STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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| CITY OF MAUSTON EMPLOYEES' UNION LOCAL 569-A, AFSCME, AFL-CIO,<br><br>Complainant,<br><br>vs.<br><br>CITY OF MAUSTON,<br><br>Respondent. | Case 40<br>No. 52921 MP-3057<br>Decision No. 28534-A |

Appearances:

Mr. Michael J. Wilson, Representative at Large, Wisconsin Council 40, AFSCME, AFL-CIO, 8033 Excelsior Drive, Suite B, Madison, Wisconsin 53717-1903, on behalf of the Complainant.

Godfrey & Kahn, S.C., Attorneys at Law, 131 West Wilson St., Suite 202, P.O. Box 1110, Madison, Wisconsin 53701-1110, by Mr. Peter L. Albrecht, on behalf of the Respondent.

ORDER GRANTING MOTION
TO EXCLUDE EVIDENCE

On July 26, 1995, the Complainant, City of Mauston Employees' Union Local 569-A, AFSCME, AFL-CIO, filed a complaint of prohibited practices wherein it alleged that the Respondent, City of Mauston, violated Secs. 111.70(3)(a)1 and 3, Stats., by laying off an employe, Harlan Bader, on November 25, 1994, as the layoff was motivated in part by union animus. Said complainant also alleged that certain statements were made by one of Respondent's supervisory employes, Lee Anderson, at a grievance meeting with Complainant's officers on or about February 2, 1995. Also alleged in the complaint was that the parties entered into a settlement agreement and release as to a complaint filed with regard to the February 2, 1995 matter. Said settlement agreement was attached to the complaint. In its answer, Respondent denied that it had committed any prohibited practices with regard to the layoff of Bader and denied the allegations as to Anderson's statements of February 2, 1995.

The Commission appointed the undersigned member of its staff, David E. Shaw, as Examiner to make and issue Findings of Fact, Conclusions of Law and Order in the matter. A

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hearing was held before the Examiner on October 24, 1995, in Mauston, Wisconsin. There was a stenographic transcript made of said hearing. At hearing, Respondent objected to the submission of any evidence as to the February 2, 1995 meeting or facts underlying that matter on the basis that it was irrelevant and would be in violation of the parties' settlement agreement in Case 34, No. 52324, MP-3001. After some discussion, it was agreed that the Respondent would submit its objections in writing in the form of a motion and the parties would submit written argument in support of their respective positions on the motion. Said motion was filed by Respondent on November 20, 1995. In the course of submitting its arguments opposing the motion, Complainant requested that it be permitted to submit four documents which it purported would support Complainant's understanding as to the settlement agreement in Case 34. Respondent objected to the submission. On December 11, 1995, the Examiner denied the Complainant's request to submit such documents on the basis that the terms of the settlement agreement were sufficiently clear to determine the parties' intent so as to make unnecessary the consideration of extrinsic documents.

Having considered the Respondent's motion, the terms of the parties' settlement agreement in Case 34, and the arguments of the parties with respect to the motion, the Examiner now makes and issues the following

ORDER

The Respondent's motion to exclude evidence is granted as relates to any evidence regarding the events of February 2, 1995 that gave rise to the complaint of prohibited practices filed in City of Mauston, Case 34, No. 52324, MP-3001.

Dated at Madison, Wisconsin, this 3rd day of January, 1996.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By David E. Shaw /s/
David E. Shaw, Examiner

CITY OF MAUSTON

MEMORANDUM ACCOMPANYING ORDER
GRANTING MOTION TO EXCLUDE EVIDENCE

In support of its motion, the Respondent first asserts that evidence regarding the February 2, 1995 incident is barred by the parties' settlement agreement in Case 34, No. 52324, MP-3001. According to Respondent, that settlement agreement specifically waives and releases Respondent from any and all complaints and claims arising out of, or "in any way connected with" the alleged incident of February 2, 1995. That language is broad and was intended as a final resolution of all matters pertaining to the alleged incident of February 2, 1995. The Complainant is now attempting to "get in through the back door" the facts it agreed in the settlement agreement not to raise. As the prejudice that would be caused in this case if the evidence were admitted could not be adequately redressed, the appropriate remedy is a prospective order barring Complainant from introducing such evidence. The Respondent also asserts that evidence as to what occurred on February 2, 1995 is not relevant to this case, which involves the issue of a layoff that occurred in November of 1994. Further, if the Complainant is permitted to go into the February 2, 1995 incident, the parties will end up essentially litigating that incident, unduly delaying hearing in this case.

The Complainant asserts that the statements of February 2, 1995 attributed to Anderson serve to establish a connection, as a part of a pattern of conduct, of laying off union employes in retribution for engaging in protected activity. The complaint filed in this case cites the February 2, 1995 incident as part of the facts; it is the layoff of Bader on November 25, 1994 that constitutes the alleged violation. Complainant contends that by citing Anderson's statements of February 2, 1995 and appending the settlement agreement to the complaint in this matter, it has laid the foundation for examining Anderson regarding the existence of union animus in the fall of 1994. Anderson's statements of February 2, 1995, are evidence as to the existence of union animus as motivation for the Respondent's layoff of employes in November of 1994. Complainant asserts it is not charging Respondent with a prohibited practice, or alleging interference or discrimination or any other charges in any way connected with the February 2, 1995 incident. Complainant cites the following statement in the settlement agreement as releasing Respondent from future or additional litigation over the February 2, 1995 incident, not as an agreement to suppress the incident as probative evidence in other alleged incidents of prohibited practices:

> **WHEREAS,** the parties hereto are desirous of resolving the above dispute, and all disputes and issues concerning the events that gave rise to the Complaint, and of ensuring that no further disputes regarding such issues arise between the Union and the City.

DISCUSSION

The Examiner disagrees with Respondent's objection that events which occurred after Bader's layoff are per se irrelevant. Evidence in that regard may or may not be relevant.

As to the settlement agreement in Case 34, the Examiner notes that the language of the settlement agreement cited by Complainant is from what amounts to the preamble in that document. More pertinent are the following specific terms of the agreement:

> **NOW, THEREFORE,** in consideration of the mutual covenants and promises herein contained, the Union and the City hereby agree as follows:
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> 1. The City hereby:
>
> a. agrees to cease and desist from threatening, coercing, intimidating and discriminating against bargaining unit employees about their wages, hours and conditions of employment because of their protected, concerted activity;
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> b. agrees to provide a letter to this effect to the employees who were involved in the incident that gave rise to the Complaint. (Said letter is attached hereto and incorporated herein as Exhibit "A".)
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> 2. The Union agrees that the items specified in paragraph 1 above constitute full and sufficient legal consideration for the promises and covenants set forth in this Agreement.
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> 3. The Union hereby:
>
> a. forever waives and releases the City and all of its administrators, board members and employees, from any and all complaints (including the "Complaint"), claims, charges, suits and demands arising out of, or in any way connected with, the incident that occurred on February 2, 1995 and any other claims arising under the Municipal Employee Relations Act, or federal civil rights acts, and/or any other statutory or common law claims (except for breach of this Agreement), which they had, have, or may have against any of them from the beginning of time through the date of execution of this Agreement;

b. agrees not to file, make, press, or pursue any investigation or other processing of any such complaint, claim, charge, suit, and/or demands;

c. agrees to withdraw and dismiss with prejudice, any such complaint, claim, charge, suit, and/or demand which may have been filed or made, including, but not limited to, "the Complaint";

4. The parties further state that they have carefully read this Agreement, that they fully understand its terms and binding effect; that the only promises made to induce them to sign this Agreement are made herein; and that they are signing this Agreement voluntarily and with the full intent of releasing the City from any and all possible claims arising from the incident that occurred on February 2, 1995.

. . .

Paragraph 3, a, set forth above, expressly states that Complainant releases the Respondent and its agents "from any and all complaints,. . .claims, charges, suits and demands arising out of, or in any way connected with, the incident that occurred on February 2, 1995 . .." [Emphasis added]. Complainant makes a valiant attempt to split hairs, contending it is not charging Respondent with a prohibited practice based on the February 2, 1995 incident; rather, it is only submitting that incident as evidence of the existence of union animus to support its charge in this case. The wording emphasized above is broad and all encompassing and provides for no exceptions, such as that claimed by Complainant. Further, paragraph 4, above, states, in relevant part, "that the only promises made to induce them to sign this Agreement are made herein. . ." Again, there is no provision in the agreement for utilizing the February 2, 1995 incident to support other claims against Respondent. Finally, paragraph 4 concludes with the statement, "and that they are signing this Agreement voluntarily and with the full intent of releasing the City from any and all possible claims arising from the incident that occurred on February 2, 1995." [Emphasis added]. The intent of the parties is clearly stated and Complainant's attempt to utilize the February 2, 1995 incident in this case is contrary to that intent. Therefore, the Respondent's motion to exclude evidence as to the incident that occurred on February 2, 1995 is granted.

For purposes of preserving Complainant's rights on appeal, an automatic exception to this ruling is granted. Complainant also may, at its option, make an offer of proof as to what it would have attempted to establish if it had been permitted to adduce evidence as to what occurred on February 2, 1995.

Dated at Madison, Wisconsin, this 3rd day of January, 1996.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By David E. Shaw /s/
David E. Shaw, Examiner

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