STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

CITY OF BROOKFIELD, LIBRARY EMPLOYEES LOCAL 20 OF WISCONSIN COUNCIL 40, AFSCME, AFL-CIO, Complainant, vs. CITY OF BROOKFIELD, Respondent.	Case XLVII No. 30242 MP-1369 Decision No. 20691-A

Appearances:

Lawton & Cates, Attorneys at Law, by Mr. Richard V. Graylow, 110 East Main Street, Madison, Wisconsin 53703-3354, appearing on behalf of the Complainant.

Godfrey, Trump & Hayes, Attorneys at Law, by Mr. Tom E. Hayes, 250 East Wisconsin Avenue, Milwaukee, Wisconsin 53202-4278, appearing on behalf of the Respondent.

ORDER REVISING EXAMINER'S FINDINGS OF FACT, AND AFFIRMING EXAMINER'S CONCLUSIONS OF LAW AND ORDER

Examiner Edmond J. Bielarczyk, Jr., having, on May 20, 1983, issued his Findings of Fact, Conclusions of Law and Order with Accompanying Memorandum in the above-entitled proceeding, wherein he concluded that Respondent had not committed prohibited practices with the meaning of Sections 111.70(3)(a)1, 3 or 4 of the Municipal Employment Relations Act (MERA) and therefore ordered that the instant complaint be dismissed in its entirety; and Complainant having, on June 7, 1983, filed a petition for Commission review of said decision; and the parties having filed briefs in the matter, the last of which was received on August 15, 1983, and the Commission having reviewed the record in the matter, including the petition for review, and the briefs filed in support of and in opposition thereto, and being satisfied that the Examiner's Findings of Fact should be revised and that the Examiner's Conclusions of Law and Order be affirmed.

NOW, THEREFORE, it is

ORDERED 1/

1. That the Examiner's Findings of Fact 6 and 11 be, and the same hereby are, revised to read as following:

6. That on June 14, 1982, Bielmeier sent the Complainant's Staff Representative, Richard Abelson, the following letter:

> Mr. Richard Abelson:
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> Please be advised that all library employees with employment dates on and after October 1, 1979 will be laid off on July 1, 1982.

1/ Pursuant to Sec. 227.11(2), Stats., the Commission hereby notifies the parties that a petition for rehearing may be filed with the Commission by following the procedures set forth in Sec. 227.12(1) and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.16(1)(a), Stats. (Continued on page two)

This reduction in staff is necessary to keep personnel expense within the appropriation made by the Common Council.

Sonia Bielmeier, Director Library Services

that on June 15, 1982, Abelson sent the following letter to Bielmeier:

Dear Ms. Bielmeier:

I am in receipt of your letter of Monday, June 14, 1982, relative to the layoff of employees with employment dates on and after October 1, 1979 and the layoff scheduled for July 1, 1982.

1/ (Continued)

227.12 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025 (3)(e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

227.16 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.15 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefor personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.12, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.11. If a rehearing is requested under s. 227.12, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 182.70(6) and 182.71(5)(g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

Note: For purposes of the above-noted statutory time-limits, the date of Commission service of this decision is the date it is placed in the mail (in this case the date appearing immediately above the signatures); the date of filing of a rehearing petition is the date of actual receipt by the Commission; and the service date of a judicial review petition is the date of actual receipt by the Court and placement in the mail to the Commission.

Please be advised that the reduction of staff at this stage of the negotiation process is a unilateral alteration of wages, hours and working conditions, and constitutes a prohibited practice under Section 111.70, Wisconsin Statutes. The Union demands that the impending layoff not take place. Further, please be further advised that while not waiving the demand that the layoff not take place, the Union reminds you that there is currently no layoff or recall provision negotiated between the parties. Therefore, the Union demands that the parties meet in immediate collective bargaining in order to negotiate the impact of the layoff proposal referred to in your June 14, 1982 letter, upon bargaining unit employees.

Further, the Union has filed a petition to accrete the employees working twenty (20) hours per week or less. Therefore, to alter any of those emloyees wages, hours, or working conditions is also illegal at this time.

Please contact the undersigned at your earliest possible convenience.

Very truly yours,

Richard W. Abelson
Representative; 2/(Fn. omitted)

that on June 16, 1982, Bielmeier sent the following letter to employe Elaine Farnham:

Dear Elaine,

Please be advised that as of July 1, 1982 all employees with employment dates on or after October 1, 1979 will be laid off. We regret that it is necessary to inform you of this decision by letter, as the announcement was made personally to the other staff members affected on Thursday, June 17, while you were on vacation. This reduction in staff is necessary to keep personnel expense within the appropriation made by the Brookfield Common Council.

We would like you to report to work as scheduled June 21; we expect your cooperation during this period.

Sincerely,

Sonia Bielmeier, Director Library Services;

that on June 17, 1982, Mitchell sent the following letter to Abelson:

Dear Mr. Abelson:

Library Director, Sonia Bielmeier has referred to me your letter of June 15, 1982, about the proposed lay-off of library employees with employment dates on and after October 1, 1979.

Your contention that the layoff is a prohibited practice under Sec 111.70 is contrary to the State Supreme Court's decision in City of Brookfield v. WERC, 87 Wis 2d 819 (1978), Gabe v. Lake, 271 Wis 391, cited in 88 ALR (3rd) 1165.

Attorney Tom Hayes has advised me that the layoffs are not negotiable, but the effects of the layoffs are negotiable and will be negotiated.

Mr. Hayes is vacationing with Mrs. Hayes in Europe for some ten (10) days, and I suggest you confer with him on his return.

Sincerely,

William A. Mitchell, Jr.
MAYOR
CITY OF BROOKFIELD

that there is no evidence in the record that Respondent subsequently failed or refused to negotiate with Complainant on the impact of the Respondent's decision to lay off employes.

11: That Farnham has served as a permanent member of the Complainant's two person bargaining team since the commencement of the parties' negotiations on an initial collective bargaining agreement; that the City's representatives, including Mitchell, had knowledge of that fact; that there is no evidence that the Respondent was aware prior to its decision to lay off part-time employes that Complainant sought inclusion of part-time employes working twenty (20) hours or less in said bargaining unit; and, that the decision of Mayor Mitchell to lay off employes in reverse order of seniority was not motivated by an anti-union animus.;

and that in all other respects the Examiner's Findings of Facts be, and the same hereby are, affirmed.

2. That the Examiner's Conclusions of Law and Order in the instant matter be, and the same hereby are, affirmed.

Given under our hands and seal at the City of Madison, Wisconsin this 7th day of February, 1984.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Herman Torosian, Chairman

_____
Gary L. Covelli, Commissioner

_____
Marshall L. Gratz, Commissioner

MEMORANDUM ACCOMPANYING ORDER REVISING EXAMINER'S FINDINGS OF FACT, AND AFFIRMING EXAMINER'S CONCLUSIONS OF LAW AND ORDER

BACKGROUND

In its complaint initiating this proceeding the Complainant alleged that Respondent committed prohibited practices within the meaning of Sections 111.70(3)(a)1, 3 and 4 of the Municipal Employment Relations Act (MERA), by laying off employes including Elaine Farnum, a member of the Complainant's negotiating team, and by amending its civil service ordinance, such that all employes in a certified bargaining unit would be excluded from its application, during the time the parties were negotiating for the terms and conditions of the parties' first collective bargaining agreement. The Complainant alleged that the layoffs and the ordinance amendment were unilateral actions on the part of the Respondent which interfered with, restrained, and coerced municipal employes in the exercise of the rights guaranteed them under Section 111.70(2), Stats; that such actions discriminated against municipal employes with respect to conditions of employment; and that the Respondent refused and failed to bargain and/or engaged in bad faith bargaining by said actions. The Respondent denied that it had committed any prohibited practices within the meaning of the Municipal Employment Relations Act and alleged that it had informed representatives of Complainant in November, 1981, that layoffs were to occur in the library under the budget adopted for the year 1982; and that at the time of the layoffs in July of 1982, the parties had not reached any agreement with respect to the procedure for layoff. The Respondent alleged that it amended its civil service ordinance which excluded from its coverage all employes within certified collective bargaining units to eliminate any conflicts between collective bargaining agreements and the civil service ordinance.

THE EXAMINER'S DECISION

The Examiner found that the Respondent had decided to automate its library functions which would result in fewer employes being required in the library. This decision was made prior to the Complainant's filing an election petition in the bargaining unit, and subsequent to the election in the unit, the Respondent engaged in negotiations with the Complainant, during the course of which, in November, 1981, and January, 1982, the necessity of layoffs was discussed. The Respondent had established a budgeted amount for salaries based on a reduced number of employes in the library for the calendar year 1982. The parties' negotiations did not produce an agreement, and pursuant to a petition filed on January 18, 1982, the parties utilized the procedures of mediation-arbitration under Sec. 111.70(4)cm 6 of the Municipal Employment Relations Act, with the Complainant and the Respondent submitting their final offers on May 10, 1982, and on July 26, 1982, respectively. The Examiner determined that by June, 1982, it had become evident to the Respondent that the library would not be able to remain within its budget allocation, unless layoffs occurred; that thereafter, on June 14, 1982, the library director informed the Complainant's bargaining representative that layoffs would take place on July 1, 1982; that four of these layoffs occurred on June 30, 1982, and that a fifth occurred on July 7, 1982.[2] Additionally, the Respondent on July 6, 1982, amended its civil service ordinance such that it would not apply to certified bargaining unit employes. The civil service ordinance required layoffs to be approved by a 3/4 vote of the Respondent's city council and prohibited department heads from changing the status of employes without prior Civil Service Commission approval. The Examiner determined that this amendment was made to avoid conflicts between the ordinance and collective bargaining agreements with existing bargaining units. The Examiner found that the Respondent's actions did not contain either an implied or expressed threat of reprisal, which would tend to interfere with employes in their exercise

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2/ The Examiner found that this fifth layoff was delayed because of the Complainant's demand to bargain the impact of Respondent's layoff decision; however, contrariwise, the record failed to reveal the basis for the delay in this layoff, and accordingly, we have revised the Examiner's Finding of Fact.

of rights guaranteed them by MERA because the evidence failed to demonstrate any anti-union animus and because the employes were aware of the decision to automate the library with its attendant layoffs well in advance of the actual layoffs. The Examiner further found that the Respondent did not discriminate against Elaine Farnum as the evidence failed to demonstrate that the Respondent was hostile to her as a member of the Complainant's bargaining team and that the Respondent's action had a legitimate basis and was not pretextual. The Examiner also dismissed the allegation that the Respondent refused to bargain with Complainant and unilaterally altered the wages, hours and conditions of employment of the employes. The Examiner concluded that the layoff decision was not a mandatory subject of bargaining; that while the impact of said decision was a mandatory subject of bargaining, the Respondent had not refused to bargain the impact; and that the Complainant had waived its right to bargain by failing to pursue negotiations on that particular issue. The Examiner also found that the Complainant failed to request bargaining on the Respondent's amendment of its civil service ordinance, either as to the decision or its impact, and for that reason, found that Respondent had not refused to bargain on the subject. Therefore, the Examiner dismissed the complaint in its entirety.

PETITION FOR REVIEW

In its petition for review, the Complainant asserts that the Examiner's "'Conclusions of Law' are erroneous" and "all 'Findings of Fact' to support said 'Conclusions' are also erroneous." With respect to the charge of interference, the Complainant argues that while the Examiner correctly stated the legal standard, he incorrectly applied that standard to the facts of the case. The Complainant asserts that the Examiner erred in finding a lack of anti-union animus on the part of the Respondent. It contends that a showing of intent to interfere is not required to support a charge of interference, but that only proof of threats of reprisal or promises of benefits which tend to interfere with employes exercising their protected rights under MERA is necessary. The Complainant contends that evidence of the Respondent's sequence of actions met the legal requirement for interference. It points out that the Respondent threatened layoffs in November, 1981, and again in January, 1982; however, instead of laying employes off, it hired a new employe in March of 1982, and gave non-union employes a pay raise. Additionally, in June, 1982, the Respondent hired a second new employe, and at approximately the same time, the Respondent, in reviewing its budget, determined that a projected deficit necessitated layoffs. It notes that the Respondent did not notify the Complainant until June 14 that layoffs would occur, and that the Complainant's demand to bargain on the issue of layoffs was denied, and that any bargaining on the issue of impact would have to be delayed until the return of Respondent's counsel. It points out that the layoffs, which occurred on July 1, 1982, were not approved by the civil service commission in violation of the civil service ordinance, which was followed by the amendment of the civil service ordinance on July 6, 1982, which removed civil service rights from bargaining unit employes without any prior notification to the Complainant. The Complainant asserts that the timing of the Respondent's ordinance amendment to coincide with the layoff date of one of Complainant's principal negotiators sent a clear message to the remaining employes and that such actions tended to interfere with employes in the exercise of their rights under MERA.

The Complainant contends that the Examiner erred in dismissing the discrimination charge. It asserts that anti-union animus was shown by the giving of pay raises to non-bargaining unit employes, by following a layoff procedure that mixed bargaining unit and non-bargaining unit employes, and by failing to follow civil service provisions prior to the layoff of employes. The Complainant asserts that these actions prove discrimination on the part of the Respondent.

The Complainant alleges that the Respondent refused to bargain in good faith in that it unilaterally implemented changes in wages, hours and conditions of employment prior to the exhaustion of the statutory impasse procedures. The Complainant asserts that the unilateral change in the terms and conditions of employment constitutes a prohibited practice, and that the Examiner's conclusion that the Respondent's decision to layoff employes was based on a financial certainty which provided a valid defense for its actions, must be rejected. The Complainant challenges the financial problems asserted by the Respondent, and points to the hiring of two new employes and the pay raise given to non-bargaining unit employes as proof that the Respondent had the financial ability to pay. It argues that the Respondent could not engage in self-help, but was required to maintain the status quo and could not unilaterally implement its last best offer until after the arbitrator had chosen which party's offer to implement. It

requests that the Examiner's decision be reversed and the relief requested by the Complainant be granted.

In response, the Respondent contends that the Complainant's arguments, in support of its petition for review, are merely a rehash of its arguments before the Examiner. The Respondent relies on its arguments before the Examiner with respect to interference and discrimination. The Respondent contends that the Complainant is really arguing that the City does not have a right to layoff employes, or if layoffs could occur, that employes of the bargaining unit and the Complainant's bargaining team should not have been laid off. The Respondent contends that the layoff decision is related to the formulation, implementation, and management of public policy, and hence, it does not have a duty to bargain that decision. It further argues that the Complainant waived its right to bargain the impact of the decision to layoff. Respondent points out that it had given notice of layoff as early as in the summer of 1981, and except for the provisions of its final offer, Complainant made no impact proposals.

The Respondent contends that the civil service ordinance was not violated because Respondent maintained all benefits of the civil service code for employes in the bargaining unit. Its amendment of the civil service ordinance was to eliminate a conflict between the ordinance and collective bargaining agreements for other employes of the Respondent. The Respondent argues that its layoff of bargaining and non-bargaining unit employes was pursuant to a common and fair layoff formula. Respondent asserts that it had announced for many months prior to the layoffs that layoffs would occur, and that it had a right to layoff without the concurrence of the Complainant. It asserts that it has not committed any prohibited practices and requests that the Examiner's Conclusions be upheld.

DISCUSSION

Interference

The first issue raised by Complainant in its petition for review is that the Examiner erred in finding that Respondent's layoff of employes and its amendment of its civil service ordinance did not constitute interference with the rights of employes. We have reviewed the record and find no basis to reverse or modify the Examiner's Findings of Fact, and Conclusions of Law on this issue.

A finding of anti-union animus or motivation is not necessary to establish a violation of Sec. 111.70(3)(a)1. Interference may be proved by a showing of a threat of reprisal or a promise of benefit which would reasonably tend to interfere with the employe's right to exercise MERA rights. The Complainant argues that while the Examiner stated the proper standard, he incorrectly applied the standard in determining that the Respondent's conduct did not constitute interference. It bases its argument on the Examiner's finding that there was no direct evidence of anti-union animus connected with the Respondent's actions. The Complainant contends that a direct showing of animus is not necessary to support a charge of interference. A review of the Examiner's decision reveals that he applied the proper standard. Although the Examiner found that there was a lack of anti-union animus against Complainant, this finding did not constitute the entire basis for the Examiner's dismissal of the charge. Unrelated to his finding of no anti-union animus, the Examiner also found that the Respondent's complained of actions did not contain a threat of reprisal or promise of benefit. Thus, notwithstanding the incorrect impression created by the Examiner that anti-union animus is an element in determining interference, the standard applied by the Examiner to the facts was proper with respect to the charge of interference. The Complainant relies on the timing of the Respondent's actions, and the evidence that, after announcing layoffs for budgetary reasons, the Respondent had hired additional employes and had granted pay increases to non-bargaining unit employes. While this evidence is probative as to the motivation for the Respondent's acts, it is not dispositive. The entire record must be examined to determine if the Respondent had a legitimate reason for its actions. The evidence supports the Examiner's conclusion that the Respondent had a valid business reason for its actions. Respondent had for some period of time determined to automate the library system which would ultimately result in a reduction in the number of employes in the library and the Respondent's budget for the calendar year 1982 was determined with these reductions in mind. The civil service ordinance was amended to avoid conflicts with collective bargaining agreements for other bargaining units. We are satisfied that, notwithstanding the timing of the Respondent's acts herein, the Complainant has failed to meet its burden of proving that the Respondent committed a prohibited practice in violation of Sec. 111.70(3)(a)1 of

MERA. The record does not establish by a clear and satisfactory preponderance of the evidence that the layoff and amendment of the civil service ordinance would reasonably tend to interfere with, restrain, or coerce any of the Respondent's employes in the exercise of their MERA rights. 3/

Discrimination

Turning to the charge of discrimination, the Complainant contends that the Examiner erred in dismissing the charge of discrimination on the basis that Farnum's layoff was not motivated by anti-union considerations. While not directly challenging this conclusion, the Complainant contends that discrimination was shown by Respondent's giving a pay increase to non-bargaining unit employes, by following a layoff procedure that mixed bargaining and non-bargaining unit employes which procedure had not been agreed to by the Complainant, and by failing to follow the civil service procedures for these employes. We are satisfied that under the circumstances presented here, the layoffs were based on the decision to stay within the library's budget allocation, and that the evidence failed to prove by clear and satisfactory preponderance of the evidence that the actions were motivated, in part, by anti-union considerations. Layoffs fell on both bargaining and non-bargaining unit employes. The mere granting of a pay increase to non-bargaining unit employes, while negotiating for pay increases for bargaining unit employes, does not evidence anti-union animus. 4/ Even when this action is coupled with Respondent's amendment of the civil service ordinance, 5/ it is insufficient to establish that these were motivated, in part, by anti-union considerations.

Therefore, we are affirming the Examiner's decision that the Respondent's actions did not violate Sec. 111.70(3)(a) 3 of the MERA.

Refusal to Bargain

The Complainant contends that the Examiner erred in concluding that the Respondent did not refuse to bargain in good faith with the Complainant. The Complainant contends that the unilateral decision to layoff employes violated the Respondent's duty to bargain. The decision to layoff employes is not a mandatory subject of bargaining. 6/ While the impact of the decision to layoff is a mandatory subject of bargaining, such bargaining obligation does not preclude the implementation of the layoff decision without first bargaining on the impact. 7/ Whether an employer is required to bargain the impact prior to implementation is handled on a case by case basis, as to whether the totality of conduct is consistent with the statutory requirement of good faith. 8/ The evidence indicates that the subject of layoffs was discussed in negotiations between the parties in November, 1981, and again in January, 1982, and that both parties had offered proposals on the impact of any layoff. In June, Complainant made a demand to bargain the impact of any layoff and the Respondent indicated that it would negotiate the impact of any layoffs. The evidence failed to establish that Respondent refused upon request to participate in discussions on impact apart from

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3/ City of Sparta, 12778-A (12/74), Menomonie Jt. School District No. 1, 18211-C (3/78).

4/ Shell Oil Co., 22 LRRM 1158 (1948).

5/ The City Council adopted said amendment on July 6 but apparently said amendment did not become effective until published shortly thereafter. Whether or not the City violated the Civil Service ordinance in laying off the employes herein is not within the Commission's prohibited practice jurisdiction to determine.

6/ City of Brookfield v. the WERC, 87 Wis. 2d 819 (1978).

7/ Milwaukee Board of School Directors, 20093-A (2/83).

8/ City of Green Bay, 18731-B (6/83).

what the parties had already previously discussed and included in their respective final offers. Therefore, we conclude that the evidence related to the Respondent's totality of conduct was consistent with the statutory requirement of good faith. 9/

With respect to the Respondent's amendment of its civil service ordinance, the record establishes that the amendment removed a requirement of a 3/4 vote of the City Council to abolish a position prior to the layoff of the employe, and the requirement that a department head have civil service approval before changing the status of an employe. We do not find that these changes constituted an alteration of the status quo over which Respondent was obligated to bargain because we are of the opinion that the amendment of the civil service ordinance was a permissive subject of bargaining. The amendment essentially changed the provisions of the ordinance with respect to the procedure for making a decision by the Respondent related to a layoff. Inasmuch as the decision to layoff is a permissive subject of bargaining, the internal procedure that an employer utilizes to decide to make a layoff, would likewise be permissive, as it relates primarily to the formulation and management of public policy. While the impact of the ordinance change would be subject to bargaining, the evidence failed to establish any distinction between the impact of such change and the impact of a resulting layoff. Additionally, there was no evidence offered of any request for bargaining on the impact of the ordinance change or that there was a refusal on the part of the Respondent to bargain the impact of its decision. Therefore, we conclude that the unilateral amendment of the civil service ordinance did not constitute bad faith bargaining or a refusal to bargain on the part of the Respondent.

The Complainant further argues, that the Respondent refused to bargain in good faith by unilaterally implementing the layoffs and the ordinance amendment prior to exhausting the statutory impasse procedures of Section 111.70(4)(cm)6, Stats. In support of its position, the Complainant relies on Weymouth School Committee and National Association of Government Employes, Local R-162, Case No. MUP-4293, July 2, 1982, a decision of the Massachusetts Labor Relations Commission. In that case, the union requested that the employer bargain the decision and the impact of a change in a civil service ordinance. The employer refused both requests. Even if said case is otherwise persuasive, the present case does not involve a refusal upon request to bargain the impact. Therefore, that decision is not in conflict with our decision in this instant matter. 10/ The second case relied on by the Complainant is a California Public Employment Relations Board decision, Moreno Valley Educators Association v. Moreno Valley Unified School District, Case LA-CE 398 decided April 30, 1982. In that case, the employer unilaterally implemented its last offer before the compulsory advisory arbitration procedure had been exhausted. The rule in that case, if otherwise persuasive, is inapplicable herein because the subjects implemented involved mandatory subjects of bargaining. Here, the decision to layoff and the decision to amend the civil service ordinance were permissive subjects of bargaining as to which the municipal employer had no duty to bargain. Therefore, Moreno Valley is inapplicable to the instant situation.

Based on the above discussion, we find no basis to conclude that the Respondent refused to bargain or engaged in bad faith bargaining in violation of Sec. 111.70(3)(a)4, Stats., and we find that the Examiner correctly dismissed the Complaint in its entirety.

Dated at Madison, Wisconsin this 7th day of February, 1984.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Herman Torosian, Chairman

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Gary L. Covelli, Commissioner

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Marshall L. Gratz, Commissioner

9/ City of Madison, 17300-C (7/83).

10/ Id. In this case, we distinguished a case of the Michigan Employment Relations Commission where the employer had refused to bargain over impact.