

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

PETER MOHM III,	:	
	:	
Complainant,	:	Case XLIII
	:	No. 20550 MP-629
vs.	:	Decision No. 14704-A
	:	
HILLVIEW NURSING HOME, LACROSSE COUNTY,	:	
	:	
Respondent.	:	

Appearances:

Johns, Flaherty & Gillette, S.C., Attorneys at Law, by Mr. James G. Birnbaum, appearing on behalf of the Complainant.
Mr. Ray A. Sundet, Corporation Counsel, LaCrosse County, appearing on behalf of the Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

A complaint of prohibited practices having been filed with the Wisconsin Employment Relations Commission in the above entitled matter; and the Commission having appointed Dennis P. McGilligan, a member of the Commission's staff, to act as Examiner and to make and issue Findings of Fact, Conclusions of Law and Order; as provided in Section 111.07(5) of the Wisconsin Statutes; and hearing on said complaint having been held at LaCrosse, Wisconsin on July 28 and July 30, 1976, before the Examiner; and thereafter the parties having filed briefs in the matter; and the Examiner having considered the evidence and arguments, and being fully advised in the premises, makes and files the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. That Peter Mohm III, hereinafter referred to as Complainant Mohm or Mohm, is an individual residing at LaCrosse, Wisconsin; and that at all times material herein, Complainant Mohm has been employed by Hillview Nursing Home, LaCrosse County, as an orderly.
2. That LaCrosse County, hereinafter referred to as the Respondent, is a Municipal Employer; that among other municipal services, Respondent maintains and operates Hillview Nursing Home, hereinafter referred to as Hillview; that at all times pertinent hereto, Kenneth Guthrie was employed by the Respondent as Personnel Director; that Dr. James Edward Glasser was Medical Director of Hillview; that Oscar Lindgren, Jr., was Administrator of Hillview; that Phyllis Blair was Assistant Director of Nurses at Hillview; and that Mary Hickey, Caroline Stelin and Cynthia Van Landuyt were nurses employed by the Respondent at Hillview in a supervisory capacity.
3. That Peter Mohm III, was employed as an orderly from October 16, 1974 until the date of his discharge on May 27, 1976; that on March 19, 1975, Complainant Mohm received an employe evaluation review from Cynthia Van Landuyt dated February 28, 1975; that said evaluation indicated that Complainant Mohm had a definite interest in his work, was tactful and obliging and was an overall satisfactory employe.
4. That on April 15, 1975, Complainant Mohm received his six month employe evaluation report from Cynthia Van Landuyt; that said

report was basically the same as the aforementioned review dated February 28, 1975, except it showed improvement in a number of different areas; that said evaluation indicated that Complainant Mohm was resourceful, well informed, quite careful in his work and overall a satisfactory employe; that on May 13, 1975 Complainant Mohm received a six month wage increase from the Respondent.

5. That on October 16, 1975, Complainant Mohm received another employe evaluation report, this time from Mary Hickey; that said evaluation indicated that Complainant Mohm was tactful, ingenious, cooperative and an overall satisfactory employe; that said evaluation did not indicate any areas that needed immediate attention or improvement.

6. That Complainant Mohm has been a member in good standing of Local 150, Service and Hospital Employees International Union, AFL-CIO, since approximately March 16, 1975; that on October 28, 1975, Complainant Mohm was elected as union steward for Local 150; that at no time prior to Complainant Mohm's election as union steward did Mohm receive any written reprimands or unsatisfactory work evaluations.

7. That Administrator Lindgren testified he first learned of Complainant Mohm's election as union steward in a letter from Mrs. Boyles dated October 31, 1975, and received in his office on November 3, 1975; that Mr. Lindgren further stated that he was unaware that Complainant Mohm was a union member or steward at any time in October of 1975; that, however, Mr. Lindgren verbally cautioned Complainant Mohm to cease harassment of other employes "under the guise of union steward" on October 30, 1975; that around this time other management and supervisory personnel at Hillview became aware of Mohm's activities as a union member and steward.

8. That on October 28, 1975 Administrator Lindgren called Complainant Mohm down to his office for the first time during Mohm's tenure of employment; that Lindgren reprimanded Complainant Mohm orally for punching in too early in the morning, talking about Hillview's food, talking with fellow employes in the kitchen and on the second floor, talking about Mrs. Lindgren and punching out too early for lunch; that most of the conduct for which Complainant Mohm was reprimanded on October 28, 1975 was conduct which Mohm had exhibited since he was first employed and for which he had not previously been reprimanded; that other employes of the Respondent exhibited similar conduct for which Complainant Mohm was reprimanded on October 28, 1975, and for which they were not disciplined.

9. That on November 5, 1975, Mrs. Cotner, a nurse working on the third floor, ordered Complainant Mohm to accompany a patient over to the hospital in an ambulance; that Mohm's normal lunch period was from 12:00 noon to 12:30 p.m.; that Mohm left Hillview a little bit before 12:00 noon and returned from the hospital at approximately 1:30 p.m.; that when Mohm arrived back at Hillview, Administrator Lindgren questioned him regarding his extended absence from the facility; that Mohm explained to Mr. Lindgren he was performing a job assignment given to him by Mrs. Cotner, which Mr. Lindgren later verified through Phyllis Blair; that Mr. Lindgren was satisfied Mohm's absence was authorized and did not pursue the matter further.

10. That on November 6, 1975 Complainant Mohm failed to punch out for lunch; that Administrator Lindgren questioned Mohm regarding this failure; that when Mohm informed Lindgren that he had forgotten to punch out, Lindgren accepted the explanation and did not pursue the matter further.

11. That Complainant Mohm regularly visited second floor at Hillview to see patients and other employes; that on some of these visits to second floor Complainant Mohm ran errands for Cynthia Van Landuyt at her request; that, however, prior to his election as union steward Cynthia Van Landuyt told Complainant Mohm on several occasions not to come down to second floor and bother other employes during working hours; that on November 11, 1975, Administrator Lindgren reprimanded Complainant Mohm in writing as follows:

"You have been verbally cautioned twice by the undersigned to cease harassment of other employees under the guise of Union Steward. Also that you were elected as Steward for 3rd Floor day shift. These admonitions were made on October 30th, 1975 and November 4th, 1975.

At 10:00 a.m. on November 7th, 1975 you were cautioned by your floor supervisor not to disturb patient care on 2nd Floor. On November 7th at 1:45 p.m. you visited 2nd Floor, again without authorization, and called the supervisor names - 'a back stabber and a lazy pig.' This was observed by and reported by an L.P.N.

In view of the above disregard for supervisory orders and for making insulting accusations to the supervising nurses, consider this letter a severe reprimand and any further disregard of supervisory orders and violation of your jurisdiction, your employment at Hillview will be terminated."

that Mr. Lindgren had never sent a letter like the above letter to any other employe; that one of the reasons Mr. Lindgren sent said letter to Complainant Mohm was because of Mohm's activities as union steward.

12. That numerous other critical notes were placed in Complainant Mohm's personnel file around this time by various representatives of the Respondent; that no notes contained a date prior to October 28, 1975, the date on which Mohm became union steward.

13. That shortly thereafter on November 21, 1975, Complainant Mohm filed a complaint of prohibited practices against LaCrosse County, Hillview; that at a hearing in the matter on January 6, 1976, Complainant Mohm and the Respondent entered into a stipulation before an Examiner appointed by the Wisconsin Employment Relations Commission which provided in part:

"(a) The Respondent shall purge all disciplinary records, notes and letters contained in Mohm's personnel file from the date of his employment to the present;

- (e) The Respondent agrees that Mohm be permitted access to the building at off duty times for such things as grievances, patient visits and picking up pay checks;
- (f) The Complainant (Mohm) agrees to live within the existing labor agreement and not harass non-Union members;
- (g) The Respondent agrees to post a copy of the terms of the stipulation on the employe bulletin boards at Hillview Nursing Home;
- (h) Based on the stipulation, Complainant Mohm withdraws the complaint in the matter.";

that in addition to the above, the Respondent stated as a matter of intent (as to how it would deal with the Union in the future) that the County would work toward periodic meetings between management and Local 150 to improve employer-employee relations.

14. That at no time following execution of the aforementioned stipulation did the Respondent post the terms of the stipulation on employe bulletin boards at Hillview, despite requests from Complainant Mohm to do so; that on or about January 24, 1976, Complainant Mohm was elected chief steward of Local 150.

15. That all throughout this period of time management and supervisory personnel at Hillview viewed Complainant Mohm's election as union steward and his subsequent activities on behalf of Local 150 in a hostile manner; that Doctor Glasser testified morale was bad at Hillview due to the activities and "agitation" of Complainant Mohm; that Doctor Glasser further testified that things were better at Hillview with Mohm no longer there; that Administrator Lindgren testified Complainant Mohm would do anything that he could to disrupt and discredit the administration, and took joy in this; that Administrator Lindgren also testified that Complainant Mohm did not promote a harmonious relationship between management and labor; that Mary Hickey testified that Complainant Mohm's constant pursuit of grievances gave him a reputation of being "unhappy about everything" and that he was always that way from the date he was hired; that Phyllis Blair testified Complainant Mohm was "disruptive" to the Respondent's staff and its functioning.

16. That after the aforementioned stipulation was executed, the Respondent and Local 150 began having periodic employer-employee meetings; that the purpose of these meetings was to provide a forum for the candid discussion of all types of problems between management and labor; that the parties hoped said meetings would improve communication between all employes involved in the delivery of health care services; that during the course of said meetings union members sometimes criticized a nurse's performance of her (his) duties.

17. That on March 23, 1976, a meeting between management and labor representatives occurred; that the matter of Mary Hickey's nursing abilities came up within the context of a discussion regarding patient welfare and nursing care; that Complainant Mohm made some comments critical of Hickey's care of several patients, including an allegation that she left patients wet in their beds.

18. That thereafter on April 7, 1976, Administrator Lindgren asked Complainant Mohm to come to his office; that when Mohm arrived

at the Administrator's office, Mr. Lindgren, Caroline Stelin and Mary Hickey were all present there; that said persons questioned Complainant Mohm regarding comments he had made concerning Mary Hickey's nursing abilities at the aforementioned management-labor meeting on March 23, 1976; that Complainant Mohm refused to discuss the matter without counsel present; that Complainant Mohm's supervisor, Mary Hickey, was upset, threatened to sue Complainant Mohm, indicated she no longer wished to work with Mohm and requested that he be transferred.

19. That following the meeting of April 7, 1976, the Respondent did not transfer Complainant Mohm from the supervision of Mary Hickey; that instead supervisor Hickey was assigned directly to supervise Complainant Mohm's work area; that thereafter Mary Hickey repeatedly hauled Complainant Mohm into patients' rooms ostensibly in order to show him how difficult it was to keep patients who frequently wet their beds dry, but in fact to harass Mohm; that Mary Hickey also repeatedly followed Complainant Mohm around while he was shaving and administering to patients.

20. That on May 3, 1976, Linda Vangen, a nurse at Hillview, complained to Caroline Stelin that she was unable to properly punch in because Complainant Mohm had left his time card in the time slot; that Caroline Stelin verbally reprimanded Complainant Mohm for same; that Complainant Mohm had left his time card in the time slot many times in the past; that Mohm had never previously been told that it inconvenienced anyone; and that Complainant Mohm had not been previously warned or reprimanded regarding same.

21. That sometime in early April 1976 at a meeting attended by the Administrator, nurses and other management personnel, but not attended by the nurses aides or orderlies, Hillview decided to change its procedure for the giving of "report"; that prior to this time, "report" was extremely informal and consisted of aides writing down information regarding patient care on a piece of paper which would be pertinent to the next shift and placing same on the station desk so that nurses aides and orderlies could read it when they came on duty; that this system did not work out because periodically notes would be lost or not read by everyone concerned; that the change in giving of "report" was made to facilitate communication between employes from the different shifts and to improve patient care; that the new policy was not clearly defined, but basically involved a change from the written "report" to an oral "report" at the change of shifts; that this verbal exchange of information occurred primarily between nurses and aides; that the new policy was not communicated in writing to the employes of Hillview; that instead the supervisors of the various shifts were told to notify their respective employes of the change in policy.

22. That there exists some confusion regarding whether orderlies were required to go to "report" from the time the new "report" was instituted on May 13, 1976; that prior to the change in the giving of "report", orderlies were supposed to attend "report"; that apparently said requirement was not uniformly enforced as some orderlies attended "report" while others did not; that the new policy of verbal "report" was intended to include orderlies; that Complainant Mohm's supervisor, Mary Hickey, announced sometime during the first week in May 1976 the change in policy regarding the giving of "report" to the employes of her shift at a time when Mohm was present; that Mary Hickey did not specifically state that orderlies were required to go to "report" although the announcement was intended to cover all the employes; that after the above announcement some orderlies went to "report",

although the orderlies on Mohm's shift did not attend "report"; that during this period Complainant Mohm continued to commence patient care at the beginning of his shift and did not attend "report"; that on May 11, 1976, after the time for "report", Mary Hickey specifically informed Complainant Mohm for the first time that he was required to go to "report"; that on May 12, 1976, Complainant Mohm was shaving a patient in the morning when Hickey came in the room and interrupted patient care to inform Mohm that he was required to attend "report"; that Complainant Mohm finished shaving his patient and went to "report", but it was already over for the day.

23. That on May 13, 1976, Complainant Mohm reported to Hillview and went to the third floor at approximately 6:39 a.m. as customary; that Complainant Mohm proceeded to bathe patients; that Complainant Mohm had a patient in a tub and was bathing him prior to the time for "report"; that Mary Hickey came into the room and informed Complainant Mohm that he was required to go to "report"; that Complainant Mohm apologized and said that he had forgotten; that Mary Hickey left the room and returned a few minutes later with Phyllis Blair who also told Complainant Mohm that he was required to attend "report"; that Complainant Mohm thereupon indicated that he was speaking as chief steward and challenged what he considered to be a discriminatory policy of requiring him to attend "report" while other orderlies did not; that while Complainant Mohm was discussing the matter of attendance at "report" with Phyllis Blair, Mary Hickey left the room and returned shortly thereafter with Caroline Stelin who likewise informed Complainant Mohm of his obligation to attend "report"; that after some discussion over the care of the patient Mohm was bathing, Complainant Mohm went to "report" with Mary Hickey; that after "report" Complainant Mohm returned to his patient only to find him partially dressed; that Complainant Mohm finished dressing the patient; that as Complainant Mohm was finishing this task Caroline Stelin returned to the room and stated to Mohm that she had spoken to another union steward, Gerri Amumud, who agreed with her that he (Mohm) was required to go to "report"; that Complainant Mohm and Caroline Stelin got into an argument over who should have been contacted first in regard to the dispute, the steward or the chief steward; that during the course of said argument, Caroline Stelin indicated that she didn't care whether Complainant Mohm was chief steward or not but that she didn't want to be interrupted or challenged regarding the matter; that Complainant Mohm responded that as chief steward he was on equal grounds and again challenged Respondent's policy requiring his attendance at "report"; that Caroline Stelin then left to call Mr. Ed Lund, head of the Board of Trustees of LaCrosse County; that Complainant Mohm proceeded to pass out the breakfast trays; that as Complainant Mohm was passing out the breakfast trays Respondent's supervisors Caroline Stelin and Phyllis Blair came back upon the floor and informed Complainant Mohm that he was terminated and escorted him from the building; that at approximately 10:00 a.m. on May 13, 1976, Respondent's Personnel Director, Kenneth Guthrie, changed Complainant Mohm's discharge to a suspension.

24. That on May 14, 1976, Phyllis Blair, acting on behalf of Hillview, gave Complainant Mohm a letter of suspension as follows:

"This is to formally advise you that as a result of your actions on May 13, 1976, you are hereby suspended for a period of thirty calendar days dating from 7:16 a.m. on May 13, 1976 through June 13, 1976.

It is the opinion of the administration that your actions were insubordinate by refusing to carry out orders of higher medical authority, and that your comportment on

that date, and as previously exhibited to the nursing supervisory staff, is in conflict with the intent of our Working Agreement. In addition, such disruptive acts also have a direct bearing on the quality of patient care. Furthermore, your actions exhibit a manner contrary to the basic tenets of what an employer can expect from its employees.

You are further restrained from access to Hillview Home during this suspension period with the exception of carrying out such duties as may be assigned to you as Chief Steward of Local 150. Pursuant to Article V, Section 2, this will require your obtaining prior permission to enter the premises only to investigate such grievances that might arise. Such visitations will be limited to a reasonable period of time which we feel should not exceed more than one-half hour, and if longer time is required, it will be necessary for you to obtain an extension of this time period from the administration at Hillview.

You are further advised that upon return from this suspension that any further acts of insubordination or other unacceptable behavior shall result in further discipline up to and including discharge."

that the terms of suspension permitted, among other things, Complainant Mohm to perform all types of union activity including checking dues boxes, posting notices, grieving matters and assisting employes in resolving employment problems; that the terms of suspension requiring prior approval did not specify from whom such approval should be sought.

25. That Respondent's suspension of Complainant Mohm on May 13, 1976, was due, at least in part, to animus toward Mohm because of his protected concerted activity on behalf of Local 150 and its members.

26. That thereafter whenever Complainant Mohm required permission to enter the building he would seek prior permission to enter orally or in writing; that sometime around May 17 and 18, 1976, Complainant Mohm sought permission to enter Hillview in order to empty the union dues box; that Oscar Lindgren denied Complainant Mohm access to Respondent's facility despite knowledge that Mohm was pursuing valid union matters; that, however, on several occasions, including May 17, 1976, Complainant Mohm was granted permission to enter Respondent's facility by Mrs. Blair and Oscar Lindgren in order to pursue union matters.

27. That sometime prior to May 27, 1976, Complainant Mohm sought permission to enter Hillview in order to assist a probationary employe, Paula Van Tol, regarding her termination from employment; that Mohm spoke by phone with Mrs. Blair regarding the matter; that Mrs. Stelin was also on the phone line; that Mrs. Blair responded that she didn't think that the matter was grievable, that she felt Mohm could get someone else to do the union business and that she didn't want Mohm to come into the building; that Mrs. Stelin made some comments along the lines of keeping Mohm out of the building; that after some further discussion Mrs. Blair hung up on Complainant Mohm; that immediately thereafter Complainant Mohm called Oscar Lindgren up and asked him for permission to enter the building; that in response to questions from Mr. Lindgren as to what business he had to conduct, Mohm informed Lindgren that it was to pursue Paula

Van Tol's grievance and other union matters; that Mr. Lindgren then hung the phone up on Complainant Mohm.

28. That on May 27, 1976, Complainant Mohm and Paula Van Tol went out to Hillview in order to pursue Van Tol's grievance; that May 27, 1976 was the last day under the time limits imposed by the grievance procedure to process said grievance; that Complainant Mohm sought permission to enter the facility from Respondent's supervisor of nursing, Phyllis Blair; that the receptionist told Complainant Mohm that Mrs. Blair was not available then to talk; that Complainant Mohm replied that he would talk with Mary Hickey first and asked the receptionist to tell Mrs. Blair that he (Mohm) was there to talk to her; that thereafter Complainant Mohm and Paula Van Tol went up to the third floor and Mohm proceeded to discuss Van Tol's grievance with her immediate supervisor, Mary Hickey; that Mary Hickey responded that Paula Van Tol's termination was out of her hands and that she really had nothing much to do with it; that following this conversation Complainant Mohm and Paula Van Tol walked toward the elevator; that when Complainant Mohm got within about ten (10) feet of the elevator the door opened up and Mr. Lindgren barged off the elevator; that Mr. Lindgren informed Complainant Mohm that he was terminated from employment at Hillview; that Complainant Mohm informed Mr. Lindgren that he still wished to discuss the matter of Paula Van Tol's dismissal; that Mr. Lindgren replied that he (Mohm) was terminated and that he was no longer chief steward; that Complainant Mohm responded that he was elected to the union position and that he (Mr. Lindgren) could not remove him from same; that Mr. Lindgren then told Complainant Mohm to leave the building; that Complainant Mohm replied that "you are not going to kick me out"; that Mr. Lindgren then ran down the stairs and got on the PA system; that Mr. Lindgren announced over the PA system that Complainant Mohm was terminated from Hillview for coming in while on suspension; that Mr. Lindgren further stated that Mohm was no longer recognized as chief steward for the union and that no employes should speak to him regarding grievances.

29. That subsequent to the above series of events Complainant Mohm received a letter of termination from Mr. Lindgren as follows:

"This is to formally advise you that as a result of your actions on May 27, 1976 your employment at Hillview is hereby terminated effective at 10:45 a.m. on May 27, 1976 for violation of the terms of the 30 day suspension which was imposed on May 13, 1976.

Administration wishes to point out that your suspension on May 13, 1976 for reasons as stated in the letter dated May 14, 1976 did also prohibit your entrance into Hillview without permission of management. The May 14th letter also called to your attention that any further acts of insubordination and unacceptable behavior could result in discharge.

It is the opinion of Hillview management that you violated the terms of your suspension by entering Hillview accompanied by a former Hillview employee without permission of Hillview management."

30. That Respondent's discharge of Complainant Mohm on May 27, 1976, was due, at least in part, to animus toward Mohm because of his protected concerted activity on behalf of Local 150 and its members.

31. That the actions of the Respondent and its representatives against Complainant Mohm have not discouraged membership in the union.

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

CONCLUSIONS OF LAW

1. That because the Respondent's reprimands of Complainant Mohm between October 28, 1975 and November 11, 1975 were not part of the complaint in the instant matter filed on June 4, 1976; and because said reprimands were the subject of another complaint filed with the Commission on November 24, 1975, and subsequently the subject of a stipulated settlement agreement on January 6, 1976, upon which an Order For Dismissal was issued on January 9, 1976, the Examiner is without jurisdiction to determine whether said reprimands constitute a violation of Sections 111.70(3)(a)1 and 3 of the Municipal Employment Relations Act.

2. That Respondent's suspension of Complainant Mohm on May 13, 1976, was due, at least in part, to animus toward Peter Mohm III, because of his protected concerted activity on behalf of Local 150, and therefore Respondent, LaCrosse County, by its authorized representatives, discriminatorily suspended Complainant Mohm in violation of Sections 111.70(3)(a)1 and 3 of the Municipal Employment Relations Act.

3. That Respondent's discharge of Complainant Mohm on May 27, 1976, was due, at least in part, to animus toward Peter Mohm III, because of his protected concerted activity on behalf of Local 150, and therefore Respondent, LaCrosse County, by its authorized representatives, discriminatorily discharged Complainant Mohm in violation of Section 111.70(3)(a)1 and 3 of the Municipal Employment Relations Act.

4. That Respondent, LaCrosse County, by its authorized representatives did not discourage membership in Local 150 as a result of its discriminatory suspension and discharge of Complainant Mohm, and thereby did not independently violate Section 111.70(3)(a)3 of the Municipal Employment Relations Act.

5. That Respondent, LaCrosse County, by its authorized representatives did not violate a collective bargaining agreement between the parties, and therefore did not violate Section 111.70(3)(a)5 of the Municipal Employment Relations Act.

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

ORDER

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

1. Cease and desist from discriminating against Peter Mohm III, or any other employes, because of their union activities on behalf of Local 150, Service and Hospital Employees International Union, AFL-CIO, or any other labor organization.
2. Take the following affirmative action which the undersigned finds will effectuate the purposes of the Municipal Employment Relations Act:

- (a) Immediately offer to Peter Mohm III, full reinstatement to his former position, or a substantially equivalent position, without prejudice to his seniority, benefits or other rights and privileges previously enjoyed by him, and make him whole for any loss of pay or benefits he may have suffered by payment to him of the sum of money equal to that which he would normally have earned or received as an employe, from the date of his suspension on May 13, 1976, to the effective date of the unconditional offer of reinstatement made pursuant to this Order, less any earnings he may have received during said period and less the amount of unemployment compensation, if any, received by him during said period, and, in the event that he received unemployment compensation benefits, reimburse the Unemployment Compensation Division of the Wisconsin Department of Industry, Labor and Human Relations in such amount.
- (b) Notify all employes, by posting in conspicuous places in its offices where employes are employed, copies of the notice attached hereto and marked "Appendix A". That notice shall be signed by Respondent, and shall be posted immediately upon receipt of a copy of this Order and shall remain posted for thirty (30) days thereafter. The Respondent shall take reasonable steps to ensure that said notices are not altered, defaced or covered by other material.
- (c) Notify the Wisconsin Employment Relations Commission, in writing, within twenty (20) days following the date of this Order, as to what steps have been taken to comply herewith.

Dated at Madison, Wisconsin this 22nd day of June, 1977.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Dennis P. McGilligan, Examiner

APPENDIX A

NOTICE TO ALL EMPLOYEES

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

1. WE WILL offer to Peter Mohm III, full reinstatement to his former position, or a substantially equivalent position, and make him whole for any loss of pay or benefits he may have suffered by payment to him of a sum of money equal to that which he would normally have earned as an employe, but for the discriminatory suspension and discharge of him.
2. WE WILL NOT discriminate against Peter Mohm III, or any other employe, because of his activities on behalf of Local 150, or any other labor organization.
3. WE WILL NOT in any other or related matter interfere with the rights of our employes, pursuant to the provisions of the Municipal Employment Relations Act.

Dated this ____ day of _____, 1977.

By

Oscar Lindgren, Administrator
Hillview Nursing Home

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

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

Complainant filed a complaint of prohibited practices with the Wisconsin Employment Relations Commission on June 4, 1976. The Examiner held a hearing on July 28 and 30, 1976. The transcript was issued on August 19, 1976. The Complainant filed a brief on September 14, 1976. The Respondent filed its brief on September 15, 1976. The Complainant filed a reply on September 27, 1976, while the Respondent filed a reply brief on October 8, 1976.

Complainant primarily argues that Respondent's reprimands of Peter Mohm III, between October 28, 1975 and November 11, 1975, Respondent's suspension of Mohm on May 13, 1976, and Respondent's subsequent discharge of Mohm on May 27, 1976, were based, at least in part, on the Complainant's activities on behalf of Local 150, Service and Hospital Employees International Union, AFL-CIO, and that, therefore, Respondent's actions were violative of Section 111.70 (3)(a)1 and 3 of MERA. Complainant also argues that Respondent's discriminatory treatment of Mohm has discouraged membership in Local 150, contrary to Section 111.70(3)(a)3 of MERA.

To the contrary, the Respondent denies that any reprimand, suspension or discharge of Mohm had anything to do with his union activities. The Respondent feels that Complainant Mohm was insubordinate, disruptive and lacking in his performance as an orderly. The Respondent argues that in order to manage an efficient operation at Hillview it does not have to put up with the behavior of Peter Mohm III. Finally, the Respondent maintains that there was no showing that any decrease in union membership was attributable to its treatment of Complainant Mohm.

It is well established in the Commission's decisions pertaining to alleged discriminatory discharges and suspensions of employes that an employer may discharge an employe for any reason, or for no reason, provided that the discharge is not motivated by a desire to discourage or encourage concerted activity. Put another way, an employe may not be discharged or otherwise discriminated against when one of the motivating factors for the employer's action is the employe's protected concerted activity, no matter how many other valid reasons exist for such employer action. 1/

In resolving the above issues, the Examiner has been presented with some conflicting testimony regarding certain material facts. As a result, it has been necessary to make credibility findings, based in part on such factors as the demeanor of the witnesses, material inconsistencies and inherent probability of testimony, as well as the totality of the evidence. Some of these credibility determinations are discussed within the context of the Examiner's rationale in support of the Findings of Fact and Conclusions of Law. All other conflicts in the evidence, although not specifically detailed or discussed, have been considered in reaching the Examiner's decision.

1/ Muskego-Norway School Dist. No. 9 (7247) 8/65, aff. 35 Wis. 2d 540, 6/67.

In addition it should be noted that it is the Complainant who has the burden of proving by a clear and satisfactory preponderance of the evidence that the Respondent's actions against Peter Mohm III were based, at least in part, on anti-union considerations. 2/ To prevail, Complainant must therefore establish that Peter Mohm III was active in union affairs and that Respondent had knowledge of such activities; that Respondent bore animus against Mohm because of such activities and that finally, Respondent's stated reasons for its actions taken vis-a-vis Mohm were pretextual in nature, and that one of the reasons for Respondent's actions was based on the fact that Mohm was active in union affairs. 3/

KNOWLEDGE

The Examiner is completely satisfied that Peter Mohm III was extremely active on behalf of Local 150 and that Respondent had full knowledge of his activities. Respondent hired Peter Mohm III as an orderly on October 16, 1974. Mohm joined the union approximately six months later. 4/ Mohm was elected as union steward on October 28, 1975. 5/ Oscar Lindgren, Administrator of Hillview, learned that Mohm was a union steward on or before October 30, 1975. 6/ Around this same time other management and supervisory personnel at Hillview Nursing Home became aware of Mohm's activities as a union member and steward. 7/

ANTI-UNION ANIMUS

The Examiner is also satisfied that the Respondent's conduct throughout the period of time covered by the complaint was motivated by animus toward Complainant Mohm because of his union activity. In this regard, the reaction and attitude of management and/or supervisory personnel of Hillview to Complainant Mohm's election as union steward and his subsequent activities on behalf of Local 150 went far beyond a "normal" reaction.

2/ St. Joseph's Hospital (8787-A, B) 10/69, 12/69; Earl Wetenkamp d/b/a Wetenkamp Transfer and Storage (9781-A, B, C) 3/71, 4/71, 7/71 and AC Trucking Co., Inc. (11731-A) 11/73. Joint School District No. 1, Village of Holmen et al. (10218-A) 12/71.

3/ City of Wisconsin Dells (11646) 3/73, Madison Joint School District No. 8 (13794-A) 5/76.

4/ TR 12.

5/ TR 13.

6/ Mr. Lindgren testified that he was unaware that Complainant Mohm was a union member or union steward at any time in October or prior to November 3, 1975, TR 203. However, on October 30, 1975, Mr. Lindgren verbally warned Complainant Mohm to cease harassment of employees under the guise of a union steward. Exhibit 2. In addition, the Examiner notes that Mr. Lindgren orally reprimanded Complainant Mohm on October 28, 1975 for the first time, TR 13, 209, which suggests Mr. Lindgren may have known Mohm was union steward the same day he was elected.

7/ TR 47, 130, 146.

Dr. James Edward Glasser, Medical Director at Hillview, testified that Complainant Mohm's aggressive pursuit of grievances and other union business after he became a union steward in the fall of 1975 was viewed as a form of "agitation" by the institution. 8/ Dr. Glasser further testified that it was thought Complainant Mohm was trying to spread discontent to other orderlies and aides. 9/ Dr. Glasser added that the problems and difficulties which arose due to Mohm's conduct caused a drop in morale at the facility. 10/

Oscar Lindgren, Administrator of Hillview, summed up the general attitude toward Complainant Mohm when he testified that Mohm would do anything that he could to disrupt and discredit the administration, and took joy in this. 11/ Obviously, Mr. Lindgren did not think that Complainant Mohm promoted a harmonious relationship between management and the employees. 12/

The negative attitude toward Complainant Mohm because of his union activity by the above top level management at Hillview carried through to the other management/supervisory personnel at the facility. Despite the fact that Complainant Mohm had received an evaluation from her dated October 16, 1975, indicating that he was tactful, obliging, cooperative and superior in many respects and an overall satisfactory employe, Mary Hickey, Complainant Mohm's immediate supervisor, testified that Mohm's constant pursuit of grievances gave him a reputation of being "unhappy about everything", 13/ and that he had always been that way. 14/ Even when Complainant Mohm processed grievances while on vacation or on days off he was viewed as "disruptive" to the Respondent's staff and its functioning, according to Phyllis Blair, Assistant Director of Nurses. 15/ This attitude toward Complainant Mohm was shared by other members of the management staff at Hillview. 16/

Based on this animus, representatives of the Respondent acted accordingly in their attempt to discourage Complainant Mohm's protected concerted activities on behalf of the union. 17/

8/ TR 46, 47, 48.

9/ TR 48.

10/ TR 46, 47.

11/ TR 207.

12/ Id.

13/ TR 192.

14/ TR 193.

15/ TR 166, 175.

16/ TR 46, 47.

17/ TR 38, 39, 217, 218, 219.

COMPLAINANT'S REPRIMANDS BY RESPONDENT
FOLLOWING HIS ELECTION AS A UNION STEWARD

The Respondent's reprimands of Complainant Mohm between October 28, 1975 and November 11, 1975 were not part of the conduct complained of in the complaint filed in the instant matter by Peter Mohm III on June 4, 1976. However, said reprimands were the subject of another complaint filed with the Commission on November 24, 1975, and thereafter the subject of a stipulated settlement agreement on January 6, 1976, upon which an Order For Dismissal was issued on January 9, 1976. 18/ If the terms of that settlement agreement have been violated, the proper course of action is to bring a violation of contract action against Respondent under Section 111.70(3)(a)5 of the Municipal Employment Relations Act. Based on the above, the Examiner is without jurisdiction to determine whether said reprimands taken alone constitute a violation of Section 111.70(3)(a)1 and 3 of the Municipal Employment Relations Act. However, the Examiner can (will) consider said reprimands within the context of the Respondent's suspension and discharge of Complainant Mohm for purposes of determining motivation and intent.

SUSPENSION ON MAY 13, 1976

The Examiner is satisfied that the record supports a finding that the totality of the Respondent's actions indicates the Employer's suspension of Complainant Mohm on May 13, 1976 for refusal "to carry out orders of higher medical authority", and his "comportment on that date" 19/ was pretextual in nature, and that one of the reasons for Respondent's suspension of Mohm was based on its displeasure with Mohm's vigorous, but protected, concerted activity on behalf of the union.

Complainant Mohm began employment with the Respondent on October 16, 1974, as an orderly and was employed as an orderly from that date until the date of his discharge on May 27, 1976. On February 25, 1975, April 15, 1975, and October 16, 1975, Complainant Mohm received evaluation forms signed by Respondent's supervisors, Cynthia Van Landuyt and Mary Hickey. These evaluations indicated that Complainant Mohm was tactful, cooperative and superior in many respects and an overall satisfactory employee. Shortly after the last evaluation, Complainant Mohm was elected as a union steward by Local 150 on October 28, 1975. Management/supervisory personnel at Hillview were aware on that date, or shortly thereafter, of Complainant Mohm's election as union steward and his subsequent activities on behalf of Local 150. Complainant Mohm's aggressive conduct of union business quickly earned him a negative reputation among representatives of the Respondent as said persons viewed Mohm as someone constantly griping or unhappy and disruptive to the institution's staff and operation. Said representatives of the Respondent also viewed Complainant Mohm's union activities as a form of "agitation" which harmed employer-employee relations and caused a morale problem.

18/ LaCrosse County (Hillview Nursing Home) (14159-A) 1/76.

19/ Exhibit 3.

Within this context it is not surprising that Complainant Mohm suddenly received a number of oral and written reprimands from the Respondent between October 28, 1975 and November 11, 1975. This was despite the fact that at no time prior to Complainant Mohm's election as union steward did Mohm receive any written reprimands or unsatisfactory evaluations. In some instances the conduct for which Complainant Mohm was reprimanded was conduct which Mohm had exhibited since he was first employed and for which he had not previously been reprimanded. 20/ In addition, other employes of the Respondent exhibited similar conduct for which Complainant Mohm was reprimanded, and were not disciplined. 21/

Based on all of the above: namely, the Complainant's good work record prior to his election as union steward; the sudden change in attitude by the Respondent toward Mohm after said election with a corresponding issuance of numerous oral and written reprimands, many of which contained negative references to Mohm's activity on behalf of the union and the unequal treatment of Complainant Mohm vis-a-vis other employes regarding conduct on the job, it is reasonable to conclude that the Respondent was attempting to harass and discourage Mohm because of his protected, concerted activity on behalf of Local 150.

On November 24, 1975, Complainant Mohm filed a prohibited practice charge of discrimination with the Commission. 22/ At hearing on January 6, 1976, Complainant Mohm entered into a stipulation before the Commission which provided in part:

- "1. That Mohm be permitted to conduct his Union business without harassment from the Respondent.
2. That Mohm be permitted access to the hospital at off duty times for such things as grievances, patient visits and picking up pay checks.
3. That a copy of the Stipulation be posted on the employe bulletin board." 23/

Respondent also agreed to meet periodically with representatives of Local 150 to discuss problems between management and labor candidly in order to improve employer-employe relations. 24/

Things quieted down between Complainant Mohm and the Respondent for a short while following execution of the stipulation. On March 23, 1976 a meeting between management and labor representatives occurred at which time Complainant Mohm criticized nursing care within the context of patient welfare and singled out Mary Hickey, his supervisor,

20/ TR 14.

21/ TR 14, 80, 115, 205.

22/ TR 20.

23/ Exhibit A, TR 20, 212.

24/ Exhibit A, TR 64, 213, 214.

as lacking in the performance of her duties. 25/ Mohm specifically said that Mary Hickey left patients wet in their beds.

On April 7, 1976, Complainant Mohm was confronted by Mr. Lindgren and other supervisors regarding comments he had made at the above meeting. 26/ Complainant Mohm's supervisor, Mary Hickey, was extremely upset, 27/ threatened to sue Mohm, 28/ indicated that she no longer wished to work with Mohm and requested that he be transferred. 29/

However, Complainant Mohm was not transferred from the supervision of Mary Hickey. 30/ Instead, Mary Hickey was assigned directly to supervise Complainant Mohm's work area. 31/ Thereafter, Mary Hickey harassed Complainant Mohm by repeatedly hauling Mohm into patients' rooms 32/ ostensibly to show him how easy it was for patients to wet their bed after being changed immediately prior to the wetting, but in reality to get after Mohm because of his criticism of her. Mary Hickey also constantly followed Complainant Mohm around while he was administering to patients. 33/

In light of Complainant Mohm's criticism of Mary Hickey and Hickey's adverse reaction to said criticism, it would appear that Respondent's refusal to transfer Mohm and its assignment of Hickey to assume more supervision of Mohm constituted an attempt to increase surveillance and harassment of Complainant Mohm. By said actions, Respondent put Complainant Mohm into a situation where it was almost impossible for him to succeed.

On May 3, 1976, Complainant Mohm was orally reprimanded by Respondent's supervisor, Mrs. Stelin, for leaving his time card in the time slot, 34/ although he had done so in the past, 35/ had never been warned against said conduct, 36/ and had never been told that it inconvenienced anyone. 37/

It was within the context of this negative attitude by Respondent toward Complainant Mohm because of his union activities which coincided with the issuance of a number of reprimands, oral and written, to Mohm and the harassment, bordering on vendetta, by Mary Hickey toward Complainant Mohm because of his criticism of her, that the incident

25/ TR 21 - 24.

26/ TR 24 - 27.

27/ TR 194.

28/ TR 125, 194.

29/ TR 25, 194, 195.

30/ TR 25.

31/ TR 25, 195.

32/ TR 26, 196.

33/ TR 29, 196.

34/ TR 28.

35/ TR 28.

36/ TR 28.

37/ TR 28, 114, 115.

concerning attendance at "report" occurred which lead to Complainant Mohm's suspension.

Prior to May 13, 1976, Mary Hickey told Complainant Mohm on several occasions that he was required to attend "report". 38/ On May 13, 1976, before "report" began, Complainant Mohm was bathing a patient. Mohm was interrupted by Mary Hickey who again informed him that he was required to go to "report". 39/ Hickey then left the room and returned a few minutes later with Phyllis Blair who again told Complainant Mohm that he was required to attend "report". 40/ Complainant Mohm then indicated that he was speaking as chief steward and challenged what he considered to be a discriminatory policy of requiring him to attend "report" while others did not. 41/ While Complainant Mohm was discussing the matter with Mrs. Blair, Mary Hickey left the room and returned shortly thereafter with Supervisor Stelin, who also informed Mohm that he had to go to "report". 42/ After some discussion over the care of the patient who was being bathed, Complainant Mohm went to "report" with Mary Hickey. 43/ Afterwards he returned to his patient and finished dressing him. 44/ As Mohm was doing this Caroline Stelin returned and said she had spoken to another union steward who agreed that Mohm was required to go to "report". 45/ The parties then got into an argument as to who should have been contacted first, the steward or chief steward, whereby Stelin replied that she didn't care whether Mohm was chief steward or not but that she would not be interrupted. 46/ Mohm replied that as chief steward he was on equal grounds and thereupon challenged Respondent's policy requiring attendance by orderlies at "report". 47/ The parties got into further argument over the matter, whereupon Mrs. Stelin left to call Ed Lund, head of the Board of Trustees of LaCrosse County. 48/ Shortly thereafter Stelin returned, informed Complainant Mohm he was terminated, and supervisors Blair and Stelin escorted Mohm out of the building. 49/ At approximately 10:00 a.m. that same day, Respondent's personnel director changed Complainant Mohm's discharge to a suspension, 50/ and subsequently gave Mohm a letter to that effect.

38/ TR 29 - 32.

39/ TR 32.

40/ TR 32.

41/ TR 33.

42/ TR 33.

43/ TR 33.

44/ TR 34.

45/ TR 34.

46/ TR 34.

47/ TR 35.

48/ TR 35.

49/ TR 35, 82.

50/ TR 102, Exhibit 3.

There is some dispute as to whether Caroline Stelin and Mrs. Blair told Complainant Mohm that he was terminated or suspended when they escorted Mohm out of Hillview on the morning of May 13, 1976. As noted above, Complainant Mohm testified that he was told by Caroline Stelin he was terminated. 51/ This was supported by the testimony of Elizabeth Finney. 52/ Caroline Stelin denied using the word "terminated" or "fired" and stated that she and Phyllis Blair told Complainant Mohm he was suspended. 53/ However, the Respondent failed to introduce convincing evidence to support Caroline Stelin's version of the story. 54/ Based on the aforementioned, and Caroline Stelin's demeanor and testimony on the witness stand, 55/ the Examiner credits the Complainant's testimony on this matter. Such a finding, that the above supervisors told Complainant Mohm he was terminated as they escorted him out of the building on May 13, 1976, is consistent with Respondent's harassment of Complainant Mohm up to that date because of his union activities. It is a reasonable conclusion that the aforementioned supervisors seized upon Complainant Mohm's behavior on said date as a good opportunity to get rid of the "agitator".

However, assuming arguendo, that said supervisors told Complainant Mohm he was suspended, not terminated, for his actions on May 13, 1976, as they escorted him out of the building, the Examiner's conclusion that the suspension was pretextual in nature would be the same. Representatives of the Respondent had knowledge of Mohm's union activities and animus toward him as a result thereof. Shortly after Mohm was elected as union steward Respondent began a campaign of harassment against him with a series of oral and written reprimands. Following settlement of a discrimination complaint on January 6, 1976, said campaign of harassment began again with renewed intensity, following Mohm's criticism of Mary Hickey at a management-employee meeting on March 23, 1976. Despite the severely strained relationship between Complainant Mohm and Mary Hickey, following said criticism Respondent did not separate the two employees. To the contrary, Mary Hickey assumed a greater role in the supervision of Complainant Mohm, creating a situation where Mohm would be unable to succeed. She followed Mohm from room to room as he administered to patients and often dragged him into rooms where patients had wet their beds ostensibly to show him how easy it was, but in fact to harass Mohm because of his criticism of her regarding same. Complainant Mohm also received numerous other reprimands during this period. On May 13, 1976, it is important to note that Caroline Stelin refused to discuss Mohm's challenge to his required attendance at "report", which he alleged was discriminatory, stating that she didn't care whether Mohm was chief steward or not.

51/ TR 35.

52/ TR 82.

53/ TR 145.

54/ The Respondent did not introduce Mohm's time card where Mrs. Stelin allegedly signed "E. Lund, suspension, CES" at the time she escorted Mohm out of the building, TR 144. Nor did Mrs. Blair specifically testify as to what was said to Complainant Mohm as she and Caroline Stelin escorted Mohm out of the building.

55/ See particularly TR 148 - 154.

Therefore, based on the totality of the Respondent's actions noted above, the Examiner finds it reasonable to conclude that the Respondent's suspension of Complainant Mohm on May 13, 1976, because of Mohm's behavior that day was pretextual in nature, and that said action was based, at least in part, on animus toward Complainant Mohm because of his union activities.

DISCHARGE ON MAY 27, 1976

On May 14, 1976, Complainant Mohm received a letter of suspension suspending him for thirty (30) days, restricting his access to Respondent's facility, requiring Mohm to obtain prior permission for entrance and restricting Mohm to one-half hour for union activities. 56/ The term of suspension permitted, among other things, Mohm to perform all types of union activity including checking dues boxes, posting notices and processing grievances. 57/ The terms of suspension requiring prior approval did not specify from whom such approval should be sought. 58/

While on suspension Complainant Mohm continued to conduct union business. Whenever Complainant Mohm required permission to enter Respondent's facility, he would seek prior permission to enter either orally or in writing. 59/ However, Respondent continued its hostile attitude toward Mohm and its effort to discourage Mohm's union activity. Sometime around May 17, 1976 and May 18, 1976, Complainant Mohm sought permission to enter Hillview Nursing Home and Respondent denied Mohm access, despite knowledge that he was pursuing valid union matters. 60/ Sometime prior to May 27, 1976, Complainant Mohm sought permission to enter said facility to assist a probationary employe in a grievance matter and to conduct other union business. 61/ Respondent denied Complainant Mohm access to the building on this date, hung the telephone up on him several times, 62/ and left him waiting on the line several minutes, despite a five day limitation on the filing of grievances. 63/

On May 27, 1976, to assist Paula Van Tol, a probationary employe, Complainant Mohm went out to Respondent's facility and sought permission to enter the facility from Respondent's supervisor of Nursing, Mrs. Blair. 64/ Complainant Mohm was told that she was not available, 65/

56/ Joint Exhibit 3.

57/ TR 216, 217.

58/ TR 217, Joint Exhibit 3.

59/ Exhibit B, TR 36, 70, 217.

60/ TR 218, 219.

61/ TR 39.

62/ TR 38.

63/ TR 37.

64/ TR 39, 40, 126.

65/ TR 126.

although she was present at the facility. 66/ There was only one day left in the time limitation for the processing of the above employe's grievance. 67/ Therefore, Complainant Mohm told the receptionist he would talk to Mrs. Blair when she became available, and in the meantime that he would talk to Mary Hickey, the grievant's immediate supervisor. 68/ Complainant Mohm and the aforementioned probationary employe then proceeded to the third floor where Mohm discussed the probationary employe's problem with her immediate supervisor. 69/ At no time did Complainant Mohm harass any employe or disrupt any patient services. 70/ Moreover, Respondent's supervisor, Mrs. Hickey, did not deny him permission to be on the premises. 71/

Following this conversation Complainant Mohm and the grievant began walking toward the elevator when they were confronted by Mr. Lindgren. 72/ Mr. Lindgren told Complainant Mohm that as of approximately 10:30 a.m. he was terminated and no longer an employe of Hillview. 73/ Complainant Mohm and Mr. Lindgren got into an argument over Paula Van Tol's grievance. Thereafter Mr. Lindgren got on the PA system and announced that Complainant Mohm was terminated from Hillview for coming in while on suspension. 74/ Mr. Lindgren further stated that Mohm was no longer recognized as chief steward, and that no employes should talk to him regarding grievances or anything else. 75/

Mr. Lindgren testified at first, regarding what he said over the public address system, that he mentioned Complainant Mohm was no longer a representative of the union, 76/ although he later denied having said this. 77/ Mr. Lindgren also testified that he was not aware that Complainant Mohm was a union member or steward at any time in October of 1975 or prior to November 3, 1975. However, Mr. Lindgren had verbally warned Complainant Mohm to cease harassment of employes under the guise of union steward on October 30, 1975. 78/ In addition,

-
- 66/ TR 221.
 - 67/ TR 39.
 - 68/ TR 40.
 - 69/ TR 40, 93.
 - 70/ TR 199.
 - 71/ TR 40.
 - 72/ TR 40.
 - 73/ TR 40, 41.
 - 74/ TR 41, 200.
 - 75/ TR 41, 93.
 - 76/ TR 200.
 - 77/ TR 201.
 - 78/ Exhibit 2.

both Elizabeth Finney 79/ and Paula Van Tol 80/ testified that Mr. Lindgren announced over the PA system that Mohm was terminated and no longer recognized as union steward and employees should not talk to him regarding grievances or anything else. The Respondent failed to offer any additional testimony or evidence to support Mr. Lindgren's version of the event. Based on all of the above, the Examiner credits the Complainant's version of the announcement regarding Mohm's discharge.

The action of dismissing an employe by announcing over a public address system said employe's termination is unusual. To announce that said person is no longer a union representative, and that employees should not talk to that person regarding grievances or anything else is even more unusual. Unless, of course, this was the real purpose behind the termination of Complainant Mohm all along. By said statements Respondent clearly demonstrated its animus toward Complainant Mohm because of his union activities, and revealed that at least in part, by Mohm's termination, it hoped to stop Mohm's union activities.

The Examiner finds it reasonable to conclude that the above action of Mr. Lindgren was the finale of a campaign to get rid of Mohm, which began shortly after Mohm's election as union steward on October 28, 1975, and continued thereafter. By the terms of the aforementioned suspension, Complainant Mohm was free, within certain restrictions, to conduct union business. In light of the previous actions of the Respondent in denying Complainant Mohm an opportunity to process Paula Van Tol's grievance, and the time limits on said grievance, Complainant Mohm did not act unreasonably on May 27, 1976, in first seeking permission to enter the facility from Phyllis Blair, telling the receptionist he would be back after being informed Blair was unavailable, and then going to talk to Van Tol's immediate supervisor regarding the grievance. Accordingly, Mr. Lindgren's termination of Mohm constituted unreasonable interference with his right to conduct union business in processing Van Tol's grievance, and therefore amounted to a harassment of Mohm regarding same.

Based on all of the above, and the totality of the record, the Examiner finds it reasonable to conclude that the Respondent's termination of Complainant Mohm for his conduct on May 27, 1976, was pretextual in nature, and that at least part of the reason was animus toward Complainant Mohm because of his union activities. 81/

DISCOURAGING MEMBERSHIP IN LOCAL 150

The Union argues that Respondent's discriminatory treatment of Complainant Mohm has discouraged membership in Local 150 contrary to Section 111.70(3)(a)3 of MERA. The Respondent rejects this argument and feels that Complainant Mohm has not sustained his burden of proof in regard to this allegation.

The record indicates, by hearsay testimony, that some employees may have lost interest in, or felt discouraged about the union, due to Respondent's discriminatory treatment of Complainant Mohm, 82/

79/ TR 83.

80/ TR 93.

81/ TR 47, 48, 175, 192, 207, 214-215.

82/ TR 82, 90.

and that some employes told Complainant Mohm that Respondent's treatment of him was the reason they dropped out of the union. 83/ However, there is no direct persuasive evidence that a causal relationship existed between Respondent's discriminatory treatment of Complainant Mohm and a corresponding drop in the number of union members. Nor is there any direct persuasive evidence that Respondent's discriminatory treatment of Complainant Mohm was intended to have a "chilling effect" on union membership. Therefore, the Examiner dismisses that portion of the complaint alleging that Respondent's discriminatory treatment of Mohm discouraged membership in Local 150 because Complainant Mohm has failed to prove same by a clear and satisfactory preponderance of the evidence.

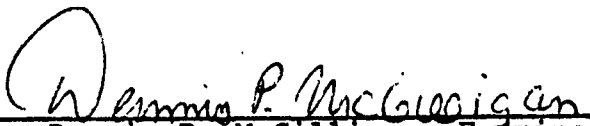
VIOLATION OF CONTRACT

The Complainant failed to introduce evidence to support that portion of the complaint which alleged that a collective agreement was violated between the parties. The Complainant also failed to argue same in his brief. Therefore, the Examiner finds that the Respondent did not violate a collective bargaining agreement between the parties, and therefore did not violate Section 111.70(3)(a)5 of the Municipal Employment Relations Act.

Dated at Madison, Wisconsin this 22nd day of June, 1977.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Dennis P. McGilligan, Examiner