

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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**THE WISCONSIN STATE EMPLOYEES UNION (WSEU),  
AFSCME, COUNCIL 24, AFL-CIO, and PAUL SCHUBRING, Complainants,**

vs.

**THE STATE OF WISCONSIN, Respondent.**

Case 402  
No. 52879  
PP(S)-247

**Decision No. 28961-A**

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**THE WISCONSIN STATE EMPLOYEES UNION (WSEU),  
AFSCME, COUNCIL 24, AFL-CIO, and PAUL SCHUBRING, Complainants,**

vs.

**THE STATE OF WISCONSIN, Respondent.**

Case 411  
No. 53552  
PP(S)-254

**Decision No. 28962-A**

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Appearances:

Lawton & Cates, S.C., by **Attorney Bruce M. Davey**, 214 West Mifflin Street, P.O. Box 2965, Madison, Wisconsin 53701-2965, appearing on behalf of Complainants.

**Mr. David J. Vergeront**, Chief Legal Counsel, Department of Employment Relations, 137 East Wilson Street, P.O. Box 7855, Madison, Wisconsin 53707-7855, appearing on behalf of Respondent.

### **FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

The Complainants filed their complaints in Cases PP(S)-247 and PP(S)-254 above, with the Wisconsin Employment Relations Commission (WERC), alleging that Respondent, above, had committed unfair labor practices within the meaning of the State Employment Labor Relations Act, Sec. 111.80, et seq. On January 3, 1997, the parties agreed to consolidate the complaints for hearing. On January 7, 1997, the Wisconsin Employment Relations Commission issued an order appointing the undersigned, Dennis P. McGilligan, as Examiner.

Pursuant to notice, the Examiner conducted a hearing concerning the complaints on March 10, 11 and 12, April 7, 8 and 9, and June 17 and 18, 1997, at the Commission's offices, Madison, Wisconsin. Briefing was completed on October 26, 1998.

**To maximize the ability of the parties we serve to utilize the internet and computer software to research decisions and arbitration awards issued by the Commission and its staff, footnote text is found in the body of this decision.**

The Examiner has considered the record evidence and arguments submitted by the parties. On the basis of the record, the Examiner makes and issues the following Findings of Fact, Conclusions of Law and Order.

### **FINDINGS OF FACT**

1. Paul J. Schubring ("Schubring" or "Complainant Schubring") is an individual who resides at 4806 School Road, Madison, Wisconsin 53704.

2. Wisconsin State Employees Union, AFSCME, Council 24, AFL-CIO ("WSEU" or "Union") is a labor organization with offices at 8033 Excelsior Drive, Suite C, Madison, Wisconsin 53717-1903. AFSCME Local 171, hereinafter "Local Union," is a local labor organization affiliated with WSEU.

3. The State of Wisconsin is the State Employer. The State's Department of Employment Relations (DER) is statutorily designated to represent the interests of the State for purposes of conducting labor relations involving state employees. DER has offices at 137 East Wilson Street, Madison, Wisconsin 53707-7855.

4. The University of Wisconsin (UW) System exists pursuant to and by virtue of the laws of the State of Wisconsin.

5. The UW, among its many functions and missions, operates a campus in Madison, Wisconsin, identified as the University of Wisconsin-Madison.

6. At all times material hereto, the Chancellor of the University of Wisconsin-Madison campus was and continues to be David Ward, 161 Bascom Hall, Madison, Wisconsin; the President was and continues to be Katherine Lyall, 1720 Van Hise Hall, 1220 Linden Drive, Madison, Wisconsin 53706-1557; John Torphy was a Vice-Chancellor and Henry Lufler was an assistant to the Chancellor.

7. At all times material hereto, the University of Wisconsin-Madison operated a Department of Police and Security with offices at 1429 Monroe Street, Madison, Wisconsin 53711-2018. Susan Riseling is the Chief of Police. Debra Hettrick is a Captain. Lieutenants in December of 1995 included Brian W. Bridges, Gary Johnson and Ronald L. Tews. Sergeants at that time included Dale Burke. There were around 21 Police Officers employed at the time including Harlan Hettrick and Stephen R. Sasso. Security personnel included Security Supervisors James Kaszubski and James Williams, and Security Officers John Powers, Mark L. Voight and Earl Weisensel.

8. At all times material hereto, Paul J. Schubring was employed by and worked for the University of Wisconsin-Madison, Department of Police and Security as a Police Officer. Schubring began his employment with the aforesaid Department on January 8, 1984.

9. During the course of his employment with the Department of Police and Security, Paul J. Schubring was active in Local Union 171. Said Local Union was and continues to have jurisdictional and representational duties for certain classified employees employed by and working at the University of Wisconsin-Madison Campus including, but not limited to, University of Wisconsin-Madison, Department of Police and Security. It was and continues to be appropriately affiliated with the instant complaining Union.

10. Paul J. Schubring became a Steward for Local 171 in 1992, and later that year became Chief Steward. Schubring became President of the Union effective February, 1995. He has been extensively involved in Union grievance procedures and bargaining on behalf of Local 171 at all times material herein.

11. On or about August 24, 1994, Chief Riseling attended a meeting in which Paul Schubring was acting as Union steward. Also present was the grievant, Jodi Hollis, Attorney Gordon McQuillen, also representing Hollis, Captain Hettrick and one other member of the management group. During the course of this meeting, Schubring alleged that Police Communication Operator James Foley had violated the confidentiality of the content of the meeting. Chief Riseling asked him what he meant. Schubring responded that Foley "had wished Ms. Hollis good luck before coming into the meeting." (Foley had wished Hollis good luck going into the meeting, "like I do to everybody.") Chief Riseling failed to see how that violated any kind of confidentiality so at that point dropped the matter. The parties then moved on to the subject matter of the grievance.

The next morning Captain Hettrick informed Chief Riseling that Foley had called her at home and was very upset and would not calm down until he heard from Chief Riseling that he would not be disciplined. Chief Riseling subsequently spoke with Foley who informed her that he had been called at home by Schubring who informed him that he was in trouble and that he was probably going to be investigated and disciplined for violating the confidentiality of the aforesaid meeting. Chief Riseling asked Foley if he knew what the meeting had been about with Hollis and he replied that he thought it had something to do with her seniority date. Foley “was visibly shaking” and went on to tell Chief Riseling about his employment history “and that he had never been in trouble.” Chief Riseling then said that there seemed to be “a total miscommunication.” She told Foley there was nothing going on so calm down, and “after about a half an hour he did.” Thereafter the meeting ended.

The following Monday, Schubring came by Chief Riseling’s office just before lunch time in order to talk about the above matter. Chief Riseling and Schubring decided to talk informally about it. They talked about the meeting with Hollis, the phone call to Foley, the subsequent phone call from Foley to Captain Hettrick and Captain Hettrick’s recommendation that the Chief talk to Foley. They basically got everything out on the table pertaining to the Foley/Hollis matter and “we shook hands and we parted.” No discipline was ever imposed on Schubring as a result of this incident nor was Schubring ever told by the Chief that she “would not allow him to upset employees even if it is on Union business.”

12. In January, 1995, Chief Riseling, Paul Schubring, Captain Hettrick and others participated in a pre-disciplinary meeting concerning Officer Stallsmith involving some problems he was having at the arts center. During the meeting, Stallsmith became “quite agitated.” Chief Riseling attempted without success to calm Stallsmith down and she “just kind of reached toward Paul. And Paul then interjected” and calmed Stallsmith down. After the meeting Schubring asked Chief Riseling what would happen if Stallsmith had not calmed down. Chief Riseling told Schubring that if she could not “de-escalate him,” she would “order him to calm down and then we would be looking at an insubordination type issue.” Schubring then queried what would happen if a Union steward got upset at these meetings. Chief Riseling responded that she would try to de-escalate the tension and that if she was unable to do that, she would ask the employee to intervene with their own steward; and if that was unsuccessful, then she would end the meeting; and if the steward continued he would face insubordination charges. Schubring then asked how she could find the steward insubordinate if the steward was not an employee of the Department and Chief Riseling responded “I would most likely have to resort to placing them under arrest, if it got to that level.” However, Chief Riseling testified they were just talking in a “hypothetical sense” far removed from the situation they had just dealt with, Mr. Stallsmith.

13. In February, 1995, Paul J. Schubring wrote to Chancellor Ward regarding the effect of budget cuts stating that his “recent across the board budget cuts have adversely hurt

the University Police Department.” Schubring asked that Ward “increase the size of the UW-Police Department not decrease it.” Schubring concluded by noting that by not filling one soon-to-be vacant Captain position there would be sufficient salary for two police officers.

14. In response to the above letter, Chief Riseling wrote Schubring on March 7, 1995, that she found his “math in calculating management to officer positions misleading.” Chief Riseling also wrote: “I found it bizarre for you to argue not to cut the Police in one paragraph, then use false numbers to argue that Police management should indeed be cut.” Chief Riseling called Schubring’s suggestion that a Captain’s position not be filled “short sighted” and stated:

I don’t expect you to understand what every position in this organization does, but don’t let that turn the clock back on the progress the 100 of us continued to make.

Chief Riseling concluded by noting:

It is too soon to know what, if anything, will need to be reduced as a result of the state budget. As I have stated before on several occasions, I will not speculate. If you have any questions or concerns, please contact me. Thank you.

15. On or about May 30, 1995, Paul Schubring, as the Union Steward, met with Security Supervisor James Williams concerning two grievances regarding unscheduled overtime for Security Officer Earl Weisensel. At the grievance meeting, Williams told Weisensel and Schubring that he had made the overtime assignments in dispute according to the agreement with the Union. Schubring said there was no agreement and that management “was fucking with the employees.” At that point, Williams picked up the Union contract and tossed it on the table in front of Schubring and said for Schubring to show him the rules. The contract ricocheted off the table and hit Schubring. At that point Schubring “became increasingly angry” and again said that management was “fucking with the employees.” Williams asked Schubring “to please refrain from using that language.” Schubring responded “I’ll talk any fucking way I want.” At that point Williams saw Schubring “with a red face, his neck was swelling, his voice was very angry and loud.” Williams testified: “I was hit with a load of adrenaline. I felt I was no longer in control. He was no longer in control. I declared the meeting at an end.”

As Schubring left, Schubring told Williams to tell Captain Hettrick that he was canceling the local agreement and that Williams should complete the grievance forms immediately. Williams thought Schubring's remarks were giving orders. Williams finished the grievance forms and left the room about 10 – 15 minutes later and met Schubring "by accident in our rear lobby." The two had a conciliatory conversation in which Williams expressed regret that the meeting had ended early "because Earl never did get an answer to his grievance."

The same day of the grievance meeting Schubring approached Sergeant Burke about the meeting and said he was sorry he yelled at Williams. Williams was then brought into the room. Williams and Schubring agreed that the environment of the grievance meeting had been unproductive. Schubring indicated that he was sorry for yelling at Williams, but that he could not help it when he felt he was taken advantage of by management.

On June 13, 1995, Schubring was interviewed as part of a pre-disciplinary investigation of Schubring's conduct in the above grievance meeting. Present were Union Steward Mark Voight, Council 24 Representative Diana Miller, Sergeant Todd Kuschel, Schubring and Sergeant Burke. During the course of this interview, Kuschel and Burke criticized Schubring's "tone" and "behavior" during the grievance meeting, particularly his use of the word "fucking." They also indicated that Chief Riseling was "concerned about what is acceptable behavior and actions in dealing with other members of the department" and people feeling safe and secure in dealing with Schubring.

During an informal discussion, also on June 13<sup>th</sup>, Schubring explained to Chief Riseling that he felt bad about an incident with Security Supervisor Williams in which he used the word "fucking" because they had been friends for years. Schubring explained that he wanted to lay the incident to rest and that he had apologized to Williams. Chief Riseling and Schubring then talked about the similarities between the Chief's job and the job of Union President. They talked about how they both dealt with stress with Chief Riseling saying that she played softball and Schubring stating that he liked to lift weights. It was within the context of this discussion that Chief Riseling gave the article noted below to Schubring.

16. On June 14, 1995, Chief Riseling gave Schubring a copy of an article appearing in "Women Police." The article was the President of the IAWP's message to the membership. On the copy Chief Riseling wrote:

Paul,

I read this today and thought it may be beneficial to you. Kind of a follow-up to our talk yesterday.

Susan

The article was the President's suggestions on how to deal with criticism, disagreements and arguments. It concluded by noting:

Remember, don't get down on yourself or others when criticism pops up. Biting your tongue, controlling your emotions and focusing on self-improvement are often well rewarded.

17. Sometime in early June, 1995, Paul Schubring arranged to meet with Henry Lufler of the Chancellor's Office with regard to the Union's concerns with management. The day before the meeting, Chief Riseling and Schubring started a conversation near the Xerox/coffee room. Chief Riseling expressed to Schubring her concern that if he were to lose his temper with Lufler that would reflect poorly on the organization. Schubring then explained his strategy concerning the proposed budget cuts and his intention "to make sure that the chancellor's office understood that (the) Local 171 was not in favor of, obviously losing positions." Chief Riseling then told him that she agreed with that, and, as in previous conversations, Chief Riseling and Schubring agreed "that no cuts were good cuts."

Schubring and Sharon Russ, a secretary in the court services office, testified that Chief Riseling stated that she would be angry if there was a "negative response" or "problems" as a result of the aforesaid meeting. Russ indicated that Chief Riseling's tone of voice was "not normal," it was "stern" during the above conversation. Russ "got out" of the room not wishing to hear anything further.

At no time prior to or after this meeting or at any time material herein did Chief Riseling tell Schubring that he "had to get out of uniform and put on plain clothes when interacting with non police and security personnel on Union business even while on duty."

18. Paul Schubring then met with Lufler. Schubring told Lufler that excessive disciplinary measures were being taken; there was excessive micro-management; that minor incidents were turned into major incidents; and that there was too much management in comparison to officers. Schubring also told Lufler that he thought a Police and Fire Commission would be a good idea because it would help eliminate bias and personality conflicts. Later, Schubring discussed the possibility of a Police and Fire Commission with Captain Hettrick who made it clear that she did not want a Commission "because the department would lose control and other people would be involved."

19. On or about June 14, 1995, Paul Schubring wrote Attorney Scott Hassett requesting help with a "possible unfair labor charge." The letter informed Hassett, in material part, as follows:

As of today, I was informed I was to have a pre-liminary (sic) disciplinary investigation against me for alleged misconduct during a grievance hearing in which I was acting as the steward. Unfortunately, I was not the steward who had filed the grievance. I did get upset because the supervisor was being a jerk. So, I said "you are fucking with the employees." At that point the supervisor got mad and asked that I refrain from poor language. I indicated I could say what I wanted as long as it was not directed at the supervisor. The supervisor James Williams advised that the meeting was over. So, we left! . . .

The letter also advised Hassett of several other incidents including:

. . . The first was the Chief called me in her office for a PDI for an instance when I called a represented employee at home from my home. We both were off-duty! The employee was not upset with me but got concerned that he had been mentioned in a meeting. So, out of paranoia he called the Captain. The Chief Stated (sic) "I will not allow you to upset employees even if it is Union business!" She claims she controls the employees at all times, on duty and off.

and

The next incident was in front of the records manager Patricia McGuire. The Chief confronted me because she heard that I had a meeting with the Chancellor to complain about her having a ratio of 3 to 1 supervisors to officers which is triple of the norm for most agencies of our departments (sic) size. The Chief said "I understand you have a meeting with the Chancellor tomorrow, I will be very angry if anything happens and we will have a problem."

The letter concluded by noting:

The Chief requires that I get out of uniform and into plain clothes if I have a meeting with non Police and Security personnel, even though I am on duty! Other Union personnel who wear uniforms are not required to do this!

The Chief has threatened me with discipline when I clearly am acting as a steward or as the Local Union President.



20. Paul Schubring, in a letter received June 15, 1995, wrote Marty Biel and other representatives of the Union about Chief Riseling's "continual harassment of me!" Schubring stated in said letter that during a meeting "with Lt. Tews, Lt. Miller, Riseling, Ed Corcoran, Union Rep. Mark Voight and myself to discuss overtime. (sic) Chief Riseling stated numerous times 'I don't like the tone of your letter or your attitude regarding Union issues.'" Schubring asked that Attorney Scott Hassett write a letter telling management "that my tone and health regarding Union activity is none of their business."

21. On July 14, 1995, a complaint of prohibited practices was filed against the State of Wisconsin by Council 24 and Paul Schubring. The complaint alleged that Chief Riseling had engaged in an ongoing campaign of intimidation and harassment directed at Schubring as a result of his protected activities on behalf of Local 171 and the WSEU. The complaint alleged a number of occasions on which Schubring had been threatened with discipline for conduct in connection with his performance of duties as a steward. The complaint (PP(S)-247) alleged that the actions of Chief Riseling since August of 1994 were in violation of Secs. 111.84(1)(a) and (1)(c), Stats.

22. The complaint received coverage in the Badger Herald and The Capital Times. The articles quoted Schubring as saying "morale is at an all time low," and that officers were disheartened by Chief Riseling's penchant for "doing frivolous things with money, including funding of 'powerless' jet ski and horse mounted police programs in the face of under-staffing in the departments represented by Schubring." Schubring was also quoted as criticizing Chief Riseling for her decision to send some managers to San Diego to hear a speech by a UW professor.

Chief Riseling disagreed with Schubring's claims. Chief Riseling was quoted in The Capital Times article as saying: "If there is any lack of morale, . . . it's because of Schubring."

23. Paul Schubring met with Vice-Chancellor Torphy several months after his meeting with Lufner. He told Torphy that there was excessive discipline, microscopic management and poor morale. He also told Torphy that officers felt they were watched every minute. Schubring further told Torphy that hundreds of grievances had been filed. Torphy disagreed and, therefore, after the meeting Schubring faxed Torphy copies of 67 grievances that had been filed.

24. On August 10, 1995, Paul Schubring wrote to Attorney Scott Hassett, in material part, as follows:

The Chief stated in front of Linda Foley an administrative aid (sic) that she refuses to talk to me as she can no longer trust me. Oh, Well!

However, another case of Union discrimination recently occurred. Sgt. Dale Burke refused to move my schedule to a different slot that was open. Sgt. Burke had previously (approximately 6 months ago) informed me that at the first of 1996 I would be allowed to switch to slot 8. This would allow me to work more often with Steve Sasso. Sgt. Burke on 8-8-95 informed P.O. Sasso and I that he would not allow the switch as this would cause complications setting up meetings with UNION stewards, as now we were available more often. I explained that our Union status should not have any basis to being allowed to switch.

Past practice has been allowed to allow officers to switch slots before a new officer is assigned to the shift or to voluntarily shift slots. Therefore, this is again Union discrimination and harassment. Of course you have seen the various news articles in which she blamed me for low morale, even though the chancellor's office and Union minutes reflect many disgruntled officer complaints.

I know she is going to make an arbitrary shift change without going to the union, soon, as she is downsizing the Security Division. (not Police Division yet) We filed 30 3<sup>rd</sup> step grievances in 2 weeks due to a new Policy and Procedure Manual which includes many contract violations, so I guess she just is not going to stop. Thought you'd like the information.

25. In October, 1995, Paul Schubring and Steve Sasso took time off during their shift to look at potential offices for Local 171. They notified management that they would be off duty for that purpose and they indicated on the work schedule they would be off for Union business by writing "UB" on the schedule. At the Union membership meeting on November 8, 1995, the membership was informed that a new office had been found and volunteers were solicited to help move Local 171 to the new office.

26. On November 14, 1995, Sergeant Burke officially advised the Patrol Officers of the slot changes for 1996. November 14, 1996 was also the last day in November or December that Paul Schubring, Officer Sasso and Sergeant Burke all worked together prior to the disputed incident.

27. On November 16, 1995, Paul Schubring took issue with the slot changes for 1996 in a communication to Captain Hettrick. Also on November 16, 1995, Schubring filed a grievance challenging the slot changes for 1996.

28. On November 28, 1995, the Local Union held an Executive Board meeting at which time the Union's move from its old office at 306 North Brooks in the old YMCA building to its new office at 2433 University Avenue was discussed.

29. The move was scheduled for 12:00 to 2:00 p.m. on December 15, 1995. December 15, 1995 was a work day for Paul Schubring. Police Officer Harlan Hettrick was Officer In Charge (OIC), which meant that he assigned the officers to patrol certain districts. On this day, Officer Hettrick assigned Schubring to District 3. The assignment was verbalized to Schubring during roll call and noted on the schedule. When Hettrick informed Schubring that he was assigned to District 3, Schubring made no statement about being off duty that day. On other occasions when Hettrick made district assignments as OIC, when Schubring was present, Schubring indicated that he had something to do during the course of the day. Also, when Hettrick placed the "3" in the December 15 slot nothing else was written there-no "UB," nothing. In addition, Police Officer Lind was scheduled to be "comped out" for the afternoon of December 15, 1995. If Schubring was also to be off, there would be only two officers on patrol, which would violate the Police Department's minimum scheduling requirement that there be at least three officers on duty during the period of time in question. If Schubring was scheduled to be off on December 15, 1995, Lieutenant Gary Johnson, the supervisor in charge on that day, would have had to assign overtime to an employee in order to avoid falling below the minimum scheduling policy. No overtime for the day shift occurred on December 15, 1995.

30. During the morning of December 15, 1995, Paul Schubring received approval from Communications Officer James Foley and Lieutenant Johnson to use an old dolly to help move furniture to the new Local office. At that time Schubring told Communications Officer Foley that he was not helping with the move. Communications Officer Roger Feucht overheard Schubring state to Foley that "he was only going to drop the dolly off and would not be helping with the move."

Schubring put the dolly in his squad and took it to the old Union office. At 9:25 a.m., Schubring had a telephone conversation with Lieutenant Johnson in which he indicated that he would drop the dolly off for Union members to use in the move. During the course of this conversation, Schubring also stated: "I'm not going to help them move because they are moving at noon and I'm just going to take it over there so that they have it." After the call, Schubring took the dolly to the old Union office and then went back on patrol.

31. At approximately 11:45 a.m., Paul Schubring returned to the old Union office. Schubring then proceeded to the new office. When he arrived at the new office, he went inside and called the old office.

At approximately 12:40 p.m., Mitch McGinnis, an employee of Gumby's Pizza, observed some trucks parked in areas designated for Gumby's. When McGinnis confronted

the men unloading the trucks, those men began yelling at him. McGinnis yelled back. Both sides used profanities. Thereafter, McGinnis went to the office area and was confronted by a "short cop dressed in a dark blue police shirt without a badge, wearing a gun and gun belt." McGinnis asked for the officer's name but this was refused and the officer "took hold of my arm and walked me out of the office."

After McGinnis left, Schubring removed parts of his uniform, including his shirt and gun belt.

McGinnis then advised Charles Schmidt, Manager of Gumby's Pizza, of the problem and Schmidt then walked over to the Union office. Schmidt said "since there appears to be a problem, can I have your name and badge number." Schubring told him his name and said he was Union President. Schubring explained that they only had two hours to move and asked Schmidt to leave. Schubring became angry when Schmidt continued complaining about the parking situation while refusing to leave the office. Schubring then pushed him out of the office. While pushing him out of the office, Schubring stated that he was a police officer and could have him arrested. After Schubring released Schmidt, Schmidt called the Madison Police Department (at 1:13 p.m.) and said that he had been assaulted by a police officer and "wanted the police sent immediately."

At or around this same time, Schubring contacted the landlord's office and spoke with Bonnie Brink. Schubring was "belligerent, . . . using language that on any other occasion I would have just hung up on him. But because he was a new tenant, I didn't." Despite her repeated efforts to get Schubring to calm down, ". . . he continued to just scream" at her and use "foul, abusive language." Schubring told Brink ". . . to get [her] . . . fucking ass down there . . ." and straighten out the parking problem.

Three Madison Police Officers (Officers Robinson and Hankins and Sergeant Acre) arrived on the scene. They interviewed various people, including Schubring, Schmidt and McGinnis. The written report by Officer Robinson stated that Schubring physically escorted McGinnis out of the office and that Schubring "grabbed Schmidt by the neck and physically escorted him out of their office." Officer Hankins observed redness around Schmidt's neck.

32. At approximately 1:40 p.m. Schubring called Department Headquarters. Lieutenant Tews was summoned by PCO Foley, who told him that Schubring wanted to talk with a supervisor about the matter. Lieutenant Tews spoke with Schubring. Schubring told Lieutenant Tews what had happened. Lieutenant Tews immediately informed Chief Riseling of the incident.

Lieutenant Tews was advised by PCO Foley that Schubring was listed as "available" on the CAD System and had never taken himself off "duty."

At or around 2:00 p.m., Schubring returned to the station. He then met with Lieutenant Tews and explained in more detail what had occurred and told Tews the Madison Police had investigated the incident and the matter was over. Lieutenant Tews told Schubring that he would have to see the Chief.

Thereafter, Lieutenant Tews passed the additional information on to Chief Riseling. Chief Riseling spent some time contacting and consulting with a variety of State and University personnel to relay the facts as she knew them and seek their advice on how to proceed.

At approximately 3:30 p.m., Chief Riseling met Captain Hettrick and Sergeant Burke in the hallway; all three proceeded to the Chief's office. Chief Riseling asked both whether they had given Schubring permission to be off for any reason on December 15, 1995; both responded that they had not. Captain Hettrick proceeded to the room where the work schedule was located, reviewed it and saw only a "3" in the slot for Schubring; there was no "UB." Sergeant Burke went up to his office and checked a file he kept of leave requests submitted by employees; there was nothing in it to indicate that Schubring had permission to be "off duty."

Chief Riseling consulted with her staff about the known facts. She also consulted DER's Chief Legal Counsel and various University personnel involved in human relations, labor relations and employee assistance.

Schubring returned to the station around 4:00 p.m. and talked with officers coming on duty for the next shift.

At approximately 4:00 p.m. a decision was made to place Schubring on paid administrative leave.

Also around 4:00 p.m., Captain Hettrick rechecked the December schedule and found "UB" squeezed in Schubring's slot.

At approximately 4:20 p.m., Lieutenant Tews gave Schubring a letter from Chief Riseling stating:

Effective today's date you are placed on administrative leave with pay pending the outcome of an internal investigation. This investigation will consider your fitness for duty and your actions in an incident that occurred on this date in the 3400 block of University Ave.

You are required to turn in your department keys, police identification, deputy card, and badges to Lt. Ron Tews. You are not to be present on the

premises of the Police facility including parking lot or garage, nor be present in any state vehicle unless you are required to do so at our request. Your authority to carry a weapon which is derived from your police officer status is revoked. Failure to comply with these orders may result in disciplinary action.

You will be contacted regarding arrangements we may need to make with you as our investigation proceeds.

33. On December 15, 1995, in addition to placing Schubring on administrative leave, Chief Riseling contacted Dane County Sheriff Richard Raemisch and requested that Raemisch suspend Schubring's authority as a Dane County Deputy Sheriff. As a result of the request, Raemisch revoked Schubring's authority as a Dane County Deputy Sheriff. Schubring was informed by Lieutenant Bernie Reinfeldt in a phone conversation on December 15, 1995, that his authority as a deputy sheriff was suspended. Written notice of this suspension was given to Schubring on December 18, 1995.

Chief Riseling also contacted Schubring's part-time employer, the Village of Shorewood on this date. Chief Riseling called Terry Ninneman, the Chief of the Shorewood Police Department and told him that she had suspended Schubring "and that she felt it would be appropriate if I would suspend Paul." She told Ninneman that she had called the Dane County Sheriff's Department and arranged to have Schubring's deputy status revoked. She also told Ninneman that if he "knew the circumstances of the suspension that I wouldn't let Paul work for me." Ninneman told Chief Riseling that he had talked to Schubring and reviewed the police report and that he was not going to suspend Schubring. Chief Riseling then told Ninneman that Schubring was restricted from campus and that if Schubring continued to work for Shorewood Ninneman "was not allowed to have him come on campus." Ninneman said that would be difficult because part of the campus was in the Village of Shorewood Hills and Chief Riseling responded that if Schubring came on campus he would be arrested. Thereafter, Ninneman and Chief Riseling agreed that Schubring would not come onto campus as part of mutual aid or routine patrol but that he could answer specific calls. Chief Riseling informed Ninneman that Schubring was not to come to the UWPD offices.

34. On December 16, 1995, Officer Sasso found the lavender colored original of Schubring's Absence Notification for Union Business for December 15, 1995, in Schubring's mailbox. On December 17, 1995, Sergeant Burke found a copy of the aforesaid notice in his mailbox at headquarters.

35. On December 18, 1995, Chief Riseling called Dr. Eric Hummel, a licensed psychologist with Affiliated Psychological Resources in Madison, Wisconsin, for the purpose of arranging a psychological evaluation of Schubring. Chief Riseling told Hummel that there apparently had been some physical contact between Schubring and a delivery person and

manager of a pizza establishment. Chief Riseling also told Hummel that Schubring was the President of the Union and that he had “total freedom of speech” while conducting Union business. She further told Hummel that there had not been any incidents on the job where Schubring was physically or verbally abusive since 1992, but that there were some incidents of concern in his role as Union person. Chief Riseling informed Hummel that some people were raising an issue over Schubring coming to grievance meetings in his uniform and were questioning whether or not he was presenting an intimidating posture by wearing his weapon and placing his hand on his gun or near his gun “while there was intense verbal interaction going on.” Hummel told Chief Riseling he had time available on December 19, 1995, to do an evaluation.

36. By letter dated December 18, 1995, Chief Riseling “ordered” Schubring to see Dr. Hummel for “an evaluation for fitness for duty” on December 19, 1995, and “to sign all necessary release so that Dr. Hummel may share the evaluation results” with the Department. Chief Riseling noted: “Failure to appear may result in discipline up (sic) and including termination.”

37. Paul Schubring met Dr. Hummel on December 19, 1995. Schubring provided Hummel with a variety of written materials and advised Hummel that he should contact the Shorewood Hills Police Chief. Schubring told Hummel that it was fair to say that his relationship with the Chief was not very good and that his suspension was more a “personal vendetta” than incident based.

38. On January 4, 1996, Lieutenant Johnson and Lieutenant Glen Miller conducted an investigatory meeting with Paul Schubring.

39. On January 5, 1996, Dr. Hummel had a phone conversation with Chief Riseling or her administrative assistant in which he asked for information regarding Schubring’s management of stress, anxiety or anger. In particular, Hummel requested anything in writing relating to meetings or incidents in which Schubring exhibited “reactions of a strong nature” relating to the aforesaid issues. Captain Hettrick assembled various materials and forwarded the materials to Hummel for his review.

40. Dr. Hummel submitted an eight page report to Chief Riseling on January 25, 1996. In summary, Hummel wrote:

I was asked to provide an independent evaluation of Officer Schubring related to his ability to perform his job duties, specifically in regard to the extent to which he is at risk related to his control of anger, stress, frustration. I am aware from you, Officer Schubring, Attorney Hassett, who has contacted me on two occasions, and through a newspaper article which Officer Schubring

sent, that his situation is already placed in the legal arena. This independent evaluation is specifically intended to describe Officer Schubring's personality characteristics related to his job performance. I did not investigate nor form an opinion as to the legal appropriateness of any of his conduct or that of the University of Wisconsin Department of Police & Security.

Officer Schubring has personality characteristics which result in a moderate risk of undercontrolled aggression in circumstances which includes a belief that he is being poorly treated, unfairly dealt with, or aggressively challenged about his conduct or when he perceives others to strongly or unnecessarily challenge him on a personal level. He can become abruptly emotional when under pressure. Most often, his reaction will be verbal. He can become irritable, hasty, self-righteous, and aggressive. In the absence of stress and psychological threats, Officer Schubring will appear peaceful, but tightly controlled.

Officer Schubring indicated a desire to work hard and be seen as a model officer and citizen. He has a high degree of energy which at times leaves him over-excitabile and easily distracted. He can be suspicious of others and he does not take criticism well.

Officer Schubring reported that he has been treated for an anxiety or stress disorder, including occasional psychotherapy and regular use of an anti-anxiety medication. I would anticipate his treatment providers will describe Officer Schubring in positive terms, particularly in his desire to do well and his general ability to monitor the intensity of his reactions. From general appearance and his self-report, Officer Schubring presents himself as well controlled and maintained. He works hard through rather rigid self-monitoring to contain himself and put his best foot forward. It is my opinion that this works well for Officer Schubring a vast majority of the time, however, there will be occasions where he displays more intensity than is appropriate or healthy.

Thank you for asking me to evaluate Officer Paul J. Schubring. You may have specific questions about Officer Schubring's current ability to perform his job. Please contact me if there are additional matters you would like me to address as a result of this evaluation.

41. On February 2, 1996, Chief Riseling faxed Dr. Hummel five pages of detailed questions concerning statements contained in his report. The fax concluded with the following seven questions:



- 1) Does Paul pose a threat to the safety of himself, coworkers, customers, arrestees or anyone else in the community? If so, under what circumstances?
- 2) Is Paul capable of returning to work and performing all of the duties of a Police Officer? If not, could he return to work and perform these duties with modifications or accommodation? (If yes, please describe.)
- 3) If there are concerns about Paul's mental health status could we expect a resolution of these concerns with treatment intervention? If so, what kind of treatment would you recommend? What is the prognosis and expected length of treatment for resolution? Does Paul have a diagnosis?
- 4) In light of the fact that Paul has been receiving treatment for anxiety for approximately 14 months, can we expect improvement in the future?
- 5) Can we depend on Paul to perform well in pressure situations, remaining calm and reacting in a polite, efficient and professional manner that promotes confidence in him from the public and fellow workers?
- 6) Do you have any data to support your conclusions? If so, may I have copies of that data?
- 7) If this were a pre-employment psychological test for this Department and Officer Schubring received these current test and interview results what would be your recommendation regarding his suitability for employment?

42. Dr. Hummel responded to Chief Riseling's questions on February 7, 1996, with a seven page single spaced letter. Among other things, Hummel commented on a "one-page letter dated June 17, 1992, regarding the assessment Mr. Duberry conducted related to Officer Schubring. The assessment differs from my examination in several ways. . . ." Hummel noted particularly that, unlike Duberry, he found that Schubring "does, in certain conditions, exhibit a diminished ability to control his anger, raising the potential for inappropriate work behavior." Hummel also noted that Schubring "is at higher risk to display excessive force or an inappropriate anger reaction in a 'more public circumstance' including if he perceived the public to treat him poorly or unfairly." Hummel further added that Schubring "angers quickly," and that when he angers, "there is a significant intensity to his anger." Hummel noted that although Schubring worked very hard at containing his anger, he was "not able to always express or contain these characteristics in a manner which avoids excessive expression." Hummel also pointed out that:

The description was intended to indicate that Officer Schubring is able to function relatively well in his duties as a police officer, remain organized, and function independently most of the time. His risk of inappropriate behavior related to his job duties relates to the risk level of physical response and aggression in circumstances which are described in the summary of my 1996 report, namely, when the circumstances include his belief he is being poorly treated, unfairly dealt with, or aggressively challenged about his conduct or when he believes others to strongly or unnecessarily challenge him on a personal level. The risk is highest when Officer Schubring does not anticipate or expect such a reaction from others.

Hummel repeated that “most often” in challenging confrontations Schubring would respond verbally and that Schubring was “tightly controlled” and “works hard through rather rigid self-monitoring to contain himself and put his best foot forward.”

In response to a question regarding Schubring’s ability to return to work, Hummel stated:

Officer Schubring could perform most of the job duties of a police officer, except for the circumstances which are not anticipated or predicted, which, unfortunately, is often a routine part of law enforcement. He will not consistently handle well his duties when he is unexpectedly confronted in an aggressive or challenging manner, when his authority is not reasonably respected, or someone attempts to chide or embarrass him.

Officer Schubring needs additional education and treatment in anger control and stress management as part of his being able to perform all of his job duties.

Hummel gave no opinion on Schubring’s suitability for employment stating:

The pre-employment screening is different than an independent evaluation, therefore, I could not make definitive statements as to how my recommendations, beyond encouraging a police department to carefully review references regarding Officer Schubring’s previous work history, particularly as it relates to his ability to consistently manage pressure situations relating to his being challenged about his authority, accepting feedback, particularly critical feedback from authority figures, or the potential of use of excessive force. Prior incidents of such behavior would be a strong negative.

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43. On February 8, 1996, a Pre-Disciplinary Investigation (PDI) for Schubring was held.

In order to afford Schubring the opportunity to be evaluated by a psychologist of his own choosing, Chief Riseling gave Schubring several months to do so. On April 22, 1996, Schubring's psychologist issued his report. In his report, a copy of which was submitted to Chief Riseling, Dr. Hanusa stated the following about Schubring:

Conclusion/Recommendations: Overall, Mr. Schubring presents as a low risk for anger/abusive outbursts. However, given Mr. Schubring's occupation in law enforcement, he appears to be in a position to benefit from counseling aimed at improving conflict resolution tactics and decreasing anger arousal. It is recommended that he become involved in specific anger management counseling, preferably a structured cognitive behavioral regimen focusing on skill development.

44. By letter dated June 10, 1996, Chief Riseling informed Schubring that his employment was terminated. The letter stated, in material part, as follows:

...

As a result of your conduct in the incident of December 15, 1995, and the information revealed during the investigation that followed, I have determined that it is necessary to terminate your employment with this Department, effective immediately. The bases for my decision are summarized as follows:

...

I find that your conduct in the incident of December 15, 1995, as well as your misrepresentations, falsifications or lies during the course of the investigation into that incident, constitute violations of the following Department policies and University of Wisconsin employe work rules:

1. University of Wisconsin-Madison Department of Police and Security Policy (hereinafter UW-Madison Police Policy) 112.00 Use of Force; Sections 112.01 and 112.02.
2. UW-Madison Police Policy 107.00 Uniforms; Section 107.08
3. University of Wisconsin System Classified Employees Work Rules Prohibited Conduct (hereinafter UWS Work Rules)

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I. Work Performance

B. Loafing, loitering, sleeping or engaging in unauthorized personal business.

- D. Falsifying records or giving false information to other state agencies or to employees responsible for record keeping.
- E. Failure to provide accurate and complete information whenever such information is required by an authorized person.
- G. Negligence in performance of assigned duties.

#### 4. UWS Work Rules

##### IV. Personal Actions and Appearance

- A. Threatening, attempting, or doing bodily harm to another person.
- B. Threatening, intimidating, interfering with, or using abusive language towards others.
- J. Failure to exercise good judgment, or being discourteous, in dealing with . . . the general public.

The violations of the use of force policy are serious. A police officer is the only occupation given the authority to use force, up to and including deadly force, in dealing with the community's citizens. You violated this trust when you utilized physical force on two members of the community on December 15, 1995 without sufficient justification. Your willingness to use force in that situation to solve a minor parking dispute directly impacts the University's confidence in your judgment as a law enforcement officer. You have been warned before about poor judgement and your loss of control.

An additional distressing aspect of this case is the fact that you gave false information during the course of the investigation. Confidence in you as a police officer depends on your honesty. A police officer must report incidents and arrests accurately and testify in court. The public and this Department must be able to trust you. You have shattered that trust with your misconduct.

There were no mitigating circumstances revealed during the investigation of this incident that can excuse your loss of control and your subsequent dishonesty. You have consistently maintained that you do not have any psychological problems with respect to your ability to control your anger. Pursuant to my request, you submitted to a psychological evaluation after this incident. You have also submitted a psychological evaluation by an individual who you selected. Neither evaluation indicates a psychological disability. Accordingly, you are fully responsible for your conduct and activities related to the incident of December 15, 1995 and during the subsequent investigation.

. . .

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45. Respondent's decision to terminate Paul J. Schubring was based on the activities noted in its letter of termination set forth in Finding of Fact No. 44 above and was not in retaliation for Schubring's protected activity. Nor did said action have a reasonable tendency to

interfere with, restrain or coerce Complainants in the exercise of their rights under Sec. 111.82, Stats.

46. Respondent's actions, as noted in Findings of Fact Nos. 11, 12, 15, 16 and 17, were not in retaliation for Schubring's protected activity. Nor did said actions have a reasonable tendency to interfere with, restrain or coerce Complainants in the exercise of their rights under Sec. 111.82, Stats.

Based upon the foregoing Findings of Fact, the Examiner makes the following

### **CONCLUSIONS OF LAW**

1. Respondent, by its actions in response to Paul Schubring's phone call to PCO James Foley on or about August 24, 1994, and the Stallsmith grievance meeting which was held in January, 1995; by its failure at any time material herein to require "Officer Schubring get out of uniform and put on plain clothes when interacting with non-Police and Security personnel on Union business, even when on duty"; by expressing concerns that it might reflect poorly on the UW Police Department if he (Schubring) lost his temper when meeting with the UW Chancellor's Office; and by informing Schubring on June 13, 1995, that Chief Riseling had some concerns about his "tone" or "attitude" when he acted in his capacity as steward while engaged in a grievance meeting on or about May 30, 1995, was not motivated in whole or in part by hostility toward the exercise of Schubring's protected rights and, therefore, has not committed unfair labor practices within the meaning of Sec. 111.84(1)(c), or derivatively (1)(a), Stats.

2. Respondent, by its actions noted in Conclusion of Law No. 1 above, has not interfered with, restrained or coerced Complainants in the exercise of their rights under Sec. 111.82, Stats., and therefore, has not committed an unfair labor practice within the meaning of Sec. 111.84(1)(a), Stats.

3. Respondent, by terminating Paul J. Schubring on June 10, 1996, did not retaliate against Schubring for protected activity; thus, Respondent has not committed an unfair labor practice within the meaning of Sec. 111.84(1)(c), or derivatively (1)(a), Stats.

4. Respondent, by terminating Paul J. Schubring on June 10, 1996, has not interfered with, restrained or coerced Complainants in the exercise of their rights under Sec. 111.82, Stats., and therefore, has not committed an unfair labor practice within the meaning of Sec. 111.84(1)(a), Stats.

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5. Respondent, by the actions complained of in terminating Paul J. Schubring on June 10, 1996, has not acted to initiate, create, dominate or interfere with the formation or administration of WSEU, AFSCME, Council 24 or Local 171, and therefore, has not committed an unfair labor practice within the meaning of Sec. 111.84(1)(b), Stats.

Upon the basis of the above and foregoing Findings of Fact and Conclusions of Law, the Examiner makes and issues the following

**ORDER**

IT IS ORDERED that the complaints filed in the above-entitled matters be, and the same hereby are, dismissed.

Dated at Madison, Wisconsin, this 14<sup>th</sup> day of December, 1998.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Dennis P. McGilligan /s/

Dennis P. McGilligan, Examiner

STATE OF WISCONSIN

**MEMORANDUM ACCOMPANYING**  
**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

**PARTIES' POSITIONS**

**Complainants' Position**

In their brief, Complainants make the following principal arguments regarding Case PP(S)-247. One, Respondent Chief Riseling engaged in conduct which interfered with and coerced employees in the exercise of protected rights. Complainants allege the following conduct violated Sec. 111.84(1)(a), Stats.: Chief Riseling's threat of discipline for Schubring advising Foley he might be contacted by management; Chief Riseling's admonition that if Schubring did not behave when acting as a steward he would be disciplined; Chief Riseling's statements to Schubring that he should not be in uniform when acting as a steward; Chief Riseling's conversation with Schubring concerning his scheduled meeting with the Chancellor's Office; and subjecting Schubring to a pre-disciplinary investigation for his tone of voice or attitude in conducting Union business. Two, Respondent Chief Riseling discriminated against Complainants as a result of the aforesaid activity.

In said brief, Complainants also make the following principal arguments regarding Case PP(S)-254. One, Respondent's placement of Schubring on administrative leave, its order to Schubring to undergo a psychological evaluation and its termination of his employment all violated Sec. 111.84(1)(c), Stats. In support thereof, Complainants argue that it is undisputed that Schubring engaged in conduct protected by Sec. 111.82, Stats. Complainants also argue that Chief Riseling and her management team were aware of Schubring's protected activities and were hostile to said activities. As evidence of this hostility, Complainants rely on the following: Chief Riseling's activity in contacting various high ranking University and State officials immediately following the incident without actually knowing what in fact took place; her decision to order Schubring to immediately submit to a psychological examination; and the information Chief Riseling provided and the contact that she had with the psychologist doing the aforesaid examination. As further evidence of Chief Riseling's hostility and motivation in discharging Schubring, Complainants make the following allegations: the reasons asserted by Chief Riseling for terminating Schubring greatly exaggerate his conduct and were not sufficient to terminate his employment; the disparity between the manner in which certain other officers were disciplined for the same or similar conduct and Schubring is attributable to Schubring's Union activity; Sergeant Burke's termination of his friendship with Steve Sasso and failure to dispute Sasso's testimony corroborating Schubring's testimony; and Chief

Riseling's cancellation of her plans to attend the retirement party for Shorewood Police Chief Terry Ninneman because she was concerned that Schubring would be present, and create a scene.

Complainants also argue that the above actions of management reacting to Schubring's protected activities were undertaken in a manner that tended to interfere with the assertion of protected rights, and therefore, violated Sec. 111.84(1)(a), Stats.

Finally, Complainants argue that Respondent's termination of Schubring violated Sec. 111.84(1)(b), Stats.

For a remedy, Complainants ask that the Examiner find the appropriate statutory violations. Complainants also ask that the Examiner order Respondent to reinstate Schubring to his former position and make him whole for all wages and benefits lost since the termination of his employment.

In their reply brief, Complainants make the following new principal arguments regarding PP(S)-247. One, because in Respondent's brief the incidents which are the basis of the allegations in Case PP(S)-247 are not denied and Respondent does not contend that the conduct did not have a reasonable tendency to interfere with, restrain or coerce employees in the exercise of protected rights, the Examiner should enter an order finding the conduct alleged in the aforesaid case violates Sec. 111.84(1)(a), Stats. Two, contrary to Respondent's attempt to portray Chief Riseling as "Mother Teresa" because she was "lenient" when imposing discipline on Schubring and because she "always went to bat for her officers," Chief Riseling's hostility toward Schubring is evident from Respondent's brief, i.e. Respondent claims Schubring filed "numerous petty grievances" just to "harass" Chief Riseling and that he filed said grievances to clog up the system rather than address legitimate concerns. Complainants conclude that prior to the termination of Schubring's employment, Chief Riseling on several occasions engaged in conduct that had a reasonable tendency to interfere with, restrain, or coerce employees in the exercise of their Sec. 111.82 rights. Complainants repeat and expand upon the incidents first cited in their briefs in support thereof.

In said reply brief, Complainants reiterate many of their arguments noted above regarding PP(S)-254, all alleging that placement of Schubring on administrative leave, ordering him to undergo a psychological evaluation and the termination of his employment all violated Sec. 111.84(1)(c), Stats. In addition, Complainants make the following new main points. One, Chief Riseling did not follow standard procedure to conduct an investigation before making the decision whether to require a psychological evaluation because she knew that requiring Schubring to submit to a psychological evaluation might provoke him and he might refuse to submit to the exam giving her a reason to terminate his employment. Two, "the best evidence of the fact that Schubring's labor activity was a factor in the decision to place Schubring on administrative leave is the evidence concerning the way Schubring was



treated when he was involved in an incident involving the use of force . . . in 1992.” In that incident Schubring was not placed on administrative leave while the incident was investigated and was not asked to have a psychological evaluation until after the incident. Of course, in 1992 when the incident occurred, Schubring was not an officer or steward in the Union. (Emphasis in original) Three, the actions taken by Chief Riseling upon learning Schubring was involved in the December 15<sup>th</sup> incident demonstrate her hostility toward Schubring and are “a classic illustration of getting your ducks in order so you can accomplish the results you want.” Four, Respondent acted improperly by now claiming that Schubring’s prior discipline was a factor in the decision to terminate his employment.

In conclusion, Complainants reiterate that the evidence of Respondent’s unlawful motivation in taking the aforesaid action against Schubring is clear, convincing and satisfactory and establishes a violation of Sec. 111.84(1)(c), Stats. (Emphasis in original)

### **Respondent’s Position**

Respondent basically argues that Complainants have failed to meet their burden. In this regard, Respondent first argues that the Examiner can only address Complainants’ statutory claims and is without jurisdiction to determine whether there was just cause to terminate Schubring, an issue raised by Complainants in the Amended Complaint. Respondent next argues that with respect to Sec. 111.84(1)(b), Stats., Complainants have failed to submit any proof or make any arguments that Respondent’s conduct threatened the Union’s independence or reduced the Union to a mere tool of the Employer. Therefore, according to Respondent, the only matter before the Examiner is whether Respondent violated Sec. 111.84(1)(a), Stats. In the opinion of Respondent, Complainants did not prove by a clear and satisfactory preponderance of the evidence the Respondent’s conduct was likely to interfere with, restrain or coerce Union-represented employees in the exercise of rights protected by Sec. 111.82, Stats., and therefore, this claim must be dismissed.

In support of the above, Respondent initially argues that Schubring’s version of what occurred totally lacks credibility. In this regard, Respondent claims that the record evidence supports a finding that all of Schubring’s versions of when he allegedly gave Complainants’ Exhibit No. 14 (notice that he would be off for two hours on December 15, 1995 to help move the Union office) to Sergeant Burke are rank falsehoods. Instead, according to Respondent, the record clearly supports a finding that Schubring drafted Complainants’ Exhibit No. 14 after the December 15, 1995 incident as part of his cover up. Respondent also claims other evidence supports its claim that Schubring’s version that he was “off duty” as well as his version of what occurred at the new Union office contains numerous falsehoods. In this regard, Respondent cites the recorded phone conversation between Schubring and Lieutenant Johnson at 9:25 a.m. on December 15, 1995, wherein Schubring indicated he was not going to help with the move. Respondent also cites other conversations wherein Schubring indicated he

was not involved in the move. In conclusion, Respondent alleges that the only credible version of what actually happened on December 15<sup>th</sup> is that Schubring never planned to be off duty between noon and 2:00 p.m.; that Schubring thought he could help with the move while “on duty” and no one would notice; that when the incident occurred, Schubring realized that he had to eliminate “on duty” indicia and fabricate evidence of being off duty; that Schubring made numerous provable errors in his attempt at cover up; and that Schubring is guilty of the actions complained of. Respondent also claims that the record supports a finding that Schubring never asked for two hours time off on the date in question; that he helped with the move of the Union offices while on duty; that he was involved in a parking dispute which escalated into something more serious, in part, due to his behavior; that he manufactured a story to cover up for his actions; that he caused a red mark on Mr. Schmidt’s neck; that he was abusive to Bonnie Brink and that he acted unprofessionally on the date in question.

In support of its claim that Schubring acted improperly with respect to the December 15, 1995 incident, Respondent next argues that Schubring has a propensity for such conduct because he engaged in similar behavior in the past, including dishonesty, use of excessive force and fits of uncontrolled temper and rage. For example, Respondent notes that in 1991 Schubring broke into a State office to cheat on a competitive promotional exam; that he has been disciplined for using unnecessary physical force in the past; and that he has previously exhibited unpredictable and uncontrollable fits of rage and anger.

Respondent next argues that psychological reports establish that Schubring did not have a psychological problem or disability which might explain his behavior.

Finally, Respondent argues that Complainants’ contention that Schubring was terminated, in part, because of his Union affiliation and activities is without support in the record. In support thereof, Respondent claims that Chief Riseling was unbelievably lenient when imposing discipline against Schubring for acts of misconduct; that Chief Riseling went to bat for her officers and Schubring acknowledged that Schubring’s filing of grievances was uncalled for and hardly an example of “clean hands,” rather they showed that Schubring and others knew how to file numerous petty grievances designed to harass and clog up the grievance machinery, instead of challenging legitimate issues; that others besides Schubring were suspended with pay while alleged misconduct was investigated; and that other instances which Complainants cite do not support a conclusion that Schubring was the victim of Union animus at any time, including when he was terminated. In addition, Respondent notes that the incident involving PCO Foley demonstrates Schubring’s abuse of his position; that Schubring acted unreasonably as a Union steward and representative; that there was nothing wrong with Chief Riseling advising Schubring not to do something which might harm the Department’s efforts when he met with the Chancellor’s Office; that Chief Riseling sent other staff to psychological evaluation for mental health evaluations; that the discipline imposed on John Powers was warranted and unrelated to his position with the Union; that the discipline imposed

against Schubring versus that imposed against Messrs. Hooker, Tyler and Feucht does not demonstrate an anti-union motivation; and that there were substantial differences between the conduct in which Mr. Van Natta engaged and the conduct of Schubring.

Respondent concludes by noting that as cited in Complainants' brief the mere fact that an employer engages in violations of SELRA does not mean that Schubring's termination will be overturned. Respondent notes that a complainant must prove that the termination was motivated in part by hostility. (Emphasis in original) Respondent claims that the record is absolutely void of any credible evidence which establishes a nexus between Schubring's concerted activity and his discharge.

For the foregoing reasons, Respondent submits that the Complainants have failed to meet their burden and requests that the complaints be dismissed on their merits.

Both parties, in advancing the above arguments, cite numerous authorities and precedent in support of their positions.

### **CASE PP(S)-247**

#### **Section 111.84(1)(a) – Interference**

Section 111.84(1)(a), Stats., provides that it is an unfair labor practice for the State as an employer:

(a) to interfere with, restrain or coerce state employees in the exercise of their rights guaranteed in s. 111.82.

Section 111.82, Stats., provides the following with regard to the rights of employees:

**111.82 Rights of state employees.** State employees shall have the right of self-organization and the right to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing under this subchapter, and to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection. Such employees shall also have the right to refrain from any or all of such activities.

The Commission has consistently held that it will find interference on the part of an employer in the following circumstances:

Violations of Sec. 111.70(3)(a)1, Stats., occur when employer conduct has a reasonable tendency to interfere with, restrain or coerce employees in the exercise of their Sec. 111.70(2) rights. If, after evaluating the conduct in question under all the circumstances, it is concluded that the conduct had a reasonable tendency to interfere with the exercise of Sec. 111.70(2) rights, a violation will be found even if the employer did not intend to interfere and even if the employee(s) did not feel coerced or was not in fact deterred from exercising Sec. 111.70(2) rights.

JEFFERSON COUNTY, DEC. NO. 26845-B (WERC, 7/92), AFF'D 187 WIS.2D 647 (CTAPP 1994), CITING WERC V. EVANSVILLE, 69 WIS.2D 140 (1975) and BEAVER DAM UNIFIED SCHOOL DISTRICT, DEC. NO. 20283-B (WERC, 5/84); CITY OF BROOKFIELD, DEC. NO. 20691-A (WERC, 2/84); JUNEAU COUNTY, DEC. NO. 12593-B (WERC, 1/77).

While the above holding references statutory provisions of the Municipal Employment Relations Act (MERA), those provisions are substantively identical to Secs. 111.84(1)(a) and 111.82 of SELRA, respectively, and the same test for whether interference occurred applies under both statutes. STATE OF WISCONSIN, DEPARTMENT OF EMPLOYMENT RELATIONS V. WERC, 122 WIS.2D 132, 143 (1985).

In their complaint in Case PP(S)-247, Complainants allege that the following incidents were part of a pattern of harassment and intimidation: an incident on or around August 23, 1994, wherein Chief Riseling "called Officer Schubring in for a pre-disciplinary interview and stated to him that she 'would not allow him to upset employees even if it is on Union business'"; an incident in January of 1995, wherein Chief Riseling advised Schubring "that if he didn't 'behave' in the context of acting as Union Steward he could be disciplined as insubordinate"; a directive from Chief Riseling to Schubring to get out of uniform and put on plain clothes when interacting with non-Police and Security personnel on Union business, even when on duty; an incident in May of 1995, wherein Chief Riseling advised Schubring that she understood that he had a meeting with the Chancellor the next day and that she would be "very angry if anything happens and we have a problem"; and in incident on June 15, 1995, wherein Schubring was subjected to a preliminary disciplinary investigation by Chief Riseling for alleged "tone" or "attitude" in his capacity as Steward while engaged in a grievance meeting earlier in June. In addition, Complainants argue that Respondent essentially admits the aforesaid complaint allegations in Case PP(S)-247 by not responding to same in its brief; and

therefore, the Examiner should enter an order finding the appropriate statutory violation. Complainants also argue that Respondent's brief is further evidence of Chief Riseling's hostility toward Schubring's exercise of protected activity.

The problem with the Complainants' allegations is that there is no persuasive evidence in the record in support of same. 1/ To the contrary, the record indicates that Respondent acted responsibly in the situations complained of by Complainants and its conduct did not have a reasonable tendency to interfere with the exercise of Sec. 111.82 rights. In this regard, the Examiner notes that, contrary to Complainants' assertion, Chief Riseling never told Schubring that she "would not allow him to upset employees even if it is on Union business." She did have an informal discussion with him regarding a phone call to PCO James Foley in which he informed Foley that he was probably going to be investigated over a remark he made to Jodi Hollis as she went into a grievance meeting and that he faced probable discipline over his comments. She testified persuasively that they had an amiable, informal discussion on the subject; "shook hands and parted." No discipline was ever imposed on Schubring as a result of this meeting. The Examiner also notes that, contrary to the Union's assertion, Chief Riseling never told Schubring that if he didn't "behave" in the context of acting as Union Steward that he could be disciplined as insubordinate. Chief Riseling did discuss with Schubring how she would "de-escalate" the situation with a Union steward who was out of control. However, this was a hypothetical discussion and Chief Riseling never advised or warned Schubring regarding same.

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1/ In making this finding, the Examiner has been presented with conflicting testimony regarding certain material facts. As a result, it has been necessary to make credibility findings, based in part on such factors as the demeanor of the witnesses, material inconsistencies and inherent probability of testimony, as well as the totality of the evidence. Schubring's testimony is replete with examples of inconsistent, vague, contradictory, confusing and unresponsive statements. For example, Schubring testified during cross, at page 144, that it was him not Security Supervisor James Williams who wanted to end their grievance meeting. When shown a copy of Complainants' Exhibit No. 8, Schubring admitted that "My recollection was probably wrong then."

Schubring also gave conflicting statements regarding when he allegedly gave Complainants' Exhibit No. 14 (the notice that he would be off for two hours on December 15, 1995, to help the Union move its office) to Sergeant Burke. At his January 4, 1996 interview with Lieutenant Johnson, Schubring stated that he provided Sergeant Burke and Lieutenant Johnson with a copy of the aforesaid notice on "11/27/95." (Respondent Exhibit No. 23, Part I, Tab Q, p. 5) Then, on January 23, 1996, Schubring presented Lieutenant Johnson with a copy of the first shift schedule showing that Schubring was off on UB on December 15, 1995, which had typed on it "Filed at office at 11-28-95." (Respondent Exhibit No. 23, Part I, Tab W, p. 2) At his PDI on February 8, 1996, Schubring stated that he and Officer Sasso met with Sergeant Burke on November 27, 1995, regarding the schedule slots and he handed Burke a Union absence notification form. (Schubring and Sasso were not scheduled to work together that day.) (Respondent Exhibit No. 23, Part II, Tab BBB) Schubring also stated on that date that he filed

a request and accompanying schedule at the Union offices on November 28, 1995. Yet, at the hearing, when confronted with conflicting statements on this point, Schubring admitted that he had “back dated” the Union absence notification form provided to Lieutenant Johnson during his investigation of the December 15, 1995 incident to reflect that it was received in the Union office on “Nov 28 1995.” (Tr. at 563) This, despite testifying earlier that the Union stamp was something “the office staff generally does when they are given something.” (Tr. at 560)

Another example of Schubring’s lack of credibility when testifying is his claim initially that Respondent Exhibit No. 10 (Department Guidelines for Union Activities) was backdated to December 14, 1995. (Tr. at 492) Later, he admitted that it was possible for said document to be issued on said date but received later by both Department supervisory personnel and the Union office. (Tr. at 493) He had just “assumed” to the contrary.

The Examiner also finds Schubring’s lack of recollection over whether he filed a complaint or grievance over the Williams’ incident less than persuasive. Schubring initially testified that he couldn’t remember if he filed a grievance or complaint with management over the issue. (Tr. at 494) When shown Respondent Exhibit No. 11, Schubring admitted that he filed a complaint over the matter but didn’t remember with whom. (Tr. at 495) When shown Respondent Exhibit No. 12, Schubring remembered that he also filed a grievance on the incident. (Tr. at 496) Then Schubring stated he didn’t “remember receiving any correspondence or anything from management” on the subject. (Tr. at 497) After being shown Respondent Exhibit No. 13, Schubring identified said document as a response to his complaint regarding Williams but stated “I don’t remember seeing it, but it’s addressed to me.” (Tr. at 497) The Examiner points out that all of the above testimony is in regard to an incident which is referenced in paragraph 14 of Complainants’ complaint in PP(S)-247. The Examiner finds Schubring’s lack of memory on this subject perplexing especially in light of his better memory regarding other matters allegedly supporting his position which are the subject matter of this controversy.

In contrast to the above, Chief Riseling provided clear and persuasive testimony regarding the events in dispute and particularly in relation to the December 15, 1995 incident. Her testimony is corroborated by other witnesses, particularly Captain Hettrick, Lieutenant Tews and Sergeant Burke. Other Respondent witnesses corroborated their testimony. Therefore, based on the foregoing, the Examiner credits the testimony of Chief Riseling, et al. over the testimony of Schubring regarding all material facts involved in the subject matter of these complaints.

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The record also does not support a finding in support of the other allegations by Complainants. For example, there is no persuasive evidence that Chief Riseling ever required Schubring while on duty to get out of uniform and put on plain clothes when conducting Union business with non-Police and Security personnel.

The issue is closer regarding Complainants’ allegation that Chief Riseling told Schubring during a conversation in June, 1995, concerning a meeting Schubring was having with the Chancellor’s Office: “I understand you have a meeting with the Chancellor tomorrow, and I will be very angry if anything happens and we have a problem.” Both

Schubring and Sharon Russ, a secretary in court services, testified that Chief Riseling stated words to the affect that she would be angry if there was a “negative response” or “problems” as a result of the aforesaid meeting. However, Chief Riseling testified persuasively that she simply informed Schubring of her concern that if he were to lose his temper with Henry Lufler of the Chancellor’s Office that this would reflect poorly on the Department. In addition, this statement was made in the context of a discussion between Chief Riseling and Schubring regarding Schubring’s effort to inform the Chancellor’s Office of Local 171’s opposition to the proposed budget cuts and potential loss of positions, a position that Chief Riseling shared. Based on the entire record, the Examiner credits Chief Riseling’s testimony that she said nothing improper during her conversation with Schubring noted above.

Finally, the Examiner notes that it is true that on June 13, 1995, during a pre-disciplinary meeting Schubring was criticized by two representatives of Chief Riseling for his “tone” and “behavior” during a grievance meeting involving Security Supervisor James Williams toward the end of May, 1995. They also informed Schubring that Chief Riseling was “concerned about what is acceptable behavior and actions in dealing with other members of the department.” However, even Schubring was concerned and “sorry” for what had occurred in said grievance meeting. In this regard, the Examiner points out that following the grievance meeting Schubring and Williams had a conciliatory conversation about the matter. Later, Schubring told Sergeant Burke that he was sorry that he yelled at Williams. When Burke brought Williams into the room where he was talking with Schubring, Williams and Schubring had a conversation in which both agreed that the environment of the grievance meeting had been unproductive. Schubring also indicated that he was sorry for yelling at Williams, but that he could not help it when he felt victimized by management. Thereafter, Chief Riseling and Schubring had an informal discussion regarding the incident in which Schubring again indicated that he felt bad about what had happened at the meeting and that he had apologized to Williams and wanted to lay the incident to rest because he and Williams had been friends for years. Chief Riseling and Schubring then proceeded to talk about the similarities of their two jobs and how they dealt with the tension that accompanied their jobs. Following this discussion, Chief Riseling gave Schubring a copy of an article that appeared in “Women Police” which she felt might be helpful to Schubring in dealing with stress. In this context, the Examiner finds it difficult to conclude, as argued by Complainants, that Chief Riseling’s comments regarding Schubring’s actions and behavior in grievance meetings noted above were part of a pattern of harassment and intimidation of Schubring as a result of his protected activities on behalf of Local 171 and the WSEU. The Examiner also points out that no discipline occurred as a result of this PDI meeting.

The Examiner also reaches the above conclusion based, in part, on the context in which the aforesaid management concerns were raised. As noted by Chief Riseling: “We got into a discussion about the whole issue surrounding blowing up at people or losing tempers or flare-ups, those kinds of things.” (Tr. at 1229) Other management representatives had also

expressed concern about their safety and the potential for physical harm as a result of Schubring's blow-ups during grievance and other types of meetings. (Tr. at 240, 599, 649-650, 653, 665-666, 681, 683, 713-714, 792-794, 796, 917 and 934) In addition, Schubring's confrontational behavior at least sometimes prevented grievances from even being addressed. (Tr. at 602) In this context, Complainants' arguments notwithstanding, the Examiner is of the opinion that Respondent's representatives acted appropriately in raising these concerns about Schubring's behavior in grievance meetings.

The Examiner agrees with Complainants' contention that Respondent did not respond to Complainants' allegations in the above case in its brief. Nevertheless, Respondent denied these allegations in its answer to PP(S)-247 and presented persuasive evidence and testimony in opposition to these allegations at hearing. Therefore, the Examiner rejects this argument of Complainants.

The Examiner also rejects Complainants' argument that Respondent's statements in its brief are further evidence of Chief Riseling's animus toward Schubring's protected activities. In its brief, Complainants cite the following statements as evidence of said animus: "Schubring's Filings of Grievances was uncalled for and hardly an Example of 'Clean Hands'"; Schubring filed numerous petty grievances designed to harass and clog up the grievance procedure rather than to challenge legitimate issues; Schubring filed grievances just to file grievances and "harass" Chief Riseling; and that Schubring acted in an unreasonable manner and abused his position as a Union representative. The problem with this argument is that Chief Riseling never made these statements. There is no persuasive evidence in the record that Chief Riseling had these opinions about Schubring's grievance activity. To the contrary, the record indicates that Chief Riseling was of the opinion, despite some concerns about Schubring's physical and verbal aggression in his role as Union representative, that he was basically free to act as he saw fit in his Union role:

And then she briefly, in three or four sentences, tried to inform me as a layperson that during union duties a person representing the union has relative freedom of speech in those union situations and that they were not behaviors or activities that typically could be, one could be disciplined for cause, because of the – at the time Officer Schubring was a representative of the union. So what I had written there was total freedom of speech in union situations. (Tr. at 917)

Based on all of the above, and the record as a whole, and absent any persuasive evidence to the contrary, the Examiner finds that by engaging in the conduct complained of Respondent has not interfered with, restrained or coerced Complainants in the exercise of their Sec. 111.82, Stats., rights. Therefore, the Examiner has dismissed the Sec. 111.84(1)(a), Stats., charge.



**Section 111.84(1)(c) – Discrimination**

Complainants also allege that Respondent's actions noted above violated Sec. 111.84(1)(c), Stats. That provision provides that it is an unfair labor practice for the State:

To encourage or discourage membership in any labor organization by discrimination in regard to hiring, tenure or other terms or conditions of employment. This paragraph does not apply to fair-share or maintenance of membership agreements.

In order to establish a violation of Sec. 111.84(1)(c), Stats., Complainants must establish by a clear and satisfactory preponderance of the evidence that (1) Schubring had engaged in protected, concerted activity, (2) that Respondent was aware of said activity and hostile thereto, and (3) that Respondent's action was based at least in part upon said hostility. STATE OF WISCONSIN, DEPARTMENT OF EMPLOYMENT RELATIONS V. WERC, SUPRA, AT 140.

The record is undisputed that Complainant Schubring engaged in protected, concerted activity, and that Respondent was aware of said activity. However, as noted above, the record does not support a finding that Chief Riseling ever called Schubring in and told him that she "would not allow him to upset employees even if it is on Union business"; that she advised him that if he didn't "behave" in the context of acting as Union Steward that he could be disciplined as insubordinate; that she ever required Schubring to get out of uniform and put on plain clothes while on duty when interacting with non-Police and Security personnel on Union business; that she informed Schubring prior to his meeting with the Chancellor's Office that she would "be very angry if anything happens and we have a problem" or that she subjected him to a pre-disciplinary investigation based solely on his "tone" or "attitude" while he acted in his capacity as steward in a grievance meeting in May, 1995. (Emphasis added) For these reasons, and the reasons discussed below in the DISCUSSION section of Case PP(S)-254 pertaining to Sec. 111.84(1)(c), Stats., charges in that case, the Examiner finds it reasonable to conclude that Respondent had no hostility toward Complainants and took no action against Schubring, in part, due to his protected concerted activity. Therefore, the allegation of Sec. 111.84(1)(c), Stats., violations has been dismissed.

Complainants have also alleged a violation of Sec. 111.84(1)(a), Stats. Inasmuch as there is no Sec. 111.84(1)(c), Stats., violation, there is no derivative Sec. 111.84(1)(a), Stats., violation.

**CASE PP(S)-254**

The Union basically argues that Respondent has violated Secs. 111.84(1)(a), (1)(b) and (1)(c), Stats., by terminating Paul J. Schubring. For the reasons discussed below, the Examiner disagrees.

**Section 111.84(1)(c) – Discrimination**

The basic thrust of Complainants' amended complaint is that Respondent placed Schubring on administrative leave; ordered him to undergo a psychological evaluation and terminated him all because of his protected activities. However, the record does not support a finding regarding same.

It is undisputed, as pointed out by Complainants in their brief, that Schubring was engaged in protected activity and that Respondent was aware of same. However, there is no persuasive evidence in the record that Respondent and/or its representatives were hostile to said activity. In this regard, the Examiner first addresses Complainants' claim that the manner in which Chief Riseling reacted upon learning Schubring was involved in an incident at the Union office demonstrates her animosity towards Schubring's protected activity and her desire to get rid of him. In particular, Complainants cite Chief Riseling's immediate series of phone calls to high ranking University officials for guidance concerning how to handle the incident at the new Union office without any significant knowledge about what had happened; her decision to order Schubring to immediately submit to a psychological examination and the information she provided the psychologist as examples of Chief Riseling's animosity toward Schubring and desire to get rid of him. However, given the nature of Schubring's employment record including past conduct of a same or similar nature and the seriousness of the allegations against Schubring as a result of the incident at the new Union office on December 15<sup>th</sup>, the Examiner finds Chief Riseling's actions in contacting various officials for advice on how to proceed entirely appropriate. In addition, contrary to Complainants' allegation noted above, Chief Riseling had some basic information prior to making calls for advice on how to proceed in the matter. In this regard, the Examiner points out that upon learning of the incident from Lieutenant Tews, Chief Riseling contacted Jim Stratton of UW personnel to see if he was available to discuss the matter with her. (Tr. at 1232) Later, when Chief Riseling spoke with Stratton and Ed Corcoran from the UW about the matter she had the following relevant information about the matter:

I knew then that the Madison police had been called to 3433 University Avenue in response to a police officer who had allegedly battered a citizen and was refusing to identify himself, that the Madison police had responded, that that officer had in fact been Paul Schubring of the university police department.

I knew at that time that Paul admitted forcing the manager out of the office after there had been a parking dispute. I knew at that time that the dispatchers – there were two of them, Feucht and Foley – believed that Paul was on duty the entire day.

I knew at that time that the only indicator in the MDC was that Paul was on duty and available. I knew at that time that Lieutenant Johnson, the dispatchers had said that Lieutenant Johnson had a conversation with Paul earlier in the day and that Paul told Lieutenant Johnson he was not going to be involved with the move.

I knew at that time that the union had moved from North Brooks Street to, at that time I thought it was 3433 University Avenue. Let me think about what else I knew at that point. I believe as of 20 minutes after two in the afternoon that's what I knew.

Q Okay. So you related this to Mr. Corcoran and Mr. Stratton; is that correct?

A Yes. (Tr. at 1233-1234)

After relaying the above information to them, and after asking for advice “on what to do next,” they advised her to contact the Department of Employment Relations, the UW legal office and the University’s Employee Assistance Program. (Tr. at 1233) Based on the foregoing, the Examiner finds that Chief Riseling had sufficient information upon which to proceed, and acted properly as a result thereto. In addition, her actions were consistent with past practice in this area. (Tr. at 1320) Therefore, the Examiner rejects the first claim of Complainants that Chief Riseling’s aforesaid phone calls on the date in question are evidence of her animosity toward Schubring and desire to get rid of him.

Likewise, the Examiner rejects Complainants’ claim that Chief Riseling’s decision to order Schubring to immediately undergo a psychological examination is further evidence of her animosity toward Schubring. In this regard, the Examiner finds that there was nothing unusual about Chief Riseling sending Schubring for a psychological evaluation based on Schubring’s past record and extreme response to the parking dispute on December 15, 1995. Chief Riseling had sent Schubring for a psychological evaluation back in 1992 for the same or similar conduct including using unnecessary force toward a citizen. (Respondent Exhibit No. 23, Part II, Tab PPP, pp. 2 and 3) Schubring had displayed similar examples of unpredictable and uncontrollable fits of rage and anger in the past. (Respondent Exhibit No. 23, Part II, Tab PPP, pp. 1 and 2. See also Respondent Exhibit Nos. 24, 25, 26, 28, 38 and 23, Part II, Tab QQQ) Chief Riseling was very concerned about allegations regarding

Schubring's conduct and the potential consequences of Schubring's behavior. (Tr. at 1233-1234, 1266-1267) She wanted to know if it was safe to put Schubring out on the streets again. (Tr. at 1239) Chief Riseling had ordered other officers to undergo a psychological examination; (Tr. at 1309) although not as often as alleged by Complainants. (Tr. at 1278) Therefore, the Examiner finds that Chief Riseling's requirement that Schubring be evaluated in December, 1995, was required by the circumstances and standard procedure, not some act of discrimination or retaliation.

In addition, the Examiner rejects Complainants' claim that the information Chief Riseling provided the psychologist demonstrates her animosity toward Schubring and her desire to terminate his employment. In this regard, the Examiner notes that Chief Riseling only provided information to Eric Hummel, the psychologist, after he asked for "info, if any, of situations at work where . . . there may have been a concern regarding Mr. Schubring's management of stress, anxiety, or anger." (Complainants' Exhibit No. 35, page 9; Tr. at 934-935) Chief Riseling responded by assigning Captain Debra Hettrick to assemble materials to forward to Hummel. Hettrick then had individuals in management prepare memorandum concerning Schubring. (Complainants' Exhibit No. 38) An accounting "of some incidents involving Mr. Schubring" was then forwarded to Hummel. (Complainants' Exhibit No. 38) An examination of these documents reveals that they were adverse to Schubring although not necessarily "derogatory" to him as alleged by Complainants.

Following Hummel's report, Chief Riseling faxed Hummel five pages of questions concerning statements contained in his report. (Complainants' Exhibit No. 40) The fax concluded with seven questions regarding Schubring's suitability to return to work, his mental health status, his prognosis for improvement, any data to support the aforesaid conclusions and a question regarding his recommendation of Schubring's ability to work as a police officer. Complainants do not challenge, nor does the record support, a finding that these were not appropriate questions given the circumstances.

Complainants argue that Chief Riseling used this evaluation process as a means to get rid of Schubring. However, the record does not support a finding regarding same. To the contrary, the record indicates that Chief Riseling gave Schubring an opportunity to go to a psychologist independent of Hummel so that she would have additional information to consider regarding Schubring's mental state. (Tr. at 1259-1260; Complainant Exhibit No. 43) Chief Riseling also gave Schubring an opportunity to respond to Hummel's report (Tr. at 1262)

It is true, as pointed out by Complainants, that the "negative information" Chief Riseling provided to Hummel for his evaluation of Schubring pertained mostly to his activities as a Union Steward. (Tr. at 917) However, even Schubring admits that this was the area where most of the problems occurred. (Tr. at 53; Complainant Exhibit No. 39, p. 5) Based

on same, the Examiner cannot find fault with the fact Chief Riseling provided Hummel with accurate information upon which to base his evaluation. Nor is this persuasive evidence of Chief Riseling's hostility and animus towards Schubring.

Finally, the Examiner rejects Complainants' allegation that because Chief Riseling rejected Hummel's recommendation that Schubring would benefit from treatment and education regarding anger control and instead declared that because Schubring had no psychological disability there were no "mitigating circumstances" and terminated his employment that this is evidence of her bias. The Examiner understands that Complainants disagree with her decision to terminate Schubring. However, in and by itself, this is not evidence of Chief Riseling's hostility and motivation.

The Examiner next turns his attention to Complainants' allegation that the reasons asserted by Chief Riseling for terminating Schubring's employment greatly exaggerate Schubring's conduct and were not sufficient to terminate his employment. In this regard, the Examiner first addresses Complainants' contention that Chief Riseling's claim that Schubring's removal of two individuals from the Union office is a sufficient basis for terminating him simply reflects her desire to get rid of Schubring.

Complainants initially argue that Chief Riseling turned a minor incident created by others into a matter of "serious" proportions for which Schubring was responsible. (Emphasis in original) Complainants take issue with Chief Riseling's statements in the termination letter that Schubring "violated" the "public trust" by his "willingness" to use "some degree of physical force on both individuals."

First, the Examiner does not agree that this was a minor incident. It may have started out as a minor parking dispute. However, before it was over it had turned into a serious disturbance and the police were called. (Tr. at 106, 108-109, 387, 535 and 873) Schubring found it necessary to contact the landlord to resolve the dispute (Tr. at 108); and Schubring called his own Department to inform them of the dispute and request the presence of a supervisor. (Tr. at 113) In addition, there was inappropriate physical contact between Schubring and two employees of Gumby's Pizza. (Tr. at 109, 390-391, 832, 872 and 874-876)

Complainants maintain that this was a minor dispute which became a major dispute due to the actions of others. It is true that Gumby's employees James McGinnis and Charles Schmidt were "agitated and upset" as a result of this incident. It is also true that their conduct was "unacceptable and probably disorderly." (Tr. at 106, 196-199, 214-216, 378, 388-390, 399 and 405) However, it is also true that Schubring was agitated and upset. (Tr. at 878 and 892) Schubring used abusive language toward his landlord. (Tr. at 892-893 and 899) He yelled and got into a shouting match with Gumby's employees. (Tr. at 388-390) It is undisputed that Schubring initiated physical contact with one or more of Gumby's employees.

(Tr. at 108-109) As pointed out by one neutral observer, there was a shouting match between the parties (Tr. at 390 and 393), in which Schubring got involved (Tr. at 391), which was ultimately resolved by both parties. (Tr. at 393) Based on the foregoing, and the record as a whole, the Examiner is of the opinion that both parties, including Schubring, were responsible for the incident at the new Union office. The conduct of the Gumby's employees can be excused or not excused as the case may be. However, the Examiner is of the opinion that one has higher expectations for the conduct of a police officer such as Schubring, whether on or off duty.

Complainants also argue that Schubring was not responsible for the incident. It is true that he did not start it. However, it is also true Schubring did not de-escalate the situation but instead was an active participant in what started out as a minor parking dispute that escalated into a disturbance call. (Tr. at 387) Complainants add that the physical contact Schubring had with McGinnis and Schmidt was nominal and arose when they repeatedly refused requests to leave the office. However, the record indicates that said physical contact was something more than minimal (Tr. at 832, 837-838, 872 and 876), and that Schubring may have avoided charges relating to same because the two Gumby's employees decided not to pursue charges. (Tr. at 841-842 and 877) The Examiner agrees with Complainants' contention that the Madison Police took no action on the matter, in part, because the matter was relatively "insignificant." However, the Examiner finds that there was no need to take any further action because the disturbance did not get completely out of hand, and because as Complainants also point out the parties resolved the dispute without further intervention. (Tr. at 393)

Based on all of the above, the Examiner finds that there is ample persuasive evidence to support Chief Riseling's contention that Schubring "violated" the "public trust" by his "willingness" to use "some degree of physical force" as set out in her letter of termination to Schubring. However, assuming arguendo that there is not sufficient evidence in support of same, Complainants' contention still must fail because there is no persuasive evidence that Chief Riseling acted for any other reason other than her understanding of the facts of the incident and its impact on Schubring's ability to perform his duties as a police officer.

Complainants also argue that it was inappropriate for Chief Riseling to resolve conflicting evidence whether Schubring had given notice that he was going to be on Union business on December 15 against him. For the following reasons, the Examiner also rejects this contention.

As pointed out by Complainants, one of the reasons asserted by Chief Riseling for the termination of Schubring's employment was that Schubring was "engaged in business unrelated to your patrol duties" at the time of the incident and that the business was more than

incidental to his “patrol activities.” (Complainants’ Exhibit No. 17) Chief Riseling further contended that Schubring’s assertion that he was engaged in Union activities was false and that Schubring submitted false documents to support his claim.

Complainants argue that the investigation of Schubring’s conduct on December 15, 1995, produced “significant” evidence supporting Schubring’s contention that he had given notice he would be off duty for about two hours to participate in the moving of the Union office. However, in the opinion of the Examiner better evidence exists in the record to support a finding that Schubring was not officially on Union business on the date in question and that he was on duty ostensibly engaged in patrol duty but instead engaged in Union business unrelated to his patrol duties.

The Examiner reaches the above conclusions for the following reasons. It is true that there is conflicting evidence and testimony regarding whether or not Schubring was on duty at the time of the incident. In this regard, the Examiner notes that Complainants presented evidence and testimony regarding the Union’s discussion of its move; (Tr. at 92-93 and 397-398, Complainants’ Exhibit No. 13); Schubring’s statements that he completed a notification of absence form that he would be off for Union business from 12:00 to 2:00 on December 15, 1995, and that he gave it to Sergeant Burke sometime in November (Tr. at 93-94); and Steve Sasso’s corroborating testimony. (Tr. at 431-432, 435 and 478-479) However, as pointed out by Respondent in its brief, there are a number of problems with Sasso’s testimony which indicate that Sasso was mistaken when he testified in support of Schubring’s version of the events in dispute. (Respondent Brief, pp. 9-11) In any event, the Examiner believes that there is better evidence in support of Chief Riseling’s charge that Schubring did not submit a notification of absence form, that he was on duty on the date in question, and that Schubring or someone else wrote “UB” on the schedule on December 15, 1995, after the incident at Gumby’s. In this regard, the Examiner credits the testimony of number two in command, Captain Debra Hettrick, who testified that on December 15, 1995, she returned to the office about 3:30 p.m. and a few minutes later looked at the schedule to see if it contained references to Union business for Schubring and that it did not. (Tr. at 1156-1157) Hettrick further testified that she went to make a copy of the schedule about a half hour later and that the “UB” entry was on the schedule. (Tr. at 1161) The Examiner also credits the testimony of Sergeant Burke, Complainants’ testimony that Burke was forgetful notwithstanding (Tr. at 428-429), who stated that Schubring had not given notice he would be off for Union business. In this regard, the Examiner points out that Burke testified that he was not given a notice that Schubring would be off; and that the last time he looked at the schedule on December 12, 1995, there was no entry on the 15<sup>th</sup> for Union business from Schubring. (Tr. at 820, 822-823, 828 and 868) Finally, Harlan Hettrick, the officer in charge on the 15<sup>th</sup>, testified persuasively that a UB for Schubring was not on the schedule at the start of the shift on that date. (Tr. at 1028-1031) Hettrick added that at the squad meeting in the beginning of the shift when assignments were made Schubring did not indicate that he would be off helping with the

move or on Union business. (Tr. at 1032 and 1037) This despite the fact that Schubring or anyone else normally would inform him at the start of the shift that they would have to be off on Union or other business that day. (Tr. at 1037)

There is other persuasive evidence that Schubring was on duty, without permission to be off on Union business, during the time in question. James Foley, Police Communications Operator, testified persuasively that he understood Schubring was on duty and hadn't been told anything differently. (Tr. at 766) Foley also overheard Schubring tell Lieutenant Johnson that he was borrowing the dolly for the Union to use in the move but that he would not be helping. (Tr. at 766) Lieutenant Johnson confirmed the foregoing comments. (Tr. at 1135) Roger Feucht, Police Communications Operator Trainee, also testified that Schubring stated that he was going to borrow the dolly for use in moving the Union office but that he wouldn't be helping with the move. (Respondent Exhibit 23, Part I, Tab T) Feucht was not aware that Schubring was off duty at any time material herein on the date in question. (Respondent Exhibit 23, Part I, Tab T) To the contrary, Feucht understood Schubring to be on duty during the time in question. (Respondent Exhibit 23, Part I, Tab A-1, p. 5)

In addition, Schubring did not go "off duty" on his MDC but rather remained on "Port." (Respondent Exhibit No. 23, Part I, Tab A-2) Schubring talked with Officer Sasso and Security Officer Voight on the radio during the noon to 2:00 p.m. time period. (Respondent Exhibit No. 23, Part I, Tab A-1, p. 4) He checked in with dispatch and other employees just as he would if he were on patrol and not "off duty" in the normal course of events.

Finally, the Examiner finds that it was appropriate for Chief Riseling to resolve conflicting evidence as to what took place on December 15, 1995, against Schubring based on his past record including the "break-in and cheating incident" wherein Chief Riseling assessed Schubring with a ten-day suspension without pay which was later upheld in arbitration. (Respondent Exhibit No. 1)

Based on all of the foregoing, and the record as a whole, the Examiner finds that Chief Riseling had sufficient basis to resolve conflicting evidence as to what took place on December 15 against Schubring and to terminate Schubring for his actions relating to the incident of December 15, 1995, 2/ and that there is no persuasive basis in the record to find that Chief Riseling took said action as a result of her hostility toward Schubring for his protected activities.

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*2/ As pointed out by Respondent in its brief, the issue of whether there is or is not just cause for Schubring's termination is not a matter that is before the Examiner; that is a matter properly addressed in arbitration. Therefore, the Examiner makes no determination regarding same in reaching the aforesaid conclusion.*

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Complainants next argue that a comparison of the alleged conduct for which Schubring was disciplined with the conduct of other officers and the discipline those officers received demonstrates that the decision to discharge Schubring was motivated in significant part by his Union activity. In particular, Complainants cite the discipline given to Van Natta, Hooker, Tyler and Feucht compared to the discipline handed out to Schubring as evidence of “how labor activity affected Chief Riseling’s disposition, attitude, and discipline.” These examples of unequal treatment cited by Complainants, however, can be distinguished from the instant case.

The main difference is that none of the other employees relied upon by Complainants in support of their position have the same poor work record of Schubring, particularly as it relates to his prior discipline, lack of honesty, poor judgment and loss of control. (Respondent Exhibit Nos. 1 and 2; Complainants’ Exhibit Nos. 17, 38 and 39; Tr. at 711, 715, 730, 963, 1200-1203, 1206 and 1331) As pointed out by Chief Riseling in her termination letter to Schubring: “You have been warned before about poor judgement (sic) and your loss of control.” (Complainants’ Exhibit No. 17) Chief Riseling added: “There were no mitigating circumstances revealed during the investigation of this incident that can excuse your loss of control and your subsequent dishonesty.” (Complainants’ Exhibit No. 17) No other employee cited by Complainants above had a similar poor past work record like Schubring which was factored into their discipline.

There are other substantive differences between Schubring and the other employees cited by Complainants above, particularly as they relate to the specific incidents involved. For example, although there are similarities between the Van Natta incident and Schubring’s incident, as noted by Complainants, including the fact both employees used force, swear words and a formal complaint was made regarding the officers’ conduct (or could have been made) there are also many important differences.

In this regard, the Examiner points out that Van Natta was on his day off while Schubring was working. (Tr. at 1285) Van Natta was in casual, plain clothes while Schubring was in uniform. (Tr. at 1285) Van Natta did not have a gun while Schubring had his gun. (Tr. at 1285) Van Natta did not have a radio; Schubring had a radio. (Tr. at 1286) Van Natta did not have pepper spray; Schubring had pepper spray. (Tr. at 1286) Van Natta did not have in his possession at the time of the incident a badge while Schubring had in his possession, although he was not wearing it at the time, a police badge. Van Natta had been in a bar and drinking alcohol; Schubring was in a business office and not consuming alcohol. (Tr. at 1286) Schubring identified himself as a police officer; Van Natta only stated that he was a police officer in order to set the record straight after the person accused him of being an undercover agent for the Drug Enforcement Administration. (Tr. at 1287) Van Natta did not have a police car with him while Schubring did. Van Natta attempted to de-escalate the situation while Schubring did not attempt to de-escalate the incident. (Tr. at 1287) Van Natta

never attempted to arrest anyone while Schubring threatened police action. (Tr. at 873 and 1195) Based on the foregoing, the Examiner finds significant differences in how Van Natta and Schubring handled their respective incidents which would account for any differences in management's response, Complainants' arguments notwithstanding.

A comparison of the discipline given to Security Officer James Hooker by Chief Riseling in February, 1994, with the discipline given to Schubring also does not demonstrate anti-Union motivation. The Examiner reaches this conclusion for the following reasons. One, the facts of the incidents are very different. Schubring's misconduct included physically assaulting two employees of Gumby's. Hooker, on the other hand, tailgated a car, activated the squad's emergency lights, and then proceeded down the highway without stopping after causing a car to pull over onto the shoulder of a highway. (Complainants' Exhibit No. 56) Two, Hooker was found to be mentally ill, requiring impatient treatment, while Schubring had no such disorder. (Tr. at 1309-1311; Complainants' Exhibit No. 17) Hooker was an unarmed, non-sworn Security Officer, while Schubring was an armed, sworn, trained Police Officer. (Tr. at 22; Complainants' Exhibit No. 57) Finally, when confronted, Hooker actually admitted some of the important details of the incident in question while Schubring continues to deny that anything improper happened. (Complainants' Exhibit Nos. 53-57)

The facts of Security Officer Tyler's discipline are also different from Schubring's. Tyler's first discipline of his career resulted in a ten-day suspension without pay. (Complainants' Exhibit No. 48) This is the same penalty Schubring received for the second discipline of his career for breaking and entering the Personnel Offices. (Tr. at 128) (Schubring received a two-day suspension for his first discipline for violating a work rule. (Tr. at 128) Schubring's third discipline of his career occurred in 1992 and was originally a 15-day suspension with pay that Chief Riseling reduced to five days based on Schubring's plea for leniency based on the hardship it would cause his family. (Tr. at 1203) Tyler's second discipline resulted in his termination of employment. (Due to his terminal health condition, Chief Riseling allowed him to resign to keep his retirement health care intact.) (Tr. at 1303-1306) Here, Chief Riseling changed her decision and assisted Tyler as she had done for Schubring in 1992. Schubring's fourth discipline of his career resulted in the termination of his employment. In addition, the circumstances of that incident differed greatly from the facts complained of in Tyler's case. (Complainants' Exhibit No. 48) In particular, the Examiner notes that Tyler intentionally destroyed public property while Schubring assaulted two individuals.

Finally, Schubring's conduct differed significantly from Police Communications Officer Roger Feucht. Feucht failed to fill out his application completely for a dispatching job. (Complainants' Exhibit No. 25) Ordinarily, the "omissions and misrepresentation" on Feucht's part would result in his "application being rejected." (Complainants' Exhibit No. 25) However, a review of his work performance with the Department indicated that he was a

“good to excellent” and “valued” employee. (Complainants’ Exhibit No. 25) Therefore, he was issued a letter of reprimand but not eliminated from the pool of candidates (which is the normal penalty). (Complainants’ Exhibit No. 25)

The Examiner finds that Schubring’s conduct is much more egregious and troublesome than that for which Feucht was disciplined. He committed an assault and battered a citizen. He was discourteous and unprofessional in his actions. But more importantly, he was not truthful during the investigation and at all times material herein.

Based on all of the foregoing, and the record as a whole, the Examiner finds that the decision to discharge Schubring and to give less severe forms of discipline to the aforesaid employees was based on the differences in their employment records, as well as the conduct for which the employees were disciplined. The Examiner can find no persuasive evidence in the record to support a finding that labor activity affected Chief Riseling’s disposition, attitude and discipline in the aforesaid cases.

Finally, Complainants argue that there is other dramatic evidence that the termination of Schubring’s employment was motivated in significant part because of his labor activity. In support thereof, Complainants cite the change in Sergeant Burke’s relationship with Officer Steve Sasso after Schubring was placed on administrative leave. (Tr. at 484) Burke stopped taking breaks with Sasso and began avoiding Sasso except when they had to deal with each other professionally. (Tr. at 484) Complainants argue that “the simple truth is that Burke knew that Schubring’s employment was terminated because of his labor activity.” Complainants add that there can be no other explanation because if “Schubring’s labor activity was not a factor and there was good cause to terminate Schubring’s employment, Burke would have no trouble facing Sasso.” The problem with this approach is that Complainants offered no persuasive evidence in support of this claim. In addition, the Examiner can think of at least one other rational explanation for Burke’s behavior. In this regard, the Examiner notes that Burke was familiar with Schubring’s poor past work record (Complainants’ Exhibit No. 38), as well as the events of December 15, 1995. He could have felt that cause existed for terminating Schubring’s employment based on his conduct during the incident of December 15, 1995, and chose to avoid the subject with Sasso who he knew felt differently. (Tr. at 484)

The Examiner likewise rejects Complainants’ contention that Chief Riseling and other top management decided not to attend the retirement party for Shorewood Police Chief Terry Ninneman because they could not face their peers knowing they knew management was after Schubring because of his labor activity. Again the problem with this approach is that it is pure conjecture. Complainants offered no persuasive evidence in support of same. To the contrary, Chief Riseling, Captain Debra Hettrick and other members of the management team offered reasonable explanations for their failure to attend the party given the circumstances. For example, Captain Hettrick stated that she felt it would be awkward because Schubring was

on administrative leave but worked for Terry and “that there was a good chance that Paul would create a scene. And I didn’t want to ruin it for Terry.” (Tr. at 1177) Chief Riseling added that because her management team was not going to avoid an incident maybe she ought not to go either. (Tr. at 1284)

Based on all of the above, and the record as a whole, the Examiner rejects Complainants’ argument that there is other “dramatic” evidence that the termination of Schubring was motivated in part because of his labor activity.

As noted above, based on all of the foregoing discussion and record evidence, there is no persuasive evidence that Chief Riseling or her management team bore any hostility toward Schubring because of his protected activity. However, assuming arguendo that there was hostility toward Schubring’s protected activities, Respondent’s conduct would have to be motivated by said hostility. Motive is difficult to determine as usually there is no direct evidence so it must be determined from the total circumstances. The Examiner could find no persuasive evidence of such motive in the specific Respondent conduct complained of by Complainants and discussed above. Complainants also introduced other evidence and testimony of Respondent’s negative behavior/attitude toward the Union to support their allegation that Chief Riseling and her representatives terminated Schubring because of his protected activity. However, in the opinion of the Examiner, this evidence does not support a finding regarding same. Instead, it simply indicates to the Examiner that both management and labor at the UW Department of Police and Security dealt with each other in a traditional, hard-nosed, often not very friendly or constructive manner. For example, Steve Sasso testified that he stopped being a steward because he had seen what happened to other stewards with discipline and didn’t want to jeopardize his job and the new house that he had just build. (Tr. at 418) However, Sasso also admitted that he stopped being a steward because of the time commitment and because some officers thought he was not effective in dealing with management. (Tr. at 418) Sasso further admitted that for a while management and labor were involved in an adversarial relationship but that things had improved. (Tr. at 455)

Schubring also testified that there was an “antagonistic atmosphere” between management and the Union while Riseling was the Chief. (Tr. at 35) He stated: “Everytime (sic) a grievance was filed it was like management was upset because we were criticizing them.” (Tr. at 35) Schubring added that he wanted it to be a problem-solving relationship but it didn’t go that way. (Tr. at 36) Yet, even Schubring admitted that there were times Chief Riseling showed flexibility toward him in grievance processing and resolution. (Tr. at 132) Chief Riseling added, un rebutted by Complainants, that there were other times that she showed leniency in disciplining Schubring. (Tr. at 1198-1199) Chief Riseling also exhibited flexibility in resolving grievances and reducing discipline for other employees. (Tr. at 1214-1215 and 1303-1306) In fact Chief Riseling and the Union worked together to obtain wage increases for police officers. (Tr. at 1224-1225) Schubring wrote a letter thanking Chief Riseling for her effort as follows:

I believe it is about time that I provide you with an OFFICIAL THANK YOU for the hard work and effort that you put into the process of getting the pay increase for law enforcement. Please be aware the attending members from law enforcement acknowledged at our Union acceptance meeting with DER that yourself and various other administrators were the guiding force towards the survey. It would be remiss for the Union to take credit for this raise in pay for officers, when administrators started the process. Certainly you played an important part in getting it done!

Therefore, from the represented and affected employees and myself, I thank you for a job well done. I look forward to working towards cooperative efforts in the future.

Schubring admitted that Chief Riseling's actions noted above boost employee morale. (Tr. at 162-164)

Schubring complains that he participated in grievance meetings conducted by management which were threatening or intimidating to him. (Tr. at 70) However, various management representatives were threatened, intimidated, or treated improperly by Schubring including Lieutenant Brian Bridges (Complainants' Exhibit No. 38), Sergeant Dale G. Burke (Complainants' Exhibit No. 38, Respondent Exhibit No. 28, Tr. at 792-794), Security Supervisor James Williams (Tr. at 596-598, 648-653), and Security Supervisory James Kaszubski (Tr. at 663-665 and 682-685).

In addition, Schubring complains that management did not like his "antagonistic" attitude in labor relations. (Tr. at 54) Schubring states that management said "his tone was getting more boisterous, more loud in meetings and stuff." (Tr. at 54) However, this is not something new. Management had expressed previous concerns over Schubring's temper and behavior. (Tr. at 270-271) In addition, both parties had engaged in behavior which could be described as loud, boisterous and physical while conducting labor relations business. (Tr. at 283-283 and 298-299) If management raised their voices, Schubring responded accordingly. (Tr. at 294)

Finally, Schubring complains about poor morale and management's style. (Tr. at 44) For example, he states that he was advised that filing of grievances was not always a positive way to create the right atmosphere to resolve problems on a mutual basis. (Tr. at 36) However, there is no persuasive evidence in the record to support this claim. It is true that when the parties did talk instead of litigating they were able to resolve problems. (Tr. at 455-458, 1200-1203, 1217, 1228-1230 and 1305) It is also true that the Union on occasion could have contributed to the poor employee morale. (Tr. at 303-305)

In their reply brief, Complainants make a number of other arguments in support of their position that Respondent terminated Schubring because of the exercise of his protected activities. For example, Complainants argue that Chief Riseling ordered Schubring to submit to a psychological evaluation contrary to standard procedure as noted above in order to provoke him and to cause him to refuse to submit to the exam, thus giving her a reason to terminate his employment. The problem with this argument is that there is absolutely no evidence in the record to support this claim. Complainants also argue that Schubring was treated differently when he was involved in an incident involving the use of force in 1992 because he was not an officer or representative of the Union at that time. While it is true that Schubring was not a Union representative at the time of his discipline in early 1992 for unnecessary force toward a citizen (Tr. at 132-133), it is also true that he did not have the extensive record of angry outbursts and other problems concerning loss of control at the time of that incident compared to December, 1995. Therefore, the Examiner finds the circumstances were different and rejects this argument of Complainants as well. Complainants further argue that Chief Riseling's response upon learning that Schubring was involved in an incident at the new Union office demonstrates her hostility toward Schubring and is "a classic illustration of getting your ducks in order so you can accomplish the results you want." This might be true if Complainants had proved that Chief Riseling terminated Schubring because of his protected activity. However, as noted above, Complainants did not offer persuasive evidence of same. To the contrary, the record indicates that Chief Riseling was simply following good labor relations practice in responding to the incident in a professional manner. (Tr. at 1319-1326 and 1329-1335) Finally, Complainants argue that it was improper for Respondent to rely in its brief on Schubring's prior discipline to support its decision to terminate him. However, Schubring's prior record was a part of the investigation process that led to his termination. (Tr. at 1321 and 1331) In addition, it was referenced in Chief Riseling's letter of termination to Schubring. (Complainants' Exhibit No. 17, p. 4 ("you have been warned before about poor judgement (sic) and your loss of control." "There were no mitigating circumstances revealed during the investigation of this incident that can excuse your loss of control and your subsequent dishonesty.") Therefore, the Examiner likewise rejects this argument of Complainants.

Based on the above, and all of the foregoing, as well as the totality of the circumstances, the Examiner finds that the evidence simply fails to show that Respondent's actions were motivated by hostility. Thus, the allegation of Sec. 111.84(1)(c), Stats., violations has been dismissed.

Complainants have alleged a violation of Sec. 111.84(1)(a), Stats. Inasmuch as there is no Sec. 111.84(1)(c), Stats., violation, there is no derivative Sec. 111.84(1)(a), Stats., violation.

**Section 111.84(1)(a) – Interference**

As far as an independent violation of Sec. 111.84(1)(a), Stats., the Examiner will apply the standard set forth in PP(S)-247 above. Based on same, and all of the foregoing, the Examiner finds no conduct by Respondent that would have a reasonable tendency to interfere with employee exercise of Sec. 111.82 rights. However, assuming arguendo that there is such conduct, the Examiner finds that Complainants' case still must fail. As noted above, the same test for whether interference occurs applies under MERA and SELRA. Under MERA, employer conduct which may well have a reasonable tendency to interfere with employee exercise of Sec. 111.70(2) rights will not be found violative of Sec. 111.70(3)(a)1, Stats., if the employer had valid business reasons for its actions. BLACKHAWK TECHNICAL COLLEGE, DEC. NO. 28846-A (CROWLEY, 5/97) AFF'D DEC. NO. 28846-D (WERC, 12/97). Here, as discussed above, the Respondent had sufficient basis for taking the action it did toward Schubring and did not do so as a result of his protected activity. Nor does the record support a finding that Respondent took any action against any other employee as a result of anti-union animus. In addition, the Examiner points out that there were sound public policy reasons for Respondent to take the action that it did against Schubring. 3/ Therefore, the Examiner finds that the evidence failed to prove any violation of Sec. 111.84(1)(a), Stats., and consequently, that charge has also been dismissed.

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*3/ Chief Riseling explained these public policy concerns clearly at pages 1266-1267 of the transcript:*

*Q Okay. Now, you have been here. You've reviewed the statements by Mr. Schmidt, Mr. McGinnis and Bonnie Brink, for example, and you've heard them testify. Why cannot behavior like this be tolerated by law enforcement personnel?*

*A I received the statement of Mr. McGinnis and Mr. Schmidt. Ms. Brink didn't make a statement. There was an interview. I did hear her testify here. I heard McGinnis and I heard Schmidt testify also in addition to reading their statements.*

*The fundamental principles of policing is kind of a coined-and-canned phrase to protect and to serve. We're the arm of the government that can take away people's freedom, liberty, and can confine them and bring them before a court of law.*

*We're also the only ones empowered in the civilian way to use, when necessary, deadly, physical force. We are entrusted from time to time to use enough force to actually kill another human being. That is a critical part of policing, and that's what sets us apart from all the other occupations.*

*It is imperative that when under stress and when in situations that are accelerating that we remain calm, remain focused as much as possible, and try to de-escalate and to reduce the tensions and the stress in those situations.*

*In my opinion, Mr. Schubring did not do that. In these situations he escalated the level of the confrontation. He did not de-escalate. He did not tactically disengage. And that is not only inappropriate, but that is dangerous.*

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**Section 111.84(1)(b), Stats.**

With respect to Sec. 111.84(1)(b), Stats., as pointed out by Respondent in its brief at page 6, Complainants have failed to submit any proof or make any persuasive arguments that Respondent's conduct threatened the Union's independence or reduced the Union to a mere tool of the Employer. Therefore, the Examiner dismisses this claim of Complainants as well.

Dated at Madison, Wisconsin, this 14<sup>th</sup> day of December, 1998.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Dennis P. McGilligan /s/

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Dennis P. McGilligan, Examiner