

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

-----

CITY OF LA CROSSE,	:	
	:	
Complainant,	:	Case XXXIX
	:	No. 24657 MP-987
vs.	:	Decision No. 17076-B
	:	
LA CROSSE PROFESSIONAL	:	
POLICE ASSOCIATION, NON-	:	
SUPERVISORY BARGAINING UNIT	:	
and THOMAS PRETASKY,	:	
	:	
Respondents.	:	

-----

LA CROSSE NONSUPERVISORY	:	
POLICEMAN'S ASSOCIATION and	:	
OFFICER THOMAS PRETASKY,	:	
	:	
Complainants,	:	Case XL
	:	No. 24690 MP-990
vs.	:	Decision No. 17084-C
	:	
CITY OF LA CROSSE, a	:	
municipal corporation and	:	
RAY G. LICHTIE, Chief of	:	
Police of the City of	:	
LaCrosse, and LA CROSSE	:	
POLICE AND FIRE COMMISSION,	:	
LaCrosse, Wisconsin	:	
	:	
Respondents.	:	

-----

ORDER AFFIRMING EXAMINER'S FINDINGS OF FACT,  
 MODIFYING IN PART AND REVERSING IN PART EXAMINER'S  
 CONCLUSIONS OF LAW, AND REVERSING EXAMINER'S ORDER

Examiner Dennis P. McGilligan, having on July 9, 1981, issued Findings of Fact, Conclusions of Law and Order, together with Memorandum accompanying same, in the above entitled matters, wherein said Examiner concluded that the LaCrosse Non-Supervisory Police Association, as well as the City of LaCrosse, Ray G. Lichtie, Chief of Police, and the LaCrosse Police and Fire Commission had not committed any prohibited practices within the meaning of any provision of the Municipal Employment Relations Act (MERA), and wherein, however, the Examiner concluded the Thomas Pretasky, a Police Officer in the employ of the City of LaCrosse had committed a prohibited practice within the meaning of Sec. 111.70(3)(b)1 of said Act, and wherein the Examiner ordered said Police Officer to cease and desist from such prohibited activity and to post a notice with regard thereto; and said Association and said Police Officer having timely filed a petition requesting the Wisconsin Employment Relations Commission to review the Examiner's decision and to conclude that Police Officer Pretasky did not commit any prohibited practice, and to further conclude that the City of LaCrosse, its Chief of Police, as well as its Police and Fire Commission, engaged in prohibited practices with respect to the imposition of a five day suspension upon Police Officer Pretasky; and the parties having filed briefs in support of and in opposition to the petition for review; and the Commission, having reviewed the entire record, the Examiner's decision, the petition for review, the briefs filed in support thereof and in opposition thereto, being fully advised in the premises, and being satisfied that the Examiner's Findings of Fact should be affirmed but that the Examiner's Conclusions of Law should be modified in part and reversed in part and his Order should be reversed;

NOW, THEREFORE, it is

No. 17076-B  
 No. 17084-C

ORDERED

A. That the Findings of Fact made and issued by the Examiner in the above entitled matters be, and the same hereby are, affirmed.

B. That the Conclusions of Law made and issued by the Examiner in the above entitled matters be modified in part, and be reversed in part, to read as follows:

CONCLUSIONS OF LAW

1. That the Police and Fire Commission of the City of LaCrosse is a "person" within the meaning of Sec. 111.70(1)(k) of the Municipal Employment Relations Act, hereinafter referred to as MERA, acting on behalf of the City of LaCrosse, within the scope of the authority granted to it by Sec. 62.13, Wis. Stats., and that, therefore said Police and Fire Commission is a "municipal employer" within the meaning of Sec. 111.70(1)(a) of MERA.

2. That the City of LaCrosse is a "party in interest" within the meaning of Sec. 111.07(2)(a), Wis. Stats., and therefore has standing to file a complaint alleging that LaCrosse Non-supervisory Police Association and Police Officer Thomas Pretasky, an employe of the City of LaCrosse, and a member of said Association, committed certain prohibited practices within the meaning of MERA.

3. That Police Officer Thomas Pretasky, at no time material herein, was authorized to speak for, or otherwise represent the LaCrosse Non-supervisory Police Association, with respect to Pretasky's statements to Police Officer Donald Sutton on May 18, 1979, and that, therefore, said Association can in no way be found to have committed any prohibited practice within the meaning of any provision of MERA, with respect to said conversation.

4. That the statements made by Police Officer Thomas Pretasky to Police Officer Donald Sutton, on May 18, 1979, did not coerce or intimidate Police Officer Sutton in the enjoyment of the latter's legal rights, including those guaranteed in Sec. 111.70(2) of MERA, and, that therefore Police Officer Thomas Pretasky did not thereby commit any prohibited practice within the meaning of Sec. 111.70(3)(b)1, or any other provision, of MERA.

5. That, since the interrogation by Chief of Police Ray G. Lichte of Police Officer Thomas Pretasky, concerning the latter's conversation with Police Officer Donald Sutton on May 18, 1979, and the subsequent suspension of Police Officer Sutton were not motivated for the purpose of discriminating against Police Officer Pretasky because of the latter's exercise of any rights set forth in Sec. 111.70(2) of MERA, neither the City of LaCrosse, nor said Chief of Police, nor the LaCrosse Police and Fire Commission, either singularly or jointly, committed any prohibited practices within the meaning of Secs. 111.70(3)(a)1, 2, or 3 of MERA with respect to such interrogation and suspension.

C. That the Order made and issued by the Examiner in the above entitled matters be, and the same hereby is reversed to read as follows:

ORDER

That all complaints filed in the instant proceedings be, and the same hereby are, dismissed in their entirety.

Given under our hands and seal at the City of  
Madison, Wisconsin this 2nd day of April, 1982

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Gary L. Covelli

Gary L. Covelli, Chairman

Morris Slavney  
Morris Slavney, Commissioner

Herman Torosian  
Herman Torosian, Commissioner

MEMORANDUM ACCOMPANYING ORDER AFFIRMING EXAMINER'S  
FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The Pleadings

One of the two cases in this consolidated proceeding was initiated by a complaint filed by the City of LaCrosse, alleging that the Association and Thomas Pretasky, an individual Police Officer in the employ of the City, committed prohibited practices within the meaning of Sec. 111.70(3)(b)1 of MERA as a result of threats conveyed to Police Officer Donald Sutton, to the effect that Sutton would not be accepted into Association membership, and that the Association would not fully represent Sutton, unless Sutton ceased working a shift assignment which Petrasky believed violated the terms of the collective bargaining agreement in existence between the Association and the City. The City also alleged that said Respondents violated Sec. 111.70(3)(b)4 of MERA by not filing a grievance regarding said shift assignment.

Prior to the filing of an answer to the City's complaint, the Association and Pretasky jointly filed a complaint alleging, in material part, that the conversation between Pretasky and Sutton, wherein the alleged threat had been made, constituted protected activity; that as a result of said conversation Petrasky was suspended for a period of five days in violation of his MERA rights, and thus that the City and the Police Chief, who were named Respondents, thereby committed prohibited practices within the meaning of Secs. 111.70(3)(a)1, 2 and 3 of MERA. The Association and Petrasky also alleged that such suspension was violative of the collective bargaining agreement since it was not for cause and therefore in violation of Sec. 111.70(3)(a)5 of MERA.<sup>1/</sup> The latter complaint was subsequently amended to include the LaCrosse Police and Fire Commission (PFC) as a named Respondent, as a result of its participation in the decision to suspend Pretasky for five days.

In answer to the City's complaint, the Association and Pretasky denied the commission of any prohibited practice, contending that the conversation between Pretasky and Sutton was privileged, and that in any event the City was not a proper party in interest to file the complaint. The City, Chief and the PFC, in their answer, denied any violation of MERA, and affirmatively alleged that the PFC is not a municipal employer under MERA, and therefore not a proper party Respondent; that by seeking and obtaining a hearing before the PFC Pretasky had chosen his forum and thus elected his remedy with respect to his five day suspension; that Pretasky's suspension had been appealed to the LaCrosse County Circuit Court, and therefore, the WERC lacks jurisdiction to make any determination with respect to Pretasky's suspension; and, finally, in the alternative, that neither the Association nor Pretasky had exhausted the grievance and arbitration procedure set forth in the collective bargaining agreement with respect to said suspension.

The Background Facts

The Association and the City are parties to a collective bargaining agreement covering wages, hours and working conditions of non-supervisory police officers in the employ of the City. Said agreement contains among its provisions a grievance and arbitration procedure with respect to alleged violations of said agreement, as well as a seniority provision granting senior Officers the right of shift selection. In the spring of 1979 the Police Chief assigned two newly employed officers, one of whom was Sutton, to investigate gambling in the community, and in such assignment said Officers worked various hours on all three shifts, a fact known to other Officers, including Officer Pretasky, who, while being a member of the Association, did not hold any office therein, and who at no time material herein was authorized to speak on behalf of, or represent, the Association. The conversation between Pretasky and Sutton, which initiated the activity resulting in the filing of the instant complaints, was set forth by the Examiner in his Findings of Fact as follows:

---

1/ The parties subsequently agreed to submit this allegation to contractual grievance arbitration

11. That on May 18, 1979, a conversation took place between Officer Pretasky and Officer Sutton; that the conversation occurred by accident resulting from a chance meeting of Officer Pretasky who was in the Police Department locker room to use the restroom and Officer Sutton who was putting his uniform on for airport duty at the LaCrosse airport; that Officer Pretasky asked Officer Sutton what shift he and Officer Brohmer were working on; that Officer Sutton stated that he was working a special assignment and he could not talk about it; that Officer Pretasky then told Officer Sutton that he was working in violation of the contract and that a lot of guys were "irate" with him because they felt he was pulling rank on them by working daytime hours; that Officer Pretasky indicated to Officer Sutton that if he and Officer Brohmer continued to work in violation of the contract they might not be accepted into the Association; that Officer Pretasky added, "If you do get nominated into the Association and you ever have any problems where you need financial backing or legal help, some of the guys . . . might hold this against you and not vote to pay your bills or to back you in any way"; that Officer Pretasky concluded his statement by indicating to Officer Sutton that it was not a personal bitch but he just wanted "to inform you what's going on and how some of the guys in the Association feel about this."

12. That Officer Pretasky was not an officer or representative of the Association at the time of the conversation; that Officer Pretasky was not requested by anyone on behalf of the Association to confront Officer Sutton about the matter; that Officer Pretasky did not disclose his intent to discuss the matter with Officer Sutton to anyone and that Officer Pretasky was not regarded as a union representative by Officer Sutton at the time of the conversation.

13. That the above-mentioned conversation between Officer Pretasky and Officer Sutton lasted three to five minutes; that Officer Pretasky did not raise his voice to Officer Sutton; that Officer Pretasky did not physically threaten Officer Sutton; that Officer Sutton was not "intimidated" by his conversation with Officer Pretasky; that, however, Officer Sutton told Officer Pretasky during the aforesaid conversation that he "was between a rock and a hard spot" and that Officer Sutton was "upset" and felt a great deal of "concern" over the alleged contract violation and his conversation with Officer Pretasky.

That, because Sutton had some concern as to whether his shift assignment was violative of the collective bargaining agreement, he spoke to his immediate supervisor regarding the matter, and subsequently, the Pretasky/Sutton "episode" was called to the attention of the Chief, who summoned Sutton to appear before him and ordered him to submit a deposition as to the incident. Sutton apparently did so and subsequently the Chief ordered Pretasky to appear before the Chief, and at that time Pretasky related the contents of the conversation to the Chief. The Chief then suspended Pretasky for five days, feeling that Pretasky has "possibly" interefered with the gambling investigation. Prior to instituting the suspension, the Chief filed charges with the PFC, in accordance with Sec. 62.13, Wis. Stats., and after hearing the PFC sustained the Chief's decision to suspend Pretasky.

In his decision the Examiner set forth the following Conclusions of Law:

1. That LaCrosse Police and Fire Commission is a municipal employer within the meaning of Section 111.70(1)(a) of MERA and, therefore, subject to the jurisdiction of the Wisconsin Employment Relations Commission to determine whether the PFC committed prohibited practices within the meaning of MERA.

2. That City of LaCrosse does have standing to bring charges of Section 111.70(3)(b)1 violations against LaCrosse Nonsupervisory Policeman's Association and Officer Thomas Pretasky.

3. That since Chief Ray G. Lichtie's five day suspension of Officer Thomas Pretasky did not interfere with the exercise of his rights guaranteed in Section 111.70(2), the City of LaCrosse, the LaCrosse Police and Fire Commission and Chief Lichtie did not commit prohibited practices within the meaning of Section 111.70(3)(a)1, 2 and 3 of MERA.

4. That since Chief Ray G. Lichtie's interrogation of Officer

Thomas Pretasky concerning his conversation with Officer Donald Sutton on May 18, 1979 did not interfere with the exercise of his rights guaranteed in Section 111.70(2), the City of LaCrosse, the LaCrosse Police and Fire Commission and Chief Lichtie did not commit prohibited practices within the meaning of Sections 111.70(3)(a)1, 2 and 3 of MERA.

5. That since Chief Ray G. Lichtie's interrogation of Officer Donald Sutton regarding his conversation with Officer Thomas Pretasky on May 128, 1979 did not interfere with the exercise of his rights guaranteed in Section 111.70(2), the City of LaCrosse, the LaCrosse Police and Fire Commission and Chief Lichtie did not commit prohibited practices within the meaning of Sections 111.70(3)(a)1, 2 and 3 of MERA.

6. That based on his conversation with Officer Donald Sutton on May 18, 1979 Officer Thomas Pretasky did interfere with Officer Sutton's exercise of his rights guaranteed in Section 111.70(2) and therefore did violate Section 111.70(3)(b)1 of MERA.

7. That based on his conversation with Officer Donald Sutton on May 18, 1979 Officer Thomas Pretasky did not commit a prohibited practice within the meaning of Section 111.70(3)(b)4 of MERA.

8. That the LaCrosse Nonsupervisory Policeman's Association did not commit any prohibited practices within the meaning of Section 111.70(3)(b)1 or 4 of MERA as a result of the conversation between Officer Thomas Pretasky and Officer Donald Sutton on May 18, 1979.

The Examiner thus dismissed the complaint alleging that the City, the PFC and the Chief of Police had committed prohibited practices. He also dismissed that portion of the complaint filed by the City with respect to the allegations that the Association had committed prohibited practices. However having found that Officer Pretasky had committed a prohibited act of interference in violation of Sec. 111.70(3)(b)1 of MERA the Examiner ordered Pretasky to cease and desist therefrom, to sign and post a notice in the Police Department with regard thereto, and to notify the Commission as to what steps were taken to comply with the Examiner's Order.

#### The Petition for Review

The Association and Pretasky filed a petition requesting that the Commission reverse the Examiner. Said Complainants argue that as Sutton did not authorize the City to file a complaint on his behalf, the City has no standing to file and prosecute its complaint; that the conversation in question concerned an internal union matter, and thus involved protected activity for which Pretasky could not be found to committed a prohibited practice; and that, in any event, Sutton was not in fact coerced or intimidated. The City, et al, would have the Commission sustain the Examiner in all respects.

#### Discussion

##### The Standing of the City to File a Complaint

The Examiner concluded that the City did have standing "to bring charges" alleging that the Association and Officer Pretasky had committed prohibited acts violative of Sec. 111.70(3)(b)1 of MERA, and in his Memorandum accompanying his decision the Examiner cited two previous Commission cases, 2/ wherein the "Commission" found that a municipal employer is a proper party to allege violation of Section 111.70(3)(b) of MERA. We agree with the conclusion of the Examiner to the effect that the City herein is a proper party complainant. Sec. 111.70(4)(a) of MERA provides that Sec. 111.07 Wis. Stats. shall govern procedure in all cases involving prohibited practices. The latter statutory provision provides, in part, as follows in Sec. 111.07(2)(a):

---

2/ Milwaukee County (12534-C) 3/75; Racine Unified School District No. 1 (14308-D, 14389-D, 14390-D) and (14308-G, 14389-G, 14390-G) 6/77, 7/77; Affirmed Sub Nom. Racine Education Association vs. WERC et. al., Dane County Circuit Court (Case No. 158-408) 5/78.

Upon the filing with the Commission by any party in interest of a complaint in writing, on a form provided by the commission, charging any person with having engaged in any specific unfair labor practice (prohibited practice). . .

Both Officers Sutton and Pretasky are employes of the City. The Respondent Association is the bargaining representative of the non-supervisory police officers in the employ of the City, and in said relationship the Association and the City, at all times material herein, were parties to a collective bargaining agreement covering the employes represented by the Association. There is no provision in MERA which in any way limits the right of a municipal employer to seek to enforce the provisions of MERA, relating to prohibited practices alleged to have been committed by its employes, employe organizations, or by agents of said organizations, where such activities are directed against the municipal employer or against any of its employes. We conclude that the employe-employer relationship between the City and Sutton qualifies the City as a party in interest within the meaning of Sec. 111.07(2)(a), Wis. Stats. The City filed its complaint on behalf of itself and not on behalf of Sutton. The City has no less right to seek to protect the rights of its employes set forth in Sec. 111.70(2) of MERA, than does the Association, or any individual employe of the City.

#### The Pretasky-Sutton Conversation

The City alleged that the remarks made by Pretasky to Sutton, as set forth earlier in this Memorandum, constituted prohibited act of coercion, and intimidation. The Examiner so concluded. We can not accept the Association's contention that the conversation involved protected activity since it related to internal "union" affairs. The mere fact that an activity relates to an internal "union" matter does not in itself immunize such activity from constituting a prohibited practice. As set forth by the Examiner, the Commission, in this matter, must determine whether Pretasky's remarks to Sutton "were likely to coerce or intimidate the latter in the exercise of his statutory rights". In his Memorandum the Examiner, in supporting his conclusion that Pretasky's remarks were violative of MERA, set forth his rationale as follows:

As noted previously implicit in Officer Pretasky's remarks was the threat that if Officer Sutton continued to work in his special assignment the Association would fail to represent him in the future. Specifically, Officer Pretasky told Officer Sutton that the Association would not back him in any way - financial or otherwise - if he got into any problems. Based on the foregoing, the Examiner concludes that Officer Pretasky's comments were likely to coerce or intimidate Officer Sutton in the exercise of his statutory rights.

We disagree with the Examiner's conclusion and rationale. In deciding whether comments by one employe are "likely to coerce or intimidate" another employe, the Commission must consider not only the statement made but also the context in which it was made, by whom the statement was made, and the manner in which it was said. Here an employe, on his own, during a chance meeting and in a conversational tone conveyed the above quoted message to Officer Sutton. Further, as found by the Examiner, Officer Sutton did not regard Officer Pretasky as a union representative at the time of the conversation. Under the circumstances we conclude that Pretasky's remarks, reasonably interpreted, were not likely to coerce or intimidate Officer Sutton in the exercise of his statutory rights. Therefore we reverse the Examiner in said regard.

#### The Examiner's Remaining Conclusions of Law

As noted previously herein, the Association and Pretasky, in their petition for review also took exception to the Conclusions of Law of the Examiner relating to his determination that the City, the Chief and the PFC did not commit any prohibited practices with respect to Pretasky. The Association and Pretasky would have the Commission reverse the Examiner's Conclusions in said regard. However, the brief and reply brief, filed in support of their petition for review, contained no arguments or facts relating to any prohibited practices alleged to have been committed by the City, the Chief and the PFC which were not adequately considered by the Examiner. While we thus agree with the Examiner that said parties did not commit any violation of MERA, we have modified the Examiner's Conclusions of Law with respect to the status of said parties.

In summary we have, as indicated above, reversed the Examiner's conclusion that Pretasky committed a prohibited practice, and it therefore follows that we have also reversed the Examiner's order in said regard.

Dated at Madison, Wisconsin this 2nd day of April, 1982.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By *Gary L. Covelli*  
Gary L. Covelli, Chairman

*Morris Slavney*  
Morris Slavney, Commissioner

*Herman Torosian*  
Herman Torosian, Commissioner