

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

WISCONSIN POLICE NEGOTIATORS, LTD.

Complainant,

vs.

WISCONSIN PROFESSIONAL POLICEMEN'S  
ASSOCIATION a/k/a WISCONSIN  
PROFESSIONAL POLICE ASSOCIATION,

Respondent.

Case I  
No. 25222 MP-1042  
Decision No. 17371-E

DRIVERS, SALESMEN, WAREHOUSEMEN, MILK  
PROCESSORS, CANNERY, DAIRY EMPLOYEES,  
AND HELPERS LOCAL 695, et al.,

Complainant,

vs.

WISCONSIN PROFESSIONAL POLICE  
ASSOCIATION,

Respondent.

Case II  
No. 25313 MP-1052  
Decision No. 17447-C

DRIVERS, SALESMEN, WAREHOUSEMEN, MILK  
PROCESSORS, CANNERY, DAIRY EMPLOYEES,  
AND HELPERS LOCAL 695, et al.,

Complainant,

vs.

WISCONSIN PROFESSIONAL POLICE  
ASSOCIATION,

Respondent.

Case III  
No. 25314 MP-1053  
Decision No. 17448-C

Appearances:

Mr. Mark T. Baganz, Attorney at Law, 411 East Mason Street,  
Milwaukee, Wisconsin, appearing on behalf of Complainant  
Wisconsin Police Negotiators, Ltd.

Goldberg, Previant, Uelmen, Gratz, Miller, Levy & Brueggeman,  
Attorneys at Law, by Ms. Marianne Goldstein Robbins, 788 North  
Jefferson Street, Milwaukee, Wisconsin, appearing on behalf of  
Complainant Drivers, Salesmen, Warehousemen, Milk Processors,  
Cannery, Dairy Employees, and Helpers Local 695, et al.

Lawton & Cates, Attorneys at Law, by Mr. Richard V. Graylow,  
110 East Main Street, Madison, Wisconsin and Gimbel, Gimbel  
& Reilly, Attorneys at Law, by Ms. Linda S. Vanden Hauvel,  
270 East Kilbourne Avenue, Milwaukee, Wisconsin, appearing on  
behalf of Respondent Wisconsin Professional Policemen's  
Association a/k/a Wisconsin Professional Police Association.

Nos. 17371-E  
17447-C  
17448-C

## FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

The Wisconsin Employment Relations Commission having heretofore issued Orders appointing Stanley H. Michelstetter, a member of the Commission's staff, as an Examiner to conduct hearing and to issue Findings of Fact, Conclusion of Law and Order in the above-entitled matters; and said Examiner having consolidated the matters for hearing, and having conducted hearing in said matters on March 11, April 11, 14 and 15, 1980, at Milwaukee, Wisconsin; and, prior to the filing of briefs by various Counsel, said Examiner having resigned his employment with the Commission, and on August 21, 1980 the Commission, by Order, having transferred the instant proceedings to the Commission, pursuant to Sec. 111.07(6), Stats., for the purpose of issuing Findings of Fact, Conclusion of Law and Order in the matters; and the Commission, having considered the evidence and briefs of Counsel, being fully advised in the premises, makes and issues the following Findings of Fact, Conclusion of Law and Order.

### FINDINGS OF FACT

1. That Wisconsin Police Negotiators, Ltd., hereinafter referred to as WPN, represents municipal law enforcement personnel for the purposes of collective bargaining, and has its offices at Milwaukee, Wisconsin.
2. That Drivers, Salesmen, Warehousemen, Milk Processors, Cannery, Dairy Employees, and Helpers Local 695, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, hereinafter referred to as Teamsters, represents, among others, municipal law enforcement personnel for the purposes of collective bargaining, and has its offices at Madison, Wisconsin.
3. That Wisconsin Professional Policemen's Association, also known as Wisconsin Professional Police Association, hereinafter referred to as WPPA, has its offices at Madison, Wisconsin; that Law Enforcement Employee Relations, hereinafter referred to as LEER, is affiliated with, and is a division of WPPA; that LEER has its offices at Brookfield, Wisconsin; and that WPPA, as well as LEER, represents municipal law enforcement personnel for the purposes of collective bargaining.
4. That at least prior to July 11, 1979 WPN was recognized by the Village of Pewaukee as the exclusive collective bargaining representative of the non-supervisory law enforcement personnel in the employ of said Village; and that on July 11, 1979 LEER filed a petition with the Wisconsin Employment Relations Commission, hereinafter referred to as the Commission, requesting the Commission to conduct an election among said law enforcement personnel to determine whether said personnel desired to be represented by LEER, or whether they desired to continue to be represented by WPN, for the purposes of collective bargaining with said Village.
5. That at least prior to August 27, 1979 Teamsters was the exclusive collective bargaining representative of non-supervisory law enforcement personnel in the employ of the City of Oconomowoc; that on August 27, 1979 LEER filed a petition requesting the Commission to conduct an election among non-supervisory law enforcement in the employ of said City to determine whether said personnel desired to be represented by LEER, or whether said personnel desired to continue to be represented by Teamsters, for purposes of collective bargaining with said City; that at least prior to August 27, 1979 Teamsters was the exclusive collective bargaining representative of non-supervisory

law enforcement personnel in the employ of the Town of Oconomowoc; that on August 27, 1979 LEER filed a petition requesting the Commission to conduct an election among non-supervisory law enforcement personnel in the employ of said Town to determine whether said personnel desired to be represented by LEER, or whether said personnel desired to continue to be represented by Teamsters, for the purposes of collective bargaining with said Town; and that at least prior to July 11, 1979 Teamsters was the exclusive collective bargaining representative of non-supervisory law enforcement personnel in the employ of the County of Waukesha; that on July 11, 1979 LEER filed a petition requesting the Commission to conduct an election among said non-supervisory personnel to determine whether said personnel desired to be represented by LEER, or whether said personnel desired to continue to be represented by Teamsters, for the purposes of collective bargaining with said County.

6. That, in the complaint initiating the prohibited practice proceeding in Case I, WPN has, among other things, alleged that WPPA, and as a result LEER, cannot properly constitute labor organizations for the purpose of representing non-supervisory law enforcement personnel in collective bargaining for the reason that WPPA admits into its membership, and to its various elective offices, law enforcement personnel who are supervisory personnel; and that Teamsters, in the complaints initiating the prohibited practice proceedings in Cases II and III, has among other things, alleged that WPPA, and as a result LEER, cannot properly constitute labor organizations for the purpose of representing non-supervisory law enforcement personnel in collective bargaining for the reason that WPPA admits into its membership, and to its various elective offices, law enforcement personnel who are managerial, executive and supervisory law enforcement personnel.

7. That WPPA is a non-stock corporation created pursuant to Chapter 181, Wis. Stats., and it has 28 members on its Board of Directors, 5 of whom have been stipulated, by WPN, Teamsters, and WPPA, as being supervisory law enforcement personnel, occupying the positions in the police departments of municipal employers set forth opposite their names as follows:

Donald Cuene - Chief of Police, City of Green Bay  
Charles Wolbert - Captain, City of Cudahy  
Thomas Haylik - Sergeant, City of LaCrosse  
Donald Haralson - Assistant Chief of Police, City of Marshfield  
Norbert Nelson - Sergeant, City of Manitowoc

that at all times material herein supervisory law enforcement personnel have always been, and continue to be, allowed to participate in WPPA members and officers; that there are local affiliates of WPPA some of which are made up solely of non-supervisory law enforcement personnel, some of which are made up solely of supervisory law enforcement personnel, and some of which have a combination of both of such personnel; and that WPPA is the parent state organization of such local affiliates;

That prior to the latter part of May, 1979 WPPA, itself, and in its own name engaged in organizational activities among law enforcement personnel for the purposes of collective bargaining, and had been certified as the collective bargaining representative of such personnel in the employ of various municipal employers; that in certain instances it also furnished guidance and assistance to local affiliates in their collective bargaining with municipal employers; that WPPA created LEER on May 22, 1979 for the purpose of representing law enforcement personnel in collective bargaining; that LEER does not admit supervisory law enforcement personnel into its membership; that while in 1979 LEER assisted two supervisory law enforcement units in their collective bargaining, however it no longer performs this function; and that the

services offered by LEER include either a "full service" plan, paid for by fixed dues paid by members of locals affiliated with WPPA, or services rendered to WPPA locals which are paid to LEER on an hourly basis.

8. That Patrick Coraggio is the full-time Administrator of LEER as it now exists, and has been so since September 1, 1979; that Coraggio maintains an office in Brookfield, which is designated as LEER's and which since September, 1979 has been separate from WPPA's Madison office; that prior to that date LEER used the WPPA's Madison office and phone for a time; that Coraggio was hired by the WPPA Board, of which he was a member, and is now paid on a sliding scale according to the number of members represented by LEER; that the WPPA office, and in particular Treasurer Charles Wolbert (a stipulated supervisor), handles the money for LEER's, as well as WPPA's, accounts, allocates dues money into the different funds, and signs Coraggio's pay checks. That the WPPA start-up money for LEER was in the form of several grants followed by a larger sum, of \$25,000, in the form of a no-interest loan repayable at a minimum of \$500 per year over a maximum of fifty years, all voted upon by the WPPA Board, which has also received and voted approval of the LEER by-laws and of at least one general "progress report" of LEER; that supervisory members have not apparently disqualified themselves from participation in these votes; and that the WPPA Board can amend LEER's structure and functions and that the WPPA Board has discussed, as a board, at least one subject of collective bargaining significance (mandatory retirement) since the formation of the LEER Division.

9. That there are factors which tend to show the existence of a nexus between the WPPA Board, with its supervisory element, and LEER; and that among these are that several election petitions have been filed with the Commission since May, 1979 under the name of WPPA rather than LEER, the possibility of changes in LEER's personnel, power and structure caused by WPPA Board votes, the fact that all of the LEER Board members, though not law enforcement supervisors, are also on the WPPA Board, along with such supervisors (under the 1980 by-laws, however, this is no longer necessary) and are appointed by the WPPA President rather than independently elected, and the fact that LEER Board meetings are always held adjacent to WPPA Board meetings.

Upon the basis of the above and foregoing Findings of Fact the Commission makes and enters the following

#### CONCLUSION OF LAW

Since Sec. 111.70(8) of the Municipal Employment Relations Act permits organizations representing supervisory law enforcement personnel in the employ of municipal employers to be affiliated with the same parent, state or national organization with organizations representing non-supervisory law enforcement personnel in the employ of municipal employers, the Wisconsin Professional Policemen's Association, a/k/a Wisconsin Professional Police Association, by permitting supervisory law enforcement personnel to its membership, and by permitting said personnel to hold office, has not committed, and is not committing, any prohibited practices within the meaning of any subsection of Sec. 111.70(3) of the Municipal Employment Relations Act.



Upon the basis of the above and foregoing Findings of Fact and Conclusion of Law, the Commission makes and issues the following

ORDER

That the complaints filed in the instant matters be, and the same hereby are, dismissed.

Given under our hands and seal at the City of Madison, Wisconsin, this 17th day of October, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Morris Slavney  
Morris Slavney, Chairman

Herman Torosian  
Herman Torosian, Commissioner

Gary I. Covelli  
Gary I. Covelli, Commissioner

Res. 1331  
1700  
1700

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,  
CONCLUSION OF LAW AND ORDER

The Pleadings

Case I

Wisconsin Police Negotiators, Ltd. (WPN), in its complaint, filed on October 16, 1979, attacks the standing of Wisconsin Professional Policemen's Association (WPPA) to act as an organization for the purposes of representing municipal employees, namely police personnel, in collective bargaining with municipal employers. Prior to the filing of said complaint, Law Enforcement Employee Relations (LEER), affiliated with WPPA, on July 11, 1979, filed a petition requesting the Commission to conduct a representation election among law enforcement personnel (excluding the Chief) in the employ of the Village of Pewaukee to determine whether said personnel desired to be represented by LEER, or whether said personnel desired to continue to be represented by WPN. Subsequently, and on October 10, 1979, representatives of LEER, WPN and the Village of Pewaukee filed a stipulation requesting the Commission to conduct such an election among said law enforcement personnel, and in the stipulation the parties agreed that WPN was not waiving any rights it might have to proceed against WPPA in a prohibited practice proceeding or otherwise.

Pursuant to said stipulation, the Commission, on October 29, 1979, directed the election in the unit involved. The election was conducted on November 30, 1979, during which the six eligible police officers all cast ballots, however, because of the pending instant complaint proceeding, the ballots were impounded pending the determination of the instant complaint proceeding.

In the instant complaint WPN alleged that WPPA through LEER, represents municipal employees for the purposes of collective bargaining and related activities; that WPPA is managed and directed by a Board of Directors, which

- a. Controls, directs, and manages the property, business, finances, and affairs of WPPA;
- b. Enacts by-laws and rules and regulations of WPPA;
- c. Approves and ratifies contracts;
- d. Collects and establishes dues;
- e. Establishes and controls other revenue raising projects;
- f. Determines the nature and extent of financial support employees receive from WPPA;
- g. Determines, creates, participates, influences, and initiates collective bargaining policies for municipal employees;
- h. Otherwise operates and controls WPPA.

The complaint also alleges that the WPPA Board and WPPA have among its members, "municipal supervisors - to wit: a Chief of Police, Captains of Police, and Sergeants of Police", and further that WPPA and the WPPA Board committed, or causes to be committed prohibited practices in violation of Secs. 111.70(3)(a) and/or (c) of the Municipal Employment Relations Act by allowing and permitting municipal supervisors:

- a. To contribute financial support to a municipal employee labor organization;
- b. To manage property, business, finances, and affairs of such a labor organization;
- c. To enact, or participate in the enactment of, by-laws, rules and regulations and other operations of such a labor organization;
- d. To collect and establish dues of such a labor organization;
- e. To determine the nature and extent of financial support to such labor organizations; and
- f. To determine, create, participate in, influence, and/or initiate collective bargaining policies for municipal employees.

The complaint further alleged that, by the acts noted above, supervisors aid and support municipal employers, and act in the interest and on behalf of municipal employers, and therefore are unlawful, and constitute interference, restraint, and coercion of municipal employees in the exercise of their rights under the Municipal Employment Relations Act (MERA) and, further, said acts are unlawful in that they constitute action relating to the initiation, creation, domination, or interference with the formation or administration of labor organizations.

WPN would have the Commission order WPPA to cease and desist from such activity and disqualify the latter organization or "any Program thereof", from acting as the bargaining agent of any non-supervisory or supervisory municipal law enforcement personnel. WPN further requests the Commission to prohibit the Village of Pewaukee from negotiating with the WPPA, or any representative thereof, on wages, hours and conditions of employment affecting non-supervisory law enforcement personnel, or to give effect to any collective bargaining agreement between said Village and WPPA covering the wages, hours and working conditions of said personnel.

On November 7, 1979 WPPA filed a motion to dismiss the complaint, contending that it did not comply with ERB 12.02, Wisconsin Administrative Code, in that it was insufficient in that the complaint did not set forth the time and place of the alleged violations. The Examiner, by Order, issued January 30, 1980, denied said motion, and extended time for filing of answer to the complaint. On February 14, 1980 WPPA filed a motion to make the complaint more definite and certain. The Examiner, on February 18, 1980 denied said motion. On February 27, 1980 WPPA filed its answer to the complaint, wherein it denied the material allegations in the complaint, and affirmatively alleged that the complaint stated no cause of action, that the statute of limitations had run, that WPN was not a proper party in interest, and that no justiciable controversy was presented. The WPPA also alleged that LEER is a separate and distinct autonomous body, not dominated or influenced by supervisory employees, and that LEER is controlled by a Board of Directors, none of whom are supervisors. The answer further contended that LEER's "legitimacy as a labor organization" had previously been determined by the Commission, and that no supervisors have played any role to seek representation rights for law enforcement personnel of the Village of Pewaukee, nor have they played any role in the formulation or implementation of collective bargaining proposals or demands. Further during the course of the hearing, and on March 11, 1980 WPPA filed an additional affirmative defense, contending that Sec. 111.70(8), MERA, permitted supervisory participation of the nature alleged by WPN to be prohibited.

## Case II

The complaint in Case II was filed on November 14, 1979 by the Teamsters, and an individual police officer in the employ of the City of Oconomowoc alleging that WPPA consisted of law enforcement.

personnel, including management officials and supervisors of law enforcement agencies, as well as employees within the meaning of MERA; that WPPA had filed a petition with the Commission requesting an election of the law enforcement personnel of the City of Oconomowoc to determine their collective bargaining representative; that the Board of Directors of WPPA includes at least six individuals who are Chiefs of Police or Captains in their respective police departments, and that WPPA "by seeking to act as a labor organization while its membership and leadership is heavily representative of employers and employer interests. . . has violated" Sec. 111.70(3)(c) of MERA, "by causing employer initiation, creation, domination and interference with the formation and administration of a labor organization by providing employer financial support to a labor organization and by maintaining supervisors as members of a labor organization", all prohibited by Sec. 111.70(3)(a)(2) of MERA. The relief requested by Teamsters was set forth as follows:

- a. Dismiss the representation petition filed by WPPA, or in the alternative.
- b. Stay the pending representation election until WPPA has removed all supervisors and management officials from all appointive or elected posts in the organization, including but not limited to the position on its Board of Directors, has removed from membership all supervisory and managerial personnel, and has renounced and refused all contributions from management and supervisory personnel.
- c. Such other and further relief as the Commission may claim just and proper.

On February 4, 1979 Teamsters filed a second complaint, wherein it added an additional complainant, namely an individual who was a deputy sheriff in the employ of Waukesha County. The acts of alleged prohibited practices were consistent with those contained in the first complaint. Teamsters expanded the relief sought which it set forth in its first complaint, by requesting the Commission to order that WPPA, or any subsidiary thereof, cease and desist from acting as a labor organization, filing petitions seeking elections to determine bargaining representative, and from acting as an exclusive bargaining representative.

In its answer to the complaint, filed March 2, 1980, the WPPA put Teamsters to prove some allegations, denied the remaining allegations, and set forth the affirmative allegations it set forth in its answer to the complaint filed in Case I. It additionally alleged that the representative of Teamsters who signed the complaint, as well as the officer in the employ of the City of Oconomowoc, were not proper parties in interest. WPPA would have the Commission dismiss the complaints filed in Case II.

### Case III

The complaint in Case III was also filed by the Teamsters on November 14, 1979, naming the WPPA as the Respondent. Said complaint was identical in its allegation, except insofar as they related to the Town of Oconomowoc and to the allegation that the WPPA filed a petition seeking to represent the law enforcement personnel in the employ of said Town. The relief sought by the Teamsters was identical to that set forth in Case II. Also on February 4, in Case III, Teamsters filed an additional complaint identical to that filed in Case II on the same date, except that it added an additional Complainant, a deputy sheriff in the employ of Waukesha County.



and in addition that WPPA had filed, on July 11, 1979 a petition seeking a representation election among law enforcement personnel in the employ of said County.

The answer filed by WPPA, in the main part, was identical to that filed in Case II.

#### Other Pleadings

Numerous pleadings and motions were filed with the Examiner who conducted the hearing in the cases involved. Said Examiner ruled on certain pleadings and motions and we affirm his rulings in regard thereto, which he made prior to the hearing.

#### Companion Cases

The complaints involved herein appear to have been filed, at least in part, resulting from the fact that either the complaining organizations or LEER, affiliated with WPPA, presently represented, or sought to represent, non-supervisory law enforcement personnel in the employ of the Village of Pewaukee, City of Oconomowoc, Town of Oconomowoc, and Waukesha County. As noted previously LEER, affiliated with WPPA, filed a petition seeking an election among said personnel in the employ of the Village of Pewaukee. 1/ The petition involving the City of Oconomowoc 2/ was also filed by LEER, affiliated with WPPA. The law enforcement personnel unit was, at the time of filing the petition, represented by Teamsters. Prior to hearing on said petition, the Commission, after receiving a request from LEER, on January 17, 1980, dismissed that petition.

LEER, affiliated with WPPA, also filed the petition seeking an election of non-supervisory law enforcement personnel in the employ of the Town of Oconomowoc, 3/ who were and are presently represented also by Teamsters. On January 17, 1980 the Commission also dismissed that petition on the same basis as in the matter involving the City of Oconomowoc. LEER, affiliated with WPPA also filed the petition involving Waukesha County, 4/ where the non-supervisory law enforcement employees were represented by Teamsters. Subsequently both organizations and the County executed a stipulation for an election. Said election was conducted, and on October 23, 1979 WPPA was certified as the collective bargaining representative.

#### The Factual Setting

The facts, as established in the record, including stipulations entered into during the course of the hearing, indicate that WPPA admits into its membership supervisory law enforcement personnel, some of whom serve on the Board of Directors. Such supervisory personnel pay membership dues to WPPA and exercise all rights of their membership. It should be noted that while Teamsters in its complaints filed in Cases II and III, in addition to alleging supervisory activity in WPPA, also alleged that certain of its members were "managerial", no evidence was adduced with regard to any managerial functions performed by any of the individuals stipulated to by the

- 1/ Village of Pewaukee, VI (17158)
- 2/ City of Oconomowoc, XVIII (17560)
- 3/ Town of Oconomowoc, VII (17561)
- 4/ Waukesha County, LIV (17263)

parties as being supervisory law enforcement personnel. Therefore, our decision herein concerns only the issue of such supervisory participation in WPPA.

#### Discussion

The issues in these consolidated cases call into play several subsections of MERA and require that we determine the intent of the Legislature with respect to the propriety of supervisory law enforcement membership in organizations which represent non-supervisory law enforcement personnel for the purposes of collective bargaining.

The definition of the term "municipal employer" in Sec. 111.70(1)(a) includes "any person acting on behalf of a municipal employer within the scope of his authority, express or implied."

The definition of the term "municipal employee" in Sec. 111.70(1)(b) includes individuals employed by a municipal employer other than an "independent contractor, supervisor, or confidential, managerial or executive employee."

Sec. 111.70(3)(a)2 provides as follows:

It is a prohibited practice for a municipal employer individually or in concert with others

To initiate, create, dominate or interfere with the formation or administration of any labor or employee organization or contribute financial support to it, but the employer shall not be prohibited from reimbursing its employees at their prevailing wage rate for the time spent conferring with the employees, officers or agents. Supervisors may remain members of the same labor organization of which their subordinates are members, but such supervisor shall not participate in determinations of the collective bargaining policies of such labor organization or resolution of grievances of employees. After January 1, 1974, said supervisors shall not remain members of such organizations.

Sec. 111.70(3)(b)5 states that:

It is a prohibited practice for a municipal employee, individually or in concert with others

To coerce or intimidate an independent contractor, supervisor, confidential, managerial or executive employee, officer or agent of the municipal employer, to induce him to become a member of the labor organization of which employees are members.

Sec. 111.70(3)(c) states:

It is prohibited practice for any person to do or cause to be done on behalf of or in the interest of municipal employers or municipal employees, or in connection with or to influence the outcome of any controversy as to employment relations, any act prohibited by par. (a) or (b).

Sec. 111.70(8) states:

(8) Supervisory Units. This subchapter does not preclude law enforcement or fire fighting supervisors from organizing in separate units of supervisors for purposes of negotiating with their municipal employers. The commission shall by rule establish procedures for certification of such units of supervisors and the levels of supervisors to be included in the units. The commission may require that the representative in a supervisory unit shall be an organization that is a separate local entity from the representative of the nonsupervisory municipal employees, but such requirement does not prevent affiliation by a supervisory representative with the same parent state or national organization as the non-supervisory municipal employee representative. In cities of the 1st class, this section applies to law enforcement supervisors. For such purposes, the term "municipal employee" includes law enforcement supervisors in cities of the 1st class.

In Milwaukee County 5/ we noted that the proper sections of MERA under which an employee organization respondent can be charged with committing a prohibited practice do not include Sec. 111.70(3)(a)2, which applies only to municipal employers or their agents. Here no municipal employer or agent thereof had been named as a respondent in any of the cases involved herein and therefore, for that reason alone the allegations with reference to such statutory violation have no merit herein.

Complainants also allege that WPPA has violated Sec. 111.70(3)(c), which prohibits the same type of conduct by . . . "any person . . ." as is proscribed for employers by Sec. 111.70(3)(a)2, among others. The issue then to be determined is whether the practice of WPPA admitting agents of municipal employers to its membership constitutes a prohibited practice under MERA. The Complainants would have the Commission find that such a practice is prohibited and in violation of Sec. 111.70(3)(a)2, by derivation from Sec. 111.70(3)(c). We cannot interpret the latter provision to incorporate Sec. 111.70(3)(a) so as to apply it to determine whether an employee organization, when not acting as an employer, or on behalf thereof, has committed a prohibited practice. If an agent of a named respondent municipal employer voluntarily joined and paid dues to an employee organization, said named respondent municipal employer could be deemed to have contributed financial support to said employee organization in violation of MERA. There are no named respondent municipal employers involved in these complaint proceedings. Further there is no allegation or proof that the WPPA coerced or intimidated any agent of any municipal employer to become members of WPPA, which could constitute a violation of Sec. 111.70(3)(b)5.

In these proceedings it was established that supervisory law enforcement personnel hold membership and office in WPPA. Initially MERA permitted supervisory employees of any type employed by municipal employers to remain members of the same labor organizations of which their subordinates were members. However, the same provision, Sec. 111.70(3)(a)2, requires supervisors to cease such membership after

January 1, 1974. However, with respect to fire fighter and law enforcement supervisors, Sec. 111.70(8) modifies the restriction set forth generally in Sec. 111.70(3)(a)2, by permitting such supervisory personnel to organize into separate units of supervisors for the purposes of negotiating with their municipal employers, and as noted earlier herein said section permits representation by a local which represents non-supervisory fire-fighter and law enforcement personnel. The section does not prevent representation by a supervisory representative from being affiliated with the parent state or national organization with which employee organizations are affiliated. Therefore, since WPPA is a parent state organization, membership therein by law enforcement supervisors is permitted under MERA. Such membership does not constitute a prohibited practice nor does it taint WPPA as an employee organization in seeking to represent, and in fact representing, non-supervisory law enforcement personnel in the employ of municipal employers in this State.

While in the complaints filed by it Teamsters alleged that WPPA had among its members managerial law enforcement personnel, no evidence was adduced with respect thereto, and therefore we have made no finding of fact in that regard. There was evidence adduced to the effect that the Chief of Police of the City of Green Bay is a member of WPPA's Board of Directors. The parties stipulated that said Chief is a supervisor. We suspect that he is also a managerial and executive employee.

While MERA permits the right of membership in employee organizations to law enforcement supervisors, it does not specifically do so with respect to managerial and executive personnel. The Complainants herein have questioned the status of WPPA and LEER as being permitted to represent non-supervisory law enforcement personnel for the purposes of collective bargaining. While there were no facts adduced in this proceeding with respect to membership by managerial and executive personnel in said organizations, the Commission is aware that following the issuance of this decision evidence, in all probability, would be introduced in possible future complaint proceedings with respect to membership of managerial and executive police personnel in WPPA. 6/ The Commission would then be confronted with a serious issue in determining whether managerial and executive police personnel should or should not be permitted to retain membership in WPPA, and if so, should such personnel be prohibited from holding office and from exercising rights and privileges ordinarily exercised by members.

It may be argued, where a managerial or executive law enforcement officer who is a member of WPPA, and where WPPA, or one of its locals, represents non-supervisory employees of a particular municipal employer, that said municipal employer could be charged with contributing financial support to said representative by the payment of dues by said managerial or executive officer in its employ, in violation of Sec. 111.70(3)(a)2 of MERA. Such membership, it could be argued, affects the capacity of WPPA and/or its locals to act as a collective bargaining representative of non-supervisory law enforcement personnel. These issues suggest other possible issues. We have determined to expedite the resolution of these issues, not by proceeding in additional complaint cases, but rather by scheduling further hearing in the case involving the Village of Pewaukee, as noted previously, a representation case still pending before the Commission. In said hearing we shall elicit evidence relating to the "managerial and/or executive" issue. All parties involved in these proceedings, as well as in any proceeding involving the status of WPPA presently pending before the

6/ Such complaints have been filed, but have not been scheduled for hearing.



Commission, will be served notice of said hearing and will be permitted to move to participate therein. Further, the Commission does not consider that hearing to involve an adversary proceeding. Rather it is deemed to be part of the issue involving the question of representation presently pending involving the Village of Pewaukee. We hope our decision therein will resolve the status of WEPA and LEER as employe organizations under MERA.

Dated at Madison, Wisconsin, this 17th day of October, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Morris Slavney  
Morris Slavney, Chairman

Herman Torosian  
Herman Torosian, Commissioner

Gary J. Covelli  
Gary J. Covelli, Commissioner