed, in a number of instances, the employe was sent home the day the notice was turned in.

The Union argues that, by so doing, the Employer discriminated against Union adherents and segregated them, for whatever length of time was left in their respective notice periods, from the other employes.

The record shows also, however, that in each case where an employe was terminated prior to the end of the notice period, the employe was paid for the balance of that entire period. Furthermore, the record demonstrates that it was not only Union adherents who were treated in this manner; for, Comer testified, without contradiction, that the several non-Union aides who were discharged during December 1974 were also paid for a 14 day unworked period. Moreover, Falcon and Tiefel testified that they were given the choice of working out their notice or not doing so and being paid for the time. While Leitner stated that she was pleased not to have to work out her notice period, Woodford did not object to the early termination, and Grevsmuehl admitted on cross-examination that she had requested (as personal leave) the days in which she ultimately was terminated early. In addition, Jon Osterkorn gave uncontradicted testimony that the Employer had generally followed such a practice for several years prior the Union's advent. Finally no evidence was offered to prove the contention in Complaint paragraph 17d.

The undersigned therefore finds no merit in the allegation that the Employer's refusal to allow employes to work out their contractual notice periods violated WEPA.

DECEMBER 10, 1974 LAYOFFS OF FALCON AND LANDSVERK: [Complaint Allegations 17b and 18b; Findings 8 and 9]

The Union contends that Falcon and Landsverk were selected for layoff on December 10 because of their highly visible Union offices and activities.

Landsverk testified that on December 10 the employes were told in a group early in the morning that because of the Employer's precarious finances some would have to be laid off; and that, shortly thereafter, when she was told she was one of those selected for layoff, she was sent home immediately but was nonetheless paid her salary throughout her layoff which ended late in December when she was recalled. Landsverk also acknowledged the fact that, as the lowest in seniority in her classification, she was the proper person to be laid off if any layoff in her classification was appropriate. That layoffs were economically necessary has been noted above. Moreover, the record as a whole supports Comer's testimony to the effect that the job done by Landsverk could be eliminated without adversely affecting the Employer's eligibility for funding, while providing a larger saving than elimination of an aide position would have provided.[24/] Landsverk was not replaced, and, when Sydow and Woodford left, she was recalled to work. As noted above, she promptly resigned because of her husband's impending transfer.

Falcon was the only employe in the professional position of Caseworker when the Employer decided to eliminate that position as a part of its cost-cutting efforts. The economic need for a reduction of staff by layoffs has been adequately demonstrated, as has been noted above. However, Complainants would have the Examiner find that the Employer made Falcon's position expendable by a gradual, discriminatorily-motivated reassignment of duties and responsibilities from Falcon to the non-professional Casework Aide position to which the evidently anti-Union Jim Echols was promoted effective October 1, 1974.[25/]

24/ Tr., 437-41 and Exhibits 27-29.

25/ Falcon admitted that no such reallocation of duties occurred between November 26 and her layoff on December 10, 1974 (Tr., 211), and Complainants are foreclosed by the November 26 agreement from claiming that pre-November 26 realignments of duties to Echols constituted unfair labor practices.

The record reveals that Falcon never performed the major function of the Casework Aide (previously titled Community Worker) position, which is the processing of forms and reports required by outside sources for continuation of their funding, and the gathering of information for that purpose from client families and others. Such information relates to the initial and continuing eligibility of the served-child's family for outside-funded services, the initial and continuing existence of the child's need for such services, and the fact of Employer provision of such services to funding-eligible children. Falcon's Caseworker position (previously titled Social Worker) is a professional position the primary focus of which was on enhancing the well-being of the children served by the Employer by observing the child at the Employer and at home and by conferring with the family and with Employer personnel in order to counsel the family as to how they might help the child and to inform the Employer's staff about the child's family environment. The striking degree of traditional duplication of information-gathering by the two positions, coupled with the traditional participation of both positions in "staffings" (i.e. staff meetings) within the agency, no doubt afforded the Employer some of the same staffing inputs from Echols that it would have received from Falcon had she not been laid off. Moreover, the record also reveals that Echols took over nearly exclusive performance of certain duties previously shared between his predecessor, Maureen Vermiglio, and Falcon, which shared duties were performed by Falcon alone between Vermiglio's May, 1974 departure and Echols' October, 1974 promotion. Nevertheless, Echols has not been shown to have significantly undertaken the Caseworker's family counseling function, and his duties have remained substantially the same as Vermiglio's.

The funding-source-related duties of the Casework Aide (which, again, Falcon had not performed previously) were manifestly necessary to the Employer's ability to continue to operate, whereas the more service-oriented duties central to the Caseworker position were not. Moreover, Echols was lower paid than Falcon.

For the foregoing reasons, the layoffs of Landsverk and Falcon appear to have been motivated by economic considerations and neither in whole nor in part by union activities.

The Employer's decisions not to keep Falcon and Landsverk--both visible Union leaders--on the job during their paid 30 day contractual notice periods would, standing alone, appear highly suspect in view of the general anti-Union animus of the Employer reflected in the record. However, as Comer testified, the Employer's decision to do so was made at the same time that the Employer was similarly treating the numerous

resignees with respect to their required notice periods. As noted above, the Employer had similarly treated many resignees in the past, and had applied the policy in 1974 both to pro-Union and to other employes. Comer also testified that the decision was based on the Employer's desire to "get on with" the business of reallocating work assignments among the smaller staff with which it was to be operating, in any event, as of the beginning of 1975, and its desire to allow the affected employes to seek alternate employment without experiencing a loss of pay.[26/] Comer's above-noted explanations are not undercut by the balance of the record, and the Examiner has, therefore, concluded that the Complainants have not proven by a clear and satisfactory preponderance of the evidence that the removal of Landsverk and Falcon, without loss of pay, during the layoff notice period constituted an unfair labor practice.

ALLEGED HARASSMENT AND INTIMIDATION OF EMPLOYES CONCERNING UNION ACTIVITIES: [Complaint Allegations 17f, g and h; Finding 12]

It is undisputed that Barbara Osterkorn met individually with several employes--generally with Comer present--shortly after her return from an extended absence from the Employer due to surgery and convalescence related to what was identified in testimony as colitis. The Union, based on its witnesses' descriptions of these exchanges, would have the Examiner find that they were unlawful harassment of employes about protected activities and/or reprimands of the employes concerning same. On the other hand, the Employer, based on Comer's version of these meetings, characterizes them as Ms. Osterkorn's noncoercive effort to reestablish a working relationship with the employes involved, and urges that no unfair labor practice be found inasmuch as the working conditions of the employes involved were not changed as a result of the discussions.

Finding 12 expresses the results of the Examiner's weighing of the various witnesses' testimony concerning said discussions.

Although all of the discussions occurred in the potentially coercive one-on-one or two-on-one private-conference-in-supervisor's-office setting, the Examiner has concluded that Barbara Osterkorn's expressions of her opinion that her physical ailment was attributable to the activities of Union supporters were near, but within, the limits

Specifically, in the instances cited in Findings 12a and 12b, the Examiner has credited the testimony of the employes involved[27/] which was contradicted, if at all, only indirectly by Comer.[28/] In those instances, Ms. Osterkorn criticized the employes addressed for being associated with the Union and for their failures to apologize to her (a supervisor) for certain actions on the part of the Union and its supporters, e.g., the content of Union leaflets. In the private conference atmosphere, such criticisms are reasonably likely to interfere with, restrain and/or coerce employes in the exercise of WEPA rights and exceed the bounds of the employer's right to free expression of its opinions. Violations of Sec. 111.06(1)(a), Stats., have therefore been predicated on each of those two instances.

In support of Complaint allegations 17h, Complainant Ballas testified[29/] that he and Balweg met with and confronted Jon Osterkorn concerning Barbara Osterkorn's aforesaid meetings with and statements to Balweg and other employes; and that after hearing Balweg's recitation of her experience in the meeting with Ms. Osterkorn, Jon Osterkorn responded, inter alia, "I don't think there is anything wrong with her saying what she feels to the employes." While Osterkorn thereby condoned his wife's prior actions, the context in which he did so is not one that is in itself reasonably likely to interfere with, restrain or coerce employes in the exercise of WEPA rights. For, Jon Osterkorn attempted to downplay the coercive aspects of what his wife was reported to have said, but Ballas, in an aggressive manner, cut off such efforts in the name of allowing Balweg to complete her recitation and by telling Jon Osterkorn, "Don't try to explain it away."[30/] It should also be noted that as to part of the statements made by Barbara Osterkorn, Jon Osterkorn's reference to Employer's right to express opinions has been upheld herein. As regards the remainder, while Osterkorn's condonation reinforces the conclusion that Barbara Osterkorn's meeting statements are attributable to the

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27/ Tr., 343-4 and 148-9.

28/ Tr., 473-4.

29/ Tr., 67-70.

30/ Tr., 69.

Employer rather than merely to herself, his response to Ballas and Balweg does not constitute a separate unfair labor practice.

DISCRIMINATORY WORKING CONDITIONS ALLEGEDLY IMPOSED ON FALCON FOLLOWING HER RETURN FROM LAYOFF: [Complaint Allegations 18c and 19; Findings 10 and 13]

The Union charges the Employer with a number of allegedly discriminatory working conditions imposed on Falcon in the period between her December 31, 1974 recall from layoff and her January 3, 1975 quit. Of the list enumerated in paragraphs 18c and 19 of the complaint, the first charge, that of assigning Falcon child care without training, has been discussed above in connection with her alleged constructive discharge.

The second allegation was that Falcon was assigned an unfamiliar bus route without orientation or instruction. As noted above (under the discussion of whether Falcon's resignation was a constructive discharge), Falcon had received orientation when she was initially hired. While there is no indication whether that orientation specifically included how to perform the bus duties involved, Falcon testified that she was able to perform those duties without experiencing any problems, despite her uncertainties as to whether she was doing what was expected of her. Furthermore, as previously noted, while it was Falcon's understanding that newly hired aides were assigned bus duty in morning or afternoon, but not both, there is no showing that Falcon's performance thereof in both morning and afternoon subjected her to a more arduous work day than that of the other aides.

The third allegation, that Falcon was "harassed and accused of falsehoods" in a meeting with Comer and Mazur, is reflected in Falcon's testimony only in terms of a brief meeting at the outset of her first day as an aide, in which "Mrs. Mazur told me that she was aware of the fact that in previous months I had been telling Infant Aides that she was not their supervisor and that they did not have to listen to her. I told her that whether she was aware of the fact or not, there was no fact to that, because I never made statements like that. We didn't go any further with that argument. . . ."[31/] In this meeting, according to Falcon, Comer also told Falcon that unlike in the past "there would be no time for personal conversations, that [she] would be too busy."[32/] Little else, according to Falcon, was said in this meeting. Since the latter remarks quoted above proved to be a reasonable description of the working conditions of all of the aides and since neither of the above remarks amounts to harassment or interference with protected Union activity, the third allegation has been rejected.

31/ Tr., 190.

32/ Tr., 190.

The fourth allegation in this series relates to the situation in which various Employer officials allegedly received human excrement in the mail. Falcon testified that on February 20, 1975, she was visited by a postal inspector and that the inspector told her she was "one of the suspects." Jon Osterkorn testified that the postal investigation had been started at the request of Mrs. Eastham, one of Penfield's Board members; and that Mrs. Eastham and other Board members, as well as supervisors and several anti-Union employes, had shared in the receipt of the mailings in question. Osterkorn introduced into evidence several anonymous letters allegedly received by Board members and himself between June and December 1974. One concerned pay levels and the Employer's assertedly intransigent bargaining position and is not quoted here. The others, which were relied on by the Employer as its basis for requesting the investigation, read as follows:

> When will the hunch-back Director and the old ogre Administrator learn that they cannot fight the power of our Union?

and

> Dear Barbara:
>
> We are all so glad to hear you are sick again, but this time we hope you don't recover!
>
> Worst Wishes

Osterkorn credibly testified, without contradiction, that he received the first at his home in early June 1974, and the second in September 1974, while his wife was in the hospital.

The Employer has blamed the Union or its supporters for these missives and parcels throughout, while the Union has attributed them to "agents provacateur" within management. In that regard, Falcon's response to the postal inspector's visit was to write a letter to the Postal Service requesting that the latter turn its investigation on the Osterkorns themselves.

Since the mailing of human excrement would ordinarily be a matter with which the Postal Service investigative forces might well be concerned, the Examiner sees no unfair labor practice in requesting the investigation in the first place or in listing "suspects" which included Falcon, the Union's President, where, as here, there is no proof of the Union's claim regarding the true source of the mailings. It may also be noted that, at the time she was investigated, Falcon was no longer an employe of the Employer.

INTERFERENCE WITH TESTIMONY BY EMPLOYES: [Complaint Allegation 20; Finding 14]

The complaint allegation numbered 20 and set forth in the recitation of substantive complaint allegations at the outset of this Memorandum was an amendment added by Complainant during the hearing. It was denied in all respects by the Employer.

In regard thereto, it is noted that Beverly Echols did testify in this case, in response to a subpoena. She stated that she had first agreed to testify voluntarily, then changed her mind, and ultimately appeared only because she was subpoenaed. When asked why she had changed her mind about testifying voluntarily, however, Echols said only:

> Well, because I have noticed certain things that have taken place at the Agency, and I was afraid - I was afraid of things that they might do in the future to destroy, perhaps, a career or something else I might pursue; and I just didn't want to be involved. 33/

Echols gave no more specific testimony with respect to the issue.

The testimony quoted above, however, is merely a subjective impression that something bad would happen to her, from persons unnamed, if she testified. The record contains no evidence as to when, where, or how any Employer agent deliberately contributed to this state of mind in any way. The undersigned is mindful that the unfair labor practices found above to have been proven in the record concerned conversations between Comer and Echols. Nevertheless, those conversations occurred months before Echols chose not to testify, and there is little evidence to link the events of the winter months to her midsummer change of mind, especially as Echols' initial willingness to testify postdated her January 1975 conversations with Comer.

With regard to Copeland and Milanowski, there is no showing that the Union subpoenaed either of them. Hence, the necessity for giving weight to the solely hearsay testimony as to their fears is not clearly established. In any event, that hearsay evidence was to the effect that those two employes would not testify because they feared Employer reprisals if they testified, in view of the general atmosphere and conditions at the Employer.

Since there is no evidence that any Employer agent contributed

conduct proximate in time to the employes' decisions concerning their testifying were engaged in that are reasonably likely to have that effect, no unfair labor practice has been proven in connection with allegation number 20, as amended.

REMEDY

In fashioning a sensible remedy for the violations found herein, given the passage of time and departure of the Union itself,[34/] the Examiner finds it appropriate, in view of the turnover rate among employes, to require that the Employer not only post a notice to current employes, but that it also mail copies of the notice to the last known address of all former employes who were in the bargaining unit at any time between the November 26, 1974 signing of the agreement and the Union's April 1976 decertification.

Dated at Milwaukee, Wisconsin this 11th day of June, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Marshall L. Gratz
Marshall L. Gratz, Examiner

34/ See Note 5, above.