STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

LOCAL UNION NO. 727B, AFSCME, AFL-CIO, Complainant, vs. MENOMONIE JOINT SCHOOL DISTRICT NO. 1, Respondent.	:	Case XVIII No. 20685 MP-645 Decision No. 14811-C

Appearances:
Lawton & Cates, Attorneys at Law, by Mr. Bruce F. Ehlke and Ms. Jean H. Lawton, appearing on behalf of the Complainant.
Solberg & Steans, Attorneys at Law, by Mr. Reid W. Klopp, appearing on behalf of the Respondent. 1/

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 Menomonie, Wisconsin, on September 9 and 10, 1976 before the Examiner; and the Examiner having considered the evidence, arguments, and briefs, 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 Local Union No. 727B, AFSCME, AFL-CIO, hereinafter referred to as the Complainant, is a labor organization within the meaning of Section 111.70, Wisconsin Statutes; that John Westphal is the President of the Complainant Union; and that Guido Cecchini is a representative of said organization.

2. That Menomonie Joint School District No. 1, hereinafter referred to as the Respondent, is a Municipal Employer within the meaning of Section 111.70, Wisconsin Statutes, with offices at Menomonie, Wisconsin; and that Respondent is engaged in the provision of public education in a district which includes Menomonie, Wisconsin.

3. That at all times material herein, James Verchota, has been the Superintendent of Schools for the Respondent District.

4. That on March 30, 1976, the Complainant filed a petition with the Wisconsin Employment Relations Commission, hereinafter referred to as

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1/ By letter dated March 8, 1977, the Examiner was advised that the law firm of Solberg & Steans no longer represented the Respondent in the instant case. On March 18, 1977, Howard F. Thedinga informed the Examiner by letter that his law office now represented the Respondent. However, Thedinga's law firm did not actively participate in the case to the extent of appearing at the hearing or filing a brief.

the Commission, requesting that an election be conducted pursuant to Section 111.70(4)(d), Wisconsin Statutes, among certain employes of the Respondent; that the employes for whom the petition was filed included all the secretarial and clerical employes of the Respondent; that on June 28, 1976 the Commission issued a Direction of Election in the matter; that subsequently on October 25, 1976 the Commission issued an Order Amending Direction of Election in the matter; that it was not until November 15, 1976, that the Commission conducted an election among said employes; and that thereafter on December 3, 1976 the Commission certified the Complainant as the bargaining representative for the aforementioned secretarial and clerical employes of the Respondent.

5. That sometime toward the end of March, 1976, Superintendent Verchota received a copy of the aforementioned election petition; that Superintendent Verchota discussed the petition with Wayne Devery, Business Manager for the Respondent and instructed him to send out a notice to the staff; that subsequently on April, 1, 1976, Wayne Devery sent the following memorandum to all secretaries and clericals of the Respondent regarding their "proposed Union affiliation":

> "We understand there is some interest in your group to organize with the AFL-CIO Union in the immediate future.
>
> Before you make your final decision, we would like the opportunity of discussing this matter with you. Therefore, would you please attend a meeting on this subject at the Administrative Building on Thursday, April 8, 1976, at 4:00 p.m."

6. That on April 8, 1976 Superintendent Verchota and Wayne Devery met with the secretaries and clericals noted above; that Superintendent Verchota had a tape recorder with him and taped portions of the meeting; that Superintendent Verchota read a portion of Chapter 111.70 relating to the employes' right to organize, and asked for comments, which he said could be made with the tape recorder off; that Superintendent Verchota turned the tape recorder off but there were no comments by any of those in attendance; that Superintendent Verchota turned the tape recorder back on and proceeded to discuss the advantages and disadvantages of a Union as he saw them; that among the advantages of organizing Superintendent Verchota noted was having "the security of a contract"; that another advantage of a union he added is "that you'll have somebody to represent you"; that concerning the disadvantages of a union Superintendent Verchota stated "I think it is my obligation to point out to you a few things that I would like to have you reflect on"; that Superintendent Verchota said that the nature of collective bargaining was an "adversary" process and that the School Board, for example, would be reluctant to grant certain advantages to the employes in contract negotiations; that Superintendent Verchota also stated that once there was a negotiated agreement, he would have to administer it strictly as written, with no room for flexibility; that the third item Superintendent Verchota asked the employes to consider was the expense of union dues; that at no time prior to the April 8, 1976 meeting or during the course of said meeting did Superintendent Verchota make a promise of any benefit or threaten to remove any benefit in order to coerce the employes to vote for or against the union; that at no time during the same period did Superintendent Verchota make a threat of any reprisal concerning the employes' efforts to organize.

7. That in the Spring of 1975, Superintendent Verchota proposed to the Menomonie Board of Education a reorganization plan which would take place primarily in the administration at the secondary and elementary levels; that as a result thereof the Respondent implemented for the 1975-1976 school year in the smaller elementary schools "dual principalships"

whereby a single person acting as principal served two buildings; that this change was made as a preliminary step to possible further reorganization; that this system of "dual principalships" created some negative reaction among various citizens of the School District which led the Board of Education to request that Superintendent Verchota reconsider the matter; that subsequently Superintendent Verchota undertook a review of the matter which included discussions of the problem within the "administrative team", with some of the School Councils (groups made up of citizens, students and teachers at each of the buildings) and with the members of the Board of Education; that on March 19, 1976, the subject of "dual principalships" including a recommendation for movement to half-time principals at the elementary levels was discussed at an "administrative team" meeting attended by Superintendent Verchota; that on or about April 8, 1976, several persons holding the position of "dual principal" communicated their solicited views in writing to Superintendent Verchota concerning the "dual principalship" role; that at the regular meeting of the Menomonie Board of Education on April 20, 1976, the problem of the "dual principalships" was discussed; that Superintendent Verchota presented a proposal to modify the "dual principalships" by creating half-time principals in two more buildings and retaining "dual principalships" in four other buildings; that Donald Wisner, a member of the Board, requested cost estimates regarding the assignment of a half-time principal at each of the elementary buildings except River Heights; that consequently further discussion by the Board of Education regarding the matter of "dual principalships" and half-time principals was postponed until the Board's meeting on April 27, 1976; that on April 27, 1976, Superintendent Verchota sent a memo to the Board of Education containing a proposal to modify the "dual principalship" system as follows:

> "As per instructions of the Board, the following is a cost analysis of placing a half-time principal at each of the following schools: Cedar Falls, Downsville, East, Knapp, Little Elk Creek, and Lucas. The figures are estimates based upon anticipated expenditure for the 1976-77 school year. It will be noted that the major offsetting cost is that of reduction in the secretarial force. The basic approach to this is to have a nine-month, half-days secretary at each of the above schools. In considering seniority and as it works out between nine-month full-day jobs and nine-month half day jobs, four full-day persons would have to become half-day, and it would be necessary to hire one additional half-day person.
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> Increased expenditure:
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> | | | |
> |---|---|---|
> | 3 Half-time teachers | $18,500 | |
> | 3 Principal increments | 6,000 | |
> | | | $24,500 |
>
> Decreased expenditure:
>
> | | | |
> |---|---|---|
> | 1-1/2 Secretarial reduction | 7,500 | |
> | Travel reduction | 1,500 | |
> | | | 9,000 |
>
> Net Cost $15,500"

that, on April 27, 1976, the Menomonie Board of Education reconvened its meeting of April 20, 1976; that during the course of said meeting, the members of the School Board discussed further the subject of "dual principalships" and the aforementioned recommendation of Superintendent

Verchota; that the School Board approved a motion to permit the Superintendent to implement half-time principalships at each of the elementary schools which had been served by dual principals as per his recommendation.

8. That certain secretarial and clerical employes first learned of possible changes in their work assignments through a newspaper article which appeared on April 28, 1976, in "The Dunn County News"; that shortly after the newspaper article appeared, Superintendent Verchota began making telephone calls to the various secretarial and clerical employes to tell them that there would be job changes and to offer different work assignments to them.

9. That on or about May 4, 1976, Superintendent Verchota informed the following employes who had signed union cards that their work hours and/or work assignments would be different in the 1976-1977 school year than they had been in the 1975-1976 school year as follows:

Carol Bakke	Reduction in hours by 1/2 hour per day.
Wanda Cordahl	Transferred from East school and library to Nurse's and Audio-Visual offices. Hours of work unchanged.
Adeline Cummings	Reduction in hours from eight to five.
Diane Hillman	Transferred from Junior High Office to Senior High Office. No reduction in hours.
Nancy Kraft	Hours reduced from eight to five, daily, and term of employment reduced from 10 1/2 to 9 1/2 months.
Faye Lehmann	Assigned additional library duties. No change in hours.
Dorothy Ormson	Transferred from a full days position to a five hour a day position. Later resigned.
Linda Risler Dougherty	After being offered reassignment, she resigned.
Mildred Simpson	Transferred from Senior High Office to Payroll Clerk at Administration Center.
Aneta Spielman	Hours reduced from eight to five. Librarian work eliminated; lunch room work added.
Mary Tilleson	Informed in the Spring of 1976 that her duties would be changed. This change was later rescinded.

that Lois Cook also signed a union card but there was no change in her job duties or hours for the 1976-1977 school year.

10. That as a result of a termination of federal funding on March 15, 1976, the job of Environmental Director was reduced from a full-time position to a part-time position; that as a result of that reduction, the need for a clerical/secretarial position for the Environmental Director no longer existed; that Muriel Evan's work hours were reduced as a result thereof.

11. That on February 2, 1976, the aforementioned "administrative team" including Superintendent Verchota met, and among other subjects,

discussed a possible reorganization of the librarian services at the elementary schools; that said representatives of the Respondent felt the professional librarians were spending too much time in two of the larger buildings and should spend more time in the other buildings in the School District; that the school administration felt this would allow more students and teachers to benefit from the librarians' professional training; that sometime prior to March 30, 1976, the School Administration initiated new assignments for the existing full-time librarians and library aides serving the elementary schools in order to improve the elementary school library program; that this allowed for some part-time library aide positions to be eliminated at two elementary schools; that as a result of this reorganization among the librarian staff Wanda Cordahl was transferred out of the library at East School when that library aide position was made a five hour job; that Superintendent Verchota offered several different jobs to Wanda Cordahl, and she chose the one in the nurse's office and the Audio-Visual Office at no loss in hours; that also as a result of the above-stated reorganization Aneta Spielman had her hours of work reduced when her library work was eliminated; that in addition, as a result of the aforementioned reorganization, Faye Lehmann retained her library position at River Heights and Mary Tilleson chose to stay at River Heights as a library aide.

12. That as a result of the switch from "dual principals" to half-time principals at six elementary schools, changes in the work assignments and/or hours were made for the following employes as noted in Finding of Fact No. 9: Carol Bakke, Adeline Cummings, Diane Hillman, Nancy Kraft, Dorothy Ormson, Linda Risler Dougherty, and Mildred Simpson.

13. That reassignments of the secretarial and clerical employes in the aforementioned bargaining unit took place in the following manner; that Superintendent Verchota first classified the secretarial-clerical positions on the following basis: high skills - twelve months - full time, high skills - nine months - full time, low skills - twelve months - full time, low skills - nine months - full time, low skills - nine months -part time; that Superintendent Verchota next took the incumbents in the aforementioned positions and ranked them on the basis of relative skill and seniority; that Superintendent Verchota then contacted the aforementioned employes and offered them various job choices allowing the employes to select based on their skill and seniority the restructured positions based on the administrative reorganization noted in Findings of Fact No. 7, No. 10 and No. 11; that Superintendent Verchota had no knowledge of who belonged to the Union or who did not belong and did not take any such information into consideration in making the above reassignments.

14. That there were six employes who did not sign the union cards, and whose working conditions and/or hours were not changed for the 1976-1977 school year; that these employes were Delores Christensen, Wanda Culp, Ruth Anne Oberg, Ruth Owen, Muriel Tylee and Helen Walter; that one employe, Carol Wing, did not sign a union card, but did experience a reduction in the hours of her employment.

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

CONCLUSIONS OF LAW

1. That Respondent's actions in scheduling and holding a meeting on April 8, 1976 with certain secretaries and clerks employed by the School District to discuss the proposed union affiliation of the employes

did not constitute interference, restraint or coercion of the secretaries and clerical employes of the Respondent in the exercise of their rights guaranteed to them in Section 111.70(2) of the Municipal Employment Relations Act, and therefore, the Respondent did not violate Section 111.70(3)(a)1 of the Municipal Employment Relations Act.

2. That Respondent's actions in scheduling and holding a meeting on April 8, 1976 with certain secretaries and clerks employed by the School District to discuss the proposed union affiliation of the employes did not constitute interference with the formation or administration of a labor organization in violation of Section 111.70(3)(a)2 of the Municipal Employment Relations Act.

3. That Respondent's actions in reassigning various secretarial and clerical employes to different jobs and making certain changes in the wages, hours and working conditions of said employes on or about May 4, 1976, effective for the 1976-1977 school year did not constitute interference, restraint or coercion of the aforementioned employes in the exercise of their rights guaranteed to them in Section 111.70(2) of the Municipal Employment Relations Act, and therefore, the Respondent did not violate Section 111.70(3)(a)1 of the Municipal Employment Relations Act.

4. That Respondent's actions in reassigning various secretarial and clerical employes to different jobs and making certain changes in the wages, hours and working conditions of said employes on or about May 4, effective for the 1976-1977 school year did not constitute interference with the formation or administration of a labor organization in violation of Section 111.70(3)(a)2 of the Municipal Employment Relations Act.

5. That Respondent's actions in reassigning various secretarial and clerical employes to different jobs and making certain changes in the wages, hours and working conditions of said employes on or about May 4, 1976 effective for the 1976-1977 school year did not discourage membership in a labor organization by discrimination in regard to hiring, tenure, or other terms or conditions of employment and therefore the Respondent did not violate Section 111.70(3)(a)3 of the Municipal Employment Relations Act.

6. That Respondent's actions in reassigning various secretarial and clerical employes to different jobs and making certain unilateral changes in the wages, hours and working conditions of said employes on or about May 4, 1976 effective for the 1976-1977 school year did not constitute a refusal to bargain with Complainant in violation of Section 111.70(3)(a)4 of the Municipal Employment Relations Act.

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

ORDER

IT IS ORDERED that the complaint allegations be, and the same hereby are, dismissed in their entirety.

Dated at Madison, Wisconsin this 30th day of March, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Dennis P. McGilligan
Dennis P. McGilligan, Examiner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The complaint alleges that the Respondent committed prohibited practices by holding a meeting with the secretarial and clerical employes to discuss the proposed union affiliation of said employes, and by making certain unilateral changes in their wages, hours and conditions of employment. The Examiner held a hearing on September 9 and 10, 1976. The transcript was issued on November 11, 1976. The Respondent filed a brief on January 17, 1977. The Complainant filed a brief on February 23, 1977. The Complainant filed a reply brief on April 6, 1977. The Respondent informed the Examiner by letter dated September 8, 1977, that it did not intend to file a reply brief in the matter.

INTERFERENCE

The Complainant argues that the Respondent interfered with its employes in the exercise of their rights guaranteed in Section 111.70(2) of MERA. The Complainant notes that these rights include, among others: "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 aide or protection."

The Complainant feels it is clear that the acts which the employer committed "were likely to interfere with" the rights of the employes. The Complainant states that within a week of receiving its copy of the WERC representation and election petition, the employer had summoned the clerical and secretarial employes to a meeting for the express purpose of discussing unionization and collective bargaining. By holding this meeting, the Complainant argues "the employer made its concern about the union organizing campaign abundantly clear to its employes." Shortly thereafter, the Complainant notes, a local newspaper article appeared, which indicated that school district staffing changes would be made the next year, and that some secretarial positions might be affected. This was followed by Superintendent Verchota notifying said employes of "drastic" changes in their wages, hours and conditions of employment. The Complainant claims this "upset" the employes and was "likely to interfere with the employes' rights." The Complainant adds that "given the drastic character of the changes made, they would constitute a violation of 111.70(3)(a)1 even if all employes had been affected equally."

The Respondent denies that its actions violated Section 111.70(3)(a)1 of MERA. In this regard, the Respondent contends that the meeting between Superintendent Verchota and the staff and what was said by Superintendent Verchota was entirely proper. The Respondent argues that the "total context" of the meeting must be evaluated. The Respondent states that Superintendent Verchota informed the employes of the advantages of a union and the disadvantages, and told them that in any collective bargaining situation the Employer would be reluctant to give up certain kinds of advantages to the employes. Superintendent Verchota added that any contract would be strictly enforced. The Respondent claims that at no time did Superintendent Verchota make any direct or implied threat of unilateral removal of benefits, or attempt to coerce the employes to vote for or against the union. The Respondent cites both the Commission and the NLRB to the effect that an employer may engage in permissible propaganda activities in an effort to dissuade its employes from selecting

a union, 2/ and an employer may inform its employes of the disadvantages of unions. 3/

The Respondent also denies that it violated Section 111.70(3)(a)1 of MERA by its reassignment of the clerical staff after the election petition was filed. The Respondent contends that there is no prohibition against the employer carrying on its normal activity. In the instant case, the Respondent feels that the record indicates the reassignment was a result of factors not related to the union but "due to the culmination of necessary planning to reorganize the school system so that the needs of the community and school children are met." The Respondent maintains that the Complainant failed to show that the reassignments interfered with any concerted activity.

To prevail on a complaint of interference with employe rights under MERA, the Complainant must demonstrate by a clear and satisfactory preponderance of the evidence that Respondent's actions were likely to interfere with employe rights. Consequently, although a finding of intent is not necessary to sustain a charge of interference, the Complainant must demonstrate that the statement or that the conduct complained of contains a threat of reprisal or a promise of benefit. 4/

The first issue then concerns the April 8th meeting between Superintendent Verchota and the secretarial/clerical employes. An initial question arises as to whether these employes were forced or required to attend the meeting. A second question arises concerning what was said at the meeting itself. At the meeting statements were made by Superintendent Verchota which allegedly interferred with the employes' MERA rights. In order to do this however, these statements must contain threats or promises related to the employes' interest in or activity with respect to the union. In addition it must be reasonable for the employes to tie those threats and/or promises to their right to engage in protected activity. Consequently, neither the calling of the meeting nor the statements made therein constitute per se acts of interference with the employes' rights or violations of Section 111.70(3)(a)1 unless it can be demonstrated that same contains a threat of reprisal or a promise of benefit.

The record does not support a finding that the voluntary nature of the calling of the April 8th meeting interferred with the employes' rights under MERA. The Respondent sent a memo to the secretarial and clerical staff asking said employes to "please attend a meeting" on the subject of their interest in forming a union. Although the record is clear that the Respondent wanted all the employes to attend said meeting, attendance was not mandatory and in fact, not everyone attended.

There is little if any dispute over what occurred at that meeting. Superintendent Verchota had a tape recorder with him and taped portions of the meeting. Superintendent Verchota read a part of Chapter 111.70 to the group, relating to the right to organize, and asked for comments, which he said could be made with the tape recorder off. There were no comments. He then went on to outline the effects of union organization as he saw them. These included the "advantages" of having a negotiated agreement and a representative to handle grievances. Then he went on to discuss some "things they should give some thought to." He stated that

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2/ Joint School District No. 1, Village of Holmen et.al., (10218-A), 12/71.

3/ City of Evansville, (9334-E, 9440-C), 5/72, City of Waukesha (Water Utility), (11486), 12/72.

4/ Lisbon-Pewaukee Jt. School Dist. No. 2, (14691-A, B), 6/76.

the process of collective bargaining is an "adversary process." He added that once there was a negotiated agreement, he would have to administer it strictly as written, with no room for flexibility. Finally, Superintendent Verchota asked the employes present to consider the expense of union dues.

The record of the above meeting indicates that Superintendent Verchota merely expressed an opinion with respect to the advantages and disadvantages of union representation and the effect on the employes' working conditions regarding same. The Examiner finds nothing in the record to support a finding that his statements should be construed as containing a threat of reprisal or promise of benefit. Although Superintendent Verchota stated the advantages of non-representation in the best possible light and the disadvantages of representation in the same vein there is nothing in the record to indicate that it was reasonable for the employes to tie said statements to their right to engage in protected activity. In view of the above, the Examiner finds that Superintendent Verchota engaged in permissible expressions of free speech at the April 8th meeting.

The next issue is whether the Respondent's unilateral reassignment of certain employes who had expressed an interest in organizing a union constitutes interference with said employes' rights under MERA.

A finding of anti-union animus or motivation is not necessary to establish a violation of Section 111.70(3)(a)1. Rather, the Municipal Employer violates said section whenever it commits acts, regardless of motive, which change the wages, hours and conditions of employment of their employes in such a way as would be likely to interfere with, restrain or coerce such employes in the exercise of their rights set forth in Section 111.70(2) of MERA. 5/

Where, as here, such changes are made during the pendency of a question of representation, evidence that the municipal employer was aware of the pendency of such question and/or evidence that such changes were made shortly after the municipal employer became aware of such pendency is evidence probative as to whether the changes were likely to have an unlawful impact on employe exercise of rights. But while such evidence is probative as to the issue, it is not necessarily conclusive. 6/ Consequently, it is not true that all changes in wages, hours and conditions of employment with respect to employes as to whom there is pending a question of representation necessarily will constitute a prohibited practice. 7/

Upon review of the record in the instant case, the Examiner concludes that, notwithstanding the timing of the changes at issue herein, the Complainant has failed to meet its burden of proving that Respondent committed a prohibited practice in violation of Section 111.70(3)(a)1. The record does not establish by a clear and satisfactory preponderance of the evidence that the announcement or the implementation of the changes involved herein was likely to interfere with, restrain or coerce any of the Respondent's employes in their exercise of MERA rights.

5/ City of Waukesha (Water Utility), supra. City of Sparta, (12778-A, B), 1/75; City of Cudahy, (13246-A, B), 8/75.

6/ City of Sparta, supra.

7/ Id.

In this regard the Examiner notes that the changes in the employes' assignments were due to legitimate business reasons. These reasons include an administrative reorganization at the principal level in the elementary schools which, in its study and planning stage, began almost a year prior to the filing of an election petition noted herein; a reorganization of the library services which began at least several months before the election petition was filed and a termination of federal funding for an environmental program. There is no evidence that the Respondent, in carrying out its normal business activity as noted above, attempted to accelerate its program in order to make the changes in the employes' work assignments in such a manner as to influence the employes in their opinion and/or choice of a union. To the contrary, the record indicates that the Respondent attempted to be fair in its reassignments by giving the employes various job choices based on their seniority and relative skills.

In addition, there is no evidence of anti-union animus on the part of the Respondent by which it would be reasonable for the employes to associate the changes in their work assignments with their union activity. Nor is there any evidence that the employes' attitude toward the union changed as a result of the Respondent's actions or that said employes abandoned their efforts at organizing a union. Finally, there is no evidence that the changes caused the employes to suffer deprivations to such an extent that it chilled their interest or desire to be organized.

DOMINATION

The Respondent argues that Section 111.70(3)(a)2 of MERA is violated only when an employer assists in the formation of a union or tries to dominate a union. The Complainant counters that "the statute is not as narrow as Respondent believes." The Complainant argues that the Respondent "interfered with" the formation of a union in the instant case by inter alia "making unilateral changes in terms and conditions of employment, and making those changes in such a way that there was a much greater adverse impact on pro-union than on non-union employes." The Complainant feels "such activity is proscribed under subsection (3)(a)2 of the statute."

The Examiner rejects the broad interpretation given to the statute by the Complainant. The statutory proscription against employer domination contemplates an employer's active involvement in creating or supporting a labor organization which is representing its employes. 8/ The record does not indicate that the Respondent tried to create a union which the Respondent dominated or assisted. Nor, did the meeting or reassignment of secretarial and clerical staff rise to the level of domination or interference with the internal administration of Complainant's organization contemplated by MERA. 9/ Therefore, the Examiner finds that the Respondent did not violate Section 111.70(3)(a)2 of MERA by the acts complained of.

8/ Lisbon-Pewaukee Jt. School Dist. No. 2, supra.

9/ There is no evidence that the meeting on April 8, 1976, or the reassignment of various employes to different jobs with corresponding changes in their wages, hours and conditions of employment interfered with the employes' union activity.

DISCRIMINATION

The Complainant further argues that the Respondent's action constitutes a violation of Section 111.70(3)(a)3 of MERA. The Complainant contends that "municipal employes are protected under Section 111.70(3)(a)3 from being discriminated against with regard to terms and conditions of employment when only one of several motivating factors for the employer's action is the employes' protected union activity, no matter how many other valid reasons exist for such municipal employer action", citing Muskego-Norway v. WERB, 35 Wis. 2d 540 (1966) in support thereof. The Complainant contends that from the testimony presented at the hearing, "the logical inference to draw is that anti-union animus was a motivating factor in the employer's actions." The Complainant relies particularly on the timing of the staff changes and the fact that mostly union supporters were adversely affected by same, to support this claim.

The Respondent denies that it discriminated against the aforementioned employes when it made changes in job assignments which the staff deemed to be disadvantageous. The Respondent maintains that Section 111.70(3)(a)3 of MERA requires that there be a clear showing of anti-union animus or hostility on the part of the employer against the employe. 10/ The Respondent argues that the Complaint offered no proof that the reassignments were done because of the Union activities of the clerical staff. To the contrary, the Respondent maintains that there was sound business reasons which led to the reassignments, and that the reassignments were carried out in a fair manner.

The Respondent is not free to alter its employes' wages, hours and conditions of employment if such alterations were motivated, even in part, by anti-union animus. 11/

Where, as in the case here, changes are made during the pendency of a question of representation, evidence that the municipal employer was aware of the pendency of such question and/or evidence that such changes were made shortly after the municipal employer became aware of such pendency is evidence probative as to whether the changes were unlawfully motivated. But while such evidence is probative, it is not necessarily conclusive as to said issue. 12/

In the instant case, notwithstanding the timing of the changes at issue herein, Complainant has failed to meet its burden of proving that Respondent committed a prohibited practice in violation of Section 111.70(3)(a)3 of MERA. The record does not establish by a clear and satisfactory preponderance of the evidence that the aforementioned changes were unlawfully motivated. To the contrary, the evidence establishes that the changes resulted from reorganization within the administration and library services which had their roots in planning that took place almost a year prior to filing of a petition in the instant matter and with respect to the library services several months prior to the filing of said petition. There is no evidence that the Employer speeded the reorganization up in order to influence the employes in their choice of a union. Nor did the Employer have any choice regarding the termination of federal funding which resulted in the

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10/ City of Boscobel, (15038), 3/72.

11/ See Muskego-Norway v. WERB, 35 Wis. 2d 540 (1966).

12/ City of Sparta, supra.

loss of hours to one employe. The totality of the record suggests that the timing of the changes resulted from the normal conduct of the District's business and were not intended to influence the employes' choice concerning the union or express an attitude of the Employer regarding same.

Likewise, the manner which the Respondent went about making changes in the employes' wages, hours and conditions of employment does not suggest anti-union animus. While it is true that the changes affected more union supporters than non-union people, the record indicates that the Employer had no knowledge of those who supported the union and those who opposed it. In addition, the record does not indicate that the Respondent bore any animus toward certain employes or made any changes in their job situation as a result thereof. To the contrary, the evidence reveals that the Respondent attempted to reassign employes in a fair manner by giving them a choice of jobs based on seniority and relative skill. At least one employe who did not belong to the union also suffered a loss in hours. Although the Respondent could have explained more fully what was going on to the affected employes, there is no evidence that the Respondent's acts were intended to discriminate against the employes because of their union activities.

In view of the foregoing evidence, the factor of the timing of the changes involved herein is not sufficient, in the Examiner's view, to sustain the Complainant's burden to prove anti-union animus by a clear and satisfactory preponderance of the evidence. The Complainant had the burden of establishing that the Respondent had knowledge of who supported the union; bore animus toward said employes because of same, and took action in changing their wages, hours and conditions of employment as a result thereof. The Complainant failing to do this, the Examiner concludes that no violation of Section 111.70(3)(a)3 has been committed.

FAILURE TO BARGAIN COLLECTIVELY

Finally, the Complainant maintains that the Respondent failed to bargain collectively with the employes' representative, in violation of Section 111.70(3)(a)4 of MERA. First, the Complainant states that the Respondent did not have a good faith doubt, or any doubt at all, of the majority status of the union among the clerical employes. The Complainant contends that "absent such a doubt, there is a duty to bargain even though the election has not yet been held." The Complainant argues that the Respondent unilaterally implemented changes in wages, hours and conditions of employment in violation of its duty to bargain collectively.

In response, the Respondent argues that it did not have a duty to bargain collectively with the Complainant over the reassignment of some of the clerical staff of the Respondent and therefore, that it did not violate Section 111.70(3)(a)4 of MERA. The Respondent claims that according to the above Section, it is necessary to have: (1) a representative of a majority of the employes, (2) an appropriate bargaining unit; and (3) a certification from the Commission as to the labor organization's representation before there can be a charge of refusal to bargain collectively with a labor organization. The Respondent points out that at the time of the reassignments the Complainant had filed a petition with the Commission for an election and no determination had been made by the Commission as to what composed the appropriate bargaining unit. The Respondent adds that it was not until October 1, 1976, that an election was held, and on December 3, 1976, certification of the Complainant as representative of the clerical staff was made by the Commission.

In April and May, 1976, when the complained-of changes were decided upon and implemented or at least announced, Complainant was neither the

recognized nor the certified representative of the employe groups herein in question. Therefore, Respondent was not under a duty to bargain in good faith with Complainant with respect to the wages, hours and conditions of employment of the respective employe groups at such times. 13/

For the foregoing reasons, the instant complaint has been dismissed.

Dated at Madison, Wisconsin this 30th day of March, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Dennis P. McGilligan
Dennis P. McGilligan, Examiner

13/ City of Sparta, supra; City of Cornell (Police Dept.), (15243-A, B), 8/77.