

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MARINETTE COUNTY COURTHOUSE	:	
EMPLOYEES LOCAL 1752A, AFSCME,	:	
AFL-CIO,	:	
	:	Case L
Complainant,	:	No. 30243 MP-1370
	:	Decision No. 20079-A
vs.	:	
	:	
COUNTY OF MARINETTE,	:	
	:	
Respondent.	:	

Appearances:

Ms. Cindy S. Fenton, Staff Representative, Marinette County Courthouse
 Employees Local 1752A, AFSCME, AFL-CIO, P.O. Box 8356, Green Bay,
 WI 54308, for the Union.

Mr. James E. Murphy, Corporation Counsel, Dunlap Square Building, P. O. Box
 226, Marinette, WI 54143, for the County.

FINDINGS OF FACT
CONCLUSIONS OF LAW AND ORDER

Marinette County Courthouse Employees Local 1752A, AFSCME, AFL-CIO, filed an unfair labor practice complaint, which was subsequently amended to a prohibited practice complaint, with the Wisconsin Employment Relations Commission in the above-entitled matter, alleging that the County of Marinette committed prohibited practices; and the Commission having appointed Andrew Roberts, a member of the Commission's staff, to act as Examiner to make and issue Findings of Fact, Conclusions of Law and Order as provided in Sec. 111.07(5) of the Wisconsin Statutes; and hearing on said complaint having been held on December 15, 1982 before the Examiner; and at the commencement of said hearing the Complainant having amended said complaint to allege that the Respondent committed prohibited practices within the meaning of 111.07(3)(a)1 of the Municipal Employment Relations Act (MERA); and the Respondent having orally answered the complaint at the hearing, denying the commission of any prohibited practice within the meaning of 111.07(3)(a)1 of MERA; and the Examiner having considered the evidence and arguments and the parties having informed the Examiner by February 1, 1983 that they would not be filing briefs, the Examiner makes and files the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. That Marinette County Courthouse Employees Local 1752A, AFSCME, AFL-CIO, hereinafter referred to as the Complainant, is a labor organization which functions as the exclusive bargaining representative for certain employees of the Marinette County Courthouse; and that it maintains its offices at P. O. Box 8356, Green Bay, Wisconsin 54308.
2. That the County of Marinette, hereinafter referred to as the Respondent, is a municipal employer which operates a courthouse and park system as part of its functions; and that it maintains its offices in the Marinette County Courthouse, Marinette, Wisconsin.
3. That the Complainant and the Respondent have been parties to a collective bargaining agreement which covered the period of January 1, 1982 through December 31, 1982, and that Article IV, the grievance procedure of the collective bargaining agreement, stated in pertinent part as follows:

ARTICLE IV - GRIEVANCE PROCEDURE

. . .

Section 1. Any employee covered by this Agreement who has a grievance shall report h/er (sic) grievance to the steward or other representative of the Union within ten (10) work days, who shall investigate the grievance thoroughly, and if the Union feels the grievance is warranted, the Union shall request a meeting with the department head. The department head shall give h/er (sic) answer to the Union in writing within three (3) days of this meeting.

Section 2. In the event the grievance cannot be satisfactorily adjusted by the department head, the grievance will be submitted in writing to the designated committee of the County Board. Following the meeting, the committee shall give its answer in writing to the Union within ten (10) days of this meeting.

. . .

4. That Gregory Bohn, an employe in the Respondent's Forestry and Recreation Department, is a custodian for Camp Bird, a Marinette County park, and has held that position for approximately two years; that Dave Hipwell is the Respondent's Park Administrator and is an agent for the Respondent; and that Hipwell has held that position since June, 1981.

5. That on May 4, 1982, 1/ Bohn filed a grievance; that pursuant to the first step of the grievance procedure under the collective bargaining agreement, Hipwell, as the Department Head for the Parks Department, initially discussed the matter with Bohn; that on a separate occasion on June 17, Bohn received a telephone call from Hipwell; that during the course of that conversation Hipwell told Bohn: "I don't appreciate this grievance and what you're doing," and further told Bohn that he was what "he would consider a moving target," and "You would get a lot further, Greg, feeding me sugar than vinegar and you're bad vinegar"; that Bohn then responded to Hipwell that he was threatened by those statements; that Hipwell then said that he wondered what sort of game Bohn was up to and that if Bohn did not like his job he should look for another one; that the grievance was not resolved at the initial step of the grievance procedure, and it was then heard by the Parks Committee of the County Board on July 9; and that the grievance was ultimately settled after the Parks Committee meeting on July 9.

6. That after the grievance was filed, Hipwell on several occasions looked through a log Bohn kept at his desk; that the log was Bohn's private property and that it generally contained his personal notes on various aspects of his job; that Bohn was not required to keep the log as part of his job duties; and that when Bohn asked Hipwell why he was going through Bohn's private property, Hipwell responded it was County owned property.

7. That Hipwell normally visits Camp Bird approximately two times each week; that during the summer of 1982, after the grievance was filed, he visited the camp approximately four times each week; and that during the summer Hipwell goes to Camp Bird more often than during the rest of the year because it has more visitors and because it is more developed than the other parks.

8. That on one occasion after the grievance was filed, Hipwell closely followed Bohn around on his daily activities; that prior to filing the grievance, Hipwell had never observed Bohn conduct his daily work activities; that on a separate occasion after the grievance was filed, Hipwell watched Bohn as he replaced a door to a building at the Camp; and that Hipwell regularly observes employes to review how they are functioning at their job.

9. That after the grievance was filed, Hipwell took the inventory of the County's property at Camp Bird; that Bohn offered to help Hipwell with the inventory because Bohn is responsible for the Park's contents; that, however, Hipwell did not allow Bohn to assist him in taking the inventory of the Camp's contents; that on one occasion when Hipwell was taking the inventory, he approached Bohn and grabbed the key ring that was attached to Bohn's belt and asked him where those keys belonged.

1/ Unless otherwise specified, all dates hereinafter refer to 1982.

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

CONCLUSIONS OF LAW

1. That the Respondent violated Sec. 111.70(2) of the Wisconsin Statutes and Sec. 111.70(3)(a)1 of the Wisconsin Statutes by its communication with Bohn on June 17 because it interfered with an employe in the exercise of his right to engage in protected activity.

2. That the Respondent did not commit a prohibited practice within the meaning of Sec. 111.70(3)(a)1 of the Wisconsin Statutes by: its alleged communication with Bohn's wife; closely following and observing Bohn in his job activities; preventing Bohn from assisting Hipwell in taking the inventory of Camp Bird; looking through Bohn's logs; and grasping Bohn's keys.

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

ORDER 2/

IT IS ORDERED that the Respondent County of Marinette, its officers and agents shall immediately:

1. Cease and desist from interfering with employes in the exercise of their rights under Sec. 111.70(2) and Sec. 111.70(3)(a)1 of the Wisconsin Statutes.
2. Take the following affirmative action which the Examiner finds appropriate under the Municipal Employment Relations Act:
 - (a) Notify all employes, by posting in conspicuous places on its premises, where notices to all employes are usually posted, copies of the notice attached hereto and marked "Appendix A". "Appendix A" shall be and remain posted for sixty (60) days thereafter. Respondent shall take reasonable steps to insure that notices are not altered, defaced or covered by other material.

2/ Any party may file a petition for review with the Commission by following the procedures set forth in Sec. 111.07(5), Stats.

Section 111.07(5), Stats.

(5) The commission may authorize a commissioner or examiner to make findings and orders. Any party in interest who is dissatisfied with the findings or order of a commissioner or examiner may file a written petition with the commission as a body to review the findings or order. If no petition is filed within 20 days from the date that a copy of the findings or order of the commissioner or examiner was mailed to the last known address of the parties in interest, such findings or order shall be considered the findings or order of the commission as a body unless set aside, reversed or modified by such commissioner or examiner within such time. If the findings or order are set aside by the commissioner or examiner the status shall be the same as prior to the findings or order set aside. If the findings or order are reversed or modified by the commissioner or examiner the time for filing petition with the commission shall run from the time that notice of such reversal or modification is mailed to the last known address of the parties in interest. Within 45 days after the filing of such petition with the commission, the commission shall either affirm, reverse, set aside or modify such findings or order, in whole or in part, or direct the taking of additional testimony. Such action shall be based on a review of the evidence submitted. If the commission is satisfied that a party in interest has been prejudiced because of exceptional delay in the receipt of a copy of any findings or order it may extend the time another 20 days for filing a petition with the commission.

- (b) Notify the Wisconsin Employment Relations Commission, in writing, within twenty (20) days following the date hereof, as to what steps have been taken to comply herewith.

IT IS FURTHER ORDERED that all remaining portions of the complaint shall be, and hereby are, dismissed.

Dated at Madison, Wisconsin this 8th day of March, 1983.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Andrew Roberts
Andrew Roberts, Examiner

APPENDIX "A"

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

1. WE WILL NOT interfere with our employees in the exercise of their right to file a grievance under the grievance-arbitration provisions of the collective bargaining agreement.

All our employees are free to become, remain, or refrain from becoming members of Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, or any other labor organization.

Dated this _____ day of _____, 1983.

MARINETTE COUNTY

By _____

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
FINDINGS OF FACT, CONCLUSIONS OF LAW
AND ORDER

The Complainant basically contends that after Bohn filed a grievance, he was harassed by Hipwell which contravened his rights under MERA and under the collective bargaining agreement. 3/ Such allegations of harassment included the following actions by Hipwell: threats to Bohn on June 17, frightening Bohn's wife, closely following Bohn throughout his job activities on one occasion, watching Bohn hang a door on a separate occasion, refusing to allow Bohn to assist Hipwell in taking the inventory of County property at Camp Bird, looking through Bohn's logs, and grasping keys attached to Bohn's belt. The Respondent, however, denies any threatening communication by Hipwell toward either Bohn or his wife and claims that with regard to the remaining actions, Hipwell was simply acting in his capacity as an administrator.

Turning first to the conversation on June 17, Bohn claims Hipwell made the following statements: "I don't appreciate this grievance and what you're doing"; Hipwell told Bohn he was a "moving target" and "You would get a lot further, Greg, feeding me sugar than vinegar and you're bad vinegar." Bohn then told Hipwell that he felt threatened by such statements, to which Hipwell responded that he wondered what sort of game Bohn was up to and stated that if Bohn did not like his job he should look for another one. 4/ Hipwell, on the other hand, testified that with regard to conversations he had about Bohn's grievance, he had simply asked either Bohn or his wife whether he had intended to drop his grievance. 5/

However, upon cross-examination, Hipwell could not recall asking Bohn what kind of game he was playing, nor could he recall telling Bohn he was a moving target. Moreover, he also could not remember whether he ever told Bohn he should not have filed the grievance. 6/ Hipwell's memory thus conveniently failed him on key segments of the June 17 conversation. In addition, Hipwell at other points in his testimony, gave contradictory responses to questions when they referred to the same topic. 7/ Based upon the foregoing, as well as the observation of the demeanor of both Hipwell and Bohn at the hearing, the undersigned finds Bohn's testimony to be more persuasive and therefore credits Bohn's description of the June 17 conversation.

Given that Hipwell made the above-described statements to Bohn on June 17, the next question is whether such statements were a prohibited practice under Sec.111.70(3)(a)1 of MERA. The Commission has long held that using the grievance procedure is a protected activity, as it stated in Harry Rydlewicz and Clarence

3/ At the commencement of the hearing, the Respondent moved that the complaint be dismissed. The Examiner denies the Motion to Dismiss on the ground that the complaint presents a contested case that requires a full hearing on the pleadings. See Mutual Fed. Savings & Loan Assoc. v. Savings & Loan Adv. Comm., (1968) 38 Wis. 2d 381; State ex rel. City of LaCrosse v. Rothwell, (1964) 25 Wis. 2d 228, rehearing denied; Town of Ashwaubenon v. Public Service Commission (1964) 22 Wis. 2d 38, rehearing denied; State ex rel. Ball v. McPhee (1959) 6 Wis. 2d 190; General Electric Co. v. Wisconsin Employment Relations Board (1957) 3 Wis. 2d 227, 241.

4/ Tr. pages 15-16.

5/ Tr. page 94.

6/ Tr. page 108.

7/ Tr. pages 84, 99.

Quandt (Village of West Milwaukee) 8/: "When a grievance procedure is established by contract, the right to process grievances without coercion or interference along the way from an employer is a fundamental right included within the employes' right to representation." Of particular import in the June 17 conversation was Hipwell's statement that if Bohn did not like his job he should look for another one. Clearly, an employe who is threatened when he files a grievance would tend to be less likely to engage in such protected activity. Accordingly, the undersigned finds that there was a violation of Sec. 111.70(3)(a)1 of MERA when Hipwell threatened Bohn in the June 17 telephone conversation.

With regard to the telephone conversation Hipwell had with Bohn's wife about the grievance, the only evidence is testimony by Bohn of what his wife told him Hipwell told her. At the hearing the Respondent objected to that testimony as hearsay. There was no other corroboration of upsetting or threatening statements made by Hipwell to Bohn's wife. The undersigned is therefore not satisfied from the record that such a telephone conversation occurred between Hipwell and Bohn's wife.

Moreover, the undersigned is also not satisfied that the remaining actions Hipwell engaged in violated Sec. 111.70(3)(a)1 of MERA. While it might be unusual for a supervisor to occasionally closely observe a subordinate, the record demonstrates that the amount of supervision increases during the summer months because of an increase in the activity in the camp. Hipwell only began his position as Park Administrator in the summer of 1981. As Hipwell explained at the hearing, 9/ he did not have the opportunity until after the grievance was filed in May of 1982 to observe Bohn perform his job during the busy summer months. As for the occasions when Hipwell did not allow Bohn to assist him with the inventory, grabbed Bohn's keys, and looked through Bohn's logs, such behavior may well be inconsiderate, but it does not amount to a violation of Sec. 111.70(3)(a)1 of MERA.

Accordingly, the undersigned finds that the communication by Hipwell to Bohn in the June 17 telephone conversation is a prohibited practice violation of Sec. 111.70(3)(a)1 of MERA, while the remaining activities Hipwell engaged in with regard to Bohn are not prohibited practices in violation of Sec. 111.70(3)(a)1 of MERA.

Dated at Madison, Wisconsin this 8th day of March, 1983.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Andrew Roberts
Andrew Roberts, Examiner

8/ Dec. No. 9845-B, 10/71.

9/ Tr. page 104.