

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

WEST SIDE COMMUNITY CENTER, INC.

Case I
No. 28173 E-2997
Decision No. 19211-A

Ropella & Van Horne, Attorneys at Law, by Mr. Dennis J. Weden, 411 East Mason Street, Milwaukee, Wisconsin 53202, for West Side Community Center, Inc.

Pursuant to a Direction of Elections previously issued in the above-entitled matter, the Wisconsin Employment Relations Commission having conducted elections on October 13, 1981 among certain employees of the West Side Community Center, Inc., Milwaukee, Wisconsin, to determine (1) whether the professional employees desired to be included in a unit with the non-professional employees and (2) whether the employees desired to be represented by Milwaukee District Council 48, AFSCME, AFL-CIO, Local 1954, for the purpose of collective bargaining; and thereafter on October 20, 1981, Milwaukee District Council 48 having timely filed objections to conduct affecting the election wherein it alleged that, among other things, West Side Community Center, Inc., had committed unfair labor practices; and on November 20, 1981, Milwaukee District Council 48 having filed amended objections to conduct affecting the election and a separate complaint of unfair labor practices; and the Commission having consolidated the two proceedings for the purpose of hearing; and the undersigned, a member of the Commission's staff, having been designated to act as the Examiner and to make and issue Proposed Findings of Fact, Conclusions of Law and Order in the matters; and hearings on the objections and complaint having been held at Milwaukee, Wisconsin before the Examiner on January 18, February 3, March 26, and May 21, 1982; and the parties having filed post-hearing briefs by July 30, 1982; and the Examiner having considered all of the evidence and the arguments of the parties, and being fully advised in the premises, makes and issues the following Proposed Findings of Fact, Conclusions of Law and Order. 1/

- (2) In any contested case which is a class 2 or class 3 proceeding, where a majority of the officials of the agency who are to render the final decision are not present for the hearing, the hearing examiner presiding at the hearing shall prepare a proposed decision, including findings of fact, conclusions of law, order and opinion, in a form that may be adopted as the final decision in the case. The proposed decision shall be a part of the record and shall be served by the agency on all parties. Each party adversely affected by the proposed decision shall be given an opportunity to file objections to the proposed decision, briefly stating the reasons and authorities for each objection, and to argue with respect to them before the officials who are to participate in the decision. The agency may direct whether such argument shall be written or oral. If an agency's decision varies in any respect from the decision of the hearing examiner, the agency's decision shall include an explanation of the basis for each variance.

PROPOSED FINDINGS OF FACT

1. That District Council 48, American Federation of State, County and Municipal Employees, AFL-CIO, hereinafter Complainant or Union, is a labor organization having its offices at 3427 West St. Paul Avenue, Milwaukee, Wisconsin 53208.

2. That West Side Community Center, Inc., hereinafter Respondent or Employer, is an employer with its offices at 546 North 31st Street, Milwaukee, Wisconsin 53208; that the purpose of Respondent's operation is to provide services to the residents of the neighborhood in the form of counseling and help in repairing homes; that Respondent's source of income is funding through grants from the federal government, the City of Milwaukee and United Way of Greater Milwaukee; and that Respondent is controlled by an elected Board of Directors, hereinafter Board; consisting of approximately eight individuals who have at all times material herein acted on behalf of Respondent.

3. That since August 24, 1981, William Meunier has been employed by Respondent in the position of Executive Director, initially on a temporary basis as "acting" Executive Director, and subsequently on a permanent basis; that among his duties the Executive Director is responsible for the overall supervision of the staff and the programs, acting as a liaison between the staff and the Board, and representing the Board in labor relations; that in the position of Executive Director, Meunier acts as an agent of Respondent's Board; and that Meunier was made aware of Complainant's organizational drive among Respondent's employees by the Vice-President and acting President of the Board, Fred Patz, approximately two days before he started as "acting" Executive Director.

4. That Richard March began his employment with the Respondent in December of 1978 as a Parent Advocate and was laid off in July of 1979; that March returned to work with Respondent in February of 1980 as Program Coordinator of the Independent Family Life Assistance Program, hereinafter IFLA; and that in April of 1981 March was made Respondent's "acting" Executive Director and held that position until the third week in May of 1981 when he was returned to the position of Program Coordinator.

5. That March discussed the idea of having a union at West Side with the Board while he was the "acting" Executive Director and indicated that he felt having a union would stabilize relations between the Board and staff; that the Board indicated to March that it did not favor having a union at West Side since it might jeopardize the funding; that the Board directed March to find out if any unionized agencies were funded by Respondent's funding sources; and that March investigated the matter and reported to the Board that a number of agencies funded by United Way were unionized and that United Way itself was unionized.

6. That Stephen Michalski was employed by Respondent from June 20, 1978 until October 7, 1981; that since March of 1979 Michalski held the position of Coordinator of the Community Housing Improvement Project, hereinafter CHIP; that in said position Michalski functioned in a supervisory capacity in that he possessed and exercised the authority to hire, fire, lay off and discipline employees; and that Michalski was an open and active supporter of the Complainant during the organizing campaign, was one of the members of the Organizing Committee, wore a union button and solicited the signing of authorization cards from the employees on the Complainant's behalf.

7. That Mark Meiling was employed by Respondent for approximately two and one-half years prior to his termination on October 7, 1981; that Meiling started with Respondent as a "work-study student" under the Work Exchange Program; that from June of 1980 until October 7, 1981, Meiling held the position of Rehabilitation Aide in the CHIP program; that in that position Meiling was responsible for doing all cost comparison pricing, making up reports on cost comparisons, doing the cost reports on each house repaired, purchasing all of the materials and tools used in the CHIP program, delivering tools and supplies to the work sites, assisting Michalski and providing some limited supervision of the CHIP work crew; that Meiling was an active and vocal supporter of the Complainant in its organizing drive, was a member of the Organizing Committee and solicited employees to sign authorization cards on behalf of the Complainant, obtaining thirteen of the seventeen authorization cards that were signed; that Meiling wore a union button and passed out pro-union leaflets and otherwise actively and openly supported the Complainant, including making pro-union remarks at a staff meeting on September 9, 1981 called by the Respondent; and that the members of Respondent's Board of Directors and Meunier were aware of Meiling's support for the Complainant.

8. That the CHIP program at West Side Community Center has as its purpose to aid lower income homeowners in substandard housing in repairing their homes so as to bring their homes into compliance with the housing codes; that the CHIP staff included the Coordinator, Michalski, Rehabilitation Aide, Meiling, Secretary/Bookkeeper, Mary Boquist and an individual responsible for helping tenants with complaints and problems, Russell Jackson, all who worked out of the CHIP office, and Gener Archer, a field "supervisor", who was responsible for directing the work crews on a daily basis, James Mueller, a Technical Assistant to Archer, who assisted Archer in directing the work of the crews, and the work crew consisting of approximately ten Carpenter-Helpers and Painters and additional individuals employed on a limited term basis through the Transitional Employment Program of the Wisconsin Division of Corrections; and that the work crew reported for work at the West Side Community Center basement each morning, went to the site of the home or homes being repaired and then reported back to the Center at the end of the work day to clean-up and put away their equipment and materials.

9. That in performing his duties Meiling spent approximately forty percent (40%) of his time in the CHIP office at West Side, forty percent (40%) of his time at stores purchasing materials and tools and twenty percent (20%) of his time out at work sites delivering tools and materials, informing the crews as to the work to be done on a particular house and as to which house the crew should go to next; that in said position Meiling exercised only limited and intermittent supervision over employees on the work crews in that on occasion Meiling would direct one of the employees to unload supplies or tools; that on at least several occasions Meiling addressed James Mueller, then a Technical Assistant in charge of one of the crews, in a derogatory fashion calling him a "Bozo" or "stupid" in front of the crew; that Meiling signed the time cards for several of the limited term employees employed with Respondent for 13 weeks through the Transitional Employment Program of the Wisconsin Division of Corrections; that Meiling had some involvement in interviewing prospective employees along with Michalski; that Meiling was involved in the "hiring" of three individuals, Mullins, Johnson and Hall, through the Transitional Employment Program; that Meiling possessed only limited authority to recommend discipline of an employee; that it was Michalski, Coordinator of the CHIP program, who was responsible for the overall supervision of the CHIP staff, including Meiling, and who made the decisions regarding discipline, promotions, lay offs, etc.; that Meiling was never informed that he had authority to hire or fire employees; that while the other employees in the CHIP program, including Mueller and Gene Archer, viewed Meiling as having some authority to direct the employees and resolve employee complaints, such belief was based on Meiling's working in the CHIP office, his friendly relationship with Michalski and his willingness to voice employee complaints to management, and not on actual authority possessed by Meiling; and that Meiling did not function as a supervisor.

10. That Respondent's employees began discussing organizing a union amongst themselves in April of 1981; that Respondent's Board of Directors were aware some time in April of the employees' discussions in that regard; that in early May of 1981, while he was still the "acting" Executive Director, March contacted the Complainant through its Staff Representative, Nick Ballas, in order to obtain information about the organization; that while he was "acting" Executive Director March arranged for Ballas to come to West Side to meet with the employees; that the meeting between Ballas and the employees took place at the Center during the employees' lunch period; that at said meeting a "core" Organizing Committee was formed and consisted of March, Michalski, Hari Kramer and subsequently, Meiling; that Ballas subsequently met with the Organizing Committee after the meeting with the employees; that approximately two or three weeks after the first meeting Ballas again met with Respondent's employees at West Side during their lunch break; that at that second meeting Ballas informed the employees about election procedures and instructed the Organizing Committee about how to organize a union; that Ballas gave the members of the Organizing Committee authorization cards to have signed in order to obtain a showing of interest; that Ballas told March, Michalski and Meiling to present the cards to Respondent's other employees only during non-productive time, such as before or after work, during breaks or if they were walking to or from places or waiting for supplies; and that Ballas instructed March, Michalski and Meiling to openly identify themselves as union organizers, to wear union buttons and to state openly that they were the core organizing committee.

11. That March, Michalski and Meiling each solicited and obtained signed authorization cards from Respondent's employees, and upon obtaining seventeen signed authorization cards gave them to Ballas; that upon Ballas' receipt of the

signed authorization cards the Complainant subsequently petitioned the National Labor Relations Board, hereinafter the NLRB, for a representation election among Respondent's employees; that after a hearing before the NLRB it was ruled that it was not appropriate for that body to exercise jurisdiction in the matter; that on June 8, 1981, Complainant petitioned the Wisconsin Employment Relations Commission, hereinafter Commission, for a representation election and a hearing was scheduled in the matter; that on September 10, 1981, a hearing was held before an examiner from the Commission's staff at which hearing Complainant and Respondent stipulated to the two voting groups, professionals and non-professionals, the eligibility list and the supervisory status of Steve Michalski; and that at said hearing Respondent indicated that it would challenge the ballots of Mark Meiling and Gene Archer on the basis of their alleged supervisory status. 2/

12. That pursuant to Complainant's petition for a representation election and the parties' stipulations the Commission directed that elections by secret ballot be held in the following two voting groups:

Voting Group No. 1

All full-time and regular part-time professional employees employed by the West Side Community Center, Inc., Milwaukee, Wisconsin, but excluding all supervisory employees, managerial employees, confidential employees, and all other employees, who were employed on September 23, 1981, except such employees as may prior to the election quit their employment or be discharged for cause, for the purpose of determining (1) whether a majority of the employees in said voting group desire to be included in the bargaining unit described as Voting Group No. 2; and (2) whether a majority of such employees voting desire to be represented by District Council 48, American Federation of State, County and Municipal Employees, AFL-CIO and its affiliated Local 1954, for the purposes of collective bargaining with the West Side Community Center, Inc.

Voting Group No. 2

All full-time and regular part-time employees employed by the West Side Community Center, Inc., Milwaukee, Wisconsin, but conditionally excluding professional employees, and fully excluding supervisory employees, managerial employees, and confidential employees, who were employed on September 23, 1981, except such employees as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether a majority of such employees voting desire to be represented by District Council 48, American Federation of State, County and Municipal Employees, AFL-CIO and its affiliated Local 1954, for the purpose of collective bargaining with the West Side Community Center, Inc. 3/;

and that the parties agreed that the election would be held on the morning of October 13, 1981 at West Side Community Center.

13. That during Complainant's organizational campaign prior to the election there were a number of discussions between Meunier and employees on the CHIP staff regarding pay raises; that in response to inquiries from the employees Meunier told them that if there was sufficient money in the budget, and if they deserved a raise, then they would get a raise whether or not they joined a union; that at the staff meeting called by Meunier on October 9, 1981, Jackson asked Meunier about his raise and was told that he was doing a good job and deserved a raise and if there was money in the budget he would be second in line for a raise behind Hoppa,

2/ It was stipulated at the hearing in these matters that the Examiner could take administrative notice of the record in the election hearing held on September 10, 1981.

3/ Commission Decision No. 18987 (9/23/81).

a Carpenters Helper on the CHIP staff, since Hoppa had been promised a raise by Michalski when he was hired and never received it; and that Meunier at that time still considered Jackson to support having a union at West Side.

14. That Meunier called a meeting of Respondent's staff during work hours on August 28, 1981 for the purpose of discussing the union organizing drive at West Side; that since not all of Respondent's employees could attend that day Meunier cancelled the meeting and rescheduled it for September 9, 1981; that the meeting was held on September 9, 1981 at approximately 8:00 a.m. in the basement of West Side and Meunier required all of Respondent's non-supervisory employees to attend said meeting; and that prior to the start of said meeting Meunier passed out leaflets to the employees, which leaflets stated:

Don't volunteer any information.

Avoid answering any questions.

Show a real solid front and don't appear uncertain about unionizing.

Chant UNION, UNION, UNION !!! at the end of the meeting.

- 1) Mary Boquist: final decision on '80 vacation wages.
- 2) Rafi's travel check.
- 3) Why were the recent comp-time directives made without any staff input (sic)?
- 4) Since the staff of CHIP and WSCC wholly (sic) supports the union, and we will get one by law: Do you think the board could have saved very much in lawyer's fees by polling the staff and recognizing the union earlier?
- 5) Board Composition & meetings
 - How many of the board members have been served by any of the programs of West Side Community Center in the last two years?
 - How many black board members are there?
 - When was the most recent board meeting with a quorum?
- 6) Elections
 - When will the next board elections be held?
 - When were the board elections supposed to have been held according to the WSCC board by-laws?
 - Why are the elections being held so late?
 - How many board vacancies are up for election?
 - How many years are the newly appointed board members going to serve?
- 7) Is it in violation of the Personnel hiring policies to hire Bill Meunier as Executive Director without holding a public board meeting?
- 8) Anti-nepotism clause
 - Do the personnel policies state that board members shall not hire relatives to do any work for WSCC?
 - Is Dennis Weeden the brother-in-law of the board member, Belle Guild?
 - Why is a board member hiring their relative as WSCC's legal counsel?
 - Is the purpose for the Anti-Nepotism clause to keep board members from lining their relative's pockets with WSCC's money?

15. That Michalski and Archer were not required to attend the September 9, 1981, staff meeting called by Meunier, while Meunier was so required; that said meeting lasted approximately one and one-half hours and was chaired by Meunier with Attorney Dennis Weden, from the law firm retained by Respondent, present to advise Meunier; that at said meeting Meunier pointed out what he felt were the

disadvantages of having a union; that Meunier told the employees there was no guarantee they would get pay raises or additional benefits if they voted to unionize and that mistakes made in the past regarding employee relations would not be repeated; that at said meeting, in response to questions from employees regarding funding, Meunier indicated that he did not know, but in his opinion, it was possible that having a union at West Side could hamper Respondent's ability to obtain funding or could reduce or adversely affect the funding; that Meunier suggested the employees talk to Donnelly, the grant monitor for the City of Milwaukee, if they really wanted to know what effect unionizing would have on Respondent's funding; that both Meunier and Attorney Weden asked the employees at the meeting if they had any questions or comments and several employees, including Meiling, made comments or asked questions; that Meiling asked the questions stated on the leaflets he handed out prior to the start of the meeting, engaged in a number of heated exchanges with Meunier regarding those questions and made comments that indicated his support for Complainant; that at no time during the meeting did Meunier or Weden mention any advantages of forming a union; that many of the employees at the meeting were wearing buttons or stickers indicating their support for having a union; and that most of the employees left the September 9, 1981, meeting chanting "Union, Union".

16. That subsequent to the September 9, 1981, meeting at the Center, two employees on the work crew from the CHIP program, Donald Hoppa and Michael Zehren, who were "temporary" employees at the time, went to Meunier during work hours and asked if they could talk to Respondent's "grant monitor" regarding the possible effect on Respondent's funding if a union was voted in; that Respondent's "grant monitor" was Tom Donnelly, an employee of the City of Milwaukee and that Donnelly was responsible for monitoring Respondent's program on the City's behalf, the City being one of Respondent's funding sources; that Meunier agreed to take Hoppa and Zehren down to the City Hall to see Donnelly to enable them to discuss their concerns with Donnelly and get the latter's opinion on the possible effects of having a union on funding; that Meunier took Hoppa and Zehren down to City Hall in his car during paid working hours; that Meunier accompanied Hoppa and Zehren into City Hall and to the general area in which Donnelly has his office; that Meunier, Hoppa and Zehren had no appointment to see Donnelly and were not expected; that Donnelly was in a meeting when the three arrived and they waited for him in the waiting area; that when Donnelly came out of his meeting, his secretary told him that some people were waiting to see him; that Meunier told Donnelly that Hoppa and Zehren wanted to talk to him; that at the request of Hoppa and Zehren, Meunier stayed in the waiting area while they went back to Donnelly's office and discussed their concerns; that Hoppa and Zehren asked Donnelly what the funding situation was and how Archer could get a \$1600 raise; that Hoppa asked Donnelly what would happen with funding if the employees unionized; that in response to Hoppa's question, Donnelly said that he did not want them to consider it a threat, and that he could get in trouble for saying this, but in his opinion he did not think that it would be very good for reasons that if one agency like theirs had a union come in, others would want it and that there was only so much money in the City for these programs and by becoming a union, it might cost more and that he was not sure what would happen, but it would be possible that West Side Community Center would not be refunded and that they should consider that and make their own decision; that after their meeting with Donnelly, Hoppa and Zehren rode back to West Side with Meunier and during that ten minute ride Meunier asked them what Donnelly had said and they repeated what Donnelly had told them; that the trip to see Donnelly and back took approximately one and one-half hours; that when Hoppa and Zehren returned to the Center from meeting with Donnelly they went out to the job site and told the rest of the crew what Donnelly had said; and that the general reaction of the crew, upon hearing what Donnelly had said, was that they no longer desired to have a union.

17. That on October 6, 1981, one of the employees on the CHIP work crew, Milton Esser, called Meunier at his office; that Meunier was talking to someone else on another telephone line when Esser called, so Esser left a message for Meunier to come out to the job site because the crew wanted to talk to him; that upon receiving the message, Meunier drove out to the work crew's job site where he met with the crew and was told by the crew that Meiling and Michalski had been continually saying that Meunier was a "queer" and "faggot", that the Board was controlled by "queers", that the Board did not know what it was doing and was a dictatorship, that they hoped West Side Community Center would fail so that the CHIP program could break away on its own and that the Board had taken money from West Side to line their own pockets; that the crew also told Meunier that Meiling had said that he (Meunier) had misappropriated funds in his last job; that the

work crew also told Meunier that Meiling and Michalski had solicited union authorization cards on company time and promised to get them a raise to cover the cost of union dues if they joined the union; that a number of the employees on the work crew told Meunier that they would quit if Meiling and Michalski remained at West Side; that Meunier then returned to his office; that at the end of the work day on October 6, 1981, the crew returned to the Center whereupon Meunier began typing up statements for the crew to sign as to what Meiling and Michalski had been saying; that a number of the employees, including Esser and Mueller, worked with Meunier in formulating what the statements should say; that as a result of what he was told by the work crew, Meunier typed the following statements for the crew to sign:

October 6, 1981

We the undersigned with our signatures attest to the following with regard to the conduct of Mark Meiling.

A Mr. Meiling has made a number of statements about the Board the staff and the Center that have portrayed them in a negative manner. Among these are the following:

1. That the Board is controlled by queers
2. That the Executive Director is queer
3. That the Board is a dictatorship and puppet type of government.
4. That some Board members took money from West Side and lined their pockets with it.
5. That the Board doesn't know what it is doing.
6. That the Executive Director misappropriated funds in his last job and caused the organization to lose its CDA grant.

All of the above statements were made on company time.

B Mr. Meiling on company time along with Mr. Michalski helped organize a union at WSCC despite his statement to us that the Board had forbid any employee to solicit for the union on company time.

1. He solicited signatures on union cards and told us that by signing them we were not joining the union, but were only giving ourselves the opportunity to get information about the union.
2. He has promised us that if we join he and Steve Michalski will find the money in the budget to give us a raise to cover the cost of union dues.
3. He has stated that if the Union wins the election he will make sure we get raises.

C Mr. Meiling has also made other statements of questionable nature.

1. He has stated he hopes West Side fails so the CHIP program can be on its own.
2. He has stated that he wants the CHIP program to break away from West Side.

We the undersigned attest to this statement in full, we sign of our own free will, no promises or threats have been made to us.

We the undersigned attest to the truth of this statement except as noted since we have not heard, Mr. Meiling make the comments noted next to our signature. We have signed of our own free will without any threats or promises having been made to us.

October 6, 1981

We the undersigned with out (sic) signatures attest to the following with regard to the conduct of Steve Michalski

A He has on an almost daily basis made comments that protrayed (sic) the West Side Community Center Board of Directors, the Center and other staff in a negative manner. Among these statements are the following:

1. The Board is controlled by faggots,
2. A number of Board members are queer
3. The Executive Director is queer
4. The Board is a dictatorship
5. The Board doesn't know what it is doing.
6. The Board has taken money from West Side and lined its lawyer's pockets with it.
7. The Executive Director misappropriated funds in his last job causing the organization he worked for to lose its CDA grant, and that he will now take our funds too.

The above statements were made on company time.

B Mr. Michalski has also actively engaged in Union organizing activities on company time.

1. He has solicited out (sic) signatures on Union cards and told us that by signing the cards we not (sic) joining the union, but were giving ourselves the chance to get information on the union.
2. He has promised us that if we join the union he will give us a raise to cover any union dues we may be assessed.
3. He has promised us that he would see to it that if the Union won the election we would all get raises.

C Mr. Michalski has also made other statements of questionable nature,

1. He has stated he hopes West Side Community Center fails so that he can have the CHIP program on its own.
2. He has stated that he is recruiting candidates for the Board elections to replace Board members he doesn't agree with.
3. He also stated that no one came to the annual meeting.

We the undersigned attest to the truth of this statement in full, no one has threatened or promised anything to get our signatures. We sign of our own free will.

We the undersigned attest to the truth of this statement except as noted since we have not heard Mr. Michalski make the comments noted next to our signature. We bear witness to all other points of this statement. We sign of our free will, no one has made any promises or threats to us.

18. That when Meunier completed typing the statements he told those members of the CHIP work crew who were still there to look the statements over carefully, and to sign their names if they wanted to and if they had heard Meiling and Michalski say those things; that Meunier told the crew that it was up to them whether or not to sign the statements and that if they did not hear all of those statements to just sign what they heard; that some of the crew members who had not stayed to sign the statements after work on October 6, 1981, signed them the next morning when they reported to work at West Side, or later out at the job site, and were told by Meunier to look the statements over and to sign if they wanted; that both Meunier and James Mueller asked Archer to sign the statements regarding things Michalski had said, but Archer told them he would not sign the statements the way they were written; that a number of the employees only signed the statement regarding Meiling or signed the statements in a manner that indicated they heard only some, and not all, of the statements made by Meiling and Michalski; that ten employees signed the statement regarding Meiling, with one employee noting he had heard only parts A, 3 through A, 6; that six employees signed the statement regarding Michalski, with one employee noting he had heard only all of parts A and B; that Meunier did not threaten or coerce the employees into signing said statements and that he told the employees he would do what he could to keep others from seeing who signed those statements; and that the employees on the work crew were aware of Meiling's and Michalski's organizing activities and viewed both of them as leaders in organizing the union.

19. That Meiling and Michalski made those statements attributed to them by the work crew; and that upon hearing what the work crew told him on October 6, 1981, about the things said and done by Meiling and Michalski, Meunier decided to recommend to the Board that those two employees be terminated.

20. That on the morning of October 7, 1981, Meunier notified Meiling that he was being suspended without pay pending a hearing before the Board; and that at the same time Meunier gave Meiling the following written notification of his suspension:

To: Mark Meiling
From Bill Meunier
Re: Suspension without pay

October 7, 1981

You are hereby informed that upon receipt of this notice you are suspended without pay.

You are to report for a hearing at the WSCC Board meeting on Weds. October 7, 1981. At this hearing you will be asked to give responses on the following charges,

- 1) That you have committed unfair labor practices
- 2) That you have slandered the Board of Directors and members of the Board of Directors
- 3) That you have slandered the Executive Director.

You are to report to the meeting at 8:30 pm. You will be paid for any time you spend at the meeting. Failure to report will result in termination.

21. That at the time Meunier notified Meiling of his suspension he also told Meiling to turn in his keys and any of Respondent's materials he had and to report to a Board meeting that evening at 8:30 p.m. to answer the charges; that Meiling read the notice Meunier had handed him and then told Meunier that the charges were "at best vague" and that he wanted to know more explicitly what Meunier was referring to; and that Meiling and Meunier then went into Meunier's office at which time Meunier told Meiling that he had committed unfair labor practices by having the union representation cards signed and telling the staff on the work crew that the cards were only to get more information, that Meiling had called the Board a "dictatorship", that Meiling had told the Board that they did not know what they were doing, that Meiling had called some members of the Board "queers" and that Meiling had called the Executive Director a "queer".

22. That also on the morning of October 7, 1981, Meunier went into Michalski's office and informed him that he was being suspended without pay pending a hearing with the Board and gave Michalski the following written notice of his suspension:

October 7, 1981

To Steve Michalski
From Bill Meunier
Re: Suspension without pay

You are hereby notified upon receipt of this notice that you are suspended without pay effective immediately.

- 1 You have consistently slandered the Board, the Center and other staff.
- 2 You have committed unfair labor practices

You will report to the Board meeting on Weds. October 7, 1981 at 9pm to answer charges on these counts. You will be paid for you (sic) attendance. Failure to report will result in termination.

23. That Meiling and Michalski, accompanied by Complainant's Staff Representative, Nick Ballas, met separately with Respondent's Board of Directors on the evening of October 7, 1981 to answer the allegations against them; and that thereafter the Board voted to terminate both Meiling and Michalski immediately.

24. That on the morning of October 9, 1981 Meunier called another staff meeting at West Side to discuss the disadvantages of having a union and required Respondent's employees to attend the meeting; that there were approximately eight or nine employees from the CHIP crew and the office staff at the meeting, Meiling and Michalski having been terminated and three of the Painter Helpers from the crew having been laid off by Michalski prior to his termination; that Meunier again chaired the meeting and this time had Attorney Ropella present to advise him; that among the disadvantages of having a union he mentioned, Meunier told the employees that he understood that Complainant's dues were either \$17.00 or \$17.50 per month whereupon an employee, Russell Jackson, objected saying "that's not true"; that Attorney Ropella responded to Jackson by saying that regardless of what the dues were, the point was that they had to be paid if the employee joined the union; that Meunier then told Jackson that he ought to check with Complainant's representative, Nick Ballas, and find out the amount of the dues and let the others know; that Meunier again told the employees that there was no guarantee they would get a wage increase if they voted in the union; that Meunier brought up the possibility of a strike at West Side if a union was voted in; that Jackson asked Meunier about the pay raise he was promised and that Meunier responded by saying that no one was promised a raise, that he did not know how much money was left in the budget, but if he checked and found there was enough money, then Jackson would get a raise and that he would also check on whether there was enough money in the budget to give Hoppa the 25¢ per hour raise that Michalski had promised to Hoppa when he was hired and that if there was not enough money in the budget no one would get a raise; that during the meeting one of the employees again asked Meunier for his opinion regarding the possible effect on Respondent's funding of having a union; that Meunier indicated that he was somewhat reluctant to give his opinion, but stated that he felt having a union might hamper the Respondent in terms of obtaining funding or sufficient funding; that Meunier also stated that regardless of whether or not a union was voted in, he would fight to obtain funding for West Side; and that none of the employees left that meeting chanting "Union, Union".

25. That the October 9, 1981, staff meeting was on a Friday; that subsequent to that meeting, Complainant's representative, Ballas, received calls from Meiling, Michalski, Mary Boquist and one of Respondent's employees on the CHIP work crew regarding the meeting; that Boquist and the employee on the crew felt that misinformation regarding a possible cut-off in funding and union dues was given to the employees at the meeting by Meunier; that thereafter, Ballas, along with Meiling and Michalski, drafted a letter to Respondent's employees in reply to what they felt was misinformation received by the employees; that since Ballas had to depend on the authorization cards for the employees' addresses and phone numbers, and approximately six employees had moved in the interim, he had difficulty in obtaining the correct addresses and phone numbers of all of the employees; and that Ballas mailed the letters at approximately midnight on Friday and did not realize until Saturday that Monday, October 12, 1981, was Columbus Day and that mail would not be delivered that day, thereby making it likely that the employees would not receive the letters until sometime on Tuesday, October 13, 1981, after they had already voted in the election.

26. That on October 12, 1981 employees on the CHIP work crews as well as several employees who had been laid off from the crew, held a party at the home of two of the employees, Marker and Kovacs; that October 12, 1981 was Columbus Day as well as a normal work day, and the party was held during the normal work hours; that some of the employees at the party had a "personal day" or "floating holiday" coming pursuant to Respondent's personnel policies so those employees were given the day off with pay at their request; that neither Mary Boquist or Russell Jackson, both CHIP office employees, were given that day off to go to the party, although they were subsequently given a day off with pay at a later date; that the party was planned and organized by CHIP work crew employees, Mueller and Kovacs, in May or June of 1981; that Mueller and Gene Archer supplied the alcoholic beverages served at the party; that neither Respondent nor its Executive Director, Meunier, provided any money or refreshments for said party; that the party was planned to be just for the employees on the CHIP work crews, although Meunier and Boquist were invited; that sometime in early August of 1981 Mueller set the date for the party; that on October 9, 1981, the work crew employees had asked Meunier for October 12 off to have their party, telling Meunier that the party had been arranged weeks in advance; that Meunier attended the party for approximately one-half hour during which time he talked to some of the employees individually, urging them to be sure to vote in the election the next day and to vote the way they felt, although he indicated he hoped they would vote against having a union; that not all of the employees on the work crew went to the party although they had the day off with pay; that other than giving the employees their floating holiday that they had coming, neither the Respondent nor Meunier were responsible for arranging the party or setting the date of the party; and that Meunier did not know whether the employees at the party supported the Complainant.

27. That on Tuesday, October 13, 1981 a secret ballot representation election was conducted by an agent of the Wisconsin Employment Relations Commission among Respondent's employees; that pursuant to the Commission's Direction of Elections 4/ Respondent's employees were divided into two voting groups: Voting Group No. 1 consisting of full-time and regular part-time professional employees and Voting Group No. 2 consisting of all full-time and regular part-time employees other than professional employees; that there were two employees included in Voting Group No. 2: Russell Jackson and Richard Vidutis; that the Respondent challenged the ballot of Vidutis; that the Commission's agent erroneously commingled Jackson's ballot with those of the employees in Voting Group No. 2; that of the twenty-two employees eligible to vote in the election, fifteen employees actually voted; that of the fifteen ballots that were cast, three were challenged by the Respondent; and that of the twelve ballots that were counted, nine ballots were cast against having the Complainant represent the employees and three ballots were cast in favor of having the Complainant represent the employees.

28. That on Tuesday, October 20, 1981, Complainant, by its agent, Nick Ballas, timely filed objections to conduct affecting the election; and that the Complainant filed said objections on a complaint form and included allegations of certain conduct which, if proved, would constitute unfair labor practices.

29. That on October 26, 1981, the Commission's General Counsel sent the following letter to Ballas: 5/

October 26, 1981

Mr. Nick Ballas
Staff Representative
District Council 48,
AFSCME, AFL-CIO
3427 West St. Paul Avenue
Milwaukee, WI 53208

4/ Decision No. 18987

5/ In going through the record in this case it was discovered that Respondent's counsel was inadvertently not copied on this letter.

Re: West Side Community Center, Inc.
Case I No. 28173 E-2997

Dear Mr. Ballas:

We are in receipt of your objections to the conduct of election filed in the above-entitled matter. When reviewing same, a question arose as to whether you were also attempting to file an unfair labor practice complaint. If that was your intent, please do so on a separate complaint form and send same to us. If that was not your intent, please notify me in writing.

Very truly yours,

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Peter G. Davis
General Counsel

30. That on November 20, 1981, Complainant filed separate amended objections to conduct of election and complaint of unfair labor practices with the Commission, which together alleged the same conduct by Respondent that was alleged in Complainant's original objections filed on October 20, 1981; that accompanying said complaint and objections was a cover letter dated November 9, 1981, a copy of which was sent to the Respondent; that said letter stated:

November 19, 1981

Mr. Peter G. Davis
General Counsel, WERC
P.O. Box 7870
Madison, WI 53707

Dear Mr. Davis:

Re: West Side Community Center, Inc.
Case I No. 28173 E-2997

In accordance with your letter of October 26, 1981, I have separated unfair labor practice charges from election objections that our Union filed with your Commission. Enclosed are the separated complaints. I have also sent copies of same to the employer.

Sincerely,

Nick Ballas /s/

Nick Ballas
Staff Representative

NB:es
Enclosure
cc: West Side Community Center, Inc.

and that on December 22, 1981, the Respondent filed an answer to the complaint denying the alleged unfair labor practices.

31. That, inasmuch as Michalski, a stipulated supervisor, was active in the Complainant's organizational campaign among Respondent's employees to the extent that he was a member of the Organizing Committee and solicited and obtained signed authorization cards from Respondent's employees on Complainant's behalf, the Complainant has never been authorized as the bargaining representative by the free choice of a majority of Respondent's employees; and that at no time did Complainant represent a majority of Respondent's employees in an appropriate collective bargaining unit.

32. That Respondent, through its agent Meunier, did not lie to Respondent's employees or attempt to mislead them at the October 9, 1981, staff meeting regarding the amount of Complainant's monthly dues.

33. That Meunier and Donnelly did not provide the employees with any factual basis for their opinions that having a union at West Side could adversely affect Respondent's funding; that Meunier had no reasonable basis for his opinion; and that the opinions of Meunier and Donnelly regarding the possible loss of Respondent's funding or adverse effect on Respondent's ability to obtain sufficient funding if its employees voted to unionize interfered with the free choice of Respondent's employees.

34. That James Mueller, not Meunier, made the comment to CHIP work crews that maybe Michalski took the \$5,000.00 that was thought to be missing; and that Mueller made the statement facetiously.

35. That during the pendency of the representation election Respondent, through its agent Meunier, promised employee Russell Jackson a raise in pay regardless of whether a union was voted in and contingent only upon there being sufficient money in Respondent's budget to give Jackson the raise he deserved.

PROPOSED CONCLUSION OF LAW

That West Side Community Center, Inc., through its agent, William Meunier, by stating that it was possible its funding would be adversely affected if its employees unionized, and by promising employee Russell Jackson a pay raise regardless of whether or not a union was voted in, and contingent only upon there being sufficient money in the budget, did interfere with the free choice of its employees in the election conducted on October 13, 1981.

Based upon the foregoing Proposed Findings of Fact and Proposed Conclusion of Law, the Examiner makes and issues the following

PROPOSED ORDER

IT IS ORDERED that the election heretofore conducted among its employees of West Side Community Center, Inc., on October 13, 1981, be, and the same hereby is, set aside.

IT IS FURTHER ORDERED that a new election by secret ballot be conducted, upon request to the Commission by Milwaukee District Council 48, AFSCME, AFL-CIO, and at such time as the Commission is satisfied that a free untrammelled election can be conducted, among the following voting groups:

Voting Group No. 1

All full-time and regular part-time professional employees employed by the West Side Community Center, Inc., Milwaukee, Wisconsin, but excluding all supervisory employees, managerial employees, confidential employees, and all other employees, who are employed by the Employer on an eligibility date to be subsequently set by the Commission, except such employees as may prior to the election quit their employment or be discharged for cause, for the purpose of determining (1) whether a majority of the employees in said voting group desire to be included in the bargaining unit described as Voting Group No. 2; and (2) whether a majority of such employees voting desire to be represented by District Council 48, American Federation of State, County and Municipal Employees, AFL-CIO and its affiliated Local 1954, for the purposes of collective bargaining with the West Side Community Center, Inc.

Voting Group No. 2

All full-time and regular part-time employees employed by the West Side Community Center, Inc., Milwaukee, Wisconsin, but conditionally excluding professional employees, and fully excluding supervisory employees, managerial employees, and confidential employees, who are employed by the Employer on an eligibility date to be subsequently set by the Commission, except such employees as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether a majority of such employees voting desire to be represented by District Council 48, American Federation of State, County and Municipal Employees, AFL-CIO and its affiliated Local 1954, for the purposes of collective bargaining with the West Side Community Center, Inc.

IT IS FURTHER ORDERED that the Respondent, West Side Community Center, Inc., its officers and agents, shall immediately:

1. Cease and desist from:
 - (a) Threatening its employees by telling them that by unionizing they could adversely affect the ability of West Side Community Center, Inc., to obtain sufficient funding from its funding sources.
 - (b) Promising any of its employees in the bargaining units that they will get a pay raise whether or not a union is voted in so long as there is sufficient money in the budget.
2. Take the following affirmative action which the undersigned finds will effectuate the purposes of the Wisconsin Employment Peace Act:
 - (a) Notify all employees by posting in conspicuous places in its offices where employees are employed copies of the notice attached hereto and marked "Appendix A". That notice shall be signed by Respondent and shall be posted immediately upon receipt of a copy of this Order and shall remain posted for sixty (60) days thereafter. Reasonable steps shall be taken by the Respondent 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 25th day of April, 1983.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By David E. Shaw
David E. Shaw, Examiner

APPENDIX "A"

NOTICE TO ALL EMPLOYEES

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

1. IT IS ORDERED by the Wisconsin Employment Relations Commission that the election heretofore conducted among the employees of West Side Community Center, Inc., on October 13, 1981 be set aside.
2. IT IS FURTHER ORDERED by the Commission that a new election by secret ballot be conducted, upon request to the Commission by Milwaukee District Council 48, AFSCME, AFL-CIO, and at such time as the Commission is satisfied that a free untrammelled election can be conducted, among the following voting groups:

Voting Group No. 1

All full-time and regular part-time professional employees employed by the West Side Community Center, Inc., Milwaukee, Wisconsin, but excluding all supervisory employees, managerial employees, confidential employees, and all other employees, who are employed by the Employer on an eligibility date to be subsequently set by the Commission, except such employees as may prior to the election quit their employment or be discharged for cause, for the purpose of determining (1) whether a majority of the employees in said voting group desire to be included in the bargaining unit described as Voting Group No. 2; and (2) whether a majority of such employees voting desire to be represented by District Council 48, American Federation of State, County and Municipal Employees, AFL-CIO and its affiliated Local 1954, for the purposes of collective bargaining with the West Side Community Center, Inc.

Voting Group No. 2

All full-time and regular part-time employees employed by the West Side Community Center, Inc., Milwaukee, Wisconsin, but conditionally excluding professional employees, and fully excluding supervisory employees, managerial employees, and confidential employees, who are employed by the Employer on an eligibility date to be subsequently set by the Commission, except such employees as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether a majority of such employees voting desire to be represented by District Council 48, American Federation of State, County and Municipal Employees, AFL-CIO and its affiliated Local 1954, for the purposes of collective bargaining with the West Side Community Center, Inc.

3. WE WILL NOT promise to grant, or in fact grant, pay raises to any employees in the collective bargaining unit during the pendency of the representation election.
4. WE WILL NOT in any other or related manner interfere with the rights of our employees, pursuant to the provisions of the Wisconsin Employment Peace Act.

By _____
West Side Community Center, Inc.

Dated this _____ day of _____, 1983.

THIS NOTICE MUST REMAIN POSTED FOR SIXTY (60) DAYS FROM THE DATE HEREOF AND MUST NOT BE ALTERED, DEFACED OR COVERED BY ANY MATERIAL.

MEMORANDUM ACCOMPANYING
PROPOSED FINDINGS OF FACT, CONCLUSION OF LAW
AND ORDER

Before discussing the objections to conduct of election filed by the Union it is necessary to dispose of the motions made by the Employer at the beginning and the close of the hearing in these matters. The Employer makes two motions (1) to dismiss the objections as not timely filed; and (2) to open the ballot of the professional employee, Richard Vidutis, based on the Employer's withdrawing its challenge to that ballot, for the purpose of determining whether the error of the Commission's election agent in commingling the ballot of the other professional employee with those of the non-professional employees was harmless error.

In support of its first motion the Employer contends that the "objections" filed by the Union on October 20, 1981 were in actuality complaints of unfair labor practices filed on a complaint form. Merely entitling the complaints as "objections" did not change what they really were; and the Union did not file what could be considered objections until November 20, 1981, far past the five day time limit.

The Employer's arguments in support of its first motion give a far too narrow and rigid construction to the Commission's rules. Chapter ERB 1, General Provisions, Wis. Admin. Code, Section 1.05, provides:

ERB 1.05 Construction. These rules and regulations shall be liberally construed to effectuate the purposes and provisions of the act.

Chapter ERB 3, Election and Certification of Representatives, Section 3.05, Wis. Admin. Code, provides:

ERB 3.05 Election; report; objection. The agent of the commission conducting an election shall make a report containing a tally of votes, serve a copy of such report upon each party in interest, and transmit a copy thereof to the commission. Any party to the proceeding who desires to file an objection to the conduct of the election shall do so within 5 days after receipt of a copy of such report. Such objection shall be in writing and shall contain a brief statement of the facts upon which the objection is based. The original and three copies of such objection shall be signed and filed with the commission, the original being sworn to. The objector shall serve a copy upon each of the other parties. If it appears to the commission that any substantial question was raised thereby, the commission shall decide such question before proceeding to a final determination.

The Union's Staff Representative, Ballas, timely filed a document entitled "Objections" with the Commission on October 20, 1981. While it was on a "complaint" form used by the Commission the document's introductory paragraph stated:

Now comes Complainant, Milwaukee District Council 48, AFSCME, AFL-CIO, and objects as follows to the conduct affecting the election in the above captioned matter:

Said document then went on to allege certain conduct by the Employer and its agents which, if proved, would constitute both valid objections and unfair labor practices under Section 111.06, Wis. Stats.

In Deaconess Hospital 6/ the Commission (then Board) discussed the purpose of filing and hearing objections to the conduct of an election in detail, stating:

6/ (7008-D) 10/65.

A hearing on objections to the conduct of an election is technically a non-adversary proceeding. The purpose of a hearing on objections is to determine whether there occurred (sic) any conduct which interfered with the free choice of the employees in the election. The purpose of filing of objections with the Board, within a certain specified time, is to preclude the Board from automatically issuing a certification of the results of the election. The timely filing of objections puts the Board on notice not to issue its certification. Upon receiving such notification, and upon the filing of objections, which, on its face, contains allegations, if proven, would establish improper pre-election conduct, the Board sets a hearing in the matter, as an investigation to solicit facts to determine whether or not the pre-election conduct affected the employees' free choice.

The Examiner is of the opinion that, given the rule requiring that the Commission's rules be construed liberally to effectuate the purposes of the Act, using a "complaint" form to file its objections did not make the Union's objections defective. Similarly, the fact that some of the conduct alleged would also constitute unfair labor practices if proved, and that the requested remedies are more appropriate to a complaint proceeding, did not make the objections defective. The purpose of filing objections, as detailed above, was served by the objections filed by the Union on October 20, 1981, i.e., the Commission was put on notice that it should not certify the results of the election due to alleged pre-election misconduct by the Employer and the Employer was put on notice as to the specific acts it was alleged to have committed. The Employer has not shown that it was prejudiced in any way by the format used by the Union in filing its original objections. Combined, the allegations made in the complaint and amended objections filed on November 20, 1981, were identical to those allegations made in the original objections. This subsequent change in form and format does not render the filing of the original objections defective and the Employer's interests were not prejudiced by those changes.

Having concluded that the requirements of Section ERB 3.05, Wis. Admin. Code, were satisfied, that the purposes of the Act and of filing objections to the conduct of an election were served by the objections originally filed by the Union, and that the Employer was not prejudiced by the subsequent change in the format, the Employer's motion to dismiss the Union's objections as untimely is denied.

The Employer's motion that the ballot of Vidutis be opened in order to determine if the election agent's mistake was harmless error is also denied. As the Examiner noted in denying the Employer's earlier motion in this regard, the Union has alleged certain conduct by the Employer which, if proven, could be found to have interfered with the employees' free choice in the election. If that conduct is proved, and also found to have interfered with that free choice, the election would likely be set aside and a new election ordered. If that is the case, then the question of whether the election agent's error affected the election need not be answered, and hence, Vidutis' ballot need not be opened. The Examiner rejects the Employer's contention that by waiting and ruling on the other objections first the Examiner would demonstrate a predisposition to order a new election. Rather, the Examiner feels that the statutory directive of Section 111.05(3), Wis. Stats., that representation elections be by secret ballot, as well as the policy behind that directive, are best served by refraining from unnecessarily exposing an employee's ballot. The fact that under some circumstances an employee's vote may be exposed does not justify exposing Vidutis' vote in this case before it is determined whether it will be necessary. Therefore, the Employer's motion that the ballot of Vidutis be opened is denied.

Objections

In its objections the Union (Complainant) objected to the following alleged conduct by the Employer (Respondent) or its agents:

. . .

3. On or about Friday, October 9, 1981, at approximately 9:00 a.m., Respondent's agent, William Meunier, accompanied by legal counsel and at least one member of Respondent's Board

of Directors, held a meeting at its principal office and lied to employees about Complainant's union dues payments and its activities. In addition, Mr. Meunier made threats of funding cutoffs if the Tuesday, October 13, 1981, representation election was won by the Complainant. Mr. Meunier also personally transported workers Donald Hoppa and Michael Marker to a funding source representative (Thomas Donnelly) to verify such threats. Such workers then conveyed same to other workers.

4. Respondent planned the meeting of Friday, October 9, 1981, in a manner that did not allow the Complainant to respond to the distortions of truth and the threats in a timely manner. Respondent failed to provide Complainant with an Excelsior List and Respondent knew that Monday, October 12, 1981, was a legal holiday (Columbus Day), and that mail would not be delivered until Tuesday, October 13, 1981, the day of the election.

5. On or about October 12, 1981, William Meunier allowed certain employees of the Home Rehabilitation Program of Respondent to have the day off (October 12, 1981) with pay. Mr. Meunier then threw a party for such employees and served and drank intoxicating beverages with such employees one day before the representation election. When other employees (clerical) asked for time off with pay, they were denied such favor.

6. During the week preceding the October 13th election, William Meunier told employees that Steve Michalski misappropriated funds of Respondent.

7. During the week of October 5, 1981, William Muenier promised Russel Jackson a raise, knowing that Jackson supported the Complainant Union.

8. Complainant objects to the conduct of the election by the Commission's election officer regarding the vote by "professional" employees. One of such two ballots was challenged by Respondent's election observer and was placed in a sealed envelope. When the ballots for other employees were counted, the unchallenged ballot of the professional voting group was co-mingled with the non-professional ballots. Such action violated the Commission's rules regarding the election (111.02(6) and 111.05(1) and (2)).

. . .

First Objection:

In its first objection, the Union alleges that the Employer's Executive Director, William Meunier, lied to the employees about the Union's dues payments and its activities and also made threats of funding cut-offs if the Union won the representation election.

Regarding the alleged statements about union dues, Meunier's un rebutted testimony was that he told the employees that having to pay union dues was one of the disadvantages of having a union and that he understood that the Union's dues

Commission does not condone exaggerations, inaccuracies, partial truths or name calling, it has held that such campaigning may be excused as propaganda so long as it is not so misleading as to prevent a free choice by the employees. 7/ Meunier's statements regarding the amount of dues were not so misleading as to rise to the level of being impermissible. There is nothing in the record to indicate that Meunier lied about the Union's activities.

The Union also alleges that at the October 9, 1981, meeting Meunier threatened funding cut-offs if a union was voted in at West Side, and that Meunier personally drove two employees to see a representative of one of the funding sources to verify his threat. The record indicates that the topic of the possible impact on West Side's funding if the employees unionized was first raised at the September 9, 1981, staff meeting by employees asking Meunier for his opinion. Meunier indicated that he did not know the answer, but stated that in his opinion if the employees unionized it could hamper West Side's ability to obtain funding. Meunier also told the employees that if they wanted to find out more about the matter they should talk to Tom Donnelly, the City of Milwaukee's grant monitor for the funding it provides to West Side. Subsequently, two employees, Hoppa and Zehren, came to Meunier and asked if they could go to City Hall to talk to Donnelly. Meunier agreed to their request and took them to see Donnelly. Meunier's un rebutted testimony was that he had no prior discussions or arrangements with Donnelly to have him talk to the employees, nor did Meunier know what Donnelly would say. Hoppa and Zehren talked to Donnelly in private at their request. Zehren testified to the following regarding Hoppa's and his meeting with Donnelly and what they in turn told the other employees:

Q Was there any discussion concerning the upcoming union election and the funding at West Side Community Center?

A Correct. There was.

Q Tell us about that?

A Don asked him what would, what could or would happen if we get a union in at West Side.

Q And Mr. Donnelly related what to you?

A He said, "In my opinion, this is not a threat of any sort," because for obvious reasons he could get into trouble for that, and he said, "I don't want you, you know, saying that I threatened you because that is not it," he said "In my opinion, I do not think that it would be very good for reasons that if one agency like ours had a union come in, others would want it and that there was only so much money in the city for these programs and by becoming a union, it might cost more and he wasn't sure what would happen but it would be possible that, that we would not be refunded."

Q Okay. And did you then come back to the job site and relate this to other employees?

A Yes, I did.

Q What did you relate to them?

A I told them what Donnelly said, that there is a chance, it is, he did not say it was going to happen, we did not tell workers it was going to happen. It could. Or could not.

(3rd Day Transcript, page 108)

7/ Holy Family Hospital (11535-B) 8/73; Two Rivers Municipal Hospital (11513-E) 4/73; Pavillion Nursing Home, Inc. (8127) 7/67.

Q Well, didn't he tell you about the same thing that Mr. Meunier told you?

A Well, plus some

Q Oh, plus some.

A Yeah.

Q Did he kind of make it a little bit more possible that perhaps the funding could be affected?

A He said it could have an affect on it.

Q But that is exactly what Mr. Meunier told you, isn't it?

A Yes.

Q So where did you advance your knowledge by meeting with Mr. Donnelly?

A Because he said that if you, if your company went union it is a possibility that others would and the funding would be cut off for the whole city programs, all the programs, it could cause a chain reaction.

Q You got the idea from him that he didn't go for unions much?

A It would be financially, wouldn't be financially ethical for them to do it if all the agencies went.

Q Did he say something about, that he could get in trouble for what he was saying to you?

A Yeah.

Q What was he saying to you that he meant he could get in trouble about?

A If he threatened to cut off the funding because we, if we voted a union in.

Q So what he was really telling you is that he, he's not going to threaten to cut off the funding but he was letting you know that that is something you better think about carefully right?

A Yes, he said think about it, make your own decision.

Q When you came back to meet with the workers to report this meeting, you told them that it looked bad, didn't you?

A I said "Make your own deciison. This is what could happen."

Q Did you tell them Mr., what, whatever he told you, it looked pretty bad if we got a union in here, is that what you said?

A Could.

Q Did you say it just could or it would be bad if we got a union?

A He did not say it would be bad.

Q In any event you weren't for the union anymore, were you?

A No, I was not.

Q By the way, did Bill drive you back from City Hall too?

A Yes.

Q And where did you meet with the people then when you got back from City Hall?

A Back on the job site.

(3rd Day Transcript, pages 122-123)

At the October 9, 1981, staff meeting one of the employee's again asked Meunier about the effect of unionizing on the funding. Meunier indicated his reluctance to respond, but stated that he felt it was possible that if the employees unionized it might hamper their ability to obtain sufficient funding. Mary Boquist, an employee who testified on behalf of the Union, conceded that Meunier also told the employees at the meeting that, union or no union, he would fight to get the program refunded. Also, according to Boquist, Hoppa and Zehren told the other employees at the meeting about their meeting with Donnelly.

It appears then that the subject was initially raised at the September 9 meeting by questions from employees. The record also indicates that the meeting with Donnelly was at the request of the two employees and that Meunier did not arrange with Donnelly to have him verify Meunier's opinion as to what possible impact unionizing West Side could have on its funding. 8/ It was Meunier, however, that suggested that the employees talk to Donnelly if they really wanted an answer. Furthermore, the record indicates that on the way back to West Side from Donnelly's office Meunier asked, and was told, what Donnelly told the employees. Meunier did not attempt to qualify Donnelly's statements and in fact, seemed to echo Donnelly's feelings at the October 9th meeting. By his actions in suggesting to the employees that Donnelly was the man to see for the answer, personally taking the employees to see Donnelly during paid work time and echoing Donnelly's opinion, Meunier lent considerable credibility to Donnelly's statement, and therefore, must take responsibility for the employees receiving that opinion. This is especially true in light of the crucial relationship between West Side's funding and its continued existence, and hence, the continued existence of the employees' jobs. The fact that the employees solicited Meunier's opinion does not necessarily insulate him from responsibility for the answer he gives. Also, the employees involved appeared for the most to be unsophisticated and the record indicated that the opinions of Meunier and Donnelly, given their positions, were accorded considerable weight by the employees. According to the testimony of employees Zehren, Mueller and Marker, Zehren's and Hoppa's report to the other employees of what they heard from Donnelly had a significant dampening effect on the employees' enthusiasm for having a union.

The Employer contends that Meunier's statements regarding the possible adverse effect of unionizing on West Side's ability to obtain funding were protected free speech. In support thereof, the Employer notes that Meunier's statements of opinion were outside the control of the Employer, since its funding is controlled by the federal government and the City of Milwaukee and not by Meunier or the Employer. The Employer also notes in this regard, that Meunier pledged his best efforts to obtain additional funding for West Side. Thus, Meunier's statements should be found to be protected free speech under the rationale set forth by the U.S. Supreme Court in its decision in N.L.R.B. v. Gissel Packing Co., 395, U.S. 575 (1969). The Employer further contends that those statements were protected free speech under the United States Constitution and the Wisconsin Constitution.

The Examiner first notes that Employer is before the Commission under the provisions of WFPA and not before the National Labor Relations Board (NLRB) pursuant to the federal labor statutes. As noted earlier, the Commission does not ordinarily pass judgment on campaign propaganda and such propaganda may be

Given the nexus between the Employer's ability to obtain funding and its ability to continue to operate and provide jobs for the employees, it was likely that Meunier's statements would tend to scare the employees. The testimony of several employees demonstrates that in fact Meunier's and Donnelly's statements of opinion of possible adverse affects on West Side's funding did cause the employees to change their minds about having a union at West Side. On that basis the Examiner has concluded that the statements of Meunier and Donnelly regarding funding did interfere with the employee's free choice.

Respondent argues that the test set forth by the Court in Gissel Packing Co., supra, should be applied. However, even under the test in Gissel the statements of Meunier and Donnelly would not be protected free speech. In Gissel the Court stated:

. . . Thus, an employer is free to communicate to his employees any of his general views about unionism or any specific views about a particular union, so long as the communications do not contain a "threat of reprisal or force or promise of benefit." He may even make a prediction as to the precise effects he believes unionization will have on his company. In such case, however, the prediction must be carefully phrased on the basis of objective fact to convey an employer's belief as to demonstrably probable consequences beyond his control or to convey a management decision already arrived at to close the plant in case of unionization. See Textile Workers v. Darlington Mfg. Co., 380 U.S. 263, 274, n. 20, 85 S.Ct. 994, 13 L.Ed.2d 827 (1965). If there is any implication that an employer may or may not take action solely on his own initiative for reasons unrelated to economic necessities and known only to him, the statement is no longer a reasonable prediction based on available facts but a threat of retaliation based on misrepresentation and coercion, and as such without the protection of the First Amendment. We therefore agree with the court that "(c)onveyance of the employer's belief, even though sincere, that unionization will or may result in the closing of the plant is not a statement of fact unless, which is most improbable, the eventuality of closing is capable of proof." 397 F.2d 157, 160. As stated elsewhere, an employer is free only to tell "what he reasonably believes will be the likely economic consequences of unionization that are outside his control," and not threats of economic reprisal to be taken solely on his own volition." Citing NLRB v. Riger Togs, Inc., 382 F.2d 198, 202 (C. A.2d Cir. 1967). (Emphasis added)

Under the Court's test in Gissel the employer's predictions must be based on objective facts which are also conveyed to the employees as the basis for the employer's prediction. Further, an employer may only predict what he "reasonably believes will be the likely economic consequences of unionization that are outside his control." 10/ Meunier never made any attempt to tell the employees why he thought it possible that the funding sources would be less likely to grant West Side funding if its employees unionized. There is also no basis in the record for finding that Meunier could reasonably have believed that the funding sources would withhold funding to West Side if its employees unionized. On that basis, the statements amount to a "threat", albeit not retaliatory, but nonetheless improper. Therefore, the statements were impermissible and not protected under either the federal or state constitutions.

10/ For an excellent summary of the law in this area see N.L.R.B. v. Lenkurt Electric Company, Inc., 438 F.2d 1102 (CA9, 1971) where the Court held:

"an employer may not impliedly threaten retaliatory consequences within his control, nor may he, in an excess of imagination and under the guise of prediction, fabricate hobgoblin consequences outside his control which have no basis in objective fact."

See also Patsy Bee, Inc. v. N.L.R.B., 107 LRRM 3155 (CA8, 1981) and Chromalloy Mining and Minerals v. N.L.R.B., 104 LRRM 2987 (CA5, 1980).

On the basis of the above, it is concluded that Meunier must be held responsible for both his own statements of opinion and Donnelly's that were communicated to the employees regarding the possible adverse impact of unionizing on the Employer's ability to obtain sufficient funding, and that those opinions unduly interfered with the employees' free choice in the election.

Second Objection:

The Union contends that the Employer, by holding its meeting with the employees on Friday, October 9, 1981, purposely did so in order to prevent the Union from responding to the Employer's lies and threats before the election on October 13, 1981, since mail would not be delivered on Monday, October 12, Columbus Day. The Union also contends that the Employer failed to provide the Union with an "Excelsior List."

It is first noted that the Employer's Friday, October 9 meeting, although a captive audience meeting, was not held within the twenty-four hour period immediately preceding the commencement of the election, and hence, did not run afoul of the Commission's "24 hour rule." 11/ Also, the Examiner has concluded that Meunier did not misrepresent the payment of the Union's dues at the October 9th meeting. Regarding the funding, Meunier first voiced his opinion on the possible adverse impact on funding if the employees unionized at the first meeting on September 9, 1981. Several employees, Meiling, Michalski and Boquist, who were in close contact with Ballas, the Union's representative, were present at the meeting. Hence, the Union had over a month to respond to Meunier's assertions.

Regarding the Employer's failure to supply the Union with an "Excelsior List", i.e., a list of the names and addresses of the eligible employees, the Commission has never required an employer to provide such a list. 12/

Third Objection:

This objection is based on allegations that the Employer threw a party for the CHIP work crew the day before the election and gave them the day off with pay, while refusing to do the same for the office employees. The record does not support these contentions. The party was planned and arranged by Mueller and the beverages were supplied by Mueller and Archer with other employees bringing chips and other snacks. The party was planned for the work crew by employees on the crew and Meunier had nothing to do with it. The employees requested the day off ahead of time in the form of a "floating holiday" which they had coming. While Meunier did not allow the office employees, Boquist and Jackson, to have that day off, he did allow them to take a day off later.

Fourth Objection:

The record indicates that it was an employee, Mueller, not Meunier, who commented that perhaps Michalski misappropriated the missing \$5000, and that Mueller did not intend that the comment be taken seriously.

Fifth Objection:

The Union contends that the Employer promised employee Russell Jackson a raise knowing that he supported the Union. Although Meunier indicated to Jackson at the October 9 meeting that no one was "promised" a raise, he did tell Jackson that he and Hoppa would get a pay raise if there was enough money in the budget. Meunier testified that some time during the organizing campaign Jackson asked him about a raise and that he told Jackson that he (Meunier) felt Jackson was doing a good job and deserved more than he was being paid and if there was money in the budget he would be second in line to Hoppa for a raise. Meunier also testified he assumed that Jackson still supported having a union at the time. Those statements to Jackson by Meunier go beyond merely telling an employee that the established procedure for determining pay raises would be followed.

11/ Deaconess Hospital (7008-D) 10/65.

12/ Ernie Hutchinson, d/b/a/ Larsen Bakery (11980) 7/73; Stoughton Hospital Association, Inc. (10436) 8/71; St. Vincent's Hospital (10347) 6/71.

Meunier promised Jackson he would get a raise as long as there was enough money in the budget, whether or not the union was voted in. Meunier's statements to Jackson contained a promise of benefit with the underlying inference that the employee did not need a union to obtain a raise, and therefore, interfered with the employee's free choice in the election.

Sixth Objection:

It has been admitted that the Commission's election agent improperly commingled the ballot of one of the two professional employees with the ballots of the other employees, with the ballot of the other professional employee having been challenged by the Employer.

Based upon the Employer's statements regarding the possible adverse impact on its ability to obtain funding if the employees unionized, and its promise of a raise to Jackson, the Examiner has concluded that the Employer has interfered with the free choice of its employees in the election.

Remedy

In its post-hearing brief the Union requests a bargaining order as a remedy. As noted in the Proposed Findings of Fact, Michalski, along with employees March and Meiling, was a member of the core Organizing Committee formed by the Union's Staff Representative, Nick Ballas. Ballas testified that these were the individuals who were responsible for developing support for the Union among the employees. Michalski, March and Meiling personally solicited the employees for signed authorization cards on the Union's behalf. The record also indicates that Michalski made certain promises to the employees to induce them to support the Union. However, Michalski held a supervisory position with the Employer. Michalski testified that he hired, fired, laid off and assigned employees. Moreover, the parties stipulated on the record that they had previously stipulated to Michalski's supervisory status for the purpose of the election.

Due to Michalski's considerable participation in the Union's organizing campaign amongst the Employer's employees, and his participation in soliciting signed authorization cards from the employees on behalf of the Union, the Examiner concludes that at no time was the Union authorized as the bargaining representative by the free choice of a majority of the employees. 13/ Therefore, the Examiner concludes that a new election, and not a bargaining order, is the more appropriate remedy in this case.

Dated at Madison, Wisconsin this 25th day of April, 1983.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By David E. Shaw
David E. Shaw, Examiner

13/ See Doyle Lithography & Printing Co. (8126-C) 5/68, for a similar result.