STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

WISCONSIN PROFESSIONAL POLICE ASSOCIATION/LAW ENFORCEMENT EMPLOYEE RELATIONS DIVISION, for and on behalf of MARSHFIELD POLICE OFFICER'S WAGE AND GRIEVANCE COMMITTEE, Complainants, 1/

vs.

CITY OF MARSHFIELD (POLICE DEPARTMENT), Respondent.

Case 126
No. 54491
MP-3219

Decision No. 28926-A

Appearances:
Mr. Dean R. Dietrich, Ruder, Ware & Michler, S.C., Attorneys at Law, 500 Third Street, P.O. Box 8050, Wausau, Wisconsin 54402-8050, on behalf of Respondent.
Mr. Gordon E. McQuillen, Cullen, Weston, Pines & Bach, Attorneys at Law, 20 North Carroll Street, Madison, Wisconsin 53703, on behalf of Complainant.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

On October 1, 1996 the Wisconsin Professional Police Association/Law Enforcement Employee Relations Division, on behalf of Marshfield Police Officer's Wage and Grievance Committee (hereafter Complainant or Union) filed a complaint alleging that City of Marshfield (Police Department) (hereafter Respondent or City) had violated Secs. 111.70(3)(a)1 and (3)(a)3, Stats., by retaliating against bargaining unit employes engaged in the protected activity of utilizing the interest arbitration provisions of Sec. 111.70, Stats. On November 25, 1996 the Commission designated Sharon A. Gallagher as Examiner. Respondent filed its Answer in this case on December 18, 1996. 2/ A hearing was originally scheduled for February 4, 1997 but was postponed and held on April 22, 1997 at Marshfield, Wisconsin. The hearing was transcribed, the parties submitted their briefs and the record herein was closed on July 31, 1997.

The Examiner, having considered the evidence and argument of the parties and being fully advised in the premises, makes and files the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Marshfield Police Officer's Wage and Grievance Committee (hereafter Union or Complainant), is a labor organization within the meaning of Sec. 111.70(1)(h), Stats., and has its principle place of business c/o of Gary Wisbrocker, WPPA/LEER Division Agent, E1125 South Radley Road, Waupaca, Wisconsin 54981.

2. City of Marshfield (hereafter City or Respondent) is a municipal employer within the meaning of Sec. 111.70(1)(j), Stats., and has its principle place of business at City Hall Plaza, 630 South Central Avenue, Marshfield, Wisconsin 54449-0727.

3. At all times material, the Union has been the exclusive bargaining representative of 2certain employes of the City defined as follows:

> all regular full-time Corporal, Police Officer and Detective ranks within the Marshfield Police Department excluding the Chief, Deputy Chief, Lieutenant and Sergeant ranks in said department.

4. At all times material, the Union and the City have been parties to collective bargaining agreements governing wages, hours and terms and conditions of employment of the employes of the City described in Finding No. 3 above, the most recent agreement being the 1993-95 collective bargaining agreement.

5. In its Answer, Respondent stipulated to the accuracy of the following allegations stated in the complaint:

> On September 27, 1995, the parties exchanged proposals for the bargaining of a successor collective bargaining agreement and the City's chief representative for the negotiation was Ms. Nicole Onder, Human Resources Specialist. The Association's chief representative was Gary Wisbrocker, Business Agent.
>
> The parties met on October 30, 1995, November 6, 1995 and December 5, 1995 for the purpose of negotiating the successor collective bargaining agreement. During the negotiation session of December 5, 1995, Ms. Onder stated that the City wage increase offer for members of the bargaining unit was 2.75 percent for each of three years. Ms. Onder further stated that no City employe will receive a wage increase of more than 2.75 percent and if the Association goes to arbitration and wins more than the 2.75 percent wage increase, lay-offs will occur to off-set the higher wage increase received.
>
> On December 6, 1995, the Association filed a petition for final and binding arbitration pursuant to Sec. 111.77, Wis. Stats. with the WERC requesting an investigation and determination on whether final and binding arbitration should be initiated between the parties. Investigator David E. Shaw held an informal investigation on February 5, 1996, at 9:30 a.m. in the Marshfield City Hall during which the parties were able to settle the

unresolved issues between the parties except for the issue of the wage increases. Final offers were submitted by the parties and consisted of the following wage rates for each:

Association -	January 1, 1996	2%
	July 1, 1996	2%
	January 1, 1997	2%
	July 1, 1997	2%
City -	January 1, 1996	3%
	January 1, 1997	3%

Investigator Shaw found an impasse existed between the parties and ordered that the parties participate in final and binding interest arbitration.

The parties selected Mr. Frank P. Zeidler as the Arbitrator to hear the dispute. . . . A hearing was scheduled and held on June 18, 1996 at the Marshfield City Hall at which time the parties were given full opportunity to give testimony, present evidence and make argument. The parties then submitted briefs and a reply brief was submitted by the City and received by the Arbitrator on August 16, 1996. The Association elected not to submit a reply brief. Arbitrator Zeidler, in his Award dated September 3, 1996, for the 1996-97 Agreement between the Marshfield Police Officer bargaining unit and the City, selected the final offer of the non-supervisory bargaining unit. (WERC Case 113, No. 53443, MIA-2103).

6. On June 27, 1995 the Mayor of Marshfield presented the following budget parameters and guidelines for 1996, which were approved by the Council:

1. City departments should seriously work to define <u>essential</u> services and provide for them in their 1996 budget proposal while trimming any non-essential services
2. The 1996 budget should limit the <u>growth</u> in Personal Services category expenditures (i.e. salaries, wages, benefits) to no more than can be sustained from our actual growth in assessed valuation (i.e. we should not increase the tax levy rate to finance increased personnel costs)
3. The 1996 budget should be developed so that there is no increase in the tax levy rate, while at the same time the City's cash reserves are maintained.
4. Departments should be encouraged to identify the direct beneficiaries of services and where possible, suggest ways to recover costs (e.g. user fees) from the most direct beneficiaries of services in lieu of allocating the cost to general property taxpayers.
5. We should encourage departmental initiatives to reduce costs where possible, and especially encourage work on inter-departmental bases to address common needs.
6. The City should consider additional areas in which services can be provided on a contractual basis.
7. City departments are encouraged to seek community partners to provide services and address needs.

8. The use of outside consultant services should be limited to occasions in which they are required (e.g. DNR requirement) or when it is more cost-effective to do so than to accomplish the same work in-house.
9. We should continue to look for ways to reduce unnecessary paperwork, eliminate redundancy, and share common information data bases.

10. After the City Administrator's recommended budget is presented in October, any suggested additions to the budget which would impact the tax levy should be offset by suggested corresponding reductions elsewhere.

During several of its regular weekly meetings (held on Mondays), after the Common Council adopted the above-quoted motion, Respondent's Finance, Budget and Personnel Committee studied the wage increases granted to other groups in the Marshfield area as well as the projected increase in the City's taxable base for 1996. The Committee concluded that a 2.75 percent wage increase for all City employes in 1996 would approximately equal the projected increase in the City's assessed property valuation in 1996. The Personnel Committee then directed the City Administrator (Randy Allen) and Human Resource Specialist Onder to limit non-union and union employe wage increases to 2.75 percent for 1996. The Committee further told Allen and Onder that if a wage increase for a particular employe group exceeded the 2.75 percent City limit, that employe layoffs would have to be undertaken to reduce the overall cost to 2.75 percent and that employe groups should be advised of this position. When asked what would happen if 2.75 percent was not agreed to, Councilman Wessel stated that the Committee told Allen and Onder that 2.75 percent was all the money the City had.

7. The City tries to retain three months' operating costs in the general fund at all times. The City's general fund contained $3.8 Million at the end of 1995. This fund was traditionally and primarily used to meet cash flow needs (including any uncompleted projects, unanticipated expenditures and estimated unemployment compensation benefits payments), as little money is collected by the City from July 15th to November 15th each year. The police department budget is one of the general fund accounts which are closed at the end of each budget year and any unused funds must be returned to the general fund at the end of each fiscal year.

8. During 1996, Respondent had an unreserved, undesignated general fund balance of approximately $4,700,000 ($3.8 million and a contingency account containing less than $100,000) which could have been used to off-set the cost of labor contracts which settled above 2.75 percent for 1996. The City's Moody bond rating remained unchanged from 1995 to 1996. At the end of the fiscal 1996 year, the Police Department returned $54,000 from its 1996 budget to the City's general fund, $29,000 of which was surplus. (The Police Department had returned $45,000 to the general fund at the end of the 1995 fiscal year). During 1996, the following Police Officers were on unpaid leaves prior to the layoffs in dispute herein:

Officer Janet Gomez -- six weeks
Officer Wayne Thom -- thirteen weeks (resigned thereafter August, 1996)
Officer Jeff Cichantek -- two weeks

It would have required a budget resolution and a 2/3 vote of the Council (7 votes) to reallocate funds to pay for the difference between 2.75 percent and the cost of the Arbitrator-imposed salary increase for 1996 in the police department.

9. During the negotiation session which occurred on December 5, 1995, Human Resources Specialist Onder stated that the City wage increase offer for members of the Complainant's bargaining unit was 2.75 percent for each of three years; that no City employe would receive

a wage increase of more than 2.75 percent; and that if Complainant went to interest arbitration and won more than a 2.75 percent increase, layoffs would occur to off-set the higher wage increases received through arbitration. Some non-represented employes of the City received an increase of 2.8 percent in 1996 and two employes who left Respondent's employ (Onder and Allen) were later replaced by new employes who received substantial increases over the former employes' pay rates, approximately three percent and twelve and one-half percent increases respectively. No layoffs occurred among non-Union administrators.

10. After the Complainant filed its petition for final and binding arbitration on December 6, 1995, Respondent submitted its written offer dated February 13, 1996 which included a three percent increase for 1996 and a three percent increase for 1997, which offer contained no indication that the three percent increases offered would be accompanied by any layoffs. Prior to February 13, 1996, the City had not indicated, either during negotiations or during the investigation regarding the interest arbitration petition, that the City would offer anything over 2.75 percent.

11. On July 8, 1996 and August 26, 1996 the following motions were made and carried by the Finance, Budget and Personnel Committee as documented in their minutes:

July 8, 1996 . . .

> Motion by Wessel, second by Schnitzler to approve as recommended the 1996, 1997, 1998 concerning (sic) collective bargaining agreements with the following units: Marshfield Dispatchers and Ordinance Enforcement Officers; Marshfield Clerical/Technical employes Union Local 929 AFL-CIO and Marshfield City Employees, Local 929 AFSCME, AFL-CIO (DPW & Parks) and to direct the proper City officials to sign these contracts. All Ayes.
>
> Motion carried.

. . .

August 26, 1996

. . .

> Motion by Schnitzler, second by Wessel to approve as recommended the 1996, 1997, 1998 tentative collective bargaining agreements with the Wastewater Employes Teamsters Local

662. All Ayes.

Motion carried.

. . .

12. After Arbitrator Zeidler issued his September 3, 1996 Award selecting the Union's final offer, the City implemented employe layoffs which affected five of the City's six collective bargaining units. (The City did not implement layoffs with respect to the fire fighter collective bargaining unit because that unit was then still in interest arbitration with the City). The layoffs were implemented in the Police bargaining unit as well as the other four bargaining units to reduce the cost of any unit wage increase over 2.75 percent for 1996. The City left it to its

department heads to determine how to accomplish the 2.75 percent increase in operating costs for 1996, but required all departments to lay off employes if contract settlements (and the arbitration award herein) were higher than 2.75 percent.

13. By (undated) Resolution 95-55 Payroll Resolution, Respondent's Common Council formalized its position regarding the appropriate 1996 compensation for its non-represented employes. That Resolution read in relevant part as follows:

> **WHEREAS,** it is the policy of the City that all compensation adjustments for non-represented employees are contingent upon satisfactory performance as documented in written performance appraisals; and
>
> **WHEREAS,** in 1995, compensation adjustments for non-represented employees were, for the first time, made effective upon employees' anniversary dates of appointment to their current positions; and
>
> **WHEREAS,** the midpoint of the respective pay range represents the market value of the job, i.e. the economic value that other employers with whom the City competes for employees place on the same or similar job; and
>
> **WHEREAS,** Personnel Policy 3.800 (adopted by the Council on February 8, 1994) provides for a timed progression to the midpoint values of the pay ranges for employees in classified positions; however, this progression is contingent upon satisfactory performance as documented in the formal performance appraisal completed on the employee's anniversary date.
>
> **NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF MARSHFIELD** that the purpose of this resolution is to authorize the continued implementation of compensation adjustments, as justified, for incumbents in the position descriptions described below, according to the methodology outlined in existing Personnel Policy 3.800 and succeeding sections of this resolution:
>
> City Administrator

Comptroller
Director of Public Works
Police Chief
Fire Chief
Parks and Recreation Director
City Engineer
Deputy Police Chief
Street Superintendent
Wastewater Superintendent
Assistant City Engineer
Information Systems Director

Building Services Supervisor
Deputy Fire Chief
Police Lieutenant
Assistant Street Superintendent
Police Sergeant
Police Staff Services Supervisor
Human Resources Specialist
Civil Engineer I
Information Systems Analyst
Accountant
Assistant Wastewater Superintendent
Parks and Recreation Supervisor II
Deputy Assessor
Plumbing Inspector
Accounting Clerk I
Cemetery Sexton
Secretary to the City Administrator
Secretary to the Police Chief
Secretary to the Fire Chief
Secretary to the Mayor
Cemetery Laborer

FURTHER, that if job performance for an incumbent in one of the job classifications listed above meets or exceeds the performance standards for the foregoing 12-month period as documented in a written performance appraisal completed by the employee's supervisor and filed in the Human Resources office, he/she shall be entitled to a salary or wage adjustment of 2.75%; and

FURTHER, that for an incumbent whose salary is less than the midpoint value associated with his/her respective pay range, progression to the midpoint value of the range is authorized according to the methodology established in City Personnel Policy 3.800 ("Compensation Plan Administration"), contingent upon the incumbent meeting or exceeding the performance standards for the job, as documented in a written performance appraisal completed by an employer's supervisor and filed in the Human Resources office.

FURTHER, that all compensation adjustments authorized in this resolution shall be made upon filing of satisfactory performance appraisals with the Human Resources office and all compensation adjustments shall be prospective in nature from the anniversary date of each incumbent's service in their current position.

. . .

14. Attached to the above-quoted memo was the following table entitled, "City of Marshfield Projection of 1996 Layoffs by Bargaining Unit":

	AFSCME	Clerical/ Technical	Police	Fire (2)	Dispatchers/ OEO	Teamsters
Average hourly rate for group (1)	$ 12.43	$ 10.64	$ 14.26	$ 9.91	$ 11.97	$ 14.28
Wage Rate differential between 3% & 2.75%	$5,748.96	$1,833.26	$4,608.42	$4,408.77	$1,152.88	$1,524.24
Wkly Unem-ployment Comp ($2.74 maximum)(3)	$ 258.54	$ 221.31	$ 274.00	$ 206.13	$ 248.98	$ 274.00
Weeks of layoffs needed to Cover Wage Rate Difference	11.6	4.3	8.1	7.9	2.4	2.7
Total Cost of Unemploy-ment Compensation(4)	$2,999.06	$ 951.63	$2,219.40	$1,628.43	$ 597.55	$ 739.80
# of weeks of layoffs	17.6	6.5	12.0	10.9	3.7	4.0
Total Cost (Wage differential plus Unemploy-ment Compensa-tion)	$8,748.02	$2,784.89	$6,827.82	$6,037.20	$1,750.43	$2,264.04

(1) Average of the last 4 employees hired
(2) Uses a 56 hour work week; all other groups use a 40 hour work week
(3) Benefits are equal to the hourly rate (in highest quarter) times 40 hours times 13 weeks times 4%
(4) Assumes to cover the unemployment compensation solely for the layoff period to cover the Wage rate differential
List of four least senior employees

B. McClung	L. Lenz	S. Meek	J. Fahrenkrug	L. Lombardi-Rice	J. Nowak
C. Adamski	D. Hall	J. Ronchetti	J. Barth	J. Cichantek	K. Duerr

W.Schroeder	J Oney	D. Keffer	C. Cass	R. Larsen	H. Tauschek
L.Sonnemann	S. Berger	R. Schletty	S. Owen	C. Stargardt	M. Klvela

WEEKLY RATE OF UNEMPLOYMENT

Formula: Hourly rate times 40 hours times 13 weeks times 4% (with a $274 maximum per week).

Based on 1996 Rates
Ordinance Officer: $227.97 per week
2nd Year Dispatcher: $246.06 per week
3rd Year Dispatcher: $258.34 per week

Patrol Positions:
All positions would be maxed out at $274 per week with the exception of Starting
Patrol Officer: $273.10 per week

15. On September 11, 1996 Police Chief Spencer issued the following memorandum regarding 1996 salary increases and proposed City layoffs:

. . .

As many of you are well aware, the Common Council has directed that any salary increases greater than 2.75% for the year of 1996, will be recovered through the reduction in staff by laying off the appropriate number of personnel for the appropriate number of weeks.

At this point, the Council has advised that the cost of the increase greater than 2.75% plus the cost of layoff compensation will be used to determine the number of weeks necessary to recover those funds.

Currently, for police personnel, the layoff period is projected to be 12 weeks total and for dispatch and ordinance enforcement personnel is identified as 3.7 weeks total.

Clerical personnel are not affected by this decision within our operation since the least senior people in that union are within other agencies.

The Council has stated that during the layoff period there will be no reduction in benefits to the employees involved in the layoff. This means they will not make reductions from vacations, holidays and further, the city will continue to pay health and dental benefits.

In the case of our operations, the avenue taken for police and dispatch personnel will be addressed through the authority of the Marshfield Police and Fire Commission. I am expecting that the Police and Fire Commission will take action at its October 3 regular meeting, and I will be able to share that decision with you the following day.

I am requesting police, dispatch and ordinance personnel to consider the appropriateness of individuals taking voluntary layoffs which potentially could reduce hardship on some individuals while benefiting the person who is laid off.

If any individual is interested in taking a voluntary layoff, I would appreciate you advising

your union representation and also advising my office through Deputy Chief Stroik or Barb Fleisner of your interest in the voluntary layoff.

Short of such a decision, the following individuals for police: Schletty, Keffer, Ronchetti and Meek have been identified as the least senior people within their contract and would be the first individuals laid off.

Under the dispatch/ordinance contract, Stargardt, Larsen, Cichantek and Lombardi-Rice are identified as the least senior people and subject to first layoffs.

The Council has identified that disciplines or position vacancies cannot be calculated into this formula and if we are to consider hiring an individual, we would then immediately be required to lay them off until the resultant dollar tradeoff is accomplished.

Should any individual have questions or comments, I would appreciate having you direct them to Deputy Chief Stroik or Mrs. Fleisner who should be able to explain the situation to you more thoroughly.

I would hope that we can make this process as painless for our operation as possible, and I would like to have a decision from the union personnel describing their interest by September 30, so we can proceed to the Commission.

I further expect that each union will need to address the voluntary layoff matter and indicate their decision back to me by September 30.

16. On September 13, 1996 City Administrator Cal Teague issued a memo to all represented City employes regarding "economic layoffs" which read as follows:

By now, each of you are aware that the City must temporarily reduce staffing levels to meet budgetary mandates set by the Common Council. These layoffs are a result of a declining economic base which is resulting from minimal increases in our property taxes. During the time employees are laid off all benefits will be continued except contributions to the Wisconsin Retirement System, the Workers' Compensation fund and social security.

Department heads are now determining the number of layoffs necessary to comply with the fiscal constraints they must work within. It has been suggested that some employees might desire voluntary layoffs. Therefore, this memo is to offer any employees who may want to volunteer, the opportunity to do so. We will require a signed consent form indicating that the employee is aware that this layoff is voluntary. A form will be provided by your immediate supervisor. Therefore, if anyone is interested please contact your individual supervisor no later than 2:30 p.m. September 20. Also, if any of you have questions, please feel free to contact me.

17. On October 1, 1996 the WPPA/LEER Division and the Marshfield Police Officer's Wage

and Grievance Committee filed the instant prohibited practice complaint alleging, inter alia, that Respondent had committed prohibited practices by threatening the members of the Marshfield Police Officer's Wage and Grievance Committee with layoffs if they won an Award

at interest arbitration above 2.75 percent for 1996 and by implementing the layoffs following the issuance of an interest arbitration award in favor of Complainant, in violation of Secs. 111.70(3)(a)1 and 3, Stats.

18. A revised projection of layoffs by bargaining unit performed in July, 1996, indicated that the weeks of layoff needed to cover the arbitrator-imposed wage rate increases was 3.9 weeks or 5.8 weeks of layoff including off-sets of Unemployment Compensation costs; among Dispatchers and Ordinance Officers, the number of weeks of layoff needed to cover the wage rate difference between that unit's increase and 2.75 percent was 1.2 weeks and if Unemployment Compensation costs were included, it was projected to be 1.9 weeks. Respondent also revised its projection of layoff in all other bargaining units using the same method used for the revised Police Department projection.

19. The City Council set its 1996 budget parameters on June 27, 1995, prior to the exchange of proposals and the commencement of negotiations with Complainant over the 1996-97 collective bargaining agreement between the parties. The issuance of these budget parameters was not motivated in whole or in part by any hostility toward the Union. Rather, this action was motivated by the City's legitimate business judgment that it should limit the cost of essential City services to the approximate rate of growth in the City's assessed valuation for 1996. Shortly thereafter, Respondent's Finance Budget and Personnel Committee projected this rate of growth in assessed valuation to be 2.75 percent for 1996 based upon evidence available to it at the time. The actual growth in the City's assessed valuation for 1996 was less than 2.75 percent.

20. The statements made by Human Resources Specialist Onder described in Finding No. 9 were not motivated in whole or in part by hostility toward the employes for engaging in any protected concerted activity. The statements made by Human Resources Specialist Onder during negotiations on December 5, 1995, had no reasonable tendency to interfere with employes' Sec. 111.70(2), Stats., rights.

21. The partial layoff of Officers Cichantek and Albers was not motivated, in whole or in part, by hostility toward the unit employes for having engaged in the protected concerted activity of seeking and obtaining a favorable interest arbitration award concerning the 1996-97 labor agreement between the parties. These layoffs did not have a reasonable tendency to interfere with the exercise of any rights protected by Sec. 111.70(2), Stats., by bargaining unit employes.

22. Respondent's refusal to use prior unpaid leaves of absence, vacant positions, budgetary surpluses (in the 1996 Police Department budget and/or the City's general fund and contingency accounts) does not constitute evidence of hostility toward the bargaining unit members for engaging in activities protected by MERA. The City's failure to layoff its non-represented employes in 1996 and its granting, to some of these non-represented employes, wage increases in excess of 2.75

percent is irrelevant to the instant case and does not constitute evidence of hostility toward the Union herein.

On the basis of the above and foregoing Findings of Fact, the Examiner makes and files the following

CONCLUSIONS OF LAW

1. Respondent, City of Marshfield, is a municipal employer within the meaning of Sec. 111.70(1)(j), Stats. During all times material hereto, Nicole Onder was an agent of Respondent while she was employed by the City in the position of Human Resources Specialist.

2. Complainant, Marshfield Police Officer's Wage and Grievance Committee, is a labor organization within the meaning of Sec. 111.70(1)(h), Stats.

3. Respondent did not violate Sec. 111.70(3)(a)1, or 3, by partially laying off employes employed by Respondent in the bargaining unit described above in Finding No. 3. Nor did Respondent discriminate against said employes with regard to hiring, tenure or other terms of employment or thereby retaliate against such employes for winning an interest arbitration award regarding the parties' 1996-97 collective bargaining agreement.

4. Respondent, by the statements made by Human Resources Specialist Onder referred to in Finding No. 9, did not interfere with restrain or coerce employes in the exercise of their rights guaranteed by Sec. 111.70(2) and, therefore, Respondent did not violate Sec. 111.70(3)(a)1, Stats.

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

ORDER

IT IS ORDERED that the complaint be, and the same hereby is, dismissed in its entirety.

Dated at Oshkosh, Wisconsin this 29th day of September, 1997.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Sharon A. Gallagher /s/
Sharon A. Gallagher, Examiner

City of Marshfield (Police Department)

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Positions of the Parties:

Complainant:

Complainant noted that City representatives threatened to layoff police officers if their bargaining unit won an arbitration award over 2.75 percent for 1996; and that the City in fact laid off Officers Cichantek and Albers as a result of Complainant's winning a favorable arbitration award in September, 1996. The Union urged that Human Resources Specialist Onder's statement at the December 5, 1995 negotiation session violated Sec. 111.70(3)(a)1, Stats., evidenced a retaliatory motive and demonstrated the City's anti-union animus against members of the Police bargaining unit. In this regard, the Union noted that Respondent arbitrarily set a percentage wage increase in advance of negotiations and that Respondent threatened to layoff Police Officers if Complainant utilized the interest arbitration process and succeeded in gaining a greater wage increase than was offered by Respondent. These actions, Complainant argued, interfered with the concerted protected activities of the unit in proceeding to interest arbitration. The Union pointed out that former Councilman Wessel demonstrated the fact that the City harbored anti-union animus against the Police Officers' bargaining unit in his testimony, when he indicated that Complainant's unit needed to be "spanked". However, Complainant did not cite the page of the transcript relevant to this contention.

Complainant argued that the layoffs were not economically motivated. In this regard, the Complainant noted that the increase in wages for 1996 which was above 2.75 percent amounted to $2,244; that the Respondent had offered a 3 percent wage increase in its final offer at arbitration yet it had never offered the Union 3 percent in negotiations and the City insisted upon recovering the .25 percent from the Union for 1996; that the City had a general fund balance of $3,800,000, a contingency account of less than $100,000 and a surplus in the Police Department for 1996 of $29,000 which was returned to the general fund, any of which funds could have been used to off-set the difference between 2.75 percent and Complainant's final offer as imposed by the Arbitrator.

The Complainant cited and discussed in detail INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL NO. 139, AFL-CIO V. TOWN OF SPIDER LAKE, DEC. NO. 28038-A, B, C (1995). In SPIDER LAKE, SUPRA, employes were organizing for a Union when their supervisor became aware of this and told one of the employes involved that if employes unionized, employes would be laid off or their hours would be cut back to part-time because the Town could not afford to pay high union wages.

In the Union's view, the facts of this case show even more clearly than SPIDER LAKE a violation of Sec. 111.70, Stats., as Respondent made threats regarding layoffs that would occur pursuant to a

Complainant victory in arbitration. The Complainant pointed out that in past

WERC cases, employe layoffs and position eliminations have been held appropriate only where municipal employers have shown that budget deficits exist. 3/ Here, the Respondent has not shown that it has any financial need or basis for the layoffs. In addition, Complainant pointed out that Respondent's Finance Committee had based its non-negotiable wage increase on an assumption regarding how fast the City would grow, when in fact the City had not reassessed property values in many years and the Finance Committee had no idea what the actual growth rate of the City would be in 1996.

Complainant urged that a four-pronged test should be used here to show that the City's actions in partially laying off unit employes violated Sec. 111.70(3)(a)3, Stats.: (1) Whether Complainant was engaged in protected union activities; (2) whether Respondent was aware of the activities; (3) whether Respondent was hostile to the activities; and (4) whether the layoffs were in part motivated by the Union activities engaged in. Complainant urged that the first two elements of the test were undisputedly proved by Onder's December 5, 1995 statements to the Union Bargaining Committee and by the admission of former Councilman Wessel that layoffs were directed to occur after the Complainant won at interest arbitration. The fact that the Respondent gave its Administrators raises beyond 2.75 percent and did not lay them off also evidenced anti-union animus, in the Complainant's view.

Complainant asserted that in the interest arbitration proceeding, Arbitrator Zeidler clearly found a need for catch-up among Police Officers. In addition, the fact that the City could have used unpaid leaves and vacant positions within the Police Department to make up the difference between a 2.75 percent increase and the 3 percent cost of the 1996 increase under the Arbitrator's Award, showed a retaliatory motive, in the Union's opinion. Finally, the comment made by former Councilman Wessel at the hearing that the Complainant was going to be subjected to layoffs because they were the ones who needed to be "spanked" left no doubt for Complainant that Respondent intended to discriminate against unit employes by laying them off.

For all of these reasons, Complainant urged that the undersigned issue an order that Respondent's decision to layoff represented Police Department employes was discriminatory and interfered with their concerted protected activities and that Respondent be ordered to make bargaining unit members whole for the partial layoff they suffered.

Respondent:

In Respondent's view, Complainant's allegation that Respondent had retaliated against bargaining unit employes because they were successful in an interest arbitration proceeding is without merit under the relevant case law as applied to the facts herein. In this regard, the Respondent noted that the absence of proof in any of the four areas listed below requires a conclusion that no Sec. 111.70(3)(a)3 violation has occurred: (1) An employe has engaged in protected activity; (2) the municipal employer had knowledge of such protected activity; (3) the municipal employer bore animus toward the employe because of such protected activity; and (4) the

action against the employe taken by the municipal employer was motivated at least in part by the employe's protected activity.

In this case, Respondent noted that there was no evidence that the Employer's actions were motivated by any anti-union animus. Instead, Respondent urged that the evidence showed it had taken its action to layoff employes for a legitimate business reason, requiring a conclusion that no violation of Sec. 111.70(3)(a)1 or 3, Stats. had occurred herein.

Respondent cited CITY OF BELOIT, DEC. NO. 27779-A and B (WERC, 1994) and discussed it at length. Respondent also cited several other cases and it noted that the statements made by Human Resources Specialist Onder were merely factual statements made during bargaining and that no evidence of anti-union animus had otherwise been proved by Complainant.

In addition, Respondent pointed out that former Councilman Wessel's testimony was not in dispute regarding the Budget and Finance Committee's motivation for limiting wage increases to 2.75 percent in 1996 and that no evidence of hostility was contained in Wessel's testimony. Respondent also pointed out that the layoffs were City-wide and not solely focused on Complainant; that all bargaining units were treated the same; that the Respondent's non-union employes received a 2.75 percent wage increase for 1996 effective upon their anniversary dates of hire, resulting in increases less than 2.75 percent; that the Common Council's decision to limit wage increases to 2.75 percent for the year 1996 occurred before contract negotiations commenced with the Union for a successor 1996-97 collective bargaining agreement. Based upon these arguments, Respondent sought the dismissal of the complaint in its entirety.

REPLY BRIEFS

Complainant:

Complainant repeated many of its arguments made in its initial brief. In addition, Complainant argued that Respondent's assertion was incorrect that the Common Council had decided to limit wage increases to 2.75 percent for 1996 before contract negotiations commenced with the Union. Rather, Complainant noted that no evidence had been offered by Respondent to support this claim and the budgetary guidelines (approved by the Council in June, 1995) contained no specific percentage limitation regarding wage increases.

Complainant also took issue with Respondent's reliance on CITY OF BELOIT, SUPRA, as that case had involved severe fiscal constraints and actual decisions to eliminate positions due to reduced work loads and limited Federal grant monies. Complainant also distinguished other cases cited by Respondent, MERCER SCHOOL DISTRICT, DEC. NO. 14597-D (1978); VILLAGE OF UNION GROVE, DEC. NO. 15541-A; TOWN OF MERCER, DEC. NO. 23136 (1986) and MEDFORD ELECTRIC UTILITY, DEC. NO. 28440-A ( ), from the instant case. In these various cases, Complainant noted that layoffs had been based upon changes in the municipality's organization, its financial status or the elimination of funding, work load or positions formerly used by the municipal authority. In addition, Complainant also distinguished cases cited by Respondent as involving the elimination of positions or layoff of workers due to a decrease in the amount of work available, not present in the instant case.

Thus, Complainant urged that the Respondent had completely failed to demonstrate a legitimate business reason for its limitation of 1996 wage increases to 2.75 percent. In sum,

Complainant urged that not only did Respondent lay off Complainant's bargaining unit workers because they won an interest arbitration award, Respondent "also bargained in bad faith with other bargaining units" by agreeing to 3 percent raises but only if off-setting layoffs occurred. In Complainant's view, the City-wide union layoffs clearly showed anti-union animus especially where Administrators were given increases above the 2.75 percent 1996 limit.

Respondent:

Respondent asserted that the Union in its initial brief mis-stated or mis-characterized evidence in this case. In this regard, Respondent noted that Finance Director Brehm did not testify that funds in the City's contingency account could be used for contract settlements. Rather, Brehm stated that the funds were to be used for other purposes such as unanticipated expenditures for Unemployment Compensation and increased demands for snow removal in a particular year. In addition, Respondent urged that it is not relevant what City Administrators received as pay increases in 1997 as the year in dispute herein involves the City's limitation of employe increases in 1996 to 2.75 percent. Furthermore, Respondent noted that the vast majority of non-union personnel received a 2.75 percent wage increase or less for both 1996 and 1997.

Respondent argued that Complainant has mischaracterized the evidence herein by its assertions that Respondent had discriminated against unit employes by threatening layoffs without economic motivation; by giving pay raises to administrators without threatening them with layoff or laying them off; by refusing to use vacant positions to make up the difference between the cost of the Arbitrator's Award and the 2.75 percent wage increase limitation imposed by the City; and by the statement of former Councilman Wessel that unit members needed a spanking. In this area, Respondent pointed out that prior to the commencement of the 1996-97 contract negotiations with Complainant, Respondent's Common Council adopted a motion limiting any increases in wage rates to the increase in the City's assessed property valuation; and that Respondent's Personnel Committee subsequently concluded that 2.75 percent wage increase for 1996 would approximately equal the projected increase in the City's property evaluation for 1996. Thus, Respondent urged that its actions in laying off police officers in 1996 was based on a legitimate management decision which was supported by financial constraints faced by the City and its established budgetary parameters and which was not, in any manner, motivated by hostility toward Complainant.

Respondent reiterated that it granted pay increases to Administrators in 1996 without laying them off because the increases to its Administrators fell almost without exception within the 2.75 percent limitation set by Respondent. Furthermore, Respondent did not rely upon vacant positions to make up the difference in the higher wage increases awarded to police officers as former Councilman Wessel stated this would amount to game-playing and that if a position was not filled perhaps it was not needed. Finally, Respondent argued that Complainant's claim that an agent of Respondent stated that Complainant needed a spanking at the hearing was wholly unsupported by the transcript in this case.

Respondent also argued that Complainant's substantive arguments are wholly without merit. Initially, Respondent noted that the TOWN OF SPIDER LAKE, DEC. NO. 28038-A through C

(1995) is irrelevant to this case. In this regard, Respondent noted that SPIDER LAKE, SUPRA, involved the termination of an employe (not a layoff or reduction of work hours) based at least in part upon the employe's concerted protected activity. In the instant case, Respondent urged that the Complainant was simply advised of the effect that a wage increase higher than 2.75 percent for 1996 would have upon its members. In Respondent's view, whether the City had a large amount of money to pay for the approximately $2,244 wage increase necessitated by the Arbitrator's Award in favor of Complainant is not material to this case. On this point, Respondent noted that Complainant has the burden of proving that Respondent bore animus toward employes because they engaged in protected concerted activity and that action taken by Respondent against unit employes was motivated at least in part by their having engaged in protected activity. In this case, Respondent urged that there is no evidence that the City bore any animus against Complainant or that the City's actions in laying off the police officers involved was motivated in any manner by their protected activity of proceeding to interest arbitration.

Finally, Respondent disputed Complainant's claim that the CITY OF BROOKFIELD and CITY OF BELOIT cases stand for the proposition that employe layoffs and position eliminations can only be found lawful where the municipal employer involved has shown that budgetary deficits exist. On this point, Respondent noted that the WERC in the CITY OF BELOIT case commented that "[p]arties 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." Thus, Respondent asserted, there is "simply no credible evidence that the City's action was motivated by hostility towards the Union" and it sought dismissal of the complaint in its entirety.

DISCUSSION

Interference -- 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 municipal employees in the exercise of their rights guaranteed in sub.(2)." In order for the Union to prevail in its complaint of interference with employe rights, it must demonstrate by a clear and satisfactory preponderance of the evidence that the City's complained-of conduct contained either some threat of reprisal or promise of benefit which would reasonably tend to interfere with employes' exercise of their rights guaranteed by MERA. 4/ An employer need not intend to interfere with protected rights or to coerce employes and it is not necessary that actual interference be proved in order for a violation of Sec. 111.70(3)(a)1, Stats., to occur. Rather, the question is whether the employer's conduct had a reasonable tendency to interfere with employe rights protected by Sec. 111.70(2). 5/ The conduct as well as the circumstances surrounding that conduct must be considered in determining the meaning which an employe would reasonably place on the conduct; the conduct must also relate to the exercise of

some right protected by MERA, otherwise the employer's conduct does not violate the provisions of MERA. 6/

In the instance case, Complainant argued that Human Resources Specialist Onder's statements made at bargaining on December 5, 1995, standing alone, interfered with, restrained

and coerced bargaining unit members in the exercise of their right to proceed to interest arbitration under MERA. 7/ I find that Onder's December 5, 1995 statements did not violate Sec. 111.70(3)(a)1, Stats. based upon the record in this case.

As the Commission noted in CITY OF BELOIT, DEC. NO. 27779-B (WERC, 9/94):

> . . . In our view, it is generally appropriate for one party to advise the other during the collective bargaining process of the potential negative consequences if a proposal or position ultimately is included in the collective bargaining agreement. Thus, for instance, if an employe advises a union that acceptance of the union's wage demands might or would require the layoff of employes and the totality of the circumstances surrounding the employer's statement establish that the employer is not motivated by a desire to threaten employes for the exercise of their right to collectively bargain, that employer is acting in a legal manner consistent with the collective bargaining process. The employer in such circumstances is not seeking to deter employes from exercising rights but rather seeking to persuade employes to change the position they are taking at the collective bargaining table when exercising their rights. Simply put, 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. 8/

Similarly, in the instant case, Onder's statements of December 5, 1995, in my view, constituted factual statements which were based upon the City's decision to limit 1996 wage increases to the approximate level of the increase in the City's assessed valuation. In this regard, I note that the City Council set its wage parameters on June 27, 1995, three months before Complainant and Respondent exchanged proposals for a 1996-97 collective bargaining agreement. Shortly thereafter, the City's Personnel Committee set the actual percentage limit the City wished to see in increased cost for wages at 2.75 percent for 1996, based upon the Committee's study of wage increases granted to other groups in the Marshfield area and the best information it had regarding the City's projected tax base for 1996.

In addition, I note that MERA does not require an employer to make any concessions to a labor organization during negotiations and that it is an employer's responsibility to make decisions regarding the level of services that it will offer and the number of staff it will use to purvey those services pursuant to an employer's general management rights. 9/ Considering all of the circumstances, including the circumstances surrounding Onder's statements were such that they would not have a reasonable tendency to interfere with employes' Sec. 111.70(2), Stats. rights. Onder's statements also did not contain any threat of reprisal or promise of benefit and they were based upon the City's management judgment to limit expenditures for wage increase in 1996, which

judgment was reached three months prior to the exchange of proposals between the parties for a successor collective bargaining agreement. 10/

Discrimination - Sec. 111.70(3)(a)3, Stats.

Section 111.70(3)(a)3, Stats., makes it a prohibited practice for a municipal employer to encourage or discourage membership in a labor organization by discrimination in regard to hiring, tenure, or other terms and conditions of employment. In order to establish a violation

of this section, a complainant must demonstrate, by a clear and satisfactory preponderance of the evidence, all of the following elements:

1. The employe was engaged in protected activity;

2. The employer was aware of the activity;

3. The employer was hostile to the activity;

4. The employer's conduct was motivated, in whole or in part, by hostility to the protected activity. 11/

It is undisputed on this record that bargaining unit employes engaged in the protected concerted activity of proceeding to utilize the interest arbitration provisions of MERA and that the City was fully aware of those activities. Thus, the first two elements of the above-quoted test have been met.

Complainant has argued that Onder's December 5, 1995 statements demonstrate Respondent's hostility toward Complainant's pursuit of an award in interest arbitration pursuant to MERA. Complainant has also urged that City Councilman Wessel made a statement at the instant hearing that unit employes needed to be "spanked". In regard to the latter contention, I can find no place in the transcript where Mr. Wessel used the word "spanked"; and, I note that the Union failed to cite a page of the transcript regarding this contention. Therefore, the Union's argument on this point is wholly unpersuasive.

In regard to Complainant's contention that Onder's December 5, 1995 statements, in and of themselves, constitute hostility, an analysis of all of the surrounding circumstances fails to produce a reasonable implication that Onder's statements constituted hostility to the Union's activity. In this regard, I note that Complainant failed to produce any evidence of anti-union statements made by any agent of Respondent. In addition, Onder's statements were prompted by the decision of the Common Council and the Personnel Committee which specifically provided that no City employes (Union or non-Union) should receive more than a 2.75 percent increase in 1996. Even if some City Administrators (non-union employes) received increases in excess of 2.75 percent (which Complainant failed to prove), this fact would not provide evidence of anti-union animus otherwise lacking in this record. 12/ In all the circumstances of this case, there is insufficient evidence to infer animus in light of the manner in which the Common Council and the Personnel Committee

decided to limit wage increases city-wide for 1996.

The Union has argued that Respondent could have financed the difference between the Arbitrator-imposed 1996 wage increase in the Police Department by using surplus or contingency fund monies or giving credits to the Department for vacancies and non-paid leaves that had previously been served. Although this is true, it does not necessarily follow that the fact that the City was unwilling to essentially finance the cost of the Arbitrator's Award beyond the 2.75 percent constituted a violation of MERA. On a similar point, Examiner Nielsen in MEDFORD ELECTRIC UTILITY, DEC. NO. 28440-D (NIELSEN, 5/97), noted that one would have to find

". . . virtually any cost cutting effort in the public sector . . . (to) be a per se violation of Sec. 111.70(3)(a)3" if one equated thereto illegal hostility to the negotiation of more costly wages to the bargaining unit. Nielsen further noted that in both PRICE COUNTY, DEC. NO. 24504-A (GRATZ, 4/88) and CITY OF BELOIT, DEC. NO. 27779-B (WERC, 9/94), no illegal motive was automatically inferred from employes being informed across the bargaining table that success in negotiating higher wages would result in layoffs.

Thus, in all of these circumstances the record fails to demonstrate by a clear and satisfactory preponderance of the evidence that the partial layoffs of unit employes were motivated in whole or in part by Respondent's hostility toward unit employes' pursuit of an award in interest arbitration, Complainant having failed to prove the third and fourth elements of the test for discriminatory/retaliatory conduct under MERA. 13/ In this case, the evidence showed ". . . that the City was not motivated by hostility but rather by legitimate management decisions and public policy choices regarding service levels and financial constraints." 14/ Therefore, the Examiner finds that the City did not violate Sec. 111.70(3)(a)1 or 3, Stats., as alleged herein. Based upon the foregoing and the record as a whole, the Examiner finds that the allegations of prohibited practices by Complainant against Respondent are without merit and the Examiner has dismissed the complaint in its entirety. 15/

Both parties have requested the Commission award fees and costs in conjunction with this action. In WISCONSIN DELLS SCHOOL DISTRICT, DEC. NO. 25997-C (WERC, 1990) the Commission stated the following principals:

> As the Examiner correctly held, where a party's position is found to demonstrate "extraordinary bad faith", attorney fees and costs are available from the Commission. HAYWARD SCHOOLS, SUPRA. In his concurring opinion in MADISON SCHOOL DISTRICT, DEC. NO. 16471-D (WERC, 5/81), Commissioner Torosian more fully stated our present view on the general availability of attorney fees and on how the "extraordinary bad faith" test can be met. He held:
>
> While I concur with the majority that attorney fees are not justified in the instant case, I disagree with the iron-clad policy enunciated by the majority of denying attorney fees in all future cases. I agree that, for some of the policy reasons stated in the UNITED CONTRACTORS case, the Commission should be reluctant to grant attorney fees. However,

I feel the Commission should retain the flexibility, and therefore adopt a policy, which would enable it to grant attorney fees in exceptional cases where an extraordinary remedy is justified. In this regard I would adopt the reasoning of the National Labor Relations Board stated in HECK'S INC., 88 LRRM 1049, wherein the National Labor Relations Board stated its intention ". . . to refrain from assessing litigation expenses against a respondent, notwithstanding that the respondent may be found to have engaged in 'clearly aggravated and pervasive misconduct' or in the 'flagrant repetition of conduct previously found unlawful' where the defenses raised by that respondent are 'debatable' rather than 'frivolous'."

In my opinion limiting the granting of attorney fees to such cases would best balance some of the policy considerations cited in UNITED CONTRACTORS and the interest of the

Commission in discouraging frivolous litigation and to protect the integrity of our process. (Emphasis added).

The Examiner does not deem the complaint or the answer to be so frivolous, in bad faith or devoid of merit as to warrant the imposition of costs and attorney's fees. As a result, Complainant and Respondent's requests for same are hereby denied.

Dated at Madison, Wisconsin this 29th day of September, 1997.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Sharon A. Gallagher /s/
Sharon A. Gallagher, Examiner

ENDNOTES

1/ At the instant hearing, Complainants moved to delete the WPPA/LEER Division as a Complainant, which motion, unopposed by Respondent, was granted.

2/ Respondent filed an identical Answer on March 10, 1997, apparently in error.

3/ Complainant cited CITY OF BROOKFIELD V. WERC, 87 WIS.2D 819, 821; LOCAL 2537, AFSCME, AFL-CIO V. CITY OF BELOIT, DEC. NO. 27779-B (WERC, 1994).

4/ See, e.g. BARRON COUNTY, DEC. NO. 26065-A (BURNS, 1/90); BARRON COUNTY, DEC. NO. 23391-A (BURNS, 7/87), AFF'D BY OPERATION OF LAW, DEC. NO. 23391-B (WERC, 8/87); SCHOOL DISTRICT OF GREENFIELD, DEC. NO. 21157-A (ROBERTS, 10/84); AFF'D DEC. NO. 21157-B (WERC, 10/84); CITY OF BROOKFIELD, DEC. NO. 19367-A (SHAW, 11/82); AFF'D, DEC. NO. 19367-B (WERC, 12/83).

5/ See e.g., BARRON COUNTY, DEC. NO. 26065-A (BURNS, 1/90); SCHOOL DISTRICT OF GREENFIELD, SUPRA; BEAVER DAM UNIFIED SCHOOL DISTRICT, DEC. NO. 20283-B (WERC, 5/84); CITY OF BROOKFIELD, DEC. NO. 20691-A (WERC, 2/84); BROWN COUNTY, DEC. NO. 17258-A (HOULIHAN, 8/80); and WINNEBAGO COUNTY (SOCIAL SERVICES DEPT.), DEC. NO. 16930-A (DAVIS, 8/79).

6/ See, CITY OF LACROSSE, DEC. NO. 17084-D (WERC, 10/83).

7/ It is significant that the Complainant proffered no other evidence regarding any statements made by Respondent or its agents which could have interfered with, restrained or coerced employes.

8/ CITY OF BELOIT, SUPRA, slip op. p. 10.

9/ Complainant offered no evidence to show that Respondent lacked the authority or management rights to partially layoff unit employes as it did in this case.

10/ See also, MEDFORD ELECTRIC UTILITY, DEC. NO. 28440-D (Nielsen, 5/97), at p. 44-45.

11/ See, e.g., MEDFORD UTILITY, SUPRA; ELCHO SCHOOL DISTRICT, DEC. NO. 27904-A (BURNS, 8/94); CITY OF BELOIT, DEC. NO. 27779-A (MCGILLIGAN, 3/94); BARRON COUNTY, DEC. NO. 26065-A (BURNS, 1/90); CITY OF BROOKFIELD, DEC. NO. 20691-A (WERC, 2/84); VILLAGE OF UNION GROVE, DEC. NO. 15541-A (DAVIS, 2/78); and MINERAL POINT UNIFIED SCHOOL DISTRICT, DEC. NO. 14970-C (WERC, 10/78) and cases cited therein.

12/ Complainant did not dispute Respondent's assertions made through its witnesses that City Administrators received increases less than 2.75 percent due to the fact that their increases were made effective on their individual anniversary dates of hire. See, CITY OF BROOKFIELD, DEC. NO. 20691-A (WERC, 2/84); MINERAL POINT UNIFIED SCHOOL DISTRICT, DEC. NO. 14970-C

(WERC, 10/78).

ENDNOTES (Continued)

13/ The fact that a policy decision made by a municipal employer may ultimately prove to have been unnecessary or wrong does not mean that such a policy decision was illegally motivated.
14/ CITY OF BELOIT, SUPRA, slip op at p. 11.

15/ I do not find the TOWN OF SPIDER LAKE, DEC. NO. 28038-A through C (1995) to be dispositive of this case as that case concerned an organizational campaign and very different facts from the instant case.