STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

INTERNATI ONAL BROTHERH OOD OF ELECTRICAL WORKERS, Complainant

vs.

MEDFORD ELECTRIC UTILITY, Respondent

Case 26
No. 52399
MP-3013

Decision No. 28440-E

Appearances:

Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., Attorneys at Law, 1555 North Rivercenter Drive, Suite 202, Milwaukee, Wisconsin 53212, by **Ms. Marianne Goldstein Robbins**, for the Complainant.

Ruder, Ware & Michler, S.C., Attorneys at Law, 500 Third Street, P.O. Box 8050, Wausau, Wisconsin 54402-8050, by **Mr. Jeffrey T. Jones** and by **Ms. Cari L. Hoida**, for the Respondent.

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

On May 29, 1997, Examiner Daniel J. Nielsen issued Findings of Fact, Conclusions of Law and Order with accompanying Memorandum in the above matter wherein he concluded that the Respondent Medford Electric Utility had not committed any of the prohibited practices alleged by Complainant International Brotherhood of Electrical Workers, Local 953. He therefore dismissed the complaint.

On June 18, 1997, Complainant filed a petition with the Commission seeking review of the Examiner's decision pursuant to Secs. 111.70(4)(a) and 111.07(5), Stats. The parties thereafter filed briefs, the last of which was received on August 4, 1997.

Having considered the matter and being fully advised in the premises, the Commission makes and issues the following

ORDER

The Examiner's Findings of Fact, Conclusions of Law and Order are affirmed.

Given under our hands and seal at the City of Madison, Wisconsin, this 9th day of October, 1997.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/
James R. Meier, Chairperson

A. Henry Hempe /s/
A. Henry Hempe, Commissioner

Paul A. Hahn /s/
Paul A. Hahn, Commissioner

MEDFORD ELECTRIC UTILITY

MEMORANDUM ACCOMPANYING ORDER AFFIRMING EXAMINER'S FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

BACKGROUND

On March 15, 1995, the International Brotherhood of Electrical Workers, Local 953 (the Complainant) filed a complaint of prohibited practices against Medford Electric Utility, City of Medford (the Respondent) alleging that the Respondent had violated the Municipal Employment Relations Act by: (1) failing to bargain in good faith over the transfer of bookkeeping work from the bargaining unit, refusing to provide requested information, refusing to meet with the Complainant, and unilaterally implemented the transfer, resulting in the partial layoff of a unit member; (2) discriminating against employes because of their protected concerted activity; and (3), through these acts, (1) and (2) above, interfering with the protected rights of unit employes.

The Respondent generally denied any statutory violations.

A request for grievance arbitration arising from the same series of events was also submitted to the Commission by Complainant.

On June 19, 1995, the Wisconsin Employment Relations Commission assigned James W. Engmann, a member of its staff, as Arbitrator to hear and decide the arbitration and simultaneously appointed him Examiner to hear and decide the complaint. Due to the resignation of Engmann, the Commission, on September 1, 1995, appointed Jane B. Buffett, another member of its staff, to serve as Arbitrator in the above noted matter and also as Examiner in the complaint.

The parties agreed to a consolidated evidentiary hearing on the arbitration and the complaint which was held before Examiner Buffett in Medford, Wisconsin on September 13 and 14, 1995, and then completed in Madison, Wisconsin on October 2, 1995. A transcript of each day of hearing was received by November 14, 1995. The parties filed briefs and reply briefs, the last of which was received February 1, 1996. On October 8, 1996, the parties stipulated to certain additional facts to be considered part of the evidentiary record.

On December 5, 1996, Arbitrator Buffett issued her Award, concluding that there was no violation of the contract. Subsequently, owing to Examiner Buffett's unavailability due to illness, the Commission on January 7, 1997, appointed Daniel Nielsen, an Examiner on its staff, to make and issue appropriate Findings of Fact, Conclusions of Law and Order.

THE EXAMINER'S DECISION

As to the portions of the complaint which raised duty to bargain issues, the Examiner concluded: (1) Respondent had no duty to bargain over the transfer of work and resultant layoff because the parties' contract reflected that they had already bargained on those subjects; (2) assuming that the duty to meet at reasonable intervals attaches to a situation in which there is no underlying duty to bargain, Respondent reasonably made itself available to meet with Complainant; and (3) considering the totality of the circumstances, Respondent's conduct when providing requested information to Complainant did not violate Respondent's duty to bargain in good faith. Therefore, the Examiner dismissed the alleged violations of Sec. 111.70(3)(a)4 and 1, Stats.

As to the allegation that Respondent's conduct violated Sec. 111.70(3)(a)3 and 1, Stats., the Examiner concluded that the record did not establish the Respondent was acting out of hostility toward the Complainant or the employes who had exercised rights protected by Sec. 111.70(2). Therefore, he dismissed these allegations.

DISCUSSION

In its petition for review and supporting briefs, Complainant asks that we reverse the Examiner and order Respondent to reinstate the laid-off employe and make her whole and return to the bargaining unit all work which was illegally transferred and subcontracted.

Respondent urges that we affirm the Examiner in all respects.

Looking first at the refusal to bargain issues, the Examiner's decision contains the following analysis:

> A. Section 3(a)4, MERA - Duty to Bargain
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> With respect to those aspects of the complaint which raise an issue of a refusal to bargain over the decision to partially layoff Jackson or the effects of the layoff, the decision of Arbitrator Buffett is dispositive. 2/ The arbitrator determined that the Utility had the contractual right to transfer work, which was the underlying cause of the layoff. The contract itself contains a layoff provision, as well as sections devoted to the status of and

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2/ CITY OF WISCONSIN RAPIDS, Dec. No. 27466-A (Shaw, 5/11/93).

benefits enjoyed by part-time employees. 3/ Moreover, the parties specifically addressed the possibility of layoffs resulting from work transfer in their negotiation four months before the layoff of Jackson, and the Union dropped its proposal. Thus the parties had already satisfied their duty to bargain over transfers of work and reductions in force at the time of this layoff. 4/

B. Section 3(a)4, MERA - Duty to Meet at Reasonable Times

The other aspects of the 3(a)4 charges are the allegations that the City failed in its duty to provide requested information and to meet at reasonable times for bargaining. The parties have a mutual obligation to meet for bargaining at reasonable intervals, and may not frustrate the bargaining process through their scheduling tactics. 5/ In this case, the City offered to meet within fourteen days of Haley's February 23rd letter requesting a meeting. Haley asked for a meeting on March 6, 7 or 10th. Jones was unavailable on the 6th and 10th, and the 7th was unavailable because it was the date of the Council meeting. He counter-proposed March 9, 22, 23 or 29th. Even assuming for the sake of argument that the duty to meet at reasonable intervals for collective bargaining attaches to a situation where there is no underlying duty to bargain, it cannot be said that an offer to meet on March 9th constitutes an unfair labor practice when the Union itself offered March 10th as a meeting date. Granting that March 9th was two days after the Council was scheduled to vote on the proposal to partially layoff a cashier, the Union was aware of the March 7th date for the Council meeting when it proposed March 10th as an acceptable meeting date.

C. Section 3(a)4, MERA - Duty to Provide Information

The remaining 3(a)4 issue is whether the City complied with its duty to provide relevant information to the Union. It is axiomatic that the duty to bargain extends to providing information necessary to the administration of an existing agreement, as well as to the negotiation of a new or successor agreement, and to do so in a timely fashion:

3/ MADISON METROPOLITAN SCHOOL DISTRICT, Dec. No. 15629-A (Davis, 5/1/78).

4/ SCHOOL DISTRICT OF CADOTT COMMUNITY, Dec. No. 27775-C (WERC, 6/23/94).

5/ JEROME FILLBRANDT PLUMBING & HEATING, Dec. No. 27045-C (WERC, 9/29/92).

> This duty exists as to requests or demands for information relevant to the bargaining agent's negotiation with the employer for a collective bargaining agreement as well as that relevant to its policing the administration of an existing agreement. Information relative to wages and fringe benefits is presumptively relevant to carrying out the bargaining agent's duties, there being no need to make a case by case by determination of the relevancy of such requests. However this presumption has not been applied to other information sought, and the burden falls initially upon the bargaining agent to demonstrate the relevancy of said information to its duty to represent unit employees. Milwaukee Board of School Directors, Dec. No. 15825-B (Yaeger, 6/79)

The burden of demonstrating relevance is measured against a liberal "discovery type" standard, rather than a "trial type standard". 6/ Additionally, the exclusive representative must make some demonstration of the necessity of the specific pieces of evidence sought if it does not relate to wages or fringe benefits. Even though information may be relevant, the bargaining representative's right to information is not absolute, and the provision of the same information in a form different from that requested will satisfy the duty to bargain. 7/ Furthermore, even relevant information may be withheld in whole or in part if the employer can make a specific and substantial claim that its interest in confidentiality outweighs the union's interest in securing the information. 8/ In this case, there is no claim that the information

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6/ MORAINE PARK VTAE, Dec. No. 26859-B (WERC, 8/9/93); LACROSSE SCHOOL DISTRICT, Dec. No. 26541-A (Crowley, 3/91).

7/ See, MILWAUKEE BOARD OF SCHOOL DIRECTORS, Dec. No. 24729-A (Gratz, 5/88), at page 10, and cases cited therein.

8/ LACROSSE SCHOOL DISTRICT, Dec. No. 26541-A (Crowley, 3/91); DETROIT EDISON V. NLRB, 440 US 301, 100 LRRM 2728 (1979); MINNESOTA MINING & MFG. CO., 261 NLRB 27, 109 LRRM 1345 (1982).

requested by the Union was irrelevant or privileged. The City concedes that it had the duty to provide the information requested, and in fact did provide the requested information. 9/ The only question is whether the information was provided in a timely fashion.

In his February 23rd letter, Haley requested:

. . . a copy of the report prepared by Anderson Tackman & Company referred to in the Notice of Public Meeting for February 20, 1995. We also request any correspondence, proposals, reports or other documents between the City of Medford and Anderson Tackman & Company which concern changes in the terms and conditions of employment of employees whom we represent at the Electric Utility or concerning charges which may impact on their terms and conditions of employment...

On March 2nd, Union counsel Robbins wrote City counsel Jones:

> . . . the Union requests that the City of Medford provide the Anderson Tackman report and all correspondence or other documents between Anderson Tackman and the City which, in any way, refer to the potential layoff or reduction in hours of employees within the bargaining unit or any changes in operations which could lead to such action...

The AT reports and relevant minutes were received by Jones from the City on March 2nd and he forwarded the reports to the Union on March 3rd. On March 8th, the Union's counsel requested a copy of the contract between the City and AT, as well as invoices and other correspondence relative to the subcontracting. While there was no formal contract with Anderson Tackman, there was a proposal to the City for providing payroll services, and this proposal was provided to Haley by letter dated March 14th.

9/ In this regard, the Examiner notes that while the data underlying the 1993 AT report was not provided until the hearing in this matter, the data consisted of notes retained by Anderson Tackman. Those notes were obtained directly from Anderson Tackman through a subpoena and there is no evidence that those notes were in the City's possession at any time prior to the hearing.

The AT reports were provided to the Union within seven days of the date on which the initial request for information was received by the City. The AT proposal was provided within eighteen days of the receipt of that request. The proposal certainly fell within the scope of the initial request, and should have been included in the City's first response to that request. Even the City does not seriously dispute that point, contending instead that this was merely an error by City officials caused by the fact that the AT proposal was not limited to Utility payroll services.

A refusal to provide relevant information is a per se violation of the duty to bargain. Whether a delay in providing information is unreasonable or inconsistent with the statutory duty is a subjective determination, based upon whether it constitutes bad faith under the totality of the circumstances. 10/ In this case, the Examiner concludes that the passage of one week before responding to the Union's request for information was not unreasonable, given the City's desire to have its legal counsel review the request and the data. The delay of eleven days beyond the original response in providing the information about the proposal is less reasonable, but standing alone it does not rise to the level of a prohibited practice. The existence of the subcontracting arrangement itself was known to the Union, and in the context of a decision to grieve or not, the City would gain little if any advantage by concealing the precise details of its business arrangement with AT, and the Union's view of its contractual rights would not be likely to change as a result of what it learned from the AT proposal. In making this observation, the Examiner does not mean to suggest that the City had any right to withhold this information. Rather the nature of the information, the absence of tactical advantage to the City through delaying its production and the likely impact of the requested information on the Union's decision to proceed with a grievance all go to the likelihood that the failure to immediately produce the AT proposal was a good faith error, and to the degree of prejudice suffered by the Union as a result of the error. These factors are weighed under the totality of the circumstances test for assessing whether the City's conduct constitutes bad faith.

10/ FRANK CARMICHAEL, D/B/A OLD MARKET SQUARE THEATRE, Dec. No. 22243-C (WERC, 12/86); MAYVILLE SCHOOL DISTRICT, Dec. No. 25144-D (WERC, 5/5/92).

> Finally, as evidence of overall bad faith, the Union cites Jones' letters of February 28th and March 3rd, in which he appears to take advantage of a typographical error in Haley's request for information. In his February 23rd letter to the City, Haley inadvertently requested information related to "charges" which might impact on conditions of employment, rather than "changes". In his February 28th letter, Jones said he was not aware of any "charges" that might impact conditions of employment and, when Union counsel Robbins subsequently challenged this claim, Jones wrote back that he was responding to the specific request, and had not understood Haley to be asking for information about changes impacting on working conditions. The Union's claim that this response was disingenuous is a fair characterization. Given the balance of Haley's letter, it had to have been clear to Jones that the use of the word "charges" was a typographical error and that the Union was in fact addressing the impact of changes in working conditions. Whatever the reason for Jones' decision to act as though he did not understand the request for information, the predictable result was to cause doubts about the City's candor and good faith. Having noted that, however, the Examiner does not find any item of information that would have been provided absent the typographical error that was not provided to the Union. Aside from generating suspicion and annoyance, Jones' decision to take advantage of the obvious typographical error appears to have had no actual impact on the Union's ability to evaluate or process this grievance. This aspect of the City's conduct causes a closer examination of the other allegations of bad faith, but on the record as a whole, the Examiner concludes hat the City's responses to the Union's requests for meetings and information, although not perfect, were not marked by an illegal desire to frustrate the Union's efforts to effectively represent its members, and did not have that effect.

Complainant contends the Examiner erred by equating Arbitrator Buffett's finding of no contract violation with a finding that the Respondent had no mid-term obligation to bargain. Complainant asserts the contract is silent as to transferring/subcontracting clerical work and thus argues the Respondent was obligated to bargain with Complainant over this mandatory subject of bargaining. Complainant further argues that it did not waive the right to bargain by its conduct during negotiations over the existing agreement.

Complainant further alleges the Examiner erred by failing to find the Respondent violated its duty to bargain when it "ignored, avoided or deferred" Complainant's "repeated and persistent efforts" to bargain over the decision to subcontract and the impact thereof on employes. Complainant argues the Respondent improperly refused to meet with Complainant or provide Complainant with necessary information until after Respondent had finalized the decision to lay off an employe.

Looking first at the question of whether the Respondent had a duty to bargain with Complainant over subcontracting/work transfer/layoff issues, we affirm the Examiner's conclusion that Respondent had no such duty. As reflected by the terms of the parties' contract and Arbitrator Buffett's application thereof in her Award, these parties had already bargained over these issues and were entitled to rely on that bargain for the duration of the agreement. 1/ Contrary to Complainant's argument and unlike the SHEBOYGAN COUNTY case 2/ cited by Complainant, the fact that both parties dropped proposals to modify existing subcontracting language in December, 1994 when the parties settled their 1995-1997 contract does not establish contractual silence but rather establishes a willingness to continue to live with the existing allocation of rights found in their expiring 1992-1994 agreement. Thus, because the 1995-1997 contract already dealt with all of the issues which the Complainant wished to address through mid-term bargaining, the Examiner correctly concluded that Respondent had no obligation to bargain further with Respondent over these matters.

Turning to the question of whether the Respondent violated Sec. 111.70(3)(a)4, Stats. by waiting until March 20, 1995 to meet with Complainant regarding Jackson's layoff, we again affirm the Examiner. As noted by the Examiner, it can reasonably be argued that if there is no underlying duty to bargain over a matter, the obligation to meet at reasonable times ought not be applicable. However, so long as a party is voluntarily willing to engage in bargaining, we are satisfied that party assumes the related obligation of meeting at reasonable times to engage in such bargaining. Having considered all the facts and circumstances, we are persuaded Respondent met that obligation. 3/ Particularly in light of the fact that the general controversy over subcontracting/work transfer/layoffs had been swirling for quite some time; the fact that Complainant was given the opportunity to and did in fact make a presentation to the Council at the March 7 meeting; the fact that the Respondent was available and willing to meet as early as March 7 in response to the February 23 letter from Complainant requesting a meeting; and the fact that the parties ultimately met before the effective date of the layoff to discuss alternatives, we are persuaded that no violation of Sec. 111.70(3)(a)4 occurred. As we noted in SHEBOYGAN COUNTY, supra, it is not inherently inconsistent with the duty to bargain in good faith for the employer to go through its own political decision making process before it meets with a union to discuss alternatives.

The last duty to bargain issue raised is whether Respondent violated Sec. 111.70(3)(a)4, Stats. by the manner in which it responded to Complainant's request for information. We again affirm the Examiner's conclusion that no violation occurred. Because we find his analysis persuasive and responsive to the issues raised by Complainant on review, we will make no further comment.

Turning to the alleged violation of Sec. 111.70(3)(a)3, Stats., the Examiner's decision contained the following analysis:

> D. Section 3(a)3, MERA - Discrimination
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> Finally, the Union asserts that the decision to transfer work to the City Hall and to AT was motivated by hostility to the protected activities of the unit employees, in that the City resented their success in bargaining good wage rates and transferred the work as an act of retaliation. Under the Commission's long-standing Muskego-Norway line of cases, 11/ the test of whether an employer's actions constitute discrimination in violation of Section 111.70(3)(a) 3 has four prongs:
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> 1. The employee was engaged in protected activity;
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> 2. The employer was aware of the activity;
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> 3. The employer was hostile to the activity;
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> 4. The employer's conduct was motivated, in whole or in part, by hostility to the protected activity.
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> Here the act of bargaining contracts is obviously protected activity and the City was necessarily aware of the activity, having taken part in the process. The question is whether this created hostility on the City's part and, if so, whether the decision to layoff Jackson was the result of that hostility.

11/ MUSKEGO-NORWAY C.S.J.S.D. NO. 9 V. WERB, 35 Wis. 2d 540, 151 N.W. 2d 617 (1967).

Arbitrator Buffett extensively discussed the City's motives for removing the work from the Utility in the context of the Union's argument that it was a bad faith effort to undermine the unit and the contract. She concluded that, even though the evidence was "troublesome", the motive for the transfer of work was a desire to implement the WTA and AT reports, and realize the efficiencies and cost savings projected by those studies. Unlike the issue of whether there was a duty to bargain over the work transfers or the layoff, the arbitrator's conclusions are not binding on the Examiner where the issue is illegal discrimination. Instead, the Examiner conducts a de novo review of the evidentiary record and draws his own conclusion. On the basis of that review, however, the Examiner finds little to disagree with in Arbitrator Buffett's analysis.

The Union's assertion of discrimination is based on statements attributed to City officials to the effect that high salaries paid to the Utility clericals were the motivation for transferring work out of the unit, as well as a confrontation between Jackson and Alderman Bix at a Common Council meeting and a question by Alderman Parent as to whether reducing the Utility clerical staff would break the Union. Both the confrontation and the question came about in July of 1994. The City denies that wage cost was the motivation, citing instead the efficiencies to be gained by consolidating its payroll. This is a very fine distinction, one that blurs into nothingness under close review. Completing a given function more efficiently connotes achieving it in a manner that saves either time or cost. The saving of time is desirable largely because it means less cost. Either way, increases in efficiency are almost always pursued because of savings in cost, and in a service industry savings in cost are almost always related to savings in wages.

Accepting the Union's argument that a desire to save money by obtaining a service at a lower cost than the cost of wages can be equated with illegal hostility to the negotiation of those wages would mean that virtually any cost cutting effort in the public sector would be a per se violation of Section 111.70 (3)(a)3. The law of municipal labor relations does not exist in isolation from the law of supply and demand. The higher the cost of having a service performed by an employee, the more attractive alternate sources of that service become. This is true no matter whether the

wage was collectively bargained, individually negotiated or unilaterally set. Even where employees are informed across the bargaining table that success in negotiating higher wages will result in layoffs -- a far more direct linkage between the protected activity and the detrimental consequence than exists in this case -- no illegal motive is automatically inferred. 12/ If the employer's motive in transferring work or laying off employees is to save money relative to negotiated wage rates, that motive may trigger a bargaining obligation, but it is not an illegal motive for purposes of Section 111.70(3)(a)3. 13/

The Union points to the fact that the reorganization of the billing function did not actually achieve greater efficiency or save money. The record shows that the Utility staff were not inefficient, that the City Hall was not able to perform all of the

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12/ PRICE COUNTY, Dec. No. 24504-A (Gratz, 4/88); See also, CITY OF BELOIT, Dec. No. 27779-B (WERC, 9/26/94) wherein the Commission found that the City did not violate MERA when it warned a specific employe that if the Union succeeded in reclassifying her position she would be laid off, and then did in fact lay her off after the Union prevailed in an interest arbitration. The Commission commented that "parties are generally free to take whatever positions they wish at the collective bargaining table, but cannot expect to be insulated from any consequences if they are successful in having those proposals become part of the collective bargaining agreement."

13/ I note that while the City is alleged to have been hostile to were arrived at through a voluntary agreement reached in mediation in December of 1994, only three months before the March 7th vote leading to this layoff. For all of the alleged hostility, there is nothing in the record to indicate that wages were the stumbling block in those negotiations. Rather, it was the issue of subcontracting that occupied most of the parties' attention. Certainly the two are related, but if the City was so hostile to the negotiated wage rates that it restructured its entire billing operation as an act of retaliation, one would expect the topic to have received more direct attention at the bargaining table.

bookkeeping functions and that the City was compelled to hire AT to do much of the accounting work. Where the justification for an action is shown to be pretextual, the Examiner may infer that hostility to protected concerted activity was the actual motive. 14/ In this case, however, I agree with Arbitrator Buffett's conclusion that the failure to achieve the desired economies is attributable to disruptions caused by personnel turn-over and the reorganization of City Hall, rather than a decision to sacrifice efficiency in favor of revenge. It appears that the City officials were enamored of the concept of centralized bookkeeping and remained committed to it even though it was not nearly as practicable as they had been led to believe. The fact that a policy decision may ultimately prove to have been the wrong decision does not mean that it was illegally motivated.

The confrontation between Jackson and Bix in July of 1994 is also held out as proof of hostility to the Union, but I agree with Arbitrator Buffett's observation that this appears to be more an expression of the deep mistrust between the Council members and the Utility staff. Hostility for the purposes of Section 111.70(3)(a)3 does not encompass all manner of bad feeling and ill-will. 15/ It appears that Bix was hostile to attempts to prevent the consolidation of payroll and other bookkeeping services, and that it was Jackson's objections to that consolidation that made her the focus of Bix's hostility at the July meeting, rather than her status as a member of the Union. More troubling is the question by Parent about whether the reduction in the clerical staff would "break the Union". She testified that this was naiveté rather than animus, and that she was genuinely confused as to whether the Union could continue to function as a bargaining representative if two of the three clerical employees were laid off. This is a plausible explanation of the question, although the use of the phrase "break the Union" has to raise a red flag for anyone

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14/ Furthermore, contrary to Kalbes' statements, the evidence failed to show that Dorothy Klatt had ever been accommodated to the extent Kalbes claimed -- that she could sit down and rest whenever she pleased while working in her SUP.

15/ LACROSSE, ET. AL., Dec. No. 17084-D (WERC, 10/83).

> reviewing this case. Notwithstanding Parent's explanation, a statement such as this could easily support a finding of animus in many cases. In this case though, it stands pretty much on its own. It is isolated from the decision to layoff Jackson by seven and a half months, while that decision was the foreseeable culmination of years of study, debate and formal Council action dating back to the original 1990 WTA report recommending consolidation of accounting functions.
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> The Complainant bears the burden of proving violations of Section 111.70 by the clear and satisfactory preponderance of the evidence. In this case, the sequence of events gave rise to a reasonable suspicion on the Union's part that the City was not, in fact, pursuing efficiency and economy by its transfer of bookkeeping work from the Utility to City Hall and to Anderson Tackman. This suspicion would have been based primarily on the fact that this transfer did not appear to actually improve efficiency, and would have been buttressed by Parent's use of the phrase "break the Union" in discussing possible layoffs and by Jones' insistence that he somehow misunderstood the Union's request for information. In each instance, however, the preponderance of the evidence demonstrates that these were poor decisions, rather than illegal decisions. Accordingly, the Examiner has dismissed the complaint in its entirety.

Complainant argues that the Examiner erred when he concluded that Respondent's actions were not motivated by illicit animus toward Complainant and the protected concerted activity of the employes it represents. As the Examiner acknowledged in his decision, there are facts in the record which would support a conclusion that Respondent was illegally motivated by

hostility toward protected concerted activity. However, on balance, we find the Examiner correctly and persuasively analyzed all the relevant facts and concluded that Respondent was not motivated by illegal hostility. Thus, we have affirmed the Examiner.

Dated at Madison, Wisconsin this 9th day of October, 1997.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/
James R. Meier, Chairperson

A. Henry Hempe /s/
A. Henry Hempe, Commissioner

Paul A. Hahn /s/
Paul A. Hahn, Commissioner

ENDNOTES

1/ CADOTT SCHOOL DISTRICT, Dec. No. 27775-C (WERC, 6/94); aff'd CADOTT EDUCATION ASS'N V. WERC, 197 Wis. 2d 46 (1995).

2/ SHEBOYGAN COUNTY, Dec. No. 27692-B (WERC, 3/95).

3/ However, in reaching this conclusion, we disavow the Examiner's view that the Complainant cannot legitimately complain about a post-March 7 meeting because Complainant itself proposed March 10 as a meeting date. As argued by Complainant, the record does not adequately support the Examiner's view that the Complainant was aware Respondent would make a layoff decision at the March 7 Council meeting when it proposed March 10 as a meeting date.

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