

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MILWAUKEE DISTRICT COUNCIL 48,
AFSCME, AFL-CIO, and NANCY HEUN,

Complainants,

vs.

MILWAUKEE AREA TECHNICAL COLLEGE

Respondent.

Case LXIX
No. 23647 MP-901
Decision No. 16631-A

Appearances:

Podell & Ugent, Attorneys at Law, by Mr. Alvin R. Ugent, appearing on behalf of the Complainants.
Quarles & Brady, Attorneys at Law, by Mr. George K. Whyte, Jr., appearing on behalf of the Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Milwaukee District Council 48, AFSCME, AFL-CIO and Nancy Heun, having filed a complaint on October 17, 1978, with the Wisconsin Employment Relations Commission, hereinafter the Commission, alleging that the Milwaukee Area Board of Vocational, Technical and Adult Education, District No. 9, hereinafter Milwaukee Area Technical College, has committed a prohibited practice within the meaning of Section 111.70(3)(a)1, 4 and 5 of the Municipal Employment Relations Act (MERA); and the Commission having appointed James D. Lynch, Examiner, to make and issue Findings of Fact, Conclusions of Law and Order; and hearing on said complaint having been held at Milwaukee, Wisconsin on November 14, 1978, and Respondent having filed its brief on January 10, 1979 and Complainant having declined to file a brief; and the Examiner having considered the evidence, argument of counsel and arguments contained in Respondent's brief 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 Milwaukee District Council 48, AFSCME, AFL-CIO, hereinafter Complainant Union, is the certified collective bargaining representative of certain employees employed by Milwaukee Area Technical College.
2. That Nancy Heun, hereinafter Complainant Heun, is employed as a clerk-steno II at the North Campus of Milwaukee Area Technical College and is a member of the bargaining unit represented by Complainant Union.
3. That Milwaukee Area Technical College, hereinafter Respondent, is a Municipal Employer charged with the responsibility of providing vocational and technical education in its district; that at all times material hereto Peter Jushka was employed by Milwaukee Area Technical College as the manager of its North Campus; that Jushka is responsible for supervising personnel at the North Campus.
4. That in August 1978, Jushka changed on a semi-permanent basis the schedule of an employe with personal problems in order to allow her to come in and leave early; that by so doing he inadvertently shortened her work day by fifteen minutes from seven and three-quarters to seven and one-half hours; that said error was corrected by Jushka on the following day by requiring the employe to make up an additional fifteen minutes; that following said change, a group of bargaining unit employes, including Complainant Nancy Heun, at the direction of their Union made written requests to their supervisors for a similar

change in schedule; that the supervisors notified Jushka of the requests.

5. That on August 25, 1978, at about 3:50 p.m., a short conversation took place between Jushka and Heun at her work place regarding her request for a change in schedule; Jushka made the following remarks to Heun:

"Nancy, what the hell is going on here? Don't any of our people -- don't you have any compassion for the personal -- for a person who has personal problems who has a sick mother?" There was no response. I said, "If I make a mistake, if I make an error, file a grievance."

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

CONCLUSIONS OF LAW

1. That Respondent, by Jushka's August 25, 1978 conversation with Complainant Heun, did not interfere with, restrain or coerce its employes in the exercise of their rights under Section 111.70(2) of MERA and therefore did not commit a prohibited practice within the meaning of Section 111.70(3)(a)1 of MERA.

2. That Respondent did not refuse to bargain collectively with Complainant Union by Jushka's August 25, 1978 conversation with Complainant Heun and therefore did not commit a prohibited practice within the meaning of Section 111.70(3)(a)4 of MERA.

3. That Respondent did not violate the collective bargaining agreement by Jushka's August 25, 1978 conversation with Complainant Heun and therefore did not commit a prohibited practice within the meaning of Section 111.70(3)(a)5 of MERA.

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 be, and hereby is, dismissed.

Dated at Madison, Wisconsin this 2nd day of March, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By James D. Lynch
James D. Lynch, Examiner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

The complaint filed herein alleges that Respondent, Milwaukee Area Technical College, by its agent Peter Jushka, committed prohibited practices within the meaning of Sections 111.70(3)(a)1, 4 and 5. Respondent denies said allegations and prays for dismissal of the complaint.

There is no dispute as to the underlying facts, namely: that Peter Jushka is the Manager of the North Campus and as such is a Supervisor with responsibility for personnel matters; that Heun is employed as a clerk-steno II at the North Campus and does not hold an official position with the Union; that in August 1978, Jushka changed on a semi-permanent basis the schedule of an employe with personal problems in order to allow her to come in and leave early; that by so doing he inadvertently shortened her work day by fifteen minutes from seven and three-quarters to seven and one-half hours; that said error was corrected by Jushka on the following day by requiring the employe to make up an additional fifteen minutes; that following said change, a group of bargaining unit employes, including Complainant Nancy Heun, at the direction of their Union made written requests to their supervisors for a similar change in schedule; that the supervisors notified Jushka of the requests; that following said requests, a short conversation, the content of which is disputed, took place between Jushka and Heun on August 25, 1978 at about 3:50 p.m. at her work place.

DISCUSSION:

The gravamen of this complaint concerns the content of the August 25, 1978 conversation. Heun testified that Jushka "...approached my window, started yelling at me and waiving (sic) his finger in my face and telling me that I should not worry about other people's jobs or the Union contract. He would take care of the contract. I should take care of my own job and then proceeded back down the hallway and yelled back at me and told me he was not happy with me at all." 1/ Jushka testified that the conversation occurred in the following fashion: "Basically, as I remember, I said 'Nancy, what the hell is going on here? Don't any of our people -- don't you have any compassion for the personal -- for a person who has personal problems who has a sick mother?' There was no response. I said, 'If I make a mistake, if I make an error, file a grievance.'" 2/ Jushka testified that during the conversation he spoke with Heun in a louder voice than normal and waved his finger in her face. 3/ He specifically denied telling Heun that contract matters were none of her business and that he would take care of the contract. 4/ He testified that directly following his conversation with Complainant he walked from her work place down the hallway where he met with the Shop Steward and related the details of his conversation with Heun. He testified that he was not angry during said conversation with the Steward. 5/

1/ See transcript at page 12.

2/ See transcript at page 9.

3/ See transcript at page 8.

4/ See transcript at page 8.

5/ See transcript at page 10.

Heun testified that during the conversation, Jushka was very angry, was yelling, and was waving his finger at her "about this close" in front of her face. 6/

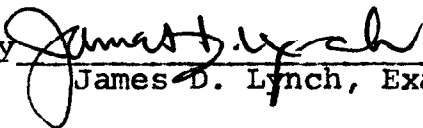
This dispute can only be resolved upon the basis of a credibility determination regarding the content of said conversation. 7/ In order to prevail in this proceeding, Complainant must demonstrate by a clear and satisfactory preponderance of the evidence 8/ that Respondent's actions are likely to interfere with employe rights. Although a finding of intent is not necessary 9/ to sustain its charge of interference, Complainant must demonstrate that the act complained of contains a threat of reprisal or a promise of benefit. If the testimony of Heun is credited, then a finding that the Respondent, by its agent Jushka, interfered with Heun in the exercise of her rights to engage in concerted activity must be entered. 10/ A contrary result would inure if Jushka's testimony is credited. Further, the Examiner finds that his decision cannot be based on demeanor as both witnesses testified credibly.

The Examiner finds the circumstances surrounding this event to favor Jushka's testimony regarding the content of the conversation. In support of this conclusion, the Examiner relies on the events surrounding Jushka's subsequent discussion with the Shop Steward. Had Jushka interfered or intended to interfere with Heun in the exercise of her rights, it is unlikely that directly following this conversation he would stop to advise the Shop Steward of the substance of said conversation. Further, had Jushka been as angry during their conversation as Heun testified, it is to be presumed that some of this anger would have been evident during his conversation with the Shop Steward whose account thereof would provide evidence to corroborate Heun's testimony.

Having credited Jushka's testimony, the Examiner finds no act of interference and hereby dismisses the complaint.

Dated at Madison, Wisconsin this 2nd day of March, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
James D. Lynch, Examiner

6/ See transcript at pages 12, 13 and 14.

7/ With respect to the refusal to bargain and contract violation allegations plead herein, Complainant has not cited nor has the Examiner found any support for the proposition that conversation complained of constitutes ground for finding a refusal to bargain violation (see complaint at paragraph 8). Further, Complainant has presented no evidence by way of the record with respect to the alleged contract violation. Accordingly, the Examiner dismisses both of these allegations.

8/ See Section 111.07(3); Section 111.70(4)(a).

9/ Ruditys v. City of Milwaukee, No. 8420 (2/68).

10/ If Heun's version is credited then Jushka's statements considered in light of the preceding employe requests for schedule changes may be considered as an oral reprimand containing an implicit threat of reprisal for engaging in concerted activities which might reasonably be expected to chill employes in the exercise of their rights.