STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

GRANT COUNTY EMPLOYEES, WCCME, AFSCME, AFL-CIO, Complainant, vs. GRANT COUNTY, Respondent.	Case 10 No. 33076 MP-1573 Decision No. 21567-B

Appearances:

Mr. Jack Bernfeld, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 5 Odana Court, Madison, Wisconsin 53719, appearing on behalf of the Complainant.

Melli, Walker, Pease & Ruhly, S.C., Attorneys at Law, by Mr. Jack D. Walker, 119 Monona Avenue, P.O. Box 1664, Madison, Wisconsin 53701-1664, appearing on behalf of the Respondent.

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

Examiner Christopher Honeyman having, on August 20, 1984, issued 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 within the meaning of Sections 111.70(3)(a)1 or 3 of the Municipal Employment Relations Act (MERA) and therefore ordered that the instant complaint be dismissed in its entirety; and Complainant having, on September 10, 1984, 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 November 2, 1984; 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 and Conclusions of Law should be revised and that the Examiner's Order should be affirmed.

NOW, THEREFORE, it is

ORDERED 1/

1. That the Examiner's Finding of Fact 5, is hereby revised to read as follows:

> 5. Commencing in May, 1982, and continuing at various times throughout 1982, the County's Employee Relations Committee discussed the in-County meal reimbursement policy; that the Employee Relations Committee also discussed and acted on other matters related to the wages and benefits of employes including budget deficits and the tight money situation on October 25, 1982, reduction of mileage reimbursement from

---

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.

> 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

(Footnote 1 continued on Page 2)

$.25 to $.23 on October 28, 1982, vacation policy and wage increases on November 21, 1982, a 5% wage increase on December 16, 1982, a decision to address meal and board allotments on January 20, 1983, denial of a 5% increase to elected officials on March 3, 1983, and on April 5, 1983, a recommendation that in-County meals no longer be reimbursed except those included in a conference registration fee; and that the cancellation of the in-County meal reimbursement, which also applied to members of the County Board, was not related to the Complainant Union's organizing attempts, was not in retaliation for them, and did not reasonably tend to interfere with, restrain or coerce employes in the exercise of their rights protected under the Municipal Employment Relations Act;

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

1/ (Continued)
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.

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.20 upon which petitioner contends that the decision should be reversed or modified.

. . .

(c) Copies of the petition shall be served, personally or by certified mail, or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon all parties who appeared before the agency in the proceeding in which the order sought to be reviewed was made.

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.

2. That the Examiner's Conclusions of Law 1 and 2 are hereby affirmed and a Conclusion of Law 3 is hereby added to read as folows:

> 3. The conduct of the County referenced in Conclusions of Law 1 and 2 did not violate Sec. 111.70(3)(a)2, Wis. Stats.

3. That the Examiner's Order in the instant matter is hereby affirmed.

Given under our hands and seal at the City of Madison, Wisconsin this 16th day of January, 1985.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Herman Torosian, Chairman

_____
Marshall L. Gratz, Commissioner

_____
Danae Davis Gordon, Commissioner

GRANT COUNTY

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 the Respondent committed prohibited practices within the meaning of Sections 111.70(3)(a)1, 2 and 3, Stats. by changing its in-County meal reimbursement policy and its policy regarding reimbursement of Bar Association dues during the pendency of the Complainant's organizing campaign. The Respondent denied that it had committed any prohibited practices within the meaning of MERA.

THE EXAMINER'S DECISION

The Examiner found that as early as May 1982, the appropriateness of paying for in-County meals had been raised. The Examiner found that the length of time it took the Employee Relations Committee to consider and then vote on cancelling the allowance was not inconsistent with other deliberations and was due to the political nature of discontinuing this benefit for County Supervisors. The Examiner concluded that there was a "general economy drive" by Respondent during 1982 which included the cancellation of the in-County meal reimbursement. The Examiner determined that the Union's organizing drive first began in December, 1982, and hence followed the Respondent's "economy drive." The Examiner concluded that the Respondent was not hostile to the Union's organizing drive and the cancellation of the in-County meal allowance was neither discriminatory nor was it likely to interfere with, restrain or coerce employes in the exercise of their MERA rights.

With respect to the denial of payment for State Bar Association dues, the Examiner found that the Union had failed to prove that there was a County policy of paying for such dues, and in any event, the denial of payment had occurred prior to December, 1982, when organizing activity first began and thus the change in policy was permissible. Consequently, the Examiner dismissed the complaint in its entirety.

THE PETITION FOR REVIEW

The Complainants' petition for review asserts that the Examiner's "findings of fact are clearly erroneous and contrary to the preponderance of evidence" and that "appeal is taken herewith from all findings of fact and conclusions of law." The Complainant takes particular exception to the Examiner's finding that the change in the in-County meal reimbursement was part and parcel of an "economy drive." It contends that the record does not justify any conclusion that there was an economy drive. The Complainant argues that a mere reduction in mileage allowance and testimony about a probable pay freeze do not establish an economy drive.

The Complainant also asserts that the Examiner's conclusion that meal reimbursement was discussed prior to January 20, 1983, is erroneous. It maintains that the testimony relied on by the Examiner in reaching his conclusion is incredible and not supported by the Employee Relations Committee's minutes. The Complainant maintains that its organizing activity preceded the deliberation on and change in the meal policy and that this change was likely to interfere with, restrain and coerce employes in the exercise of their MERA rights. It requests that the Examiner's decision be reversed and the relief requested by Complainant be granted.

The Respondent opposes the petition for review on the grounds that it fails to state any basis for dissatisfaction with the Findings of Fact or Conclusions of Law and also fails to designate any relevant portions of the record. It argues that the Examiner's Findings of Fact and Conclusions of Law are correct and are supported by substantial evidence. It points out that the record establishes a number of measures discussed and actions taken to control and reduce spending in 1982 and 1983. The Respondent claims that the record supports the Examiner's finding that the meal reimbursement policy was discussed before any Union

organizing activity began and no evidence was presented to show that Respondent was aware of such activity before March 1983. The Respondent notes that the Examiner's findings depend on credibility determinations which are particularly within the discretion of the Examiner and must be given great weight. The Respondent requests that the petition for review be denied.

DISCUSSION

Although the petition for review states that all of the Examiner's Findings of Fact and Conclusions of Law are erroneous, Complainant made no arguments concerning the Examiner's findings and conclusions with respect to the denial of Bar Association dues or his conclusion that there was no violation of Section 111.70(3)(a)3 of MERA on the basis that the proof failed to demonstrate that hostility toward the Union's organizational campaign motivated the Respondent's change in meal policy. Our review of the record persuades us that there is no basis to disturb the Examiner's findings and conclusions on these issues. 2/

The Complainant takes issue with only two findings and the conclusion that the Respondent did not violate Sec. 111.70(3)(a)1 of MERA. The first issue raised by Complainant is that the Examiner erred in finding that the change in meal reimbursement was part and parcel of an economy drive. The Examiner used the term "economy drive" to describe certain actions by the Employee Relations Committee. We have revised the Examiner's Finding of Fact 5 to set forth the actual actions of the Employee Relations Committee as established by the record. We have also eliminated the characterization of these acts as an economy drive. While certain of these were cost cutting decisions, others, such as a 5% pay increase, do not necessarily fit this characterization. The change in meal reimbursement was just one of a number of policy reviews which was considered by the Employee Relations Committee in the normal course of its business. While we have revised the Examiner's findings, it does not necessarily follow that his Conclusions of Law are erroneous. The record demonstrates that the meal policy was reviewed just as other policies were in 1982 and 1983. The evidence therefore fails to demonstrate that meal reimbursement was given any selective consideration by the Committee.

The second issue raised by the Complainant was that the Examiner erred in crediting County witnesses Wirth's and Waters' testimony that the in-County meal reimbursement policy was subject to the decision-making process and was well underway long before the commencement of any organizing activity. The record fails to demonstrate any basis to alter the Examiner's credibility determinations in this regard. The Complainant's claim that the witnesses' testimony is simply self-serving rhetoric unsupported by the minutes of the Employee Relations Committee does not outweigh the Examiner's credibility findings based on his evaluation of the witnesses. The Employee Relations Committee's minutes are very cryptic and while actions taken on motions are recorded, discussions preceding said actions were not always recorded. Additionally, the minutes indicate that some discussions on a subject occurred several meetings prior to action on a motion for that subject. Although, as argued by the Union, the minutes do not corroborate the witnesses' testimony concerning the 1982 discussions on the matter, when the entire record is considered, the minutes are insufficient reason to disturb the Examiner's credibility determinations.

We deem it significant that the change in the meal policy affected the County Board Supervisors' reimbursement and that there was a lack of haste in acting on the policy. It is undisputed that the policy change affected Supervisors as well as members of the bargaining unit. Waters testified that the Committee was concerned with the political aspects of decreasing the elected Supervisors' reimbursement through the change in policy. We concur with the Examiner's finding that this testimony is quite plausible to explain the delay in Committee action and further supports Waters' credibility. Assuming arguendo that the organizing effort was known by the Committee prior to January 20, 1983, it would be logical

---

2/ The Examiner did not rule upon the upon the Complainant's allegation that the changes in question were violative of Sec. 111.70(3)(a)2, Stats., which prohibits employer domination or interference with the formation or administration of a labor organization. We have reviewed the record as to this additional allegation and find no basis for concluding that the Respondent violated same by its conduct herein. We have therefore added a separate Conclusion of Law to that effect.

that the Committee would quickly make a change in the policy. That it did not rush to change the policy supports Waters' testimony that the change involved political considerations.

We affirm the Examiner's Findings of Fact with respect to the credibility determinations, and conclude that the record establishes that the Employee Relations Committee had subjected the in-County meal reimbursement policy to the decision-making process prior to the start of any Union organizing activity. Therefore, we affirm the Examiner's Conclusion of Law that the change in policy on meal reimbursement by the Respondent did not violate Section 111.70(3)(a)1 of the Municipal Employment Relations Act.

When reaching this conclusion, we also affirm the Examiner's statement that evidence of changes in wages, hours and conditions of employment which occur after the employer becomes aware of a union organizing campaign does not, per se, establish violations of Secs. 111.70(3)(a)1 or 3, Stats., but instead is probative and relevant evidence as to whether the complaining party has established the elements necessary for the finding of a violation. Here, the record satisfies us that the timing of the change was based upon neutral factors relating to the Respondent's internal political decision-making process. As the timing of the change was unrelated to the organizing campaign and as the applicability of the change extended both to potential bargaining unit members and to County Board members themselves (thus serving to minimize any potential chill upon employe inclination to exercise their right to collectively bargain), the record does not support a finding that the change was likely to interfere with employe exercise of their rights under Sec. 111.70(2), Stats.

Dated at Madison, Wisconsin this 16th day of January, 1985.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Herman Torosian, Chairman

_____
Marshall L. Gratz, Commissioner

_____
Danae Davis Gordon, Commissioner