STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

THE WISCONSIN STATE EMPLOYEES UNION (WSEU), AFSCME, COUNCIL 24, AFL-CIO, Complainant, vs. THE STATE OF WISCONSIN, Respondent.	Case 363 No. 51028 PP(S)-213 Decision No. 28189-A

Appearances:

Mr. Richard Graylow, Lawton & Cates, S.C., Attorneys at Law, 214 West Mifflin Street, Madison, Wisconsin 53703-2594, appearing on behalf of the Complainant Union.

Mr. David Whitcomb, Chief Legal Counsel, Department of Corrections, 149 East Wilson Street, P. O. Box 7925, Madison, Wisconsin 53707-7925, appearing on behalf of the Respondent State.

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

On May 19, 1994, the Wisconsin State Employees Union (WSEU), AFSCME, Council 24, AFL-CIO, filed a complaint with the Wisconsin Employment Relations Commission alleging that the State of Wisconsin had committed unfair labor practices within the meaning of Secs. 111.84(1)(a), (c) and (e), Stats., by its conduct at a meeting at Oakhill Correctional Institution on March 2, 1994. Thereafter, hearing on the complaint was held in abeyance pending efforts to settle the dispute. On October 5, 1994, the Commission appointed Raleigh Jones, a member of its staff, to act as Examiner to make and issue Findings of Fact, Conclusions of Law and Order, as provided in Sec. 111.84(4) and Sec. 111.07(5), Stats. A hearing on the matter was held in Madison, Wisconsin, on December 6, 1994, at which time the parties were given full opportunity to present their evidence and arguments. Both parties filed briefs and reply briefs by March 15, 1995. The Examiner having considered the evidence and arguments of the parties makes and issues the following Findings of Fact, Conclusion of Law and Order.

FINDINGS OF FACT

1. The Wisconsin State Employees Union (WSEU), AFSCME, Council 24, AFL-CIO, hereinafter referred to as the Union or Complainant, is a labor organization which maintains its offices at 8033 Excelsior Drive, Suite C, Madison, Wisconsin 53717-1903. It is the exclusive bargaining representative for certain statutorily created bargaining units, including the security and public safety bargaining unit.

2. The State of Wisconsin, hereinafter referred to as the State or Respondent, is an employer which has delegated responsibility for collective bargaining purposes to the Department of Employment Relations, which maintains its offices at 137 East Wilson Street, Madison, Wisconsin 53707-7855. The State also operates an agency known as the Department of Corrections which maintains its offices at 149 East Wilson Street, Madison, Wisconsin 53707-7925.

3. The Department of Corrections operates a correctional institution known as the Oakhill Correctional Institution. Oakhill is an unfenced minimum security institution located near Oregon, Wisconsin. At all times material herein, Catherine Farrey was the warden of Oakhill and, as such, the person in charge. At all times material herein, Cindy O'Donnell was the security director at Oakhill.

4. The WSEU and the State were parties to a collective bargaining agreement that was effective from November 13, 1993 to June 30, 1995. That agreement contained a grievance procedure which culminated in final and binding arbitration. The agreement also contained the following umpire arbitration procedure:

ARTICLE IV

Grievance Procedure

. . .

Section 12: Special Arbitration Procedures

. . .

B. Umpire Arbitration Procedure

1. Whenever possible, each arbitrator will conduct hearings a minimum of two (2) days

per month. District Council 24, Wisconsin State Employes Union and the State Division of Collective Bargaining will meet with the arbitrator at least once every six (6) months and select dates for hearings during the next six (6 (sic) month period.

2. The cases presented to the arbitrator will consist of campus, local institution or work site issues, short-term disciplinary actions (three (3) day or less suspensions without pay), overtime distribution, and other individual situations mutually agreed to.

3. Cases will be given an initial joint screening by representatives of the State Division of Collective Bargaining and the WSEU, Council 24. Either party will provide the other with an initial list of the cases which it wishes to be heard on a scheduled hearing date at least forty-five (45) calendar days prior to a hearing date. This list may be revised upon mutual agreement of the parties at any time up to fifteen (15) calendar days prior to the hearing date.

4. Statements of facts and the issue will be presented by the parties, in writing, to the arbitrator at least seven (7) calendar days prior to the hearing date unless the arbitrator agrees to fewer days for that particular hearing date. If contract language is to be interpreted, the appropriate language provisions of the contract will also be provided to the arbitrator prior to the hearing.

5. The arbitrator will normally hear at least eight (8) cases at each session unless mutually agreed otherwise. Whenever possible, the cases will be grouped by campus, institution and/or geographic area and heard in that area. The hearing site may be moved to facilitate

the expeditious handling of the day's cases.

6. The case in chief will be limited to five minutes by each side with an opportunity for a one minute rebuttal and/or closing. No witnesses will be called. No objections will be allowed. No briefs or transcripts shall be made. The Grievant and his/her steward, plus a department representative and the supervisor, will be present at the hearing and available to answer questions from the arbitrator.

7. The arbitrator will render a final and binding decision on each case at the end of the day on the form provided. The arbitrator may deny, uphold or modify the action of the Employer.

8. The cost of the arbitrator and the expenses of the hearing will be shared equally by the parties.

. . .

5. On February 23, 1994, several arbitration hearings were held at Oakhill pursuant to Article IV, Section 12 B before Arbitrator Jay Grenig. The State was represented at these hearings by Tomas Garcia, a DOC Employment Relations Specialist, and the Union was represented by Council 24 Staff Representative Al Highman. Also in attendance at these hearings were Oakhill Personnel Director Rita Smick and Local 3021 Union President John Thompson. Two of the cases heard that day by Grenig were the disciplinary grievances of employes Henderson and Ammerman. Henderson was suspended for three days for inaccurately completing an inmate count report. Ammerman was suspended for three days for not doing a cell search in accordance with established procedure. At the arbitration hearings on these two cases the Union attempted to persuade the arbitrator to uphold the grievances on the grounds that other employes at Oakhill were not complying with the Institution's policies and procedures regarding cell searches and inmate counts. To that end, some Correction Officers (hereinafter COs) apparently testified that there was wide-spread disregard of Institution post orders and policies and procedures concerning cell searches and inmate counts. No transcript was made of either the Henderson or Ammerman hearing. Arbitrator Grenig issued bench decisions on both cases that same day. He upheld both Henderson's and Ammerman's grievances and overturned their suspensions. The State complied with the Arbitrator's awards.

6. Afterwards, Garcia told Warden Farrey that he understood the Union to be taking the position at the Henderson and Ammerman arbitration hearings that a lot of Oakhill COs were not following the Institution's policies and procedures, specifically that COs were not following post orders concerning inmate cell searches and were preparing inaccurate inmate count logs or sheets. After hearing this from Garcia, Farrey talked to Smick about her impressions of what had transpired at the Henderson and Ammerman arbitration hearings. Smick confirmed what Garcia had told Farrey.

7. After hearing Garcia's and Smick's report that the Union's position at the Henderson and Ammerman arbitration hearings had been that a lot of COs were not following the appropriate procedures, Farrey became extremely concerned. Farrey indicated she was concerned for the following reasons: (1) making accurate inmate counts in any prison, especially in an unfenced facility such as Oakhill, are critical to maintaining security; (2) doing proper, thorough cell searches are necessary to providing a safe and secure facility for employes, inmates and visitors; (3) questions concerning the reliability or accuracy of DOC records could have a negative impact on inmate litigation. If DOC records were challenged on the grounds they were unreliable, the litigation interest of the Department could be compromised; and (4) if there was significant non-compliance with the Institution's policies and procedures, this would impair the facility's ability to enforce same.

8. Farrey then consulted with the DOC's Office of Legal Counsel and its Bureau of Personnel and Employment Relations. Farrey was advised in strong terms to look into the situation and take corrective action, if necessary. Two options were considered. One option was to conduct a formal investigation to determine the extent of compliance or non-compliance with the Institution's post orders and policies and procedures. The other option was to have a meeting with the local Union leadership to determine what the situation was (i.e. to get the facts).

9. Farrey elected the second option. She then directed Cindy O'Donnell, Oakhill's Security Director, to set up a meeting with the local Union leadership, which she did. O'Donnell told John Thompson, the Local Union President, that Farrey wanted a meeting. Thompson replied that he did not have a problem with that. Thompson, in turn, asked Troy Johnson, the Union Steward at Oakhill, to attend the meeting with him. The meeting was held on March 2, 1994, at Oakhill. Four people attended the meeting: Farrey, O'Donnell, Thompson and Johnson. Of the four, only Thompson had been present at the February 23 arbitration hearings. Grievants Henderson and Ammerman were not contacted about the March 2 meeting and did not attend.

10. Farrey did not have a written agenda for the meeting which lasted about one and one-half to two hours. At the outset of the meeting, Farrey told Thompson and Johnson that it had been reported to her that at the February 23 arbitration hearings for the Henderson and Ammerman grievances statements had been made by COs to the affect that there was widespread disregard of Institution post orders and policies and procedures, specifically those relating to inmate counts and cell searches. Farrey indicated that if this testimony was correct, then the security of the Institution

was jeopardized. Farrey also indicated that if it was the Union's position that a lot of COs were not following post orders or Institution policies and procedures, she would have to issue a memorandum reiterating that staff was to comply with the Institution's policies and procedures and was to fill out official State documents accurately. The matter was then discussed in detail. During that discussion Thompson and Johnson told Farrey that they believed there was not widespread non-compliance by the COs with the Institution's policies and procedures. Thompson and Johnson also indicated that any non-compliance by the COs with the Institution's post orders was not purposeful, but rather was due to questions arising from the clarity of those orders. The discussion then addressed the clarity of existing post orders and ambiguities in them that made it unclear what compliance should be when supervisory officers were required to interpret same. There was also discussion during the meeting about the Institution's policies and procedures concerning cell searches and inmate counts. During the discussion of the latter, the inmate count report involved in the Henderson arbitration was mentioned. That report contained inaccuracies in terms of the number of inmates counted. At the end of the meeting, Farrey felt her original concerns about Institution security were resolved and she was satisfied that COs were carrying out their responsibilities in a professional manner. Additionally, Farrey felt that the Union was not encouraging non-compliance with the Institution's policies and procedures. As a result, she felt there was no need to issue the memo she had mentioned at the outset of the meeting reiterating to staff that they are to follow policies and procedures. Thus, no such memo was ever issued to staff following the meeting. Farrey did not threaten anyone at the meeting on March 2, 1994. No discipline or adverse personnel action was taken against anyone as a result of the March 2, 1994 meeting.

11. Sometime after the March 2, 1994 meeting, Thompson talked with O'Donnell about the meeting. Thompson told O'Donnell that Farrey seemed upset about the umpire arbitration awards. O'Donnell responded that it seemed that way, and then stated words to the effect of "you win some, you lose some."

12. During the meeting with Thompson and Johnson on March 2, 1994, Farrey did not accuse the local Union's leadership of telling employes to lie or not follow post orders. Additionally, Farrey did not accuse the Union of using forged documents at the Henderson arbitration hearing. Farrey's action and/or statements at that meeting did not interfere with, restrain or coerce State employes in the exercise of their statutory rights and did not discriminate against employes because of their union activity.

13. The State has implemented the arbitration awards issued February 23, 1994 by Arbitrator Grenig involving employes Henderson and Ammerman.

Based on the above and foregoing Findings of Fact, the Examiner makes the following

CONCLUSION OF LAW

Respondent State has not been shown to have committed any violations of Secs. 111.84(1)(a), (c) or (e), Stats., by its conduct at the March 2, 1994 meeting at Oakhill.

Based on the above and foregoing Findings of Fact and Conclusion of Law, the Examiner makes and issues the following

ORDER 1/

The Union's complaint of unfair labor practices is dismissed.

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

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).

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Raleigh Jones /s/
Raleigh Jones, Examiner

DEPARTMENT OF EMPLOYMENT RELATIONS (CORRECTIONS)

MEMORANDUM ACCOMPANYING
FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

In its complaint, the Union alleged that the State violated Secs. 111.84(1)(a), (c) and (e), Stats., by its conduct at a meeting on March 2, 1994 at Oakhill. The State denied it committed any unfair labor practices by its conduct herein.

POSITIONS OF THE PARTIES

The Union contends the State violated SELRA by its conduct at the March 2, 1994 meeting at Oakhill. According to the Union, Farrey intimidated and coerced employes Thompson and Johnson at that meeting when she threatened to create and distribute a memo, when she alleged that the Union used a forged document at the Henderson arbitration hearing, and when she alleged that the Union witnesses at the Henderson and Ammerman arbitration hearings lied or were instructed to lie by Union officers. To support these contentions the Union relies exclusively on Thompson's and Johnson's account of what transpired at the meeting. The Union also asserts there was no need for the meeting in the first place. Assuming arguendo that a meeting was warranted, the Union argues there was no need for Farrey to give employes Thompson and Johnson the "third degree" at same or for her to question the arbitration witnesses' testimony or truthfulness. The Union believes that after the Employer lost the grievances before the arbitrator, the Employer looked for a scapegoat and a way to turn the table on the Union. The Union submits the Employer did this by holding the meeting and questioning the employes. In the Union's view, Farrey's questioning of the employes was designed to interfere, restrain and coerce their statutory rights. It further submits that Farrey's questioning of the employes damaged the grievance arbitration process. The Union therefore asks that Farrey's conduct at the March 2, 1994 meeting be found unlawful under SELRA, that the State be ordered to cease and desist from same, and that appropriate remedial orders be entered.

The State contends that its actions at the meeting on March 2, 1994 at Oakhill did not violate SELRA. At the outset, the State calls attention to the reason why Warden Farrey held the meeting in question with the local Union leadership. The State asserts that the meeting was called because Farrey had been told that at the Henderson and Ammerman arbitration hearings employes had testified that there was widespread disregard of Institution post orders and policies and procedures which related to cell searches and inmate counts. The State notes that this information was reported to Farrey by management representatives who were present at those arbitration hearings. The State avers this information caused the Warden to have concerns about the Institution's security. According to the State, these concerns were certainly warranted. It is the State's position that given these security concerns, it would have been irresponsible for it to do

nothing under the circumstances. The State argues that its ultimate decision to have a meeting with the local Union leadership at Oakhill to clarify the situation and get the facts was reasonable and justifiable. With regard to the meeting itself, the State contends that Farrey's questions of Thompson and Johnson did not interfere, restrain or coerce the employes' statutory rights. It also argues that Farrey's actions at that meeting were not intimidating or threatening. The State further contends that the Union's characterization of what transpired at the meeting is inaccurate. The State submits that at the end of the meeting, Farrey's original concerns about the Institution's security were resolved so no further action was necessary or taken. The State therefore concludes that the complaint is without merit and it asks that the complaint be dismissed in its entirety.

DISCUSSION

The Legal Framework

The complaint alleges violations of Secs. 111.84(1)(a), (c) and (e), Stats.

Section 111.84(1)(a), Stats., makes it an unfair labor practice for the State, as an employer, to "interfere with, restrain or coerce state employes in the exercise of their rights guaranteed in Sec. 111.82." 2/ To establish an independent violation of this section, it must be shown by a clear and satisfactory preponderance of the evidence that Respondent's action was likely to or had a reasonable tendency to interfere with, restrain or coerce said employes in the exercise of their protected rights. 3/ This standard does not require that the Complainant establish that Respondent's

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2/ Section 111.82 of SELRA declares that state employes:

> . . . 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 under this subchapter, and to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection. Such employes shall also have the right to refrain from any or all of such activities.

3/ See State of Wisconsin, Department of Administration, Dec. No. 15945-A (Michelstetter, 7/79), aff'd by operation of law, Dec. No. 15945-B (WERC, 8/79); State of Wisconsin, Department of Health and Social Services, Dec. No. 17218-A (Pieroni, 3/81), aff'd by operation of law, Dec. No. 17218-B (WERC, 4/81); State of Wisconsin, Dec. No. 19630-A (McLaughlin, 1/84); aff'd by operation of law, Dec. No. 19630-B (WERC, 2/84); State of Wisconsin, Department of Health and Social Services (DHSS), Division of Corrections (DOC), Dodge Correctional Institution (DCI), Dec. No. 25605-A (Engmann, 5/89), aff'd by operation of law, Dec. No. 25605-B (WERC, 6/89); State of Wisconsin, Dec. No. 25987-A (McLaughlin, 10/89), aff'd by operation of law, Dec. No. 25987-B (WERC, 12/89).

actions were intended to interfere with Complainant's statutory rights. 4/

Section 111.84(1)(c), Stats., makes it an unfair labor practice for the State, as an employer, to "encourage or discourage membership in any labor organization by discrimination in regard to hiring, tenure or other terms and conditions of employment." The Commission has required any Complainant alleging such a violation of this Section to prove that (1) he/she had engaged in conduct protected by Section 111.82, Stats., (2) the State was aware of that activity and was hostile to it, and (3) the conduct of the State or its agent(s) complained of was at least in part motivated by that hostility. 5/

Section 111.84(1)(e), Stats., makes it an unfair labor practice for the State, as an employer,

> to violate any collective bargaining agreement previously agreed to by the parties with respect to wages, hours and conditions of employment affecting state employes, including an agreement to arbitrate or to accept the terms of an arbitration award, where previously the parties have agreed to accept such award as final and binding on them.

A labor organization having exclusive bargaining status can file a complaint with the Commission under this section alleging (1) a breach of contract (specifically that the Employer has violated the parties' collective bargaining agreement); (2) a refusal to arbitrate; or (3) a refusal to accept the terms of an arbitration award.

Application of the Legal Framework to the Facts

Attention is focused first on the Union's contention that the State's conduct herein violated Sec. 111.84(1)(e). Neither the complaint nor the Union's briefs identify which type of claim under subsection (e) is involved herein (i.e. a breach of contract, a refusal to arbitrate, or a refusal to accept an arbitration award). Be that as it may, the type of claim involved here can nevertheless be

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4/ See State of Wisconsin, Dec. No. 25987-A (McLaughlin, 10/89), aff'd by operation of law, Dec. No. 25987-B (WERC, 12/89).

5/ State of Wisconsin, Department of Employment Relations v. Wisconsin Employment Relations Commission, 122 Wis.2d 132, 140 (1985); State of Wisconsin, Department of Employment Relations, Dec. No. 25393 (WERC, 4/88); State of Wisconsin, Dec. No. 25987-A (McLaughlin, 10/89); State of Wisconsin, Department of Employment Relations, Dec. No. 25284-B (Engmann, 5/90), aff'd, Dec. No. 25284-C (WERC, 11/90).

inferred since the Union is not alleging either a breach of contract or a refusal to arbitrate a specific grievance. This of course leaves the refusal to accept an arbitration award as the only remaining option. The arbitration awards involved here are the Henderson and Ammerman awards which Arbitrator Grenig issued on February 23, 1994. In both awards Grenig overturned the employe's suspension. It was clearly established at the hearing that the State has complied with both awards and made the employes' whole. That being so, no violation of Sec. 111.84(1)(e), Stats., has been shown.

The focus now turns to whether the State violated subsections (a) or (c). The Examiner believes that the following context is important in making that call. Following the arbitration hearings on February 23, 1994, Farrey heard that employes had testified at the Henderson and Ammerman hearings that a lot of COs were not following Institution post orders and policies and procedures relating to cell searches and inmate counts. This information was reported to her by Employer representatives Garcia and Smick who were present at those arbitration hearings. Upon hearing this information, Farrey had the following concerns about the Institution's security. First, making accurate inmate counts goes to the heart of the facility's security procedures. Second, doing proper cell searches are necessary for the safety and security of the facility. Third, questions about the accuracy of DOC records could adversely affect inmate litigation. Finally, if there was significant non-compliance with the Institution's policies and procedures by staff, this would impair the facility's ability to enforce same. All the witnesses at the hearing agreed that these concerns were genuine, justified and legitimate. If it was true, that "a lot of COs were not following appropriate procedures," as Farrey had heard, then she had every reason to be concerned about the situation. Farrey then decided to look into the situation further. She chose to do this by convening a meeting with the local union leadership. In the Examiner's view, Farrey's decision to convene such a meeting was reasonable and understandable given the security implications of what she had been told. There is nothing in the record which indicates that Farrey convened this meeting with the local union leadership because she was hostile towards grievance activity itself. Insofar as the record shows, Farrey convened the meeting so that she could get the facts and determine for herself whether her security concerns were warranted or not. Convening a meeting for this purpose does not violate SELRA.

The meeting itself will now be reviewed. In both the complaint and its initial brief, the Union characterizes how the meeting was called and what happened there as follows:

> . . . on or about March 2, 1994, the Warden at Oakhill Correctional Institution (OCI) ordered certain union witnesses, devotees, sympathizers, etc. to a meeting and then and there accused them of lying and using forged documents during the aforementioned arbitration proceeding. . . .
>
> The Warden, then and there, threatened to issue a Memo indicating

> that the Union used forged documents and further condoned disobedience of post orders.
>
> Further the Warden, then and there, questioned the veracity, honesty, and truthfulness of said Union, its witnesses, its sympathizers, etc. while further threatening to treat them all as "non-professionals."

The Examiner finds this characterization of what happened to be inaccurate. It is noted at the outset that Warden Farrey did not "order" anyone to appear at a meeting. Instead, O'Donnell told Thompson, the local union president, that Farrey wanted a meeting and he replied that he did not have a problem with that. Second, the "union witnesses, devotees, sympathizes, etc." who came to the meeting were the Union President (Thompson) and the Union Steward (Johnson). Employes Henderson and Ammerman were not invited to the meeting nor were any of the witnesses who testified at their arbitration hearings on February 23, 1994. Third, while Farrey did use the term "lie" during the meeting, a close reading of the record indicates that the term was used in the following hypothetical which she posed to Thompson and Johnson:

> If it's the Union's position that all staff are going to lie or if the Union is saying that staff can falsify documents, then these are my concerns." 6/

By phrasing her statement as a hypothetical, Farrey did not accuse individual employes of lying or the Union of encouraging employes to lie. The Examiner surmises that when Farrey made this statement Thompson and Johnson did not hear the critical word "if" and therefore misinterpreted what Farrey said. Fourth, while Farrey did say she was considering issuing a memo, she did not threaten to say in that memo that union officials were telling their people to lie. What Farrey did say about sending out a memo was as follows:

> I never said I was going to. What I pointed out to them was that on advice from legal counsel and personnel staff is that if, in fact, it was the union's position that, "A lot of correctional officers," were not in compliance with these fundamental job expectations, that there would be, in their opinion, a need for us to in effect send out a written directive, basically a job instruction, if you will, to all Oakhill staff to reaffirm to them that it was management's

6/ Transcript, page 78-79.

expectation that all policies and procedures, DOC's or Division of Adult Institution's, that these policies and procedures were to be complied with and that all official State documents were to be filled out accurately and completely to the best of the person's knowledge. 7/

7/ Transcript, page 67.

Fifth, during the discussion of existing post orders, Farrey did not accuse the Union's leadership of telling employes to not follow same (i.e. post orders). Finally, Farrey did not accuse the Union of using forged documents at the Henderson arbitration hearing held February 23, 1994. The document in question is the inmate count sheet utilized during the Henderson arbitration. While that document contained inaccuracies in terms of the number of inmates counted, the document was not a forgery. Farrey made the point in her testimony that she did not use the term "forgery" during the meeting to describe that inmate count sheet; rather, she used the terms "inaccurate" and "falsified." 8/ The meeting ended with Farrey being satisfied that her original security concerns were not warranted because the COs were complying with the Institution's policies and procedures.

The foregoing persuades the Examiner that the events that occurred at the meeting were not as characterized by the Union, but rather were as described by Farrey. I therefore credit Farrey's account of what she said at the meeting. The statements Farrey made in the meeting did not contain threats of reprisal or promise of benefit. That being so, Farrey did not interfere with employes' protected rights. Likewise, none of Farrey's actions during or after the meeting discriminated against any employes because of their union activity.

In summary then, it is concluded that the State did not act unlawfully when it held a meeting with Thompson and Johnson following the February 23, 1994 arbitration hearings to ascertain whether there was widespread disregard of Institution policies and procedures which related to cell searches and inmate counts. Additionally, Farrey's conduct at that meeting was not unlawful. Consequently, no violation of Secs. 111.84(1)(a) or (c), Stats., has been shown. Accordingly, the complaint has therefore been dismissed in its entirety.

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

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Raleigh Jones /s/
Raleigh Jones, Examiner

8/ Transcript, page 68.