

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

DAVID O. HAKE	:	
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Complainant,	:	Case XXI
	:	No. 24534 MP-978
vs.	:	Decision No. 17035-B
	:	
DUNN COUNTY	:	
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	:	
Respondent.	:	
	:	
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PATRICK NEVERDAHL,	:	
	:	
	:	
Complainant,	:	Case XXII
	:	No. 24543 MP-980
vs.	:	Decision No. 17049-B
	:	
DUNN COUNTY,	:	
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	:	
Respondent.	:	
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Appearances:
Solberg, Steans, Joyce & Schofield, Attorneys at Law, by Mr. Jack E. Joyce and Mr. Kenneth E. Schofield, 147 Main Street, P.O. Box 280, Menomonie, Wisconsin 54751, on behalf of the Complainants.
Thedinga Law Firm, by Mr. William A. Schembera, 403 Wilson Avenue, P.O. Box 69, Menomonie, Wisconsin 54751, on behalf of the County.

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER

AMEDEO GRECO, HEARING EXAMINER: David O. Hake and Patrick Neverdahl filed separate prohibited practices complaints with the Wisconsin Employment Relations Commission, herein Commission, wherein they alleged that Dunn County had committed certain prohibited practices in violation of Section 111.70 of the Municipal Employment Relations Act, herein MERA. Thereafter, the Commission on May 31, 1979, appointed the undersigned to make and issue Findings of Fact, Conclusion of Law and Order pursuant to Section 111.07 Stats. Hearing on said matter was conducted on September 20, and 21, and November 15, 1979, in Menomonie, Wisconsin. There, Complainants amended their complaints. Neither party filed a brief. Having reviewed the entire record, the Examiner hereby issues the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Dunn County, herein the County, is a municipal employer which maintains its principal offices in the Dunn County Courthouse, Menomonie, Wisconsin. Among its other services, the County operates and maintains a combined traffic and sheriff's department. Prior to March 21, 1979, the County maintained separate traffic and sheriff's departments. On that date, the County merged the Traffic Department into the Sheriff's Department. At all times material herein, Daryl Spagnoletti has served as Sheriff and John Krizek has been the County's Administrator, and both have acted as agents for the County.

2. Before said merger, the approximately six employees in the Traffic Department were not represented by any collective bargaining representative. The employees in the Sheriff's Department were represented for collective bargaining purposes by Dunn County Joint Council of Unions, Wisconsin Council of County and Municipal Employees #40, AFSCME, AFL-CIO, herein AFSCME. There were two separate bargaining units in the Sheriff's Department - one consisted of employees who had the power of arrest and the second consisted of employees who did not have any arrest powers. The County and AFSCME were privy to a 1977-1979 contract which, at Article 4, entitled "Seniority", provided:

Article 4 - Seniority

Section 1. The County recognizes the principle of seniority, and such principle shall dominate, where applicable, provided that employees involved in any decision to which the principle of seniority is applicable, meet the necessary standard qualifications. Seniority shall be defined as an employee's length of continuous service with the agency covered by this agreement, dating from his last date of hire. Lay-offs of less than one year shall not terminate seniority.

Part-time employees accrued seniority shall be defined as an employee's length of continuous service through accumulative hours with the agency covered by this agreement dated from the last date of hire.

Section 2. In reducing employee personnel, the last person hired shall be the first person laid off, and the last person laid off shall be the first person rehired.

Section 3. Whenever it becomes necessary to employ additional workers either in vacancies or new positions therein, former qualified employees who have been laid off within one (1) year prior thereto, shall be entitled to be re-employed in such vacancy or new position for which he may qualify in preference to all other persons.

Section 4. When an employee is laid off due to a shortage of work, lack of funds, or the discontinuance of a position, such employee may take another position for which he may qualify and that his seniority will permit him to hold within his bargaining unit.

Section 5. The principle of seniority shall govern and control in all cases of transfer in choice of shift work and choice of vacation period.

4. On or about January 11, 1979, AFSCME filed a representative petition with the Commission covering the traffic department employees.

5. Patrick Neverdahl and David O. Hake were formerly employed as traffic patrolmen in the Dunn County Traffic Department. When that department was merged into the Sheriff's Department, Neverdahl and Hake became employees of the Sheriff's Department. Both men were laid off on March 23, 1979, because of budgetary considerations.

6. Neverdahl and Hake in January, 1979 were involved in circulating union authorization cards among Sheriff Department employees on behalf of General Teamsters Union Local 662, affiliated with the

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein Teamsters. Thereafter, a representation petition was filed by the Teamsters on or about January 17, 1979, with the Commission covering a unit of Sheriff Department employees. On the next day, David Dahl, the Teamster's business agent, advised the Chairman of the County Board that the Union had authorization cards from a majority of employees in the Traffic Department and that the Union wanted to meet with County representatives on February 1, 1979, to discuss the matter. On February 8, 1979, Krizek met with Dahl and there refused to recognize the Teamsters as the bargaining agent for the Traffic Department employees.

7. On January 25, 1979, Krizek met with Neverdahl and Hake, along with other Traffic Department employees. There, Krizek questioned the employees why they wanted the Teamsters to represent them.

8. On January 30, 1979, the County's Personnel Committee and Law Enforcement Committees voted to merge the Traffic Department into the Sheriff's Department. Krizek on the next day informed the Traffic Department employees of the vote and said that the County's contract with AFSCME would henceforth be applicable to them. He also advised them of certain new working conditions which were effective immediately and which pertained to such matters as training, car allowance, shift differential, and overtime.

9. On March 21, 1979, the County Board promulgated an ordinance which merged the Traffic Department into the Sheriff's Department.

10. While neither Spagnoletti nor Krizek had no direct knowledge that Hake and Neverdahl had been active on behalf of the Teamster's organizational drive, both suspected that such was the case.

11. The lay offs of Hake and Neverdahl were not motivated by any anti-union consideration. Similarly, no such considerations were present in either the merger of the Traffic Department into the Sheriff's Department or the County's subsequent failure to recall Hake and Neverdahl.

Based upon the foregoing Findings of Fact, the Examiner makes the following Conclusions of Law.

CONCLUSIONS OF LAW

1. The County's layoffs of Hake and Neverdahl, and its subsequent failure to reinstate them, were not violative of Sections 111.70(3)(a)(1) or (3), nor any other sections, of MERA.

2. The County violated Section 111.70(3)(a)(1) of MERA by asking employees why they wanted the Teamsters to represent them and by subsequently granting certain employee benefits on February 1, 1979.

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

ORDER

1. IT IS ORDERED that that part of the complaint which pertains to the layoffs of Hake and Neverdahl and the County's subsequent failure to recall them, be, and the same hereby is dismissed in its entirety.

2. IT IS FURTHER ORDERED that the County, its officers and agents, shall immediately

1. Cease and desist from:

- (a) Interrogating employees as to why they want a union to represent them.
- (b) Granting employee benefits in the midst of a union organizing drive which it would not have granted otherwise.

2. Take the following affirmative action which the Examiner believes will affectuate the policies of MERA:

- (a) Notify all Sheriff Department employees by posting in conspicuous places in its offices copies of the notice attached hereto and marked "Appendix A". That notice shall remain posted for thirty (30) days. Reasonable steps shall be taken by the County to insure that said notices are not altered, defaced, or covered by other material.
- (b) 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 11th day of February, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Amedeo Greco
Amedeo Greco, Examiner

APENDIX 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 employees that:

WE WILL NOT ask employees why they want a union to represent them.

WE WILL NOT grant employee benefits in the midst of a union organizing drive that we would not have granted otherwise.

By _____
Dunn County

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

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND ORDER

The amended complaints herein involve two major allegations: (1) that the County acted unlawfully when it interrogated employees on January 25, 1979 and subsequently granted certain employee benefits to the Traffic Department employees on February 1, 1979; and (2) that the County acted unlawfully when it laid off Hake and Neverdahl on March 23, 1979 and thereafter refused to recall them.

The first allegation is meritorious. Thus, Krizek admitted that he called the January 25, 1979 employee meeting in response to the Teamsters' representation petition and because he wanted to find out why the Traffic Department employees wanted to join a union. Krizek's interrogation of employees at the meeting was therefore violative of Section 111.70(3)(a)(1) of MERA, as it tended to discourage employees from joining the Teamsters. Krizek compounded that unlawful conduct on February 1, 1979 when he announced new employee benefits involving overtime, car allowance, shift differential, and overtime. 1/ Those benefits were given in response to the Teamsters' petition, in the hope that the Traffic Department employees would withdraw their support from the Teamsters once their demands were met. Such conduct was also violative of Section 111.70(3)(a)(1) of MERA. To rectify such conduct, the County shall undertake the remedial action noted above.

Turning now to the second major complaint allegation, Complainants primarily argue that the County laid off and then refused to recall Hake and Neverdahl in retaliation for their activities on behalf of the Teamsters.

In order to prevail, Complainants must prove by a clear and satisfactory preponderance of the evidence that they were active on behalf of the Teamsters, that the County was aware of such activities, that the County was hostile to such activities, and that the County laid off and failed to recall Complainants at least in part because they engaged in such union activities. 2/

As to their union activities, there is no question but that Hake and Neverdahl actively participated in the Teamsters' organizing drive, as both signed Teamsters authorization cards and helped circulate those cards.

There is no direct evidence, however, that the County had first hand knowledge of such activities. Nonetheless, Krizek and Spagnoletti

1/ Said benefits were similar to those provided for in the County's contract with AFSCME. Even if we were to assume arguendo that the County could apply that contract to the Traffic Department employees when the latter department was merged into the Sheriff's Department, the County acted unlawfully when it granted those benefits before the merger, as the County clearly granted those benefits to discourage membership in the Teamsters.

2/ See, for example, Wayne Mosley and Rodger Brown, Rocky Rococo Corporation, Decisions 13556-A,B, and 13557-A,B (1976) and Milwaukee Board of School Directors, Decision 17104-A,B (1980).

both admitted at the hearing that they suspected Hake and Neverdahl were actively involved in the Teamsters' organizing campaign. By virtue of those admissions, Respondent can be charged with knowing that Hake and Neverdahl were engaged in such union activities.

Turning to the question of animus, the record is devoid of any direct evidence that the County bore animus against Hake and Neverdahl because of their activities on behalf of the Teamsters. The only basis, then, for sustaining this complaint allegation would be to find indirect animus which is to be inferred from the County's course of conduct.

At the hearing, Complainants argued that their lay-offs violated the contractual seniority clause in Article 4 of the Sheriff's Department contract and that that fact reflected the County's discriminatory intent. This contention is without merit as the County's layoff of Hake and Neverdahl was based on its good faith belief that Hake and Neverdahl were the least senior eligible employees to be laid off. 3/

In this connection, it is true that the County merged the formerly separate Traffic Department into the Sheriff Department immediately after the Teamsters appeared on the scene. While such timing under other circumstances may reflect union animus, here that is not the case since the County had considered that merger well before the Teamsters' organizing drive. Moreover, based upon the totality of the record, it is clear that the merger was motivated by a desire to cut costs and that anti-union considerations were totally absent in arriving at that decision. 4/

As to the County's subsequent failure to recall Complainants, the record shows that the County did not fill their vacated slots up to the time of the hearing. The County did, however, hire reserve deputies to work on a part-time basis and it hired a full time jailer position. In light of these hires, it is fair to ask why those jobs were not offered to Complainants. For, if the County has no satisfactory explanation, an inference could be drawn that it refused to recall Complainants because of anti-union considerations.

Here, the County has given a reasonable explanation. Thus, Spagnoletti testified that the jailer position, which was in a separate bargaining unit, was posted and that he assumed Complainants saw it.

3/ The County retained a less senior female jail matron because it needed a female matron to guard female prisoners.

By the same token, the County accorded its part-time employees prorated seniority pursuant to Article 4(1). Complainants assert that said seniority should have been based on twenty four hour days, rather than on eight hour days, as was done by the County. Since this assertion represents a somewhat strained interpretation of the contractual seniority clause, there is no basis for finding that the County deliberately violated Article 4 by laying off Hake and Neverdahl, as its interpretation of the contract was certainly reasonable.

4/ In so finding, I am mindfull that Krizek acted unlawfully by first interrogating employes on January 25, 1979, and by immediately thereafter giving them certain benefits. While such conduct evidences a determination by Krizek to undermine the Teamsters' organizing drive, there is no evidence that: (1) Krizek bore a personal animus against Hake or Neverdahl; or (2) Krizek's conduct affected Respondent's decision to merge the two departments.

It is immaterial, therefore, whether Complainants in fact saw the posting since Spagnoletti's failure to offer that job was devoid of any anti-union considerations. The same is true with respect to the County's hire of part time reserve deputies, since: (1) said hires were based upon the County's desire to cut costs; 5/ and (2) said positions are outside the bargaining unit.

Moreover, in evaluating this complaint allegation, it is important to note that Spagnoletti testified without contradiction that following the layoffs, he recommended the hiring of additional staff to the County's Law Enforcement Committee. Since Hake and Neverdahl would have been recalled if such additional positions were allocated, Spagnoletti's recommendation belies any claim that he was seeking to punish Complainants because of their union activities.

For the reasons noted above, this complaint allegation is dismissed in its entirety.

Dated at Madison, Wisconsin this 11th day of February, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

BY Amedeo Greco
Amedeo Greco, Examiner

5/ Respondent's cost cutting effort is partly reflected by a September 20, 1978, resolution adopted by the County Board which ordered a freeze on all full time vacancies for a two year period.