

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

DISTRICT COUNCIL 48, AFSCME, AFL-CIO,
and its Affiliated LOCAL 594,

Complainant,

vs.

MILWAUKEE COUNTY,

Respondent.

Case 376

No. 50983 MP-2893

Decision No. 28063-B

Appearances:

Podell, Ugent & Cross, S.C., 611 North Broadway, Suite 200, Milwaukee, Wisconsin 53202, by Ms. Nola J. Hitchcock Cross and Mr. Matthew J. Miszewski, for the Union.

Mr. Timothy R. Schoewe, Deputy Corporation Counsel, Milwaukee County, 901 North Ninth Street, Room 303, Milwaukee, Wisconsin 53233, for the County.

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

District Council 48, AFSCME, AFL-CIO and its affiliated Local 594, (the Union), on May 9, 1994, filed a complaint of prohibited practices with the Wisconsin Employment Relations Commission (the Commission) in which it alleged Milwaukee County (the County), had committed prohibited practices within the meaning of Chapter 111, Stats. On June 3, 1994, the Commission appointed Jane B. Buffett, a member of its staff, to act as Examiner, to make and issue Findings of Fact, Conclusions of Law and Order pursuant to Sec. 111.07(5), Stats. The parties attempted to settle their dispute on September 7, 1994 and November 30, 1994. No settlement was reached. Hearing was held on December 14, 1994 and March 20, 1995 in Milwaukee, Wisconsin. A transcript was taken, the last volume of which was received March 28, 1995. Briefs and reply briefs were filed, the last of which was received July 10, 1995. The Examiner, having considered the evidence and arguments of the parties, and being fully advised in the premises, makes and issues the following Findings of Fact, Conclusions of Law and Order.

No. 28063-B

FINDINGS OF FACT

1. District Council 48, AFSCME, AFL-CIO and its affiliated Local 594, (the Union), is a labor organization with offices at 3427 West St. Paul Avenue, Milwaukee, Wisconsin 53208.

2. Milwaukee County (the County), is a municipal employer with offices at 901 North Ninth Street, Milwaukee, Wisconsin 53208.

3. The Union and the County have been, and continue to be, signatories to a succession of collective bargaining agreements. The agreement provides for binding arbitration.

4. At sometime prior to October 1, 1990 the parties reached a grievance settlement which provided in pertinent part:

And by this settlement the parties further agree:

2. The president of Local 594 shall be released from County work. To the extent other officers need to be released, the Collective Bargaining Agreement shall apply.

3. This Agreement shall become effective October 1, 1990.

4. This settlement applies only to Local 594.

5. John Kropp has been employed by the County for 27 years. At the time of the events involved in this dispute, he was a Human Service Worker in the Department of Aging. Over the years he has held various offices in the Union.

6. Henry Zielinski is Director of Labor Relations for the County.

7. On May 10, 1993 Mr. Kropp was elected Vice President of Local 594. On or about May 13, 1993, there was a meeting between Mr. Kropp, Union Chief Steward Mike Andrews and Chester Kuzminski and Department of Aging Director Stephanie Sue Stein during which released time for Mr. Kropp to conduct Union business was discussed. Ms. Stein told Mr. Kropp that permission for his released time would have to be approved through the Director of Labor Relations. The Union has filed approximately 20 grievances alleging that the County has violated the collective bargaining agreement by failing to provide released time for Mr. Kropp to conduct Union business. The grievance and arbitration procedure has not been exhausted as to those grievances.

8. During the time that Mr. Kropp was Vice President, he was denied released time to attend to Union business. On some of those occasions he decided not to attend the meeting in question. On other occasions he attended the meeting and took vacation time to allow for his absence from the worksite.

9. Lois Chapple is an Economic Support Specialist in the County's Department of Human Services. She was Vice President of the Union for the period immediately proceeding Mr. Kropp's tenure as Vice President. When she had to be absent from her worksite for Union business, she would notify her supervisor that she was going to be out of the building and the length of time she would be gone. Upon her return she would again notify her supervisor. Her supervisor is not aware that such absences were recorded in any way.

10. Lee Henderson-Hortman is an Economic Support Specialist. Early in 1994 Henderson-Hortman become the Union's Chief Steward. When she had to be absent for Union business she would tell her supervisor, or her section supervisor or the section secretary when she was leaving and when she could be expected to return. During the department-wide conversion of the case files to the CARES program, which increased the workload for all the economic support specialists, Henderson-Hortman was not able to accomplish the conversion as quickly as the management desired. A special arrangement was reached in which her workload temporarily reduced and she agreed to try to schedule her Union business at the beginning or end of the workday.

11. Michael Andrews is an Emergency Coverage Worker for Protective Service Intake beginning in 1992. During 1993 and 1994 he was Chief Steward for the Union and had to be absent from the worksite in order to perform Union business. At those times he would notify his supervisor that he had to be gone, where he would be, and would notify his supervisor upon his return. Sometimes this notification was by writing the information on the supervisor's calendar. Emergency Coverage Workers occasionally have to be paged when they are working in the field, but Andrews' supervisor never called him when he was on Union business. Occasionally, he would leave without first getting permission, but his supervisor did not discipline him or criticize him for his absence.

12. Sigurd Skare is a Highway Maintenance Worker in the County's Highway and Fleet Operations. Skare is Vice President and Chief Steward of Union Local 1645. When he has to be absent to attend to Union business he gives his supervisor a written notice which stated when and where he was going and the purpose of the meeting. Occasionally meetings are cancelled by mutual consent because of an emergency such as a snow storm or a rolled truck on the freeway that requires overtime to which Mr. Skare would be entitled.

13. Cathy Muir is an Account Clerk at the Milwaukee County Mental Health Complex. During the relevant time period she has been Acting President and later President of the Local 1654. When Ms. Muir had to be absent from the worksite for union business she would generally

request permission of Administrative Assistant Sue Best. Ms. Best was allowed to grant approval based on guidelines she had been given by Human Resources Manager for the Mental Health Center, James Holzhauser, but if she had a question she was directed to consult with him or Robert Davis, Associate Administrator. On a few occasions Ms. Muir left without giving notice. Ms. Muir kept a log of the times she was absent for Union business. Ms. Best denied Ms. Muir released time to attend a first step grievance meeting based on her understanding that the President did not need to be present for a first step meeting, and on another occasion when Ms. Best was told by her supervisor that the absence was not allowed by the contract. There were some occasions in 1990 or 1991 or 1992 when Ms. Muir was denied released time because the office was busy.

14. John Nelson and Danel Crawford are Housing Program Analysts in the Department of Administration. Both Mr. Nelson and Ms. Crawford are Union officers. When they needed released time for Union business they must ask permission of their manager and recorded such time on their time sheet. They have not been denied the released time.

15. Mr. Kropp was the only Union officer whose released time for Union business had to be approved by the Director of Labor Relations.

16. The County was more restrictive in responding to Mr. Kropp's requests for released time for union business than in responding to such requests from other Union officers.

17. By treating Mr. Kropp, the Union's chosen officer, differently from other union officers, the County interfered with the Union's free choice of its representatives.

Based upon the above Findings of Fact, the Examiner issues the following

CONCLUSIONS OF LAW

1. By failing to release Mr. John Kropp to conduct Union business on the same basis as it released other Union officers, the County interfered with employees in the exercise of their rights guaranteed under Sec. 111.70(2), Stats., in violation of Sec. 111.70(3)(a)1., Stats.

2. By failing to release Mr. John Kropp to conduct Union business on the same basis as it released other Union officers, the County did not initiate, create, dominate or interfere with the formation or administration of any labor organization in violation of Sec. 111.70(3)(a)2., Stats.

3. The Union has not exhausted the contractual grievance procedure and therefore the Examiner declines to assert the Commission's jurisdiction over the alleged violation of Sec. 111.70(3)(a)5, Stats.

Based upon the above Findings of Fact and Conclusions of Law the Examiner issues the following

ORDER 1/

IT IS ORDERED that Milwaukee County, its officers and agents shall immediately:

1. Cease and desist from violating Sec. 111.70(3)(a)1, Stats., by interfering with employe rights.

2. Take the following action, which the Examiner finds will effectuate the policies of the Municipal Employment Relations Act:

(a) Reimburse Mr. Kropp's leave accounts for all the paid leave time that he liquidated when he was refused released time to conduct Union business.

(b) Notify all of its employes by posting, in conspicuous places in its place of business where employes are employed, copies of the notice attached hereto and marked "Appendix A." That notice shall be signed by the Director of Labor Relations and shall be posted immediately upon receipt of a copy of this Order and shall remain posted for thirty (30) days thereafter. Reasonable steps shall be taken to ensure that said notices are not altered, defaced or covered by other material.

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

IT IS FURTHER ORDERED that the remaining portions of the complaint alleging violations of Secs. 111.70(3)(a)2 and 5, Stats., be dismissed.

Dated at Madison, Wisconsin, this 9th day of October, 1995.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Jane B. Buffett /s/
Jane B. Buffett, Examiner

(Footnote 1/ appears on the next page.)

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.

This decision was placed in the mail on the date of issuance (i.e. the date appearing immediately above the Examiner's signature).

APPENDIX "A"

NOTICE TO ALL EMPLOYEES

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

WE WILL NOT interfere with employe rights by failing to release Mr. John Kropp to conduct Union business on the same basis as we release other Union Officers.

WE WILL reimburse Mr. Kropp's leave accounts for all the paid leave time that he liquidated when he was refused released time to conduct Union business.

MILWAUKEE COUNTY

By _____
Henry Zielinski, Director of Labor Relations

Dated this _____ day of _____, 1995.

THIS NOTICE MUST REMAIN POSTED FOR THIRTY (30) DAYS FROM THE DATE HEREOF AND MUST NOT BE ALTERED, DEFACED OR COVERED BY ANY OTHER

MATERIAL.

MILWAUKEE COUNTY

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

BACKGROUND

John Kropp has been employed by the County for 27 years, most recently as a Human Service Worker in the Department of Aging. On May 10, 1993, Mr. Kropp was elected Vice President of Local 594. 2/ On about May 13, 1993, there was a meeting between Mr. Kropp, Union Chief Steward Mike Andrews and Chester Kuzminski and Department of Aging Director Stephanie Sue Stein during which released time for Mr. Kropp to conduct Union business was discussed. Ms. Stein told Mr. Kropp that permission for his released time would have to be approved through the County office of Labor Relations. On several occasions his request for released time to conduct Union business was denied. The Union filed the instant prohibited practices complaint, alleging that this treatment of Mr. Kropp interfered with employee rights within the meaning of the Municipal Employment Relations Act.

POSITIONS OF THE PARTIES

The Union

The Union asserts the County imposed numerous impediments to Chief Steward John Kropp in his representation of the Union as Vice President. It compares the restrictions placed on him with the lesser restrictions placed on other Union officers. According to the Union, by treating various Union officers disparately, the County improperly interfered with the Union's choice of its representative. It finds this treatment of Mr. Kropp demonstrates the County's severe animus against a Union official. This hatred of Kropp was based, in part, on his philosophy regarding handling grievances, which the Director of Labor Relations disliked. Since the County placed restrictions on Kropp's time when he handled Union business, the Union had less representation when it elected Kropp than when it elected union officials whom the County preferred. The County retaliated against Kropp by forcing him to use other paid leave time to conduct Union business. The Union discredits the County's attempt to show that other Union officials had conditions imposed on their released time.

2/ The complaint was filed May 9, 1994, exactly one year after Mr. Kropp's election as Vice President. Sec. 111.07(14) Stats., made applicable to MERA by Sec. 111.70(4)(a), Stats., provides for a one-year limitation for the filing of prohibited practice complaints. The County asserted that this complaint was barred by the doctrine of laches. At the hearing, the Union presented evidence regarding events that occurred prior to May 10, 1993, but the alleged prohibited practices all occurred within the one year time period.

In addition to violating the Municipal Employment Relations Act, the County has violated the collective bargaining agreement by its conduct and this dispute should be decided by the Commission rather than being deferred to arbitration.

In its reply brief, the Union asserts that both in its complaint, and its response to the order to make more definite and certain, it has provided sufficient specificity to give rise to Commission jurisdiction over the matter, to state a claim upon which relief can be granted, and to meet the requirements of the order to make more definite and certain. It asserts that, contrary to the County's argument, the Commission does have jurisdiction over the matter. It argues the doctrine of laches does not apply here because there has been no unreasonable delay in bringing this action that would result in prejudice to the County and similarly that the doctrine of clean hands does not apply because there is no allegation of Union misconduct. Nor can it be considered harassment for the Union to seek to enforce its rights. Regarding the substance of the complaint, it reasserts its position that the County coerced and interfered with the Union rights by its treatment of Mr. Kropp.

The County

The County asserts the complaint should be dismissed on several grounds: it fails to state a claim upon which relief may be granted; laches; lack of jurisdiction by the Commission; the clean hands doctrine; the Union's harassment of the County in violation of Sec. 111.70 Stats.; the lack of a clear and concise statement of the facts constituting the alleged prohibited practice; and the failure to comply with the order to make more definite and certain.

According to the County, if the Union is really seeking to redress the grievances listed in its response to the order to make more definite and certain, it should use the parties' collective bargaining agreement arbitration mechanism. In response to the Union's implied complaint the Kropp was not permitted to attend to Union business when he was "on the clock," the County asserts that the evidence does not show that any of the other Union officials who testified performed Union business "on the clock." Also, there is no contract provision granting leave with pay for conducting Union business.

As to procedures for granting released time for Union business, there is no uniform system, but the procedures varies across the County and therefore Mr. Kropp, in being treated differently, was really treated the same as others.

In its reply brief, the County reiterates its position that the Union's complaint was vague, was not clarified by its response to the order to make more definite and certain, and that the Union brief alleges issues that were not raised in the Union's opening statement. It contends the released time the Union believes should have been afforded to Kropp was governed by Sec. 3.03 of the

collective bargaining agreement and the Union never sought the leave it claims Mr. Kropp should have been granted. Furthermore, Mr. Kropp was not an authorized person within the meaning of the contract because he did not present the County with evidence of his election until six months after the election. Mr. Kropp was always released for Union business, but on his own time. As to treating Mr. Kropp differently from other Union representatives, the County asserts that all Union representatives were treated differently depending upon their department and their department head.

DISCUSSION

The Order to Make More Definite and Certain

The County asserted that the complaint should be dismissed because the Union failed to comply with the Examiner's June 3, 1994 Order to make the complaint more definite and certain, and asserts that the complaint and the amended complaint did not satisfy the requirements of ERB. 22.02(2)(c) which provides that a complaint of prohibited practices shall contain:

A clear and concise statement of the facts constituting the alleged prohibited practice or practices, including the time and place of occurrence of particular acts and the sections of the statute that have been violated thereby.

The original complaint contained, inter alia, the following paragraphs:

10. Thereafter, on information and belief, various officials and representatives of Respondent Milwaukee County indicated their disapproval of the selection of John Kropp as Vice President of Local 594.

11. Since May, 1993 when Kropp was elected Vice President of Local 594, Milwaukee County has singled Kropp out as an individual and from time to time, failed and refused to meet with him or to allow him to engage in activities or provide him with information necessary to represent the members of Local 594.

12. Since May, 1993, Respondent Milwaukee County has attempted to dictate which officers of Local 594 should participate in various activities necessary for the representation of members of Local 594, rather than allowing Local 594 and its members to make such decisions.

13. On information and belief, Respondent Milwaukee

County has prohibited Kropp from engaging in union activities without prior written approval from the Director of Labor Relations, Henry Zielinski, and the Respondent Milwaukee County has not placed such requirement on any other representatives of Local 594 or any other local union affiliates of Complainant Milwaukee District Council 48, AFSCME, AFL-CIO.

14. By its conduct set forth in paragraphs 5 through 13 above, Respondent has violated Section 111.70(3)(a)1, 2 and 5, Stats.

The Union responded to the County's request for an order that the complaint be made more definite and certain on June 7, 1994, by listing 24 grievances by date with a description of each grieved action. I conclude that the original complaint and the June 7, 1994 response were sufficient to give the County fair notice of the allegations to which it was called to respond. Additionally, the hearing at which the Union put on its case was held December 14, 1994. Because of scheduling problems, the second day of hearing, at which the County had opportunity to defend itself, did not take place until March 20, 1995. The time period between the two hearing dates gave the County an opportunity to gather evidence in response to the evidence earlier presented by the Union. The County, therefore could not be found to be prejudiced by any lack of notice.

Alleged Violation of Sec. 111.70(3)(a)5, Stats.

Sec. 111.70(3)(a)5 Stats. provides that it is a prohibited practice for an employer to violate a collective bargaining agreement. Here, the Union claims that the County has violated the contract by refusing to grant Mr. Kropp released time to conduct Union business.

The County claims that the Commission lacks jurisdiction over this matter, which should properly be resolved through the parties' grievance arbitration procedure.

The Commission has a long-standing policy of declining to assert jurisdiction over an alleged violation of Sec. 111.70(3)(a)5, Stats., where the parties' collective bargaining agreement provides for grievance arbitration to resolve the dispute. This policy furthers the Commission's goals by honoring the parties' agreement and fostering collective bargaining. The Commission, will, however, assert jurisdiction in cases where the grievance procedure has been exhausted. 3/

In this case, there is no evidence the grievance procedure has been utilized to its limits as to the allegation that the County violated the collective bargaining agreement by refusing to grant Mr. Kropp released time to conduct Union business. The record shows that Mr. Kropp has filed over twenty grievances over this issue. There is no indication, however, of the status of those

3/ Waupun School District, Dec. No. 22409, (WERC, 3/85).

grievances. On this record, it is impossible to conclude that the grievance procedure has been exhausted. Consequently, the Examiner will not assert the Commission's jurisdiction over the breach of contract allegation and that portion of the complaint which alleges a violation of Sec. 111.70(3)(a)5 Stats. is dismissed.

Alleged Violation of Sec.111.70(3)(a)1, Stats.

Section 111.70(3)(a)1, Stats., provides that it is a prohibited practice for a municipal employer:

To interfere with, restrain or coerce employees in the exercise of their rights guaranteed in sub. (2)

The referenced Subsection provides:

(2) RIGHTS OF MUNICIPAL EMPLOYEES. Municipal employees shall have the right of self-organization, and the right to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection, and such employees shall have the right to refrain from any and all such activities except that employees may be required to pay dues in the manner provided in fair-share agreement.

This case involves the alleged interference with employee rights by the employer when it treated a particular Union officer more restrictively than it treated other Union officers. The Union argues that by placing severe limitations on Mr. Kropp in his representation of Union interests, the County was sending an implicit message to the Union membership that it would have greater Union representation if it elected an officer other than Mr. Kropp. In the Union's theory, the County was thereby exerting influence over the Union's selection of its representative.

In considering a similar situation, the Commission has held that it is improper for an employer to attempt to influence the union's choice of its officers. In West Allis-West Milwaukee School District 4/, the employer threatened to return the custodians' steward, who had newly posted into the position of storekeeper, to his former position of custodian because it asserted only a custodian could represent custodians. In finding the employer had committed a prohibited practice, the Commission noted:

Section 111.70(2), Stats., states on its face that among the rights of

4/ Dec. No. 23805-C, (WERC,11/87).

municipal employes are "the right to self-organization, and the right to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, . . ." In our view, the right to determine the identity of stewards, the shop-floor level of union representation, is clearly encompassed within those rights. 5/

Similarly, in, Milwaukee Board of School Directors, the Commission said, "[The employer's] refusal to recognize [the employe's] status as Building Representative is precisely the kind of conduct which Sec. 111.70(3)(a)1, Stats., seeks to deter." 6/ The choice of Union officers then, is to be insulated from the employer's influence.

In the instant case the Union alleges that the County sought to discourage the Union from electing Mr. Kropp as a union officer by impeding his representation of the Union.

The County does not deny that Mr. Kropp's released time had to be approved by the Director of Labor Relations; nor does it dispute that he was denied released time for Union business; the County, instead, defends itself by asserting that there was a great variety in the amount of released time granted Union officers, as well as in the procedures for obtaining it. According to the County's theory, since there was not a uniform method and basis for granting released time, it cannot be concluded that Mr. Kropp was singled out for disparate treatment.

The record, to the contrary, shows that although there was some variety in the access that different Union officers had to released time, the similarities were much more significant than the differences.

Union officers Chapple, Henderson-Hortman and Andrews were all allowed released time to attend to Union business. This evidence is especially noteworthy since Lois Chapple was the Union Vice President immediately preceding Mr. Kropp, therefore offering a clear comparison to Mr. Kropp's experience in receiving released time. Those officers had to notify their supervisor of the time and location of the union business, but they were not denied the requested time. This pattern held true for officers of another AFSCME local, Local 1654. Local 1654 officers Cathy Muir and Sigurd (Butch) Skare also were granted such released time. There were a few exceptions concerning Ms. Muir, the President of Local 1654. Ms. Muir was denied released time when she sought permission to attend a first step grievance meeting because her supervisor believed her presence was not necessary at such a meeting and she was denied released time on some occasions in 1990, 1991 or 1992 when the office was exceptionally busy.

Those few exceptions only serve to underline the predominance of the rule: in the

5/ ibid., at p. 5.

6/ Dec. No. 27867-B (WERC, 5/95), at p. 28.

overwhelming preponderance of occasions, union officers were granted released time for union business. In some departments, the supervisor understood the procedure as requiring the employe to seek permission, but as a matter of fact, permission was rarely denied. In other departments, the employe only had to inform his or her supervisor, prior to leaving the worksite, of the time and purpose of absence and the destination.

This pattern of granting of released time to other union officers is dramatically different from the restrictions imposed on Mr. Kropp, who on several occasions after his election to Vice-President after May 10, 1993 was denied the requested time. Additionally, the evidence shows that he was the only employe for whom permission had to be granted by the Director of Labor Relations. That differential treatment was so extreme that it could be reasonably understood by employes as an indication that Mr. Kropp's activities on behalf of the Union would be more restricted than those of other officers.

It is immaterial whether the County was motivated by hostility toward the Union. It is equally immaterial whether the County deliberately sought this chilling effect on employe's exercise of their rights. 7/ Unlawful interference is measured by an objective standard. In light of this treatment of Mr. Kropp, a reasonable person could conclude that the Union would receive greater representation if it were to elect an officer who would not be so closely limited and scrutinized. In this way, the County's actions interfered with the union's free choice of its officers, thereby inhibiting employes in their exercise of their rights under the statute. The disparate treatment of Mr. Kropp regarding released time for Union business, then, violated Sec. 111.70(3)(a)1., Stats.

Alleged Violation of Sec. 111.70(3)(a)2, Stats.

Sec. 111.70(3)(a)2, Stats., makes it a prohibited practice for a municipal employer to "initiate, create, dominate or interfere with the formation or administration of any labor or employee organization..." Domination involves an employer's active involvement in creating or supporting a labor organization which represents employes. 8/ A dominated labor organization is so controlled by the employer that it is presumably incapable of effectively representing employe interests. 9/ In this case, there is no showing that the County was involved in any way in supporting the Union. The portion of the complaint which alleges a violation of Sec. 111.70(3)(a)2, Stats. is dismissed.

The Remedy

7/ City of Evansville, Dec. No. 9440-C (WERC, 3/71).

8/ Dane County, Dec. No. 11622-1 (WERC, 10/73).

9/ Kewaunee County, Dec. No. 21624-B (WERC, 5/85); Dane County, Dec. No. 11622-A (WERC, 10/73).

The Examiner has ordered the County to cease and desist from interfering in the employes' exercise of their rights under the Municipal Employment Relations Act by failing to release Mr. Kropp to conduct Union business on the same basis as it releases other Union Officers. The County has also been ordered to post a notice that it will so desist.

In order to effectuate the purposes of the Act, the Examiner has also ordered that Mr. Kropp be made whole by the reimbursement of his leave accounts for all the paid leave time that he liquidated when he was refused released time to conduct Union business. This remedy will put Mr. Kropp in the position he would have been in, but for the County's unlawful interference by refusing him released time; and further, this remedy deters the County from such conduct in the future. 10/

Dated at Madison, Wisconsin, this 9th day of October, 1995.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Jane B. Buffett /s/
Jane B. Buffett, Examiner