

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MILWAUKEE DISTRICT COUNCIL 48,  
AMERICAN FEDERATION OF STATE,  
COUNTY AND MUNICIPAL  
EMPLOYEES, AFL-CIO,

Complainant,

vs.

WEST SIDE COMMUNITY CENTER,  
INC.,

Respondent.

Case II  
No. 28855 Ce-1936  
Decision No. 19212-A

Appearances:

Podell, Ugent & Cross, S.C., Attorneys at Law, by Mr. Alvin R. Ugent,  
207 East Michigan Street, Milwaukee, Wisconsin 53202, for the  
Complainant.

Ropella & Van Horne, Attorneys at Law, by Mr. Dennis J. Weden, 411 East  
Mason Street, Milwaukee, Wisconsin 53202, for the Respondent.

PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND ORDER

Milwaukee District Council 48, American Federation of State, County and Municipal Employees, AFL-CIO, having on October 20, 1981, timely filed Objections to Conduct Affecting Election wherein it alleged, among other things, that West Side Community Center, Inc., had committed unfair labor practices within the meaning of Sections 111.06(1)(a)(b) and (c) of the Wisconsin Employment Peace Act; and Milwaukee District Council 48, AFSCME, AFL-CIO, having subsequently on November 20, 1981, separated the complaint of unfair labor practices from its objections to conduct affecting the election by filing separately the instant complaint and an amended objections to conduct affecting the election; and the undersigned, a member of the Commission's staff, having been designated to act as Examiner and to make and issue Proposed Findings of Fact, Conclusions of Law and Order in the matters; and the Commission having consolidated the two proceedings for the purpose of hearing; and hearings on the complaint and objections having been held at Milwaukee, Wisconsin, on January 18, February 3, March 26, and May 21, 1982 before the Examiner; 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/

1/ Each party adversely affected by the Examiner's proposed decision shall have the opportunity to file objections to the decision with the Commission pursuant to Section 227.09(2), Stats. Said objections must be received by the Commission within twenty (20) days of the date of service of the Examiner's proposed decision. Section 227.09(2), Stats., provides:

(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 liason between the staff and the Board, and representing the Board in labor relations; that in the position of Executive Director, Meunier has, at all times material herein, acted as an agent of Respondent's Board; and that Meunier was made aware of Complainant's organizational drive among Respondent's employes 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; 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; that the IFLA program is a parental education program aimed at Hispanic families in the west side area and includes the establishment of parent support groups that meet in the homes, primarily with Hispanic mothers, to present materials on improving the health and safety of children and the relationship between parent and child; that in his position as Program Coordinator March directed the activities of the employe Rafaella Ayala who met with the support groups; Ayala's position was funded through the State of Wisconsin's WIN program and was due to end on August 21, 1981; that Ayala could speak fluent Spanish and that March was semi-fluent in Spanish; that with funding for Ayala's position due to expire and his belief that it would be better for the IFLA program to have Ayala remain and himself leave, due to her fluency in Spanish, March made a written request in the first week of August of 1981 to then "acting" Executive Director, Mike Kelly, that he be laid off; that Kelly declined to act on March's request by himself and took it to the Board; that Ayala was laid off on August 21, 1981, when her position expired; that approximately two days after Meunier was appointed "acting" Executive Director he informed March that he would be laid off as he had requested and that at least one of the reasons for granting March's request was to enable the Respondent to hire a person who was more bilingual; that March was laid off as of September 1, 1981; that Ayala was not hired to replace March; that Respondent advertised for a replacement who had the necessary qualifications and was bilingual, but only one such person applied for the position and she was not immediately available; and that Respondent then hired a person who was not bilingual, but who possessed a Bachelor of Social Work Degree which March did not possess.

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; 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; that March was an open and active supporter of the Complainant during its organizational drive, was a member of the Organizing Committee, wore a union button and participated in soliciting authorization cards from the employes on behalf of the Complainant;

that the Board was aware of March's support for the Complainant; that while March was Program Coordinator of the IFLA program there were a number of problems with the program relative to not meeting its goals and objectives and not performing up to the standards of the program's funder, United Way of Greater Milwaukee; that due to the program's inadequate performance, funding for the IFLA program was reduced by United Way for 1981; and that March was laid off at his request and due to the poor performance of the IFLA program.

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 became 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.

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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.

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 in early April of 1981 at least two of Respondent's employees, Russell Jackson and Hari Kramer, were required to attend a "fund raiser" after normal work hours and were denied compensatory time for those hours; that at the time of said fund raiser the position of Executive Director was vacant, the former Executive Director, Cathy Louie, having resigned; that March was subsequently made "acting" Executive Director; that in response to what the Board perceived as problems on April 22, 1981, the Board sent March the following interim directives:

April 22, 1981

To: Rick March  
From: Executive Directors of the Board

Subject: Directives

All mail will continue to be logged on a daily basis. This should take no more than 5 or 10 minutes a day.

The hours of West Side Community Center are 9 am til 5 pm. All employees will be expected to follow this. Any exceptions will be approved by the Personnel Committee.

A log of travel time will accompany each request for travel expenses.

Effective immediately, 40 hours a week will be all any hourly employee will work. Comp. time will no longer be accumulated with-out the approval of the Executive Committee.

that said directives were intended to remain in effect until a new Executive Director was hired; and that there is no evidence of changes in personnel policies made by the Board in May of 1981.

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 Septmeber 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 Meiling passed out leaflets to the employees, which leaflets stated:

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

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 Meiling 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 employe relations would not be repeated; that at said meeting, in response to questions from employes 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 employes 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 employes at the meeting if they had any questions or comments and several employes, 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 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 portrayed (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.

17. 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 at that time 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 employes 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 employes signed the statement regarding Meiling, with one employe noting he had heard only parts A, 3 through A, 6; that six employes signed the statement regarding Michalski, with one employe noting he had heard only all of parts A and B; that Meunier did not threaten or coerce the employes into signing said statements and that he told the employes he would do what he could to keep others from seeing who signed those statements; and that the employes 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.

18. That there had been some discussions among the crew members as to the Executive Director's being gay and that Meunier had told some of the staff that he was somewhat of a leader in the gay community; that Meiling and Michalski made those statements attributed to them by the 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 employes be terminated.

19. 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.

20. 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".

21. 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.

22. That Meunier told both Meiling and Michalski that the charges against them were based on the complaints of unnamed accusers; that at the time that Meunier suspended Meiling and Michalski he was aware of their support for the Complainant in the pending representation election and was antagonistic toward that support; and that Meunier's decision to suspend Meiling and Michalski was motivated at least in part by animus toward that support and their activities on behalf of Complainant.

23. That Meiling, along with Complainant's Staff Representative, Nick Ballas, met with Respondent's Board on the evening of October 7, 1981; that present at that meeting were approximately six or seven Board members and the Executive Director, Meunier; that Ballas informed the Board that he was there to represent Meiling; that Meunier told the Board that he had statements signed by a number of the employes; that Ballas asked to see the statements and Meunier refused the request telling Ballas that he had promised the employes that he would keep their signatures confidential; that Ballas told the Board that he had instructed Meiling not to answer any questions until Meiling was told who his accusers were; that Meunier told Ballas that the statements were signed by ten or twelve employes; that the President of the Board, James Easter, then told Ballas and Meiling that the Board would proceed with the hearing regardless of whether Meiling answered the charges; that Meunier then read the allegations in the statement signed by the employes; that Ballas instructed Meiling not to answer the charges and was told by the Board President that if Meiling did not respond to the charges the Board would assume the charges were true and make their decision accordingly; that Ballas and Meiling then caucussed and Ballas told Meiling to answer the Board's questions; that Meiling responded to all of the charges, except the charges that he called the Executive Director and the Board "queers" by deny-

ing or explaining his alleged actions; that Meiling told the Board that he would not respond to those charges without knowing who his accusers were; that during the meeting there were a number of vituperative exchanges between Meunier and Ballas and the Board's Vice-President, Fred Patz, and Ballas; that subsequent to Meiling's appearance at the meeting, Michalski appeared before the Board at the October 7, 1981 meeting to answer the charges against him; that Michalski was also accompanied by Ballas, who had advised Michalski to answer the Board's questions based on what had happened with Meiling; that Michalski either denied or explained his alleged actions; that after the Board heard Meilings' and Michalski's responses they went into executive session to discuss the matter of whether those two employes should be terminated; that during that executive session there were discussions pertaining to problems with the job performances of the two employes, as well as the charges listed on the statements signed by the employes, copies of which were provided to the Board by Meunier; that during the Board's consideration of the charges against Meiling and Michalski several members of the Board attempted to telephonically contact employes who had signed the statements of charges against the two employes; that the only employe the Board members were able to contact was Donald Hoppa; that Hoppa verified he had seen or heard everything listed on the statements except the solicitation of Complainant's authorization cards; that Meunier advised the Board that it could not consider the union organizing activities of Meiling and Michalski in their decision on whether or not to terminate them; that there was a discussion among the Board members of the likelihood that if Meiling and Michalski were terminated, their terminations would be appealed for being due to their union organizing activities; that one Board member present abstained from voting and the remainder of the Board members present voted unanimously to terminate Meiling's and Michalski's employment with the Respondent; that it is Respondent's Board of Directors who make the ultimate decision as to whether to terminate an employe; that the Board of Directors were aware of Meiling's and Michalski's organizing activities in support of the Complainant; that a number of the Board members were hostile toward that support; and that Respondent's employes viewed Meiling and Michalski as leaders in the effort to organize a union at West Side and were aware of the Board's action terminating their employment at West Side.

24. 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 employes; that pursuant to the Commission's Direction of Elections 4/ Respondent's employes were divided into two voting groups: Voting Group No. 1 consisting of full-time and regular part-time professional employes and Voting Group No. 2 consisting of all full-time and regular part-time employes other than professional employes; that of the twenty-two employes eligible to vote in the election, fifteen employes 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 employes and three ballots were cast in favor of having the Complainant represent the employes.

25. That on or about the evening of October 15, 1981, George Woywod, then campaign manager for State Senator Warren Braun in the Senator's congressional campaign, met with Respondent's Executive Director, Meunier, at the Interlude Bar in Milwaukee for the purpose of enlisting Meunier's help in Braun's campaign; that Woywod and Meunier had never met each other before their meeting on October 15, 1981; that upon their meeting in the tavern Meunier appeared to Woywod to be nervous and upset and Woywod asked Meunier how he was feeling; that Meunier responded to Woywod's inquiry by saying that he was having trouble with the union, that he had had to fire two people because of union activity, that he (Meunier) did not have much respect for those two employes and that he did not believe a small place like the West Side Community Center should have a union since it was too small and provided social services; that upon Meunier's response, Woywod indicated that he was pro-union and had at one time worked for the Amalgamated Clothing Workers, to which Meunier responded that he was not against big unions; that Meunier did not subsequently participate in Braun's campaign; and that in managing Braun's campaign Woywod sought the support of both labor, including the Complainant, and organizations such as the Respondent on behalf of Braun.

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4/ Decision No. 18987

26. 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.

27. That Meunier's decision to lay off March was not motivated by animus towards March's organizing efforts on behalf of the Complainant; and that Respondent did not deny March any benefits prior to his being laid off.

28. That there is no evidence in the record that Respondent's Board of Directors made changes in work rules or procedures affecting its employees at any Board meeting in May of 1981.

29. That Meiling engaged in protected, concerted activity in support of Complainant; that Respondent's Board of Directors were aware of Meiling's pro-union activity; that the Board of Directors were antagonistic toward such activity; and that at least one of the members of the Board of Directors, Peter Slaby, who voted to terminate Meiling, was motivated in part by his animus toward Meiling's protected activity in support of the Complainant.

#### PROPOSED CONCLUSIONS OF LAW

1. That the Respondent, West Side Community Center, Inc., its officers and agents, did not deny Richard March certain benefits prior to his lay off; and that Respondent, by laying March off on August 31, 1981, did not commit any unfair labor practices within the meaning of Sections 111.06(1)(a), 111.06(1)(b) and 111.06(1)(c)1 of the Wisconsin Employment Peace Act.

2. That Stephen Michalski, at all times material herein, was a supervisory employe of the Respondent, West Side Community Center, Inc., and was not an employe of the Respondent within the meaning of Section 111.02(3) of the Wisconsin Employment Peace Act, and therefore, Respondent by suspending and discharging Michalski, did not commit unfair labor practices within the meaning of Sections 111.06(1)(a), 111.06(1)(b) and 111.06(1)(c)1 of the Wisconsin Employment Peace Act.

3. That, at all times material herein, Mark Meiling was an employe within the meaning of Section 111.02(3) of the Wisconsin Employment Peace Act.

4. That the Respondent, West Side Community Center, Inc., its officers and agents, discriminated against its employe, Mark Meiling, by suspending and discharging Meiling in part due to his protected concerted activities on behalf of the Complainant, and therefore, Respondent committed unfair labor practices within the meaning of Sections 111.07(1)(a) and 111.06(1)(c) of the Wisconsin Employment Peace Act.

5. That the Respondent, West Side Community Center, Inc., its officers and agents, did not intimidate or threaten its employes in order to force them to cooperate with the Respondent in its actions against Michalski and Meiling, and therefore, in that regard Respondent did not commit unfair labor practices within the meaning of Sections 111.06(1)(a), 111.06(1)(b) and 111.06(1)(c)1 of the Wisconsin Employment Peace Act.

6. That the Respondent, West Side Community Center, Inc., by its Board of Directors, did not recriminate against its employes for engaging in protected concerted activity by changing various work rules and procedures at its May 20, 1981, Board of Directors meeting, and therefore, in that regard, Respondent did not commit unfair labor practices within the meaning of Sections 111.06(1)(a), 111.06(1)(b) and 111.06(1)(c)1 of the Wisconsin Employment Peace Act.

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

PROPOSED ORDER

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

1. Cease and desist from discriminating against Mark Meiling, or any other employes, in retaliation against his activity on behalf of the Complainant, District Council 48, American Federation of State, County and Municipal Employees, AFL-CIO, Local 1965, or any other union.
2. Take the following affirmative action which the Examiner finds will effectuate the purposes of the Act:
  - (a) Immediately offer to reinstate Mark Meiling to his former or substantially equivalent position, without prejudice to his seniority and such other rights and privileges which he may enjoy, and make him whole by paying him a sum of money equal to that which he would have earned, including all benefits, less any amount of money that he earned or received that he otherwise would not have earned or received, but for his termination.
  - (b) Notify all of its employes by posting in conspicuous places in its place of business where employes are employed copies of the notice attached hereto and marked "Appendix A". That notice shall be signed by the President of Respondent's Board of Directors 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 ensure that said notices are not altered, defaced, or covered by other material.
  - (c) 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 25<sup>th</sup> 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 employes that:

1. WE WILL offer to reinstate Mark Meiling to his former or substantially equivalent position and we shall make him whole for any loss of money he may have suffered as a result of his termination.
2. WE WILL NOT discriminate against Mark Meiling, or any other employes, because of their activities on behalf of District Council 48, AFSCME, AFL-CIO, Local 1954, or any other union.
3. WE WILL NOT in any other or related manner interfere with the rights of our employes, pursuant to the provisions of the Wisconsin Employment Peace Act.

By \_\_\_\_\_  
President, Board of Directors for  
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, CONCLUSIONS OF LAW  
AND ORDER

The issues presented in this case involved the alleged discriminatory layoff of Richard March, the alleged discriminatory suspensions and terminations of Mark Meiling and Stephen Michalski and alleged intimidation and recrimination against Respondent's employees.

March

Complainant contends that March was denied certain benefits he had coming and that he was laid off on August 31, 1981 due to his support and activity on behalf of the Complainant. In support of its contention the Complainant notes that March was allegedly laid off because of the need to have a person in his position that was more fluent in Spanish. March had recognized that need and volunteered to be laid off, requesting that Rafaella Ayala, an employe in the IFLA program, be retained in his place. March was laid off and Ayala was not hired to replace him. The person Respondent ultimately hired to replace March was not bilingual, thus, demonstrating that March's layoff was really motivated by his protected activity on behalf of Complainant.

Respondent argues that March requested to be laid off and his request was granted. Moreover, the IFLA program, which March was responsible for, was not performing at the desired level and March knew that and asked for his layoff. The person ultimately hired to replace March had a Bachelor of Social Work (BSW) degree, which Respondent desired the person in that position to possess, and which March did not possess.

Section 111.07(1)(c)1 of the Wisconsin Employment Peace Act (WEPA) provides in relevant part that it is an unfair labor practice for an employer individually or in concert with others:

(c)1. To encourage or discourage membership in any labor organization, employe agency, committee, association or representation plan by discrimination in regard to hiring, tenure or other terms or conditions of employment.

. . .

It is noted at the outset that the Complainant has the burden of proving the alleged discriminatory nature of March's layoff. Complainant must prove by a clear and satisfactory preponderance of the evidence that Respondent had knowledge of March's protected concerted activity; that Respondent was hostile toward said activity; and that the layoff was motivated, at least in part, by Respondent's animus toward said activity. 5/

The record reveals that March was openly and actively supporting the Complainant and that the Board was aware of his being pro-union. The Examiner cannot, however, find sufficient evidence in the record to conclude that March was laid off due to the Respondent's opposition to his support of the Complainant.

The testimony of Susan Shields, a Planning Consultant for United Way of Greater Milwaukee, funding source for the IFLA program at West Side, testified to the program's failure to meet its goals and objectives and to perform up to the standard required by the funding source while March was Program Coordinator for that program. Shield's testimony was supported by that of Respondent's Executive

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5/ Checker Taxi & Transfer Co. (8821-A,B,C,) 8/69; Graceland Cemetery (11607) 2/73; Paco's Restaurant (12165-B,C) 6/74; Rocky Rococo's, Inc. (13556-A,B) 12/75; Quercus Alba, Inc. (14726-C,D) 10/76; Mini-Bus Charter Service, Inc. (15369-A,B) 4/78.

Director, William Meunier and Board member Belle Guild. Meunier testified to problems in the program while March was its Program Coordinator, and March also admitted that some problems existed.

March is bilingual, but has some problem understanding rapidly spoken Spanish, while the employe who worked for him in the program, Rafaella Ayala, was apparently completely bilingual. The record indicates that March made several requests in July and early August of 1981 to be laid off. March's proposition to then Executive Director Mike Kelly and Board member Belle Guild was that he be laid off and Ayala, who was scheduled to be laid off on August 21 be kept on to replace him, since she was bilingual and bicultural. Kelly took no immediate action on March's request.

During the last week in August of 1981 Meunier started his employment at West Side in the position of "acting" Executive Director. Meunier and the Board decided to grant March's request to be laid off and gave as one of the reasons for doing so the desire to have someone who was more bilingual. March was laid off and Ayala was not hired back to replace him. The person ultimately hired to fill March's position was not bilingual.

While at first blush the circumstances surrounding March's lay off may seem suspicious, the Respondent has been able to adequately explain its actions. The record indicates that there were problems with the IFLA program and that March was not able to correct those problems. Meunier testified that Respondent wanted a person who was not only bilingual, but who also was more familiar with the field of social work. March, who did not have a BSW degree, had been given his position with the understanding that he would take courses in social work, but he failed to take such courses. There is nothing in the record to indicate that Ayala had any expertise or formal training in that area. In advertising for a replacement for March, Respondent required that the person be able to speak Spanish, however, there was only one person who was qualified to do the job and could speak Spanish and she was not available for six weeks. Respondent then hired the best person, in their view, that was available and that person possessed a BSW degree, although she was not bilingual.

It seems somewhat unlikely that the Board would make March the acting Executive Director if they did not consider him to be a good employe. Board member Belle Guild, however, credibly testified that March, in his position as Program Coordinator, was in effect the assistant to the Executive Director and was the best person available to temporarily fill the position of Executive Director when the incumbent Director left. It is also noted that March was only the acting Executive Director for a short time.

Other than March's pro-union activity and the Board's failure to hire Ayala or someone else bilingual to replace March, the Complainant has offered no other evidence to support its contention that the layoff was motivated by Respondent's hostility toward March's pro-union activities.

Based upon the above, the Examiner has concluded that the Complainant has failed to prove by a clear and satisfactory preponderance of the evidence that the Board's decision to lay off March was motivated in part by a hostility toward his support and activity on behalf of the Complainant.

The record is devoid of any evidence that March was denied any employment-related benefits prior to his layoff, therefore, there has been no showing that March was discriminated against in that regard.

#### Michalski

It is clear from the record that Michalski was an open and active supporter of the Complainant. He, along with March and Meiling, was on the Organizing Committee. These individuals were considered by Complainant's Staff Representative, Nick Ballas, to be the core of the support for Complainant among Respondent's staff. It is also clear from the record that Michalski held a supervisory position with the Respondent. Michalski testified that in his position as Coordinator of the Community Housing Improvement Project (CHIP) he hired, fired, laid off and assigned employes and was responsible for the CHIP program. Further, the parties stipulated on the record that they had previously stipulated to Michalski's supervisory status for the purpose of the representation election.

The Commission has previously held that it does not consider supervisory employees to be protected when participating in otherwise protected concerted activity. In Doyle Lithography & Printing Co. 6/ the Commission held that a supervisory employe who was the chief organizer among the employes was not protected, stating:

However, we have found Peterson to be a supervisory employe, and therefore, under the Act, not privileged to be protected in concerted activity, and therefore, Peterson's discharge does not constitute a violation of the Act.

Given Michalski's supervisory status and the Commission's holding in Doyle Lithography, it is concluded that Michalski was not protected by WEPA when he engaged in concerted activity on behalf of the Complainant. Therefore, even assuming arguendo that the Board's decision to discharge Michalski was motivated in part by the Board's animus toward that activity, the discharge does not constitute a violation of WEPA.

#### Meiling

Respondent contends that Meiling was also a supervisor and, like Michalski, not protected under WEPA. For the reasons discussed below, that contention is rejected.

Although WEPA does not expressly define what constitutes a "supervisor" there is sufficient Commission case law that sets forth the following criteria to be considered: the authority to hire, promote, transfer, discipline or discharge employes or to effectively recommend same, 7/ scheduling and assigning employes, 8/ directing and overseeing work and being responsible for the work, 9/ evaluating and reporting on the work of employes, 10/ receiving a greater rate of pay than other employes, 11/ and paying employes and accepting and paying for deliveries 12/.

It is clear from the record that Michalski was in charge of the CHIP program at West Side, however, after Michalski the chain of command becomes less clear. A letter from Michalski to James Gunderman of the Community Correctional Center (Employer Exhibit 13) states that Meiling will be the person's in question "immediate supervisor", however, the letter goes on to state that "Gene Archer is the head of the CHIP Rehabilitation Program" and that the person would be "ultimately responsible to him". Also, employes Mueller, Esser and Zehren testified that they considered Archer to be their supervisor, although Meiling would occasionally give them orders when he came out to the work sites, e.g., Meiling would tell an employe to unload the supplies or materials from the truck. It appears from the record that Meiling spent most of his time in the CHIP office or at stores buying

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- 6/ Decision No. 8126-C (5/68). However, the National Labor Relations Board has held that in cases where the discharge of supervisors was a mechanism for eliminating union supporters generally it was necessary to order reinstatement of the supervisors in order to grant an effective remedy. ("pure conduit" theory) Pioneer Drilling Co., 162 NLRB No. 85 (64 LRRM 1126); Parker-Robb Chevrolet, Inc. 262 NLRB No. 58.
  - 7/ Dos Bandidos (16454) 7/78; Hope, Inc. (11468) 12/72; Spooner Community Memorial Hospital and Nursing Home (10661-D) 7/74; Shady Lane Home, Inc. (9631-B) 10/70; Woodman Food Markets, Inc. (8826) 1/69.
  - 8/ Dos Bandidos; Spooner Community Memorial Hospital; Shady Lane; Woodmans; supra.
  - 9/ Shady Lane; Woodmans; Doyle Lithographing; supra.
  - 10/ Spooner Community Memorial Hospital; Shady Lane; supra.
  - 11/ Shady Lane; Woodmans; supra;
  - 12/ Dos Bandidos, supra.

tools and materials and had no employees working directly under him, so that any direction or supervision of employees was intermittent at most. Meunier testified that Michalski made the decisions regarding promotions and layoffs involving the CHIP staff.

Regarding hiring and firing, Meunier testified that Meiling did some of the hiring along with Michalski, however, Meunier could only testify to Meiling's having hired three employees. Those three employees were placed with the Respondent through the Transitional Employment Program of the Wisconsin Division of Corrections. That is apparently an ex-offender program whereby an individual is placed with an employer for thirteen weeks to learn job skills. It was not made clear what the arrangement is between the Respondent and the State's Division of Corrections for placing individuals with the Respondent. In other words, the Examiner is left to guess at whether Meiling was exercising independent judgement in hiring these individuals or merely obtaining the necessary information and completing the forms necessary to place them with Respondent, i.e., merely performing ministerial functions. Mueller testified that Meiling had once fired an employee, however, Mueller could only recall that the employee's name was "Joe" and no record of such an event was submitted. Moreover, Meunier testified that if someone got out of line, Michalski would have been the one to fire him. Meunier also testified at one point that Meiling would make recommendations to Michalski regarding disciplinary actions and subsequently testified that Meiling, or whoever the employee's direct supervisor was, would take the disciplinary action against the employee. Other than the alleged firing of "Joe", there is no evidence in the record that Meiling ever took disciplinary action, or even recommended such action, against any employee.

There is some indication from the record that the CHIP work crew viewed Meiling as having some degree of authority over them and for a time viewed him as someone to go to when they had a problem with their pay or hours. It appears, however, that the employees' view of Meiling stemmed from his friendship with Michalski, his office position, and his willingness to aggressively voice complaints to management, rather than from any actual authority he possessed.

While Meiling signed time slips for some of the employees in the Transitional Employment Program and was listed as the employee's supervisor on the "Notice of Placement" forms of several such employees, those employees worked at the work sites where Mueller and Archer were in charge and at which Meiling spent little time. There is nothing in the record to indicate that Meiling was responsible for the work done on the homes at the work sites, rather, his responsibility was limited to cost comparisons, purchasing materials and supplies and doing cost reports on the homes that were repaired by the crews. Nor does the record indicate that Meiling evaluated employees or reported on their work to anyone. The record is also void as to Meiling scheduling or assigning employees. Finally, there is nothing in the record regarding Meiling's pay rate vis a vis the pay rates of other employees on the CHIP staff.

Merely being listed as an employee's supervisor on a placement form or in a letter is not sufficient, rather, the individual's actual functions and responsibilities are determinative of his supervisory status. While it appears that Meiling purchased tools and supplies for the CHIP program, at times signed time sheets for some of the employees in the Transitional Employment Program and occasionally directed employees when he delivered materials to the work sites, such responsibilities and occasional direction of employees are not sufficient to establish that Meiling functioned as a supervisor. 13/

Respondent argues that even assuming *arguendo* that Meiling was not a supervisor, his discharge was proper due to his "slanderous and derogatory statements against the Board of Directors and the Executive Director." Respondent also contends that Meiling failed to perform his job of keeping the work crews supplied, purchased expensive and unnecessary tools, and could not get along with the other employees on the CHIP staff.

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13/ For a similar result see the Commission's decision in Wausau Hospitals, Inc. (12946) 8/74.

The record bears out Respondent's allegations that Meiling, like Michalski, made statements to the employees on the CHIP work crews regarding the Board of Directors and the Executive Director which were extremely derogatory in nature. Although Meiling denies making some of those statements, the employees on the CHIP crews were consistent in their testimony that he had made such statements to them on a number of occasions. While Meiling's statements regarding the Executive Director's sexual preferences may have been true in a very general sense, the nature of his statements, as well as the terminology he used, went far beyond what could be considered acceptable. Furthermore, according to the testimony of the employees, Meiling made these statements to them a number of times and on company time.

Meiling's statements to the employees on the work crew also served to exacerbate his poor relationship with those employees. A crew leader, Mueller, testified that Meiling at times addressed Mueller as "Bozo" or "stupid" in front of the work crew, and Mueller's testimony was supported by that of Esser. Complaints by the employees to Michalski regarding their problems with Meiling appear to have gone unanswered. The record indicates that, due to the statements to the crew by Meiling and Michalski about the Board and the Executive Director, problems with Meiling's laxity in keeping them supplied with necessary paint and materials and the arrogance he displayed towards his fellow employees, the employees felt compelled to inform the Executive Director of the statements being made to them by Meiling and Michalski at work. The degree to which the employees were affected by those statements is demonstrated by their willingness to sign their names to a written statement that they had heard Meiling make those statements and others. The disrespect and disloyalty to his employer, as evidenced by his statements to the employees, would be sufficient in themselves to justify Meiling's discharge and the record reveals that the statements by Meiling were a major consideration in the Board's decision to fire him.

Respondent also alleges that Meiling's poor job performance and his purchase of unnecessary tools justified his discharge. Board President James Easter testified that there was some discussion regarding Meiling's job performance at the October 7, 1981 Board meeting when the Board voted to terminate Meiling. The record indicates, however, that Meiling had never been warned or disciplined for anything prior to his suspension and discharge on October 7, 1981, and the only evidence of any possibly unnecessary tools he purchased was regarding an electric metal shears. While Meiling's job performance may have received some consideration by the Board in its decision to fire him, it did not appear to be a major consideration.

Relative to Meiling's union activity as a motivating factor in his suspension and discharge, Respondent presented testimony that the Board did not hold such activity against Meiling in considering whether to discharge him. That testimony, however, is contradicted by other evidence in the record. The written statement of allegations against Meiling, typed up by the Executive Director, Meunier, and subsequently signed by the employees, listed the following among the allegations:

- 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. 14/

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14/ Union Exhibit No. 1.

That signed statement containing the above-cited allegations was the basis for Meunier's decision to suspend Meiling and recommend his discharge. Meunier's written notice of suspension to Meiling also lists among the reasons for the suspension: "1) That you have committed unfair labor practices". 15/

There is also the testimony of George Woywod, then campaign manager for State Senator Warren Braun, regarding a conversation he had with Meunier shortly after Meiling was discharged by the Board. Woywod testified that he met Meunier for the first time and for the purpose of having Meunier work on the campaign, and that Meunier looked upset and agitated at the time. In response to Woywod's inquiry as to how he was feeling, Meunier responded by saying he was having trouble with the union and had fired two people for union activities. Meunier subsequently testified as follows regarding that conversation:

. . .

When I came into the bar, I had never met with Mr. Woywod before and I never recognized him. And I sat there and I had a Coke and he came up to me and he said, "You look really agitated." And I said, "Well, I am." He said why. I said, "I am tired of working 60 hours a week to do things that should have been done last year, last month, in fact for the last two or three years and that weren't done." And he asked me to explain what I meant by that and I told him that we had two employees who were in charge of a home repair program who were fired. And he asked me at that point then why were they fired and I think I related to him the statements that had been made by Mr. Michalski and Mr. Meiling and their union activities. And he asked me if they were fired for union activities and I said inasmuch as they were illegal and unfair labor practices, yes.

(Fourth Day Transcript, page 81)

The Examiner credits Woywod's testimony as to the conversation over that of Meunier, based both on Woywod's demeanor on the witness stand and it being less likely that Woywod would be inclined to color his testimony based on self interest.

The record also indicates that at the October 7, 1981, Board meeting the Board of Directors were given the written statements signed by the employees and which contained the allegations against Meiling and Michalski, including the allegations of certain activity on behalf of the Union. Board member Terrence Rybacki testified to the following:

Q At the time Mr. Meiling and Mr. Michalski were fired was the board aware of any union activity on their part?

A I believe some of us were aware of it because of the statements that were in the, these sheets.

Q Was there any discussion at that meeting concerning whether that could be considered in their termination and, if so, what?

A Only the remarks that were made in reference to union. I don't believe that they have carried anywhere near the amount of weight as the remarks that were personally directed.

(Third Day Transcript, page 129)

Board member Peter Slaby also testified about his feeling about Meiling whom he had met for the first time that evening:

Q You said several times that Mr. Michalski appeared to be arrogant to you.

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15/ Union Exhibit No. 7.

A Yes.

Q How did he seem arrogant to you?

A First by the very nature of, with the concerns as I see them, I am gtrying (sic) to keep an organization going and we see Mark (Meiling) and Steve (Michalski) bringing, continually bringing or up to that time, bringing up the concerns of the union, and that right to that board meeting, and their manner of perhaps challenging, throwing out the challenge to me, again, I come back to that, it's, shows me that they are not for the interests of the community center at large.

. . .

Q Considering all the problems this organization was having, all the things you have mentioned, would you say it was arrogant of Mark and Steve to push for this union thing with all of these problems going on?

A Yes, I do. Among other things.

(Third Day Transcript, pages 158-159)

Board members Rybacki and Slaby also testified that they had nothing against unions, although they did not think there should be a union at West Side; that Meunier advised the Board at the October 7, 1981 Board meeting that they could not fire Meiling and Michalski for their union activity; and that they did not base their decision to terminate those two employes on such activity. They testified that they instead based their decision to fire the two employes on their job performances and the statements made by them.

The Examiner is convinced that, while the statements made by the employes were the primary motivating factors in the Board's decision to discharge Meiling and Michalski, the pro-union activity of those two employes was also a motivating factor in Slaby's decision to vote for their termination. Moreover, although Meunier may have advised the Board that they could not discharge Meiling and Michalski for their union activity, one of the reasons Meunier gave for suspending Meiling and recommending his discharge was that activity. Also, the allegations of such activity were listed on the statements given to the Board by Meunier for consideration in their decision on whether or not to terminate the employes. Therefore, it is concluded that Meunier's decision to suspend Meiling and recommend his discharge and the Board's decision to discharge Meiling were motivated, at least in part, by his union activity.

As noted earlier, to prove that the discharge is discriminatory Complainant has the burden of proving by a clear and satisfactory preponderance of the evidence that Respondent had knowledge of Meiling's protected concerted activity; that Respondent was hostile toward that activity; and that Respondent's actions in suspending and discharging Meiling were motivated, at least in part, by Respondent's hostility toward that activity. 16/ Complainant has satisfied its burden of proof with respect to the suspension and discharge of Meiling.

Respondent argues that the proper test to be applied here is the "but for" test set forth by the U.S. Supreme Court in Mt. Healthy City School District Board of Education v. Doyle, 49 US 274 (1977). 17/ Respondent further argues that the Examiner should apply the shifting burdens of persuasion in this case, as was done

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16/ See footnote 5.

17/ In Mt. Healthy the Court held that the test to be applied in determining whether an employe had been discriminated against for engaging in constitutionally protected activity was whether the employer would have taken the action against the employe "but for" his protected activity.

by the Court in N.L.R.B. v. Wright Line, Inc., 652 F2d 899 (CA1, 1981). 18/ Both of Respondent's arguments are rejected.

In Muskego-Norway C.S.J.S.D. No. 9 v. W.E.R.B., 19/ the Wisconsin Supreme Court reiterated its holding that:

. . . an employee may not be fired when one of the motivating factors is his union activities, no matter how many other valid reasons exist for firing him.

(at page 562) citing St. Joseph's Hospital v. W.E.R.B., 264 Wis. 396 (1953).

The Commission has consistently applied the "in part" test since the Court's decision in Muskego-Norway. 20/ Respondent has offered no basis for rejecting the Court's holding in Muskego-Norway and the Examiner can find no basis for doing so.

#### Alleged Threats and Intimidation Against the Employees

The Complainant contends that Respondent, through Meunier, threatened and intimidated the employees into aiding Meunier in discriminating against Meiling and Michalski. The bases of Complainant's contention are the statements regarding Meiling and Michalski that were typed by Meunier and signed by the employees on the CHIP work crew. There is no evidence of such threats or intimidation. Rather, the employees who signed the statements consistently testified that they signed of their own free choice and that Meunier told them they did not have to sign if they did not want to. Therefore, no violation can be found in that regard.

#### Alleged Changes in Work Rules and Work Procedures

Complainant also alleges that Respondent interfered with and discriminated against its employees in the exercise of their rights by recriminating against its employees for engaging in protected activities by changing various work rules and procedures at its May 20, 1981, Board meeting. There is no evidence in the record regarding changes made by the Board at that meeting. The only evidence of changes in the work rules and procedures is the Board's directive of April 22, 1981 to then acting Executive Director March. The Board's directive was issued shortly after March became acting Executive Director and concerned logging in mail on a daily basis, hours of work and travel expense requests. Board member Belle Guild credibly testified that the directive was issued in response to problems that had arisen and was in part due to the absence of an experienced Director. The Examiner is unable to determine from the record whether the directive was issued before or after the employees began discussing the idea of organizing a union at West Side.

As the complaining party, Complainant bears the burden of proving by a clear and satisfactory preponderance of the evidence that Respondent has interfered with or discriminated against employees in the exercise of their rights guaranteed in Section 111.04, Wis. Stats. Complainant has failed to meet its burden in regard to any alleged changes in work rules or procedures, and therefore, no violations are found.

#### Alleged Domination or Interference with the Formation of a Labor Organization

The Complainant contends that the alleged actions by Respondent constitute a violation of Section 111.06(1)(b), Wis. Stats. That section provides, in relevant part, that it is an unfair labor practice for an employer:

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18/ In Wright Line the Court of Appeals held that the complainant has the burden of establishing a prima facie showing that the employer's actions against the employee were motivated by his protected activity. Once they make such a showing the burden then shifts to the employer to submit credible evidence that it would have taken the action regardless of the protected activity. If the employer is successful, then no violation occurred.

19/ 35 Wis. 2d 540 (1967).

20/ See those cases cited in footnote 5.

(b) To initiate, create, dominate or interfere with the formation or administration of any labor organization . . .

Since at the time of the alleged conduct there was no labor organization in place as the certified or recognized exclusive bargaining representative of the employees, only the language of 111.06(1)(b) that deals with the "formation" of a labor organization could have any application in this case. The type of conduct contemplated by that statutory provision involves active employer participation in the formation of the labor organization. 21/ "Interference" requires employer participation to the degree that the employer is the moving force behind the creation of the labor organization, however, the degree of employer control over the organization is less than that required to find "domination". 22/ "Domination" requires such employer control over the formation of the labor organization as to constitute it "a mere tool of the employer, rather than the free chosen representative of the employees." 23/

There being no evidence whatsoever in the record that Respondent attempted in any way to participate in the formation of a union at West Side, the Examiner is unable to find a violation of Section 111.06(1)(b), Wis. Stats.

Dated at Madison, Wisconsin this 25<sup>th</sup> day of April, 1983.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By David E. Shaw  
David E. Shaw, Examiner

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21/ Unified School District No. 1 of Racine County (15915-B) 12/77; Lisbon and Pewaukee Joint School District No. 2 (14691-A,B) 6/76; Spiegel Trucking Co. 25 NLRB No. 26, 92 LRRM 1604 (1976).

The language of Section 111.06(1)(b), under WEPA, and the language of Section 111.70(3)(a)2, Municipal Employment Relations Act (MERA), are substantially the same. Since cases dealing with the domination or interference with the formation of a union are rather rare the Examiner has sought guidance in this area from case law under MERA and under the federal law.

22/ Speigel Trucking, supra; Lenape Manufacturing Co., 196 NLRB 931 (1972); Unified School District No. 1 of Racine County, supra.

23/ Unified School District No. 1 of Racine County, supra, and the federal cases cited at footnote 5 of that decision.