



are aware, that the President has certain times set aside for Union activities, however, when they consistantly (sic) conflict with scheduled R.T. programs, we feel that priorities must be established. The following incident on April 6, 1984 was the straw that broke the camel's back. We were scheduled to be in the auditorium at 12:45 to set up for Bingo. Dan was on the phone or involved in other activities and did little or nothing to help set up. During the program where we had in excess of 50 residents from all units, Dan spent approximately 15 minutes out of 1 hour in the program itself Clean up was done by the rest of the R.T. department as Mr. Collins was involved elsewhere. We hope this problem can be resolved as soon as possible to benefit everyone";

that Wiskow referred the letter to her superiors and asked about designating certain times during work hours for Collins to conduct Union business; and that the letter thereafter became widely publicized.

4. That on or about May 4, 1984, these same employes sent the following letter to Mark Wirig, the County's Employee Relations Specialist:

"In regard to our letter of April 6, 1984 to our supervisor Dolores Wiskow about a problem that arose within our department, about a special time set aside for union business (since there are no set guidelines for time usage for union officials), we would like to inform you that our co-worker Dan Collins has been making a conscious effort to work union business around our Recreation schedule and has been successful at doing this at this time. We feel that this was a problem involving our department and should have stayed within our department to be worked out and not have become public knowledge. Since that is exactly what happened, we would like you to make this letter public knowledge also, to rectify and clarify any misconceptions concerning our internal problem. As strong union members, we feel you were out of line to blow this out of proportion and make a mountain out of such a tiny molehill.

Thank you."

5. That in October, 1984, Collins asked for and was given a leave of absence for three weeks to work against the proposed closing of Dane County Home West; that in December, 1984, Collins did not have his progress notes up to date and was asked to write a plan for completion of the notes; that on or about December 7, 1984, Collins wrote the following note to Sharon Burns, the County's Director of patient care, who is Wiskow's supervisor:

"- Plan for finishing late notes on Units 13A - 13B - - Cancel sports group & they will all be done by the end of Dec.

A close examination of the R.T. staff schedules will demonstrate that presently and in the past I am responsible to more group programs than any other R.T. staff. When gone on union business my duties have not been totally replaced. Therefore I maintained my direct care responsibilities and this paperwork is not complete. I suggest that in the future qualified personel (sic) replace me while gone and complete all of the responsibilities including the paperwork. - This has not occurred in the past. I don't believe it is fair that I have to make up the work that is not done when I am gone on union business per contractual agreement. Although I believe it's probably a grievable issue I will attempt to make up the work because there is no qualified personell (sic) who can perform this aspect of my job and I don't wish to overburden my coworkers."

6. That on January 24, 1985, at approximately 8:00 a.m., Wiskow went to the office shared by Hardtke and Glodowski and informed them that Collins would be off that day and they would have to cover his workload; that Hardtke asked Wiskow whether she had found out if a specific time could be set aside for Collins'

conducting Union business during work hours; that Wiskow stated that she was getting nowhere and was not getting answers from anybody; and that Wiskow stated it was up to the employees to put peer pressure on Collins to do his job.

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

CONCLUSION OF LAW

1. That the Respondents, by the statement made by Dolores Wiskow to Erwin Hardtke and Debra Glodowski on January 24, 1985, referred to in Finding of Fact 6, did not interfere with, restrain or coerce Dan Collins in the exercise of rights guaranteed in Sec. 111.70(2) of MERA, and therefore, Respondents did not violate Sec. 111.70(3)(a)1, Stats.

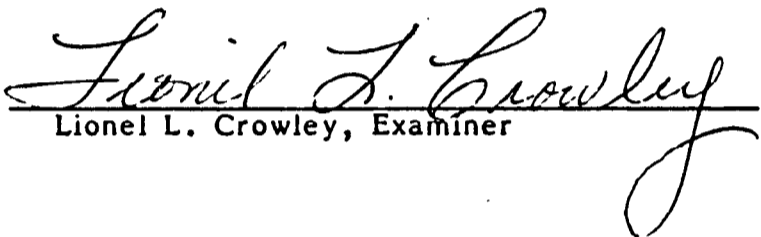
On the basis of the above and foregoing Findings of Fact and Conclusion of Law, the Examiner makes the following

ORDER 1/

It is ordered that the complaint be, and the same hereby is, dismissed in its entirety.

Dated at Madison, Wisconsin this 26th day of August, 1985.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By   
Lionel L. Crowley, Examiner

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1/ 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.

DANE COUNTY

MEMORANDUM ACCOMPANYING  
FINDINGS OF FACT  
CONCLUSION OF LAW AND ORDER

BACKGROUND

In its complaint, the Union alleged that the Respondents committed prohibited practices in violation of Sec. 111.70(3)(a)1, Stats. by Wiskow's statement to employes to put "peer pressure" on Collins, thereby interfering with his rights guaranteed in Sec. 111.70(2), Stats. The Respondents denied that they had committed any prohibited practices.

UNION'S POSITION

The Union contends that Wiskow interfered with Collins' protected rights. It submits that Wiskow knew Collins was the president of the Union and she and other representatives of the County had discussed how the work would be performed when Collins was performing protected duties. It notes that the Commission has ruled that workers' rights have been violated when employers attempted to impose a sanction for exercising protected rights. It argues that the evidence established that Collins' protected rights have been violated and asks that the County be ordered to cease and desist its unlawful conduct and to post appropriate notices.

COUNTY'S POSITION

The County contends that the Union has failed to meet its burden of proving interference. It argues that there was no evidence that Respondents had any anti-union animus against Collins or that Wiskow's alleged statement was motivated by anti-union animus. The County points out that Wiskow did not recall making the statement and even if she had, it, without more, does not constitute interference. It claims that Wiskow did not tell employes to do anything which would prevent Collins from engaging in Union activities. The County maintains that Wiskow was merely exercising her responsibility to see that all employes were doing their jobs. It notes that a conference was later held with all employes to work out the problem and her statement was prefatory to that meeting. The County contends that the complaint must be dismissed as to Barry and Hubing because the theory of respondent superior is not applicable to them and the evidence failed to prove that they engaged in any conduct which could be interpreted as interference. The County asks that the complaint be dismissed.

DISCUSSION

In order for the Complainant to prevail on its complaint of interference with employe rights, it has the burden of proving by a clear and satisfactory preponderance of the evidence that the statement made by the County's agent contained either some threat of reprisal or promise of benefit which would tend to interfere with, restrain or coerce municipal employes in the exercise of rights guaranteed by Sec. 111.70(2), Stats. 2/ It is not necessary for Complainant to demonstrate that the County's agent intended to interfere with or coerce employes or that the complained of conduct actually interfered with or coerced employes. 3/ Complainant must prove that the conduct had a reasonable tendency to interfere with employe rights protected by MERA. 4/ Broadly speaking, the traditional means of analyzing whether a violation of this Section has occurred has involved a balancing of the interests at stake of the affected municipal employe and of the municipal employer to determine whether, under the circumstances, application of

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2/ Beaver Dam Unified School District, Dec. No. 20283-B (WERC, 5/84); Western Wisconsin VTAE, Dec. No. 17714-B (Pieroni, 6/81) aff'd by operation of law (WERC, 7/81); Brown County, Dec. No. 17258-A (Houlihan, 8/80) aff'd by operation of law (WERC, 9/80).

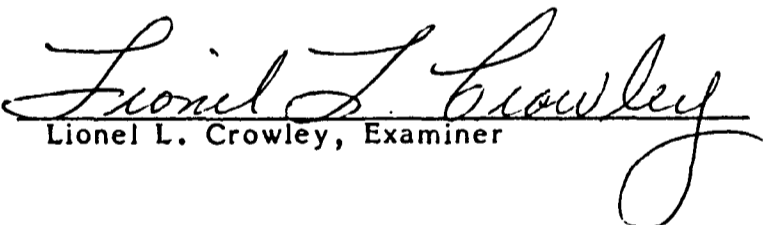
3/ Id; City of Waukesha, Dec. No. 11486 (WERC, 12/72).

4/ City of Brookfield, Dec. No. 20691-A (WERC, 2/84).

the interference and restraint prohibitions would serve the underlying purposes of the Act. 5/ The conduct complained of occurred on January 24, 1985, at about 8:00 a.m. when Wiskow informed Hardtke and Glodowski that Collins would be off that day and they would have to cover for him. In response to Hardtke's inquiry as to Wiskow's setting aside set times for Collins' Union activity, Wiskow indicated that she was getting nowhere and that it was up to the employes to put peer pressure on Collins to do his job. The Examiner has credited Hardtke's and Glodowski's testimony with respect to this statement based on their clear and unequivocal testimony. In contrast, Wiskow testified that she did not recall making this statement. Based on the respective testimony, the Examiner concludes that Wiskow made the comment. An examination of the comment and the context in which it was made leads to the conclusion that it contained neither an express or implied promise of benefit nor an expressed or implied threat of reprisal. Wiskow's statement was in response to Hardtke's inquiry about what was being done to set specific hours for Collins' activities. Wiskow's statement was tantamount to telling the employes that she was not going to do anything and they should talk directly to Collins about their complaint. This problem was not a new one and the employes' letter of May 4, 1984, indicates that Collins was making a conscious effort to work around the Recreation schedule so that discussions had apparently resolved the matter in the past without resort to setting particular times for Union activity. Additionally, Wiskow's response was in the form of a suggestion rather than a request that the employes do something. There was no evidence that Wiskow was making a preplanned solicitation of employes to interfere with Collins' protected activity or that she would be checking to see if the employes did as she suggested. Wiskow's response was directed to Collins' performing his duties during work time and was not directed at his refraining from engaging in protected activity. Wiskow did not suggest that the employes or Collins' not engage in protected activity but rather the comment was directed to when the activity could be done. Wiskow's comment does not request the employes to change their support of the Union or activity on behalf of the Union. Statements by an employer which do not contain a promise of benefit or threat of reprisal that would tend to coerce or interfere with employes in the exercise of their statutory rights do not offend any provision of MERA. Under the circumstances present in the instant case, it is concluded that Wiskow's comment did not constitute interference and consequently, the County has not violated Sec. 111.70(3)(a)1 of MERA and the complaint has been dismissed in its entirety. 6/

Dated at Madison, Wisconsin this 26th day of August, 1985.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By   
Lionel L. Crowley, Examiner

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5/ Milwaukee Public Schools, Dec. No. 20005-B (WERC, 2/84) citing Waukesha County, Decision No. 14662-A (Gratz, 1978).

6/ See also Haynes Motor Lines, 118 LRRM 1351, (NLRB, 1985); Nice-Pak Products, Inc., 104 LRRM 1127 (NLRB, 1980).