STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

LOCAL 1312, WISCONSIN COUNCIL OF COUNTY AND MUNICIPAL EMPLOYEES, AFSCME, AFL-CIO,	:	
Complainant,	:	Case 64 No. 38108 MP-1915
vs.	:	Decision No. 24288-A
JUNEAU COUNTY,	:	
Respondent.	:	

Appearances:

Mr. Jack Bernfeld, and Mr. Laurence Rodenstein, Staff Representatives, Wisconsin Council 40, AFSCME, AFL-CIO, 5 Odana Court, Madison, Wisconsin 53719, appearing on behalf of the Union.

Melli, Walker, Pease and Ruhly, S.C., 119 Martin Luther King, Jr. Boulevard, Madison, Wisconsin 53701, by Ms. JoAnn Hart and Mr. Jack D. Walker, appearing on behalf of the County.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Local 1312, Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO filed a complaint of prohibited practices with the Wisconsin Employment Relations Commission On January 9, 1987 in which it alleged Juneau County had committed prohibited practices within the meaning of Sec. 111.70, Stats. Hearing was held on March 31, 1987 in Mauston, Wisconsin. A stenographic record of said hearing was received July 15, 1987. The parties submitted briefs and reply briefs, the last of which was received September 14, 1987.

FINDINGS OF FACT

1. Local 1312, Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO (the Union) is a labor organization with offices at 5 Odana Court, Madison, Wisconsin.

2. Juneau County (the County) is a municipal employer with offices at Juneau County Courthouse, Mauston, Wisconsin.

3. The parties are signatories to a collective bargaining agreement containing the following pertinent provisions:

ARTICLE 1 - PREAMBLE

> This agreement is entered into by Juneau County, hereinafter referred to as the "Employer", and Local 1312, American Federation of State, County and Municipal Employees, AFL-CIO, hereinafter referred to as the "Union".

. . .

ARTICLE 2 - RECOGNITION

> The Employer recognizes the Union as the exclusive collective bargaining representative for all regular full-time and regular part-time employees of the Juneau County Courthouse, but excluding the Administrative Assistant II (Social Services), county maintenance supervisor, nutrition site managers, personnel director/insurance administrator, housing authority director, secretary to the district attorney, and soil and water technician, and excluding all other supervisory, confidential, managerial and professional employees.

. . .

ARTICLE 8 - HOURS OF WORK

8.01 The normal workweek shall be forty (40) hours.

. . .

ARTICLE 33 - DURATION

33.01 This agreement shall be in effect as of January 1, 1986, and shall remain in effect until December 31, 1987, and shall automatically renew itself from year to year thereafter unless either party notifies the other party at least thirty (30) days prior to the 31st day of December of 1987 of its desire to change or terminate the agreement, except prior to January 1, 1987 the parties agree to a reopening of the contract to bargain 1987 wages.

4. The Union and the County met August 26, 1986 to begin negotiations pursuant to the Article 33 wage reopener noted in Finding of Fact 3, above. At that meeting, the Union submitted the following proposal:

1. Modify Article 32 - Wages and Classification by:

(A) Increasing the 1986 base salary by 5.0% effective January 1, 1987.

(B) Reclassify each of the bargaining unit employee positions consistent with the 1986 requests for reclassification. Each classification request which was denied by the personnel committee in 1986, shall be implemented effective January 1, 1987.

At the same meeting, the County submitted the following proposal:

1. ARTICLE 32--Wages and Classifications:

The first sentence in section 32.01 be modified to read as follows:

Employees shall receive a 5.00% per hour decrease over the 1986 base salary effective January 1, 1987.

The parties met again in September, 1986. When the Union insisted it wanted a raise, County Board of Supervisors Chairman C.F. Saylor, asked, "How many lay offs do you want to take?" Staff Representative Laurence Rodenstein represented the Union at these two meetings.

5. No agreement was reached in said negotiations, and, on September 26, 1986, the Union petitioned the Wisconsin Employment Relations Commission for Interest Arbitration pursuant to Sec. 111.70(4)(cm)6, Stats. The parties waived investigation regarding the petition and submitted their final offers to the Investigator.

6. On October 13, 1986, at a meeting of the Personnel and Finance Committee, the Finance Committee asked the Personnel Committee to cut positions to save approximately $125,000.

7. Between October 13 and 16, 1986, County Personnel Committee Chairman James Barrett met with a group of Union members at the request of Union President Nancy McCullick. Barrett discussed the cuts the Finance Committee was contemplating, the positions being considered for elimination, and a reduction of the workweek to 37 1/2 hours. About 15 to 20 members of the 60 to 65 member unit were at the meeting. Rodenstein was not present. Reducing the workweek to 37 1/2 hours had not been proposed by the County at either the August or September negotiating session set forth in Finding of Fact 4, above.

8. On October 16, 1986, the Personnel Committee met to consider possible cuts pursuant to the Finance Committee's request. Among other items, the Committee requested a calculation of savings resulting from a reduction to a 37.5 hour work week and a 38.75 hour work week.

9. On October 23, 1986, the Personnel Committee discussed several items relating to the budget reduction. The Committee voted to bring the following two alternatives to the County Board at the October 29, 1986 meeting:

Resolution I: Reduce Courthouse hours to 37 1/2 hour week for union and non-union and eliminate two positions:

1. Assistant parts man in Highway Dept.
2. Clerk Typist II position in Aging/Nutrition Department.

Resolution II: To eliminate the following positions:

1. Clerk Typist II, Extension
2. Game Warden, Sheriff
3. Clerk Typist II, Veterans Service
4. Paralegal, D.A.
5. Assistant Parts Man, Highway
6. Clerk Typist II, Aging/Nutrition

To cut hours:

1. Register in Probate to 1560 hrs per year
2. Juvenile Intake Worker to 1560 hours per year
3. Clerk Typist II, Reg. Deeds to 1982 hours per year
4. Bookkeeper/accountant in County Clerks Office (1560)

Also a study to be conducted on the Park/Forestry and Zoning secretary positions.

Union President Nancy McCullick was present at the meeting and requested information to take to a union meeting. Pursuant to that request, Personnel Committee Chairman James Barrett sent her copies of the proposed resolutions.

10. The County Board of supervisors met on October 29, 1986. The Board authorized the Personnel and Negotiating Committees to cut up to $125,000 in costs.

11. On October 31, 1986, County Corporation Counsel Kenneth E. Goerke sent Rodenstein the following letter:

Dear Mr. Rodenstein:

On October 29, 1986, the Juneau County Board of Supervisors passed a motion charging the combined Personnel and Negotiating Committees with the job of cutting up to 125,000.00 from the 1987 Budget through personnel actions. As you probably know, several alternatives have been discussed regarding such cuts. The major alternatives discussed to date have all, in some manner, addressed a cut in hours and wages. Of course, such cuts would have to be negotiated with your union.

One main alternative advanced in the past was a cut in hours for Courthouse and non-union employees from 40 hours per week to 37.5 hours per week, with a corresponding pay cut. Recently, another suggestion has been made. It has been suggested that an alternative to pay cuts and/or personnel cuts would be for every employee of the county, including elected officials, to pickup the payment of some percentage of the payment of their retirement. Certainly, we would like to discuss such option with your union.

> Suffice it to say, the County would like to make the cut of this $125,000.00 as fair as possible. Therefore, we would like to hear the reaction of your union prior to November 12, 1986. We must have your reaction by that date. If we cannot have something instigated by that date, we will have to consider alternatives on a unilateral basis. A final decision must be made by November 18, which is the date on which the Budget is finally passed.

On November 4, 1986, Rodenstein responded with following letter:

> Dear Mr. Goerke:
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> Thank you for your letters of October 31, 1986. Be advised that it is the intention of the union to negotiate in good faith over all of the proposals set forth by the county for a successor agreement. We hope that it is also the intention of the county to negotiate in good faith. As the appropriate place for negotiations is through the bargaining process, the union has no comment outside of that proceeding. Given the public posture of the county committee, the union is properly concerned that the county may attempt to take bargainable action away from the negotiations' table. In the event of same, be advised that the union will avail itself of all appropriate statutory remedies.
>
> As the highway department's mediation/investigation will be conducted wth Amedeo Greco on November 10, 1986, the county should become cognizant of the union's position on the successor contract.

12. On November 12, 1986, the County Board of Supervisors adopted Resolution 86-68 which, as part of the $125,000 budget cut, called for elimination of several positions, including the Clerical Assistant in the Department of Aging and Nutrition. At that time, the Clerical Assistant was Charlotte Stange who intended to bump Millie Hovde in the event of a lay off.

13. On November 17 or 18, 1986, the County Board held a special meeting at which department heads could present arguments regarding proposed position eliminations and could suggest alternative budget cuts. At that meeting, Saylor was seated in front of District Attorney Daniel Berkos, and Barbara Hoile, who was at the time a Paralegal Aide in the District Attorney's Office. During a recess, some informal conversation took place. Hoile said to Berkos she thought it was unfair the Board was cutting positions. Saylor turned around and said if the Union would accept the 37 1/2 hour work week and a 3 percent cut on retirement, there would not be lay offs. Hoile responded that she was not in a position to change the minds of the members of the Union. One or two other exchanges took place between Hoile and Saylor, but no further evidence was adduced regarding these events.

14. The County Board met November 17, 1986. During a break in the meeting, County Supervisor Ron Burnner went to get a cup of coffee in the large room, where is found, among other things, a coffee pot, and the desk of Millie Hovde, who was, at the time, Adult Coordinator. Brunner entered the room at the same time as Charlotte Stange was about to get herself a cup of coffee. Stange poured coffee for herself and Brunner and both stood near Hovde's desk. Hovde and Stange knew Brunner through acquaintance with Brunner's wife. The following exchange ensued:

Stange: Are you Roy Brunner?

Brunner: Yes, do you want to poison me?

Stange: No, but I'm sure Millie will.

Brunner: If you people will agree to the 37 1/2 hour work week, these jobs won't have to be eliminated.

At the end of this exchange, Stange returned to her own office.

15. On November 18, 1986 the County Board of Supervisors adopted Resolution 86-68 which, as part of the $125,000 budget cut, called for the elimination of several positions including the Juvenile Intake Worker in the Judge's office and the Paralegal in the District Attorney's Office. At that time, the Juvenile Intake Worker was Robert Severson.

16. On November 19, 1986, County Finance Committee Chairman Ronald Brunner called Judge Brady's office to speak to the Judge. Judge Brady's telephone is usually answered by an employe who was not in the office when Brunner called. Consequently, Robert Severson, who was at the time a Juvenile Court Worker working in Judge Brady's office, answered the telephone. After Severson said the Judge was not in the office, the following exchange ensued:

> Brunner: Who is this? Bob? This is Ron. I might as well talk to you. If we can get the Union people to accept 37 1/2 hours and 3 percent reduction in our retirement, we will rescind the motion we passed yesterday.
>
> Severson: I don't find that's my job.

17. By remarks made to Hoile, Severson, Stange and Hovde by County Board members Saylor and Brunner, set forth in Findings of Fact 13, 14 and 16, above, the County did not individually bargain with employes.

18. By remarks made to Hoile, Severson, Stange and Hovde by County Board members Saylor and Brunner, set forth in Findings of Fact 13, 14 and 16 above, the County did not interfere with, coerce or restrain employes in the exercise of their collective bargaining rights.

CONCLUSIONS OF LAW

1. By remarks made to Hoile, Severson, Stange and Hovde, by County Board members Saylor, and Brunner, set forth in Findings of Fact 13, 14 and 16, above, the County did not individually bargain with employes, and therefore did not refuse to bargain within the meaning of Sec. 111.70(3)(a)4, Stats.

2. By remarks made to Hoile, Severson, Stange and Hovde, by County Board members Saylor and Brunner, set forth in Findings of Fact 13, 14 and 16 above, the County did not interfere with, coerce or restrain employes in the exercise of their collective bargaining rights and therefore did not commit a prohibited practice within the meaning of Sec. 111.70(3)(a)1, Stats.

ORDER 1/

IT IS HEREBY ORDERED that the complaint shall be, and hereby is, dismissed.

Dated at Madison, Wisconsin this 20th day of January, 1988.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Jane B. Buffett /s/ Examiner

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.

(Footnote one continued on page 6)

1/ (continued)

(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.

JUNEAU COUNTY

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

BACKGROUND

This complaint arises from the Union's allegation that the County, by remarks of its members of the Board of Supervisors Saylor and Brunner directed to bargaining unit members Hoile, Severson, Stange and Hovde, individually bargained with employes and interfered with, coerced and restrained them in exercise of their collective bargaining rights.

POSITIONS OF THE PARTIES

I. The Union

The Union asserts the County interfered with employe rights when County Board Officers spoke to individual employes promising the projected position elimination would not occur if the employes persuaded the Union to accept the County's desired change in the contractual hours of work. The Union finds this informal approach to affected employes coercive and threatening. According to the Union, the County, by failing to make formal bargaining proposals regarding the reductions, while also making informal remarks circumvented and undermined the bargaining agent. Numerous Commission and National Labor Relations Board, (NLRB), cases are cited to support the Union's position.

In its reply brief, the Union disputes the County's characterization of the facts, and alleges the County's position regarding the reduction in work hours never rose to the level of a bargaining proposal, and therefore subsequent comments to individual employes could not be seen as lawful communication of its bargaining proposals.

II. The County

The County contends the comments to individual employes were lawful communication of a bargaining position it had previously made known to the Union. It describes the statements as factual and non-coercive summaries of the County's position and its effects on individual employes, and it insists the statements did not amount to individual bargaining. It cites several Commission cases in support of its position.

In its reply brief, the County reiterates that it had properly submitted its bargaining position to the Union prior to individual communication, and it cites Commission precedent for the proposition that offers to bargain need not be formal. It emphasizes the unplanned and casual nature of the encounter which did not involve an attempt to bypass the Union. It discounts the relevancy of the NLRB cases cited by the Union.

DISCUSSION

It is a prohibited practice for a municipal employer to engage in individual bargaining over mandatory subjects of bargaining with employes represented by a bargaining agent. 2/ This prohibition, however, does not ban all communication between employers and employes. As the Commission stated in Ashwaubenon 3/

> Just as employes have a protected right to express their opinions to their employers, so also do employers enjoy a protected right of free speech in public sector collective bargaining. Accordingly, employers have long enjoyed the right to tell their employes what they have offered to their

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2/ Milwaukee Board of School Directors, Dec. No. 16231-E (McGilligan, 10/81) aff'd by operation of law, Dec. No. 16231-F (WERC, 10/81).

3/ Decision No. 14774-A (WERC, 10/77) (Footnotes omitted).

> union in the course of collective bargaining. However, notwithstanding labor relations policies modeled on the NLRA favor "uninhibited, robust, and wide-open debate in labor disputes," employers statements must stop short of coercion, threats or interference with employe rights, and the employer statements must not constitute bargaining with the employes rather than their majority collective bargaining representative.

Although the Union does not assert that the County sought to reach individual agreements with individual employes, it does contend individual bargaining took place during the three disputed incidents: Saylor's comments to Hoile and Brunner's comments to Hovde during a break in the November 17, 1986 4/ meeting, and Brunner's comments to Severson when Severson answered Judge Brady's telephone on November 19, 1986. The Union's argument overlooks the fact that none of these comments invited the employes to abandon the Union to achieve better terms directly from the County. Nor did the comments in any other way derogate or undermine the representative status of the Union. Instead, Saylor explicitly recognized the Union's authority by suggesting that if the Union accepted the workweek reduction, there would be no lay offs. Similarly, Brunner, speaking to Severson, suggested he get "the Union people" to accept the reduction. Brunner's comments to Hovde did not mention the Union, but there is no basis to conclude the words "If you people would agree . . ." was an attempt to induce the employes to circumvent the Union.

The totality of the circumstances of the disputed encounters indicate a lack of coercion. Each of the incidents took place by chance and in none of the incidents did the County Board member intentionally seek out the employe. The Hoile-Saylor exchange appears to have arisen merely because Hoile happened to be seated behind Saylor during the Board meeting. Indeed, Hoile herself shared responsibility for initiating the exchange when she mentioned to the people next to her that she thought the personnel cuts were unfair. Given that accusation, Saylor's comment must be characterized as a response, rather than the opening volley of a campaign to pressure individual union members.

Similarly, Brunner's conversation with Hovde arose out of the chance encounter as he went to the Adult Center room for a cup of coffee, and there is no evidence he went there with the intention of talking to Hovde. Likewise, Brunner's phone conversation with Severson was also mere fortuity: Brunner had intended to talk to Judge Brady, and could not have foreseen that Severson would answer Brady's phone, since another employe usually did so.

The unplanned nature of these encounters indicates there was no strategy to coerce individual employes, and further indicates the encounters could be reasonably perceived by the involved employe as casual. These meetings lacked the formal or ominous atmosphere surrounding an employer's deliberate visit to an employe's worksite or a summons for an employe to appear at the employer's office. Although, in other fact situations, remarks made at unplanned meetings could be coercive, in these circumstances, the unplanned aspect of these meetings contributed to their casual atmosphere.

The brevity of the meetings is also significant. In each instance, the County Board member, after suggesting the Union accept the reduced workweek, let the subject drop and the encounter ended. Neither Saylor nor Brunner responded to the employe's refusal to co-operate with any further remarks.

Finally, the disputed encounters contained no threat of reprisal or promise of benefit. No reprisal or benefit would flow from the employe's action or inaction that differed from the course the Board had already committed itself to: personnel reductions if the desired budget cuts were not achieved by other means. Thus, although Saylor and Brunner spoke to the affected employes who thereby might be more vulnerable to persuasion than other employes, the remarks still could not be considered threatening.

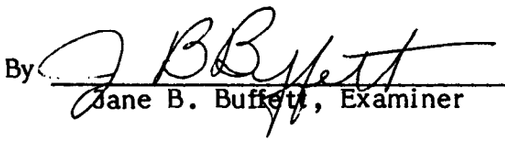
4/ The testimony indicates this meeting took place on November 17 or 18, 1986. For simplicity's sake, this discussion refers to the date as November 17, 1986.

In summary, as the disputed conversations did not attempt to make an individual agreement, or otherwise undermine the status of the bargaining representative, as the conversations were unplanned and brief, and as they contained no threat of reprisal or promise of benefit, they did not constitute individual bargaining or interference, restraint or coercion.

The Union emphasizes the factual distinction between the instant case and the Ashwaubenon case 5/ in which the employer's communication to its employes was found to be lawful. In Ashwaubenon, the letters to employes were based upon the employer's bargaining proposal. In the instant case, the County never, during either of the two formal bargaining meetings, made a formal proposal to reduce the workweek. Notwithstanding the Union's argument, the factual distinction is irrelevant. It was well-known that the County would not lay off targeted positions if savings were accomplished in another manner: the most prominent suggestion being a reduction in the workweek and an increase in the employes' contribution to pensions. Staff Representative Rodenstein formally learned of the County's position by Corporation Counsel Goerke's letter, dated October 31, 1986. At the request of Union President Nancy McCullick, Barrett discussed proposed lay offs and workweek reductions at a union meeting in mid-October, and Hoile testified the County's position was general knowledge and the subject of conversations around the Courthouse. The Examiner concludes that communication found to be lawful, for the reasons discussed earlier, are not rendered unlawful by the fact the County's position, which was well-known to the Union, was not formally proposed during the two bargaining sessions.

In conclusion, the County did not engage in individual bargaining in violation of its duty to bargain, and the County did not interfere with, restrain or coerce employes in the exercise of their collective bargaining rights.

Dated at Madison, Wisconsin this 20th day of January, 1988.

By 
Jane B. Buffett, Examiner

5/ ibid.