

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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BROWN COUNTY SHERIFF-TRAFFIC :  
DEPARTMENT LABOR ASSOCIATION, :  
Complainant, : Case LVIII  
vs. : No. 25041 MP-1016  
BROWN COUNTY and DONALD J. HOLLOWAY : Decision No. 17258-A  
Respondents. :  
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Appearances:  
Parins & McKay, S.C., Attorneys at Law, Mr. Thomas J. Parins,  
415 South Washington Street, P. O. Box 1098, Green Bay,  
WI 54305, appearing on behalf of the Complainants.  
Mr. Kenneth J. Bukowski, Brown County Corporation Counsel,  
Brown County Courthouse, Green Bay, WI 54301, appearing  
on behalf of the Respondents.

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

The Brown County Sheriff-Traffic Department Labor Association having, on August 22, 1979, filed a complaint with the Wisconsin Employment Relations Commission, alleging that the above-named Respondents have committed certain prohibited practices within the meaning of the Municipal Employment Relations Act; and the Commission having appointed William C. Houlihan, a member of its staff, to act as Examiner and to make and issue Findings of Fact, Conclusions of Law and Order as provided for in Section 111.07(5), Wis. Stats; and a hearing on said complaint having been held before the Examiner in Green Bay, Wisconsin, on October 9, 1979; and a transcript of said hearing having been received by the Examiner on October 25, 1979; and thereafter the parties having filed briefs with the Examiner; and the Examiner having considered the evidence and arguments and being fully advised in the premises, makes and files the following Findings of Fact, Conclusion of Law and Order.

FINDINGS OF FACT

1. That the Brown County Sheriff-Traffic Department Labor Association, hereinafter Association, is a labor organization within the meaning of Section 111.70(1)(j) Wis. Stats., and is the exclusive representative of all non-supervisory law enforcement personnel of the Brown County Sheriff-Traffic Department, for purposes of collective bargaining.
2. That Brown County is a County organized under and existing by virtue of the laws of the State of Wisconsin and is a municipal employer, within the meaning of Section 111.70(1)(a), Wis. Stats., whose chief executive officer is Donald J. Holloway, County Executive.

3. That Gregg Haney is and at all relevant times has been employed as an officer in the Brown County Sheriff-Traffic Department, and as such is a member of the collective bargaining unit described in paragraph 1 above.

4. That the County and the Association were involved in negotiations over the terms of a collective bargaining agreement, which negotiations had been declared at an impasse following investigation meetings conducted on May 16 and June 8, 1979 by a member of the staff of the Wisconsin Employment Relations Commission; that the parties proceeded to a Municipal Interest Arbitration hearing on October 25, 1979 and eventually received a Municipal Interest Arbitration Award in February of 1980.

5. That during a chance encounter between Mr. Haney and Mr. Holloway, on August 4, 1979, Mr. Holloway made remarks threatening retaliation against the Association because of the position it was taking in the ongoing collective bargaining process.

6. That, on August 5, 1979, Mr. Haney related the conversation to his fellow officers.

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

#### CONCLUSION OF LAW

That by his conduct of August 4, 1979, Mr. Holloway did interfere with municipal employes in the exercise of rights guaranteed by Section 111.70(2), Wis. Stats. and in so doing violated Section 111.70(3)(a)(1), Wis. Stats.

#### ORDERS

IT IS HEREBY ORDERED THAT THE RESPONDENT:

- (1) cease and desist from interfering in the rights of municipal employes to engage in protected concerted activity.
- (2) Notify all of its employes by posting in conspicuous places on its premises, where notices to all its employes are usually posted, a copy of the Notice attached hereto and marked Appendix "A". Such copy shall be signed by the Chief Executive of Respondent Brown County, and shall be posted immediately upon receipt of a copy of this Order, and shall remain posted for thirty (30) days after its initial posting. Reasonable steps shall be taken by said Chief Executive to insure that said Notices are not altered, defaced or covered by other materials.
- (3) Notify the Wisconsin Employment Relations Commission, in writing, within twenty (20) days from the date of the receipt of this Order of what steps have been taken to comply herewith.

Dated at Madison, Wisconsin this 11th day of August, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

William C. Houlihan, Examiner

APPENDIX "A"

NOTICE TO ALL EMPLOYES

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

1. WE WILL NOT threaten employees with retaliation for the purpose of discouraging their activities on behalf of or membership in the Brown County Sheriff-Traffic Department Labor Association or any other labor organization.

WE WILL NOT in any other manner, interfere with, restrain or coerce our employees in the exercise of their rights to self organization, to form labor organizations, to join or assist Brown County Sheriff-Traffic Department Labor Association or any other labor organization, to bargain collectively through representatives of their own choosing and to engage in other lawful concerted activities for the purpose of collective bargaining or any mutual aid or protection.

BROWN COUNTY (SHERIFF-TRAFFIC DEPARTMENT)

By

\_\_\_\_\_  
Donald J. Holloway  
County Executive

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 1980.

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

BROWN COUNTY (SHERIFF-TRAFFIC DEPARTMENT), Case LVIII, Dec. No. 17258-A

MEMORANDUM ACCOMPANYING  
FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

The events giving rise to this case occurred on Saturday, August 4, 1979 at approximately 7:00 p.m. Gregg Haney, who was then a probationary officer in the Brown County Sheriff-Traffic Department, was standing in a local hotel lobby. Haney is a member of a musical band which had been hired to play for a wedding reception being conducted in the hotel. As Mr. Haney prepared himself to play, Mr. Donald Holloway, Brown County Executive, who was a guest at the reception, walked into the hotel lobby.

As Holloway walked past Haney, Haney called out a greeting. When Holloway returned the greeting the men struck up a short conversation. Haney reminded Holloway that they had recently been introduced upon Haney's being hired by the Brown County Sheriff's Department. Holloway's response was something to the effect that there existed "a pathetic situation" there at the time.

It is Haney's testimony, which testimony is credited by the Examiner, that the following conversation then transpired.

Q Did you respond to that?

A Yes. I responded to him by saying that I agreed it was a pathetic situation, and Mr. Holloway continued by saying that it was too bad that the Brown County Professional -- the Brown County Sheriff's Department Labor Organization didn't realize Mr. Parins is doing nothing but milking our Benevolent in order to keep Mr. VanderKelen's head above water, because they were in cahoots on the cable television issue.

Q Did you respond to that?

A I just nodded my head. I didn't want to comment on it being that I was a probationary employee. I didn't understand the validity of the statement. After I nodded my head, he said that it was too bad, because what they do not realize is if they want to keep pushing the issue -- I presumed he was referring to the Brown County Police Department, or the Benevolent Association -- that they will find -- well, he said that if they don't want to -- if they want to keep pushing the issue that then we're just going to put the binders on them next year, and there is -- they are not going to get anything.

Q Did you respond to that?

A Just by nodding my head in agreement, because I didn't want to comment. I said to him that I had no standpoint in it at that time, because I was a probationary officer. I just wished that the contract would be settled. 1/

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1/ In the face of conflicting testimony given by Haney and Holloway, it was necessary for the Examiner to make a credibility finding as to exactly what was said. As noted in the text of the memorandum, Haney's version of the conversation has been credited in its entirety. It was Mr. Holloway's testimony that he couldn't recall much of the conversation. Specifically, he could not recall making the statement referring to Parins and VanderKelen. Only after repeatedly being questioned as to what was said, did Holloway admit that Haney's memory could be better than his own, and that it is possible that he made the statement. With respect to the "putting the binders on them" statement, Holloway flatly denied uttering that or anything of the kind.

The Examiner was persuaded by Haney's ability to recall the details of the men's conversation. Haney testified that he repeated Holloway's remarks without realizing that they were at all improper or that they could result in trouble for the County Executive. This professed innocence on the part of Officer Haney is credible given Haney's unfamiliarity with the ongoing bargaining process and the fact that Holloway's remarks are not so outrageous or so sinister as to put a reasonable man, unfamiliar with the labor process, on notice that an impropriety had occurred. Once Haney repeated the remarks to his fellow officers, their reaction and the resultant litigation that followed would certainly operate to insure that he would never forget those remarks. This is to be contrasted to Mr. Holloway's very candid admission that he didn't really recall much of the conversation.

In a relative sense, the conversation was one of far greater consequence to Haney than it was to Holloway. To Haney, a probationary officer, the conversation with the Chief County Executive dealt with his new work-place and the concerns and conditions under which he worked. To Holloway, the conversation amounted to little more than a chance remark to a young officer. It is hardly surprising that Haney is better able to recall details.

Finally, Haney's testimony does not serve to promote any selfish interest. Haney was not active in, or knowledgeable about, union affairs. His was the status of probationary employee; hardly the ideal position from which to fabricate stories calculated to embarrass the County Executive. In light of his probationary status, and the fact that his testimony was procured by subpoena, the Examiner can see no motive for Haney to falsify his testimony.

Haney subsequently relayed the conversation back to other officers whose concern and outrage led to the instant proceeding. 2/

Forming the background of this conversation were the ongoing labor negotiations between Brown County and the Sheriff-Traffic Department Labor Association.

Those negotiations, which had been ongoing for an extended period of time, were in the throes of interest arbitration. Impasse had been declared two months earlier and the parties were awaiting the appointment and arrival of the arbitrator. 3/ A complaint of prohibited practice had been initiated by the union on June 29, 1979. The complaint, alleging bad faith on the part of County Executive Holloway in the negotiations, had yet to proceed to the scheduled hearing. 4/

To sustain its burden of proof with respect to the alleged interference, complainant must demonstrate by a clear and satisfactory preponderance of the evidence that Holloway's statements contained either some threat of reprisal or promise of benefit which would tend to interfere with, restrain, or coerce municipal employees in the exercise of rights guaranteed by Section 111.70(2) Wis. Stats. 5/ It is not necessary for the complainant to demonstrate that Respondent intended that his conduct have the effect of interfering with or coercing employees 6/ or even that the employer conduct actually did interfere with or coerce employees. Rather, the question raised when interference is alleged is whether the employer's conduct had a reasonable tendency to interfere with employee rights protected by Section 111.70(2) Wis. Stats. 7/

Holloway's comments in regard to Parins who is the Association's attorney, "milking the Benevolent" contain neither a promise of benefit nor a threat of reprisal. Absent such threats or promises of benefits, statements which indicate that a labor organization, or its agent(s) is acting irresponsibly, that it does not represent the views of the employees, or that its bargaining positions may not

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- 2/ In its complaint, the complaint alleges violations of Sections 111.70(3)(a) 1, 2, and 4. During the course of the hearing and in its post-hearing brief, the complainant offers proof and argues only the interference allegation. On this basis, the Examiner deems the other allegations to have been dropped and is concerned solely with the charge of interference.
- 3/ WERC, Case L, No. 24464, M.I.A. 436, Dec. No. 17155-A, 2/16/80.
- 4/ WERC, Case LVI, No. 24836, MP-999, Dec. No. 17133-A, 11/6/79.
- 5/ Drummond Jt. School District No. 1, 15909-A, 3/23/78, Lisbon-Pewaukee Jt. School Dist. No. 2, (14691-A) 6/76 Ashwaubenon School Dist. 14774-A, 10/3/77.
- 6/ City of Evansville, 9440-C, 3/15/71, City of Waukesha 11486, 12/26/72, Fennimore Jt. School District, 12790-A, 14305-A, 1/3/78.
- 7/ Winnebago County, 16930-A, B, 8/30/79.

benefit the membership do not constitute prohibited practices. 8/ Similarly, comments critical of employee and/or employer representatives, which do seem to surface with some regularity in the "uninhibited, robust, and wide-open debate" 9/ characterizing labor disputes, have traditionally been found not to offend any provision of the Municipal Employment Relations Act. 10/

County Executive Holloway's further remarks, however, represent something outside the scope of free speech protection. Those comments threaten retaliation should the union "keep pushing the issue". The extracted dialogue, set forth above, does not explicitly define what "the issue" referred to is. In the context of the conversation, the Examiner believes that both parties understood "the issue" to concern the ongoing negotiations, which are specifically referred to by Haney. At this point in time the union was "pushing" its bargaining position in the Municipal Interest Arbitration forum and to some extent in the complaint forum. The exercise of rights in each of these forums is regarded as protected concerted activity by the Municipal Employment Relations Act.

By threatening retaliation for the exercise of protected employee activity, Mr. Holloway was interfering with the employee's right to freely decide what form, if any, of statutorily protected conduct to pursue. The threat of retaliation for engaging in protected concerted activity is inherently coercive, 11/ and a per se violation of the Municipal Employment Relations Act.

The Examiner is mindful of the circumstances surrounding the conversation. The men's meeting was a chance occurrence in a social surrounding. The conversation was initiated by Mr. Haney. The subject of the exchange was a natural one for these men to discuss once Haney identified himself as a member of the Sheriff's Department. Nevertheless, a threat, prohibited by statute was made. Coming from the County Executive the threat was a credible one, and a technical violation of Section 111.70(3)(a)1, Wis. Stats.

Dated at Madison, Wisconsin this 11th day of August, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By William C. Houlihan, Examiner

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8/ Janesville Joint School District, 8791-A, 3/69, Drummond Joint School Dist. No. 1, 15909-A, 3/23/78.

9/ Janesville at 8, Old Dominion Br. No. 496 v. Austin (418 U.S. 264).

10/ Lisbon-Pewaukee Jt. School Dist. No. 2, 14691-A, 6/9/76 Ashwaubenon School Dist, 14774-A.

11/ Village of Menomonee Falls, 15650-C, 2/28/79.