

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

**MILWAUKEE POLICE ASSOCIATION and
CAROL KUCHENREUTHER, Complainants,**

vs.

**CITY OF MILWAUKEE, ARTHUR JONES, Chief of Police
for the Milwaukee Police Department, JAMES BARTHOLOMEW, Captain
of Police for the Milwaukee Police Department, and THOMAS BOHL,
Sergeant of Police for the Milwaukee Police Department, Respondents.**

Case 442
No. 55600
MP-3346

Decision No. 29443-A

Appearances:

Eggert & Cermele, S.C., by **Attorney Jonathan Cermele**, 1840 North Farwell Avenue, Suite 303, Milwaukee, Wisconsin 53202, appearing on behalf of the Complainants.

Mr. Donald L. Schriefer, Assistant City Attorney, City of Milwaukee, 800 City Hall, 200 East Wells Street, Milwaukee, Wisconsin 53202, appearing on behalf of the Respondents.

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

On October 1, 1997, the Milwaukee Police Association and Carol Kuchenreuther filed a complaint of prohibited practices with the Wisconsin Employment Relations Commission wherein it alleged that the City of Milwaukee, Arthur Jones, James Bartholomew, and Thomas Bohl had violated Section 111.70(3)(a)1, 2 and 3, Stats., by engaging in certain conduct involving Carol Burgoyne, f/k/a Carol Kuchenreuther. Thereafter, the matter was held in abeyance pursuant to an agreement of the parties. On September 11, 1998, the Commission appointed Coleen A. Burns, a member of its staff, to make and issue Findings of Fact, Conclusions of Law and Order. On September 11, 1998, a hearing was scheduled for

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October 26, 1998. Thereafter, the hearing was indefinitely postponed pursuant to an agreement of the parties. On January 25, 2002 Complainants filed an amended Complaint, without objection from the Respondents, in which the Complainants alleged that Respondents had violated Sections 111.70(3)(a)1, 2, and 3, Stats., by removing materials from the MPA bulletin board; threatening to investigate Officer Burgoyne for placing the items on the MPA bulletin board, and by issuing internal disciplinary charges against Officer Burgoyne for placing items on the MPA bulletin board. Hearing on the amended complaint was held on January 28 and 29, 2002 in Milwaukee, Wisconsin. A stenographic transcript was made of the hearing and the post-hearing briefing schedule was completed by May 8, 2002.

Having considered the evidence and arguments of the parties, the Examiner makes and issues the following

FINDINGS OF FACT

1. The City of Milwaukee, hereafter the City, is a municipal employer with its principal offices located at City Hall, 200 East Wells Street, Milwaukee, Wisconsin 53202-3551. At all times material hereto, Arthur L. Jones has been the Chief of Police for the Milwaukee Police Department (MPD) and David J. Bartholomew a/k/a James Bartholomew and Thomas Bohl have been supervisory employees of the MPD.

2. The Milwaukee Police Association, hereafter MPA or Union, is a labor organization having offices at 1840 North Farwell Avenue, Milwaukee, Wisconsin 53202. At all times material hereto, Carol Burgoyne, f/k/a Carol Kuchenreuther, has been employed by the City as a Police Officer and currently works in the property control section of the MPD.

3. For at least thirty years, the MPA has been the exclusive collective bargaining representative of certain employees of the MPD. Bradley DeBraska was elected to the MPA Executive Board on January 1, 1986 and has been President of the MPA since January of 1989. The collective bargaining agreement between the MPA and the City in effect from January 1, 1995 through December 31, 1997 contains the following:

ARTICLE 45 **BULLETIN BOARDS**

The City will furnish bulletin boards at each district station and bureau. The material being placed upon such boards shall consist of official announcements of the Association; announcements of social events, Association election campaign material (provided that such material is non-controversial), results of Association elections, calls for Association elections; and any other matter approved by the Association, provided such matter is non-controversial. It shall

be the duty of the Association to keep the boards current and to remove obsolete materials; the Association shall assign one or more stewards at each location for this purpose.

...

ARTICLE 47
LIMITATIONS UPON ASSOCIATION ACTIVITY

1. No Association member or officer shall conduct any Association business on City time except as specified in this Agreement or as authorized by the Chief of Police, City Labor Negotiator, or the Labor Policy Committee or the Common Council. Nothing in this subsection shall preclude obtaining employee signatures on grievance forms or meetings to discuss grievances on City time when authorized by commanding officer.

2. No Association meeting shall be held on City time nor on City property.

In 1997, MPA Stewards were authorized by the MPA to keep the MPA bulletin board that is located at each District station house updated and to remove materials not approved by the MPA. MPA Stewards also had the responsibility to assist members in filing grievances; to review orders and memos to ensure they did not conflict with the labor contract; and to communicate to MPA members the information that the Executive Board of the MPA disseminates. Such communications could be verbal, or via postings on the MPA bulletin board. The material authorized by MPA to be posted by MPA Stewards includes minutes of MPA meetings; internal election material; resumes of candidates for external elections who have been endorsed by the MPA Board of Directors; and information on pending litigation, including copies of complaints. At all times material hereto, MPA President DeBraska has considered the MPA to have the sole right to approve what is placed on the MPA bulletin boards at each District station.

4. Prior to 1996, the MPA supported the City of Milwaukee's annual United Performing Arts Fund and Visions campaign, hereafter UPAF campaign, which campaign sought charitable donations through employee payroll deductions. This support was no longer provided after the MPA obtained Sec. 501 (c) (3) status and the City denied MPA's petition to be included in the UPAF and other charity fund drives. In February of 1997, MPA President DeBraska attended a monthly meeting of MPA stewards and explained why the MPA would not support the UPAF campaign. Officer Burgoyne attended this meeting in her capacity as a MPA Steward at District #3. At this time, Officer Burgoyne had been a MPA Steward for two or three years. At this meeting, MPA Stewards expressed the opinion that MPA members should not donate to UPAF through the MPD because it would reflect well upon the MPD and

that there were alternative ways for MPA members to support UPAF. Officer Burgoyne, who shared this opinion, expressed her opinion that, by donating through the UPAF campaign, members could be making the Police Chief and his administration look good. At this meeting, the MPA Stewards discussed their dissatisfaction with MPD policies and procedures, as well as methods by which the MPA could display their displeasure. Unless directed otherwise by MPA President DeBraska, MPA stewards are expected to reduce the statements of MPA President DeBraska to minutes and post the minutes at the District station. In February of 1997, a person unknown posted the following memorandum on the MPA bulletin board in District #3:

MEMO NO. 97-24

February 18, 1997

(POST UNTIL APRIL 2, 1997)

MEMORANDUM

RE: 1997 UPAF/VISIONS CAMPAIGN

Dear Department Members:

I am writing to ask for your generous support of the 1997 United Performing Arts Fund (UPAF) and VISIONS campaign.

As you probably know, UPAF is an umbrella organization that raises funds for 25 performing arts groups in Milwaukee. Visions is the City of Milwaukee's own campaign, now in its eighth year, to raise money for Friends of the Pabst Theater, the Milwaukee Public Library Foundation, the Recreation fund, and the Milwaukee Urban Forestry Fund. Also include in this year's Vision campaign is the Milwaukee Public Museum.

The UPAF/VISIONS Campaign is important to Milwaukee. Your donations provide cultural, educational and environmental benefits without using tax dollars. Last year, the city's campaign raised \$172,746 with the Police Department alone donating \$45,515. The city's goal for 1996 is \$175,000. Our Department hopes to continue its success in this worthwhile campaign. This is achievable if each of us participates in the campaign.

I have named Captain Susan M. Edman and Captain Joseph Purpero as the coordinators of our Department's campaign. I urge you to carefully consider the campaign information you will be given, and to give generously to support these organizations. The funds we raise will help to improve the quality of life here in Milwaukee.

Solicitors will be distributing the UPAF campaign brochure and individual (three-part) contribution forms to each member. Personnel who contributed to the 1996 UPAF/VISIONS campaign, and wish to do so again in 1997, must sign a new pledge form.

When soliciting donations, the following instructions should be followed:

Payroll Deduction Requested: *Deduction should be the same for all pay periods. Collect the white and canary copies. The pink copy is to be given to the donor.*

Cash or Check Given: *Attach cash or check to white and canary copies and give the pink copy to employee as a receipt. The check is to be made out to "UPAF/VISIONS".*

Pledge: *Obtain the completed pledge form and collect the white and canary copies. The pink copy is to be given to the donor.*

No Contribution: *Have employee write "NONE" across form, sign it, and submit all three copies of the contribution form to the solicitor.*

All Contribution forms, whether donating or not, are to be submitted to Captain Susan Edman, Central Records Division, by Wednesday, April 2, 1997.

Sincerely,

**ARTHUR L. JONES
CHIEF OF POLICE**

*James W. Koleas /s/
JAMES W. KOLEAS
ASSISTANT CHIEF OF POLICE*

The above memo was typed on the letterhead of the Chief of Police and signed by Assistant Chief Koleas. MPA had not authorized the above memo to be placed on the MPA bulletin board and District #3 contains other bulletin boards for the use of the MPD. The MPA bulletin board is on the wall of the assembly room in District #3. The MPA bulletin board is not encased or locked. Any individual that has access to the assembly room, *i.e.*, employees of the MPD, also have access to the MPA bulletin board. At times, Police Officers who are members of the MPA bargaining unit remove materials from the MPA bulletin board. Shortly after roll call on February 27, 1997, Officer Burgoyne observed that the above memorandum was posted on the District #3 MPA bulletin board. Officer Burgoyne then hand wrote a note on the back of a MPD Form entitled "Milwaukee Police Department Request for Trade of Regular Off Day," which note states as follows:

When you donate to U.P.A.F., you help the Chief and his Administration look good! Do you want to help that cause?

Officer Burgoyne placed this note, hereafter UPAF note, on the MPA bulletin board directly above the memorandum from Assistant Chief Koleas. Normally, posted MPA communications were on MPA letterhead, reflected the name of the MPA representative that authored the communication, or expressly referenced MPA business or a MPA activity. Officer Burgoyne did not sign this note. In February, March and April of 1997, Sgt. Thomas Bohl was the immediate supervisor of Officer Burgoyne. Thomas Bohl, who became a Lieutenant in 2001, is hereafter referred to as Sgt. Bohl. Immediately prior to the posting of the UPAF note, Sgt. Bohl observed Officer Burgoyne in the area of the MPA bulletin board and in the area of the time clock, where an unused pad of MPD forms entitled "Milwaukee Police Department Request for Trade of Regular Off Day" are kept for the use of District #3 staff. Concluding that Officer Burgoyne was acting sneaky or suspiciously, Sgt. Bohl went to the MPA bulletin board after Officer Burgoyne had left the area and observed the UPAF note. At that time, Sgt. Bohl believed, but was not certain, that Officer Burgoyne had placed the UPAF note on the MPA bulletin board. Sgt. Bohl read the UPAF note. Concluding that a person unknown had inappropriately used a MPD form to express a personal opinion about the Police Chief, his command staff and a charity that was inappropriate and concerned that his superior officers would be displeased to find such a note posted at a MPD District station; would want to know who had authorized the posting of the note; and that he would be the recipient of his supervisors' displeasure if he permitted the note to remain on the MPA bulletin, Sgt. Bohl immediately removed the UPAF note from the MPA bulletin board. The condition of the UPAF note did not provide Sgt. Bohl with a reasonable basis to conclude that the MPD form had been discarded prior to being used to write the UPAF note. The UPAF note, on its face and within the context of the posting, was an anonymous communication that manifested and furthered a purely individual, rather than a collective, concern. As part of his normal duties, Sgt. Bohl occasionally inspected District #3 bulletin boards to ensure that objectionable items or non-approved items were not on the bulletin boards. Sgt. Bohl construes MPD Rule 4,

Section 2/350.00 as providing him with authority to police District #3 bulletin boards, including the MPA bulletin board. In February of 1997, Sgt. Bohl was not familiar with the provisions of the collective bargaining agreement that addressed the MPA bulletin board. After removing the UPAF note, Sgt. Bohl showed the note to his Lieutenant and advised the Lieutenant that he had removed the note from the bulletin board. In February of 1997, Sgt. Bohl and Officer Burgoyne both worked the late power shift. During roll call at the start of the February 28, 1997 late power shift, Sgt. Bohl, with intent to make a general direction to the entire shift, made certain statements about finding and removing the UPAF note. These statements are reflected in the following contemporaneous notes of Officer Burgoyne:

If you think you can put your opinion up on the board, we'll take it down, show the Captain and start an internal investigation. If you have an opinion about the Chief, rules or policies - keep it to yourself. Don't put up signs.

The above statements were directed to all the Police Officers in attendance at roll call. Officer Burgoyne made the notes because she was concerned that Sgt. Bohl was trying to intimidate officers to not talk about things that they did not agree with. During the roll call, Officer Burgoyne and Sgt. Bohl had a discussion regarding the UPAF note. Officer Burgoyne confirmed that she had written the UPAF note and advised Sgt. Bohl that she had called MPA President DeBraska and was told by MPA President DeBraska that she had every right to post notes such as the UPAF note upon the MPA bulletin board. Officer Burgoyne began to contest Sgt. Bohl's assertion that she did not have such a right and Sgt. Bohl ended the discussion by advising Officer Burgoyne that he would refer the matter to Capt. Bartholomew. Sgt. Bohl decided to refer the matter to Capt. Bartholomew because he believed that Officer Burgoyne had just admitted a rule violation, *i.e.*, using a Department form in violation of MPD Rule 4, Section 2/385.00, and because Officer Burgoyne had contested Sgt. Bohl's assertion that she did not have the right to post notes such as the UPAF note on the MPA bulletin board. Sgt. Bohl never asked Officer Burgoyne if the note reflected her personal opinion or MPA's opinion. On February 28, 1997, Officer Burgoyne told Sgt. Bohl that Assistant Chief Koleas' UPAF memo did not belong on the MPA bulletin board; Sgt. Bohl told Officer Burgoyne that she was right; and Sgt. Bohl reposted this memo onto the District's bulletin board. After roll call on February 28, 1997, Sgt. Bohl had a discussion with Capt. Bartholomew regarding Officer Burgoyne's conduct and was instructed to prepare a "Matter Of" and to contact the IAD to receive an IAD number and to begin an investigation regarding the UPAF note being placed on the bulletin board. Thereafter, on February 28, 1997, Sgt. Bohl received an IAD number from IAD and prepared the following written "Matter Of":

RE: Attached Note, IAD 97-0469.

To: David J. BARTHOLOMEW, Captain of Police

Sir:

On Thursday night, February 27, 1997, I found the attached note taped to a copy of Memorandum 97-24 which was tacked to the MPA bulletin board in the assembly area. I immediately removed the note and brought it to the attention of Lieutenant OLIVA. I felt that this was placed on the board by PO Carol KUCHENREUTHER of the Late Power Shift. I observed her at the board and when she left, I found the note, however I did not see her place the note.

I attempted to address the Late Power Shift as a whole on Friday February 28, 1997, at 8:00 PM, and advise them not to leave hand written notes on any of the bulletin boards if it expressed their personnel opinion. At this point PO KUCHENREUTHER raised her hand and stated she placed the attached note and that she called Bradley DEBRASKA of the union and he told her she has every right to place notes such as this one on the MPA board. She began to argue with me at roll call to which I indicated I would bring this matter to the Captains attention and we will proceed from there.

Officer KUCHENREUTHER indicated this was fine, that she would meet with the Captain and the Chief regarding same. Officer KUCHENREUTHER further disrupted the roll call on Thursday, February 27, 1997 when I began reading information relating to the use of handcuffs. I felt Officer KUCHENREUTHER appeared very upset or distressed at the current policies of the department and felt that this may have contributed to the note being left on the bulletin board. This matter was referred to Sergeant HEINEN of the Internal Affairs Division and was assigned IAD #97-0469.

Sgt. Bohl intended to do the investigation of the UPAF note at the District level but his investigation was delayed due to the fact that Officer Burgoyne was either off work or at an in-service. In February of 1997, Sgt. Bohl routinely posted materials on the MPA bulletin board that were sent to District #3 from the MPA on MPA letterhead and with a "please post" stamp. Sgt. Bohl understood that materials not on MPA letterhead were required to be reviewed and stamped by District supervision to ensure that confrontational items, or items that could harm individuals, were not placed on bulletin boards that are housed in District stations and to keep track of how long the material had been posted. In early March of 1997, Sgt. Bohl observed a posting on the MPA bulletin board that referenced a meeting and free beer. Sgt. Bohl discussed this posting with his Lieutenant and was told that the posting probably referenced a MPA meeting because such meetings normally had free beer. Pursuant to the Lieutenant's instruction, Sgt. Bohl stamped the posting and replaced the posting on the MPA bulletin board. On March 12, 1997, Sgt. Bohl approached Officer Burgoyne and advised her that the posting about the MPA meeting with free beer had not been authorized; but that he had removed,

stamped and replaced the posting of the MPA meeting; that, if she were posting items on the MPA bulletin board that did not come from the union, that she should run them by him and if they were okay, then he would approve them, stamp them and put them up on the bulletin board; and that way, if anyone had a question about a posting, then they would discuss the matter with Sgt. Bohl. Prior to this time, Officer Burgoyne had never had her MPA postings reviewed or approved by MPD supervisors prior to posting them on the MPA bulletin board. Following roll call on March 13, 1997, Officer Burgoyne engaged in a conversation with another Officer. Sgt. Bohl approached these Officers and made the statements that are reflected in the following contemporaneous notes of Officer Burgoyne:

After Roll Call it's your job to hit the streets & go 10-8. Don't sit around + talk or have little mtgs. You will be watched and followed and you will be investigated.

At the time, Officer Burgoyne was waiting for her partner. Sgt. Bohl was never advised by Capt. Bartholomew, or any other District #3 supervisor, to be watchful of Officer Burgoyne and was not aware that any other supervisor had placed Officer Burgoyne under closer scrutiny than any other Officer. On April 14, 1997, Officer Burgoyne posted a document entitled "Union Notes" on the MPA bulletin board at District #3 and on May 17, 1997, Officer Burgoyne posted a document entitled "Union Meeting Notes" on the MPA bulletin board at District #3. The April 14, 1997 "Union Notes" was a summary of topics discussed at the union stewards meeting and was prepared by Officer Burgoyne for the purpose of keeping District #3 members informed of these topics. A person, or persons, other than Officer Burgoyne subsequently removed each of these postings from the MPA bulletin board. Neither of these postings were stamped or approved by District #3 supervisors. Sgt. Bohl did not remove either of these postings. Concluding that prior notices had been taken off the Board by supervisors, Officer Burgoyne placed a copy of the "Union Notes" behind each Officer's time card. On September 10, 1997, Officer Burgoyne posted a copy of a newspaper article that she had received from her brother. Someone other than Officer Burgoyne removed this posting, which posting discussed a recent NLRB ruling on the use of e-mail and free speech protections. After this posting had been removed, Officer Burgoyne hand-wrote and posted the following note on the MPA bulletin board:

Our Union Board has been temporarily silenced. If you would like Union meeting note or updates, see your shift steward. Any questions. . .you can call Brad DeBraska at the Union office, 273-2515.

The above note was not removed from the MPA bulletin board. Officer Burgoyne placed the note on the MPA bulletin board because she wanted MPA members to know that she could not effectively relay information on the MPA bulletin board because her postings were being removed. At some point in 1997, Officer Burgoyne's brother had a heart attack and she

telephoned Lt. Galezewski to ask for the day off. Lt. Galezewski granted the day off and told Officer Burgoyne about a sickness in the family day for which she could write a "Matter Of." Pending a response to this "Matter Of", she was granted another type of off day. A "Matter Of" is the universal form used by a Police Officer to document all types of actions. When she returned to work, Officer Burgoyne wrote the "Matter Of" requesting a sickness in the family day. Thereafter, Sgt. Bohl advised her that her request had been denied because it was not within the parameters of a sickness in the family day. Sgt. Bohl told Officer Burgoyne that he would look into the denial to see what else she could do, but he never got back to Officer Burgoyne. MPA President DeBraska considers the UPAF note to closely reflect information disseminated to MPA stewards at their monthly meeting and does not consider the note to be controversial under the bulletin board provisions of the collective bargaining agreement. MPA President DeBraska does not consider the UPAF note to be private business, but rather, considers the note to be union activity, specifically pre-approved by the MPA. In MPA President DeBraska's experience, the UPAF note is the only posting in which there has been a disagreement between MPD and the Association regarding what is controversial.

5. Capt. Bartholomew was in charge of District #3 from approximately January 10 of 1997 to January 10 of 1998 and retired from the MPD in November of 2000. In February of 1997, Capt. Bartholomew assumed that a MPD supervisor, i.e., Sergeant or above, had the right to approve all materials posted on the bulletin boards within the MPD, including MPA bulletin boards and that offensive or controversial materials were not permitted. Capt. Bartholomew, unlike Sgt. Bohl, was aware that there was a provision in the collective bargaining agreement that addressed bulletin boards and believed that this provision did not permit MPA to post controversial materials on their bulletin board. Capt. Bartholomew further assumed that all supervisory personnel at District #3 were responsible for policing bulletin boards, but that he had the authority to determine what was, or was not, controversial. Capt. Bartholomew's assumptions regarding this supervisory authority and responsibility were based upon his construction of MPD Rule 4, Section 2/350.00. Capt. Bartholomew removed the April 14, 1997, "Union Notes" posting from the MPA bulletin board. This posting states as follows:

UNION NOTES

There will be 9:00 A.M. meetings every month from now until June. The next meeting will be on May 13, 1997. The night meeting will be at 7:00 P.M. Please try to attend. If you have any questions, please ask.

If you are interviewed by Internal Affairs, you may be required to answer questions orally and be taped during the interview. We are currently in the process of fighting this procedure in court. Until a decision is reached, **ASK FOR UNION REPRESENTATION WHENEVER TALKING TO INTERNAL**

AFFAIRS. They are not your friends and even if you feel that you have done nothing wrong, you may face discipline!!! Judge WELLS has been assigned to hear the case. Judge WELLS has ruled that you are not allowed to bring in your own tape recorder. He stated that it is a matter of collective bargaining and of course the Chief WILL NOT negotiate this point. He's the Chief and he said so

As of June 15, 1997 we will be saying Good-Bye to a man who has been a very good friend to us and has been very helpful to many Officers. Kenneth MURRAY will no longer be our Union Lawyer. Laurie EGGERT will be taking over the lead role as the Union Attorney. She will be joined by Mike EDMONDS (no relation to the EDMONDS on the Department). Based on the way that this Administration does things, I'm sure that they will both be very busy.

Any Officers who took the time to call their Alderman about the Mayor's attempt to take over control of our Pension Board by adding a 9th member, a sincere Thank You. Your calls paid off and it looks like we have once again DEFEATED Johnny O in his efforts to take away OUR money.

There was a very good response to the survey sent out regarding members' concerns during the next round of negotiating a new contract. A summary of the responses will be forth-coming. Keep your eyes open for a building ~~for a building~~ that is up for sale. Our Union really needs to purchase a building for our Union Office. Two sites mentioned were 17th & Wells and 92nd & Bluemound. If you see anything else that looks good, please let me or someone at the Union Office know.

Thank you to everyone who volunteered and helped out on political campaigns. We helped many candidates win election.

Please be aware that there are certain Community Newspapers that are requesting and getting listings of Officers' license plates from DOT. District 7 Officers report that they have seen individuals walking through their lot and writing license plate numbers down. DOT has stated that they will deny requests from people asking for 10 or more listings at a time, if you fill out a form. If interested please see me for a form.

The Mayor and his new-found friend, Greg GRACZ (politics really do create strange bed fellows) have been fighting to keep the bill which would help us become top-paid in the State, out of the Governor's Budget. This is very

strange thinking because this Bill would not only help us become top-paid in the State but it would also allow the Fire Department to become the top-paid Fire Department in the State. By the way, if you see Greg GRACZ, congratulate him on his recent promotion handed down from. . .you guessed it, the Mayor's Office.

One of our members, Edgar BULLOCK, has recently under-gone heart surgery. If any one can donate even 1-2 hours of comp or holiday time to him it would be appreciated. See Me.

UNION STWARDS

Ted BUSCH-Days	Any member interested
John CZERWINSKI-Early	in being an Alternate
Carrie KUCHENREUTHER-Late Power	Steward, talk to your
Walter MCCULLOUGH-Late	shift steward.

At the bottom of this document, Officer Burgoyne had typed her name, telephone number and the following statement: "Let me know if you have any problems, questions or concerns." On April 15, 1997, Officer Burgoyne went to Capt. Bartholomew's office and asked if he knew who took down these notes. Officer Burgoyne's notes of this meeting, which were taken at or near the time of the meeting, accurately reflect this discussion and state as follows:

#3 Captain

-Admitted Taking notes down due to the fact that they are "inaccurate"

-Looking for Bldg is okay

-What is inaccurate?

No example

-Turned notes over to Internal Affairs

-Board is for Union our responsibility

-Took pen & paper out for specifics

None given

-I advised him I feel it is harassment.

As set forth in these notes, Capt. Bartholomew admitted taking down the notes on the basis that they were inaccurate; did not clarify what was inaccurate when requested to do so; and told Officer Burgoyne that the notes had been referred to IAD. When Officer Burgoyne told Capt. Bartholomew that she felt like she was being harassed because she was a union steward, he asked that she leave his office. On April 29, 1997, Lt. Galezewski advised Officer Burgoyne that, because a petition for the election of Tommy Thompson was political in nature,

it could not be posted on the MPA bulletin board. Officer Burgoyne, who had posted this petition on the MPA bulletin board because the MPA had endorsed Tommy Thompson, then removed the petition. On October 9, 1997, Capt. Bartholomew issued a memorandum to “**ALL HANDS**” regarding “**INSTRUCTION TO MEMBERS**”. These instructions included the following:

BULLETIN BOARDS”: Nothing will be placed on any bulletin board within this district without prior authorization from a supervisor. Supervisors who approve items for posting will date and initial the same. **NO EXCEPTIONS.**

Capt. Bartholomew does not consider the above instruction to constitute a change in his bulletin board policy at District #3. MPA President DeBraska considers the above instruction to violate the MPA labor contract because he believes that he, as MPA President, is the only individual with authority to approve materials posted on the MPA bulletin board. MPA President DeBraska bases this opinion upon the language of the current collective bargaining agreement, bargaining history and the repeal of certain FPC rules in 1984. When MPA President DeBraska was advised that Capt. Bartholomew had removed one of Officer Burgoyne’s postings, he contacted the Captain and told him that this conduct was inappropriate and that, if Capt. Bartholomew believed that a MPA posting was inappropriate, then the remedy would be to file a complaint with the WERC. Sergeant Elizabeth Pridmore-Dahlke has been with the MPD since 1979; was a MPA steward for several years prior to being promoted to Sergeant in 1995 and was assigned to District #3 in February or March of 1997. During her tenure as a MPA steward, Sgt. Pridmore-Dahlke understood that she did not need permission to post union business on MPA bulletin boards. Sgt. Pridmore-Dahlke continues to have this understanding. Some time after the UPAF note was removed from the MPA bulletin board, other Sergeants at District #3 told Sgt. Pridmore-Dahlke that it was Capt. Bartholomew’s position that MPA postings required prior supervisory authorization. In Sgt. Pridmore-Dahlke’s experience, the “Union Notes” that were removed by Capt. Bartholomew is the type of material that is placed on MPA bulletin boards to describe, and inform members of, union activity. Police Personnel Administrator Valerie Watson has been assigned to the Personnel Division of the MPD for nine years and has a responsibility to interpret and apply the MPA labor contract on behalf of the MPD. When determining whether or not a matter is “controversial,” Ms. Watson considers whether or not the matter undermines the authority of the Department; whether or not the matter will have a negative impact upon Department morale; and whether or not the matter will impact upon the efficiency of the Department. Ms. Watson considers the UPAF note to be controversial in that it undermines the authority of the Department and negatively impacts the efficiency of the work location in that it divides those who are “for” and those who are “against.” In Ms. Watson’s opinion, the MPA labor contract does not provide MPA with authority to post whatever MPA wishes to post because it does not provide MPA with a right to post non-controversial items and, if an item is controversial, then it is subject to MPD rules regarding posting materials on walls. In Ms. Watson’s opinion, the

MPD form used to create the UPAF note was MPD property. In Ms. Watson's opinion, if the form upon which the UPAF note was written had been discarded and retrieved from a recycling bin, then it would remain MPD property, because materials discarded in recycling bins remain under the control and custody of the Chief of Police until such time as MPD custodial workers remove the recycling bin and discard the materials contained therein. In Ms. Watson's opinion, if a Sergeant considers a posting to be controversial, it is appropriate for the Sergeant to remove the posting and refer the matter up the chain of command. In February of 1997, Sgt. Bohl and Capt. Bartholomew knew that Officer Burgoyne was a MPA Steward.

6. Capt. Bartholomew initiated the investigation on the UPAF note because he considered the note to be controversial, inappropriate and possibly in violation of the rules of the MPD. In Capt. Bartholomew's opinion, the UPAF note was disrespectful to the Chief; could cause friction between, or division among, the troops; was derogatory in nature; interfered with his ability to run the station and was controversial because many officers donate to UPAF and it is a charity. At the time that he initiated this investigation, there were two ways for Capt. Bartholomew to investigate a member of his command, *i.e.*, a District supervisor could conduct the investigation or an IAD supervisor could conduct the investigation. District level investigations may be concluded by a supervisor issuing a PD-30, or referring the matter up the chain of command to IAD. Normally, a PD-30 is used for minor observed violations, such as for not wearing a hat or being late for duty. Capt. Bartholomew instructed Sgt. Bohl to conduct the investigation. Given the UPAF's reference to the Police Chief, Sgt. Bohl thought it likely that the investigation would be referred up the chain of command to IAD. On March 10, 1997, while serving as acting Lieutenant at District #3, Sgt. Robert Ley received a telephone call from Police Chief Jones. Police Chief Jones asked Sgt. Ley if he was aware of a note that Officer Kuchenreuther had placed on the bulletin board at District #3 and Sgt. Ley responded "no", but that he would look into the matter by calling the Captain at home. Sgt. Ley then telephoned Capt. Bartholomew at home and was advised that the UPAF note and a report from Sgt. Bohl were in his desk. Sgt. Ley retrieved these materials from the Captain's desk and telephoned Police Chief Jones. During this telephone conversation, Sgt. Ley told Police Chief Jones that he had the UPAF note and report and Police Chief Jones told Sgt. Ley that the Chief would send Capt. Dale Schunk to District #3 to pick up the materials. Approximately fifteen minutes later, Capt. Schunk picked up these materials. The IAD stamp indicates that IAD received Sgt. Bohl's February 28, 1997 "Matter Of" on March 10, 1997. Sgt. Ley telephoned Sgt. Bohl at home to advise him that the Chief had directed that the investigation of the UPAF note be turned over to IAD. After this telephone call, Sgt. Bohl had no further involvement in this investigation. During his tenure at District #3, Sgt. Ley understood that it was Captain Bartholomew's policy and the policy of the MPD to have bulletin board postings approved by the Captain, or in his absence, the Lieutenant or acting Lieutenant. Sgt. Ley's understanding of the MPD policy is based upon his construction of MPD Rule 4, Section 2/350.00. Capt. Bartholomew never had any discussions with the Sergeants or Lieutenants at District #3 regarding watching Officer

Burgoyne closely and was not aware of any staff member who would have been watching her more closely than any other Officer.

7. In 1997, Dale Schunk was a Captain and commanded the MPD Internal Affairs Division (IAD). Dale Schunk, who is currently a Deputy Chief in the MPD, is hereafter referred to as Capt. Schunk. Arthur Jones' appointment as Police Chief in the Fall of 1996 increased IAD's workload because the Police Chief decided that he did not want District supervisors to use their time to conduct investigations. IAD is attached to the office of the Chief of Police, but is housed in a separate building that is some twenty minutes away by auto. In 1997, Capt. Schunk, in his capacity as IAD commander, reported to Police Chief Jones regarding pending IAD matters. Capt. Schunk does not recall any specific conversation with the Police Chief regarding Officer Kuchenreuther (as Officer Burgoyne was then known), but believes that such conversations were likely because of the note's reference to the Police Chief and the nature of the investigation. Capt. Schunk considers it appropriate for the IAD to investigate the UPAF note because the note talks negatively about the Chief and his Administration. Capt. Schunk was not under any pressure from the Police Chief to make the investigation of Officer Burgoyne a priority, or to deal with Officer Burgoyne in any particular fashion. In April of 1997, Capt. Schunk received additional information on the investigation of Officer Burgoyne when he received the "Union Notes" posting that had been removed from the MPA bulletin board by Capt. Bartholomew. Capt. Schunk reviewed this posting; considered the posting to be bordering on disrespect; but concluded that the posting did not rise to the level of a rule violation. In reaching this conclusion, Capt. Schunk gave consideration to the fact that the posting was labeled "Union Notes;" had the names of union representatives on it; and included union business. Consideration of these facts, lead Capt. Schunk to conclude that the April posting was union correspondence. Capt. Schunk does not view the UPAF as conveying any union business or union opinion and considers the "verbiage" of the UPAF note to be potentially divisive or disruptive to the operation of the MPD. While familiar with the contractual provisions on MPA bulletin boards, Capt. Schunk reviewed the UPA note to determine compliance with MPD Rules, rather than with the collective bargaining agreement. Captain Linda Haynes, hereafter Sgt. Haynes, was a Sergeant in IAD in 1997. Sgt. Haynes conducted the IAD investigation of Officer Burgoyne. Although the SOP is to complete an IAD investigation within 120 days, this time line is not strictly enforced. MPA President DeBraska, but not Capt. Schunk, considers Sgt. Haynes' investigation to involve an unusually long period of time. Sgt. Haynes does not recall who assigned her this investigation, but believes her investigation would have started after IAD received the written reports from the District. At the time that Sgt. Haynes was assigned this investigation, she was not told how to conduct the investigation and did not consider this investigation to be a priority. Prior to her assignment at IAD, Sgt. Haynes was a Sergeant at MPD District's 1 and 7. On August 4, 1997 Sgt. Haynes prepared a "Complaint Against Police Officer Carol Kuchenreuther," which was addressed to Capt. Schunk and included the following:

Sir:

On Friday, February 28, 1997, Captain Dale SCHUNK instructed members of the Internal Affairs Division to conduct an investigation into allegations of misconduct by member, Police Officer Carol KUCHENREUTHER.

ALLEGATIONS

Sergeant Thomas BOHL, who is assigned to District Three, recovered a handwritten note that was attached to a Milwaukee Police Department Memorandum #97-24 dated February 18, 1997. The memorandum was posted on the assembly bulletin board of District Three. The note was not authorized by a Supervisor for posting to the bulletin.

INVESTIGATION

A review of Milwaukee Police Department "Matter Of" dated February 28, 1997, written by Sergeant Thomas BOHL related the following:

On Thursday, February 27, 1997, Sergeant BOHL recovered a handwritten note that was taped to Milwaukee Police Department Memorandum #97-24. The memorandum was located on the District Three's Milwaukee Police Association bulletin board. The memorandum addressed the 1997 UPAF/Visions Campaign for raising funds. The memorandum was signed by Assistant Chief of Police James KOLEAS, with the typed name of the Chief of Police Arthur JONES listed above his signature. Sergeant BOHL related that he immediately removed the note and brought the matter to the attention of his immediate supervisor, Lieutenant Richard OLIVA.

Sergeant BOHL suspected that Officer KUCHENREUTHER of District Three, Late Power Shift, to be the culprit, due to the fact, that he had observed her at the bulletin board earlier. Upon her departure from the board, he observed the note. However, he stated that he did not observe her put the note on the board.

On Friday, February 28, 1997, at 8:00 P.M., during roll call for the late power shift, Sergeant BOHL addressed the fact that notes that expressed personal opinions should not be left on the district's bulletins boards. During this roll call assembly, in the presence of Sergeant BOHL, Officer KUCHENREUTHER gave a verbatim statement, in which she stated she had

wrote and placed the note on the bulletin board. She further stated that she called Bradley DEBRASKA of the Milwaukee Police Association and he told her it was o.k. to place notes on the board.

Sergeant BOHL related that he believes that Officer KUCHENREUTHER was upset because of the current departmental policies in effect and this may have perpetuated her actions in writing the note.

The note was written on the back of a Milwaukee Police Department Request for Trade of Regular Off Day, PR-27 form. The note reads, "When you donate to U.P.A.F. you help the Chief and his Administration look good! Do you want to help that cause?"

CONCLUSION

Officer KUCHENREUTHER through her own admission acknowledged to Sergeant BOHL during roll call that she wrote and placed the note on the bulletin board. The Charges have been sustained. Officer KUCHENREUTHER is in violation of:

RULE 4, SECTION 2/350.00:

The furniture, files and other equipment of the Police Department buildings shall remain where officially placed and shall not be moved from such offices or places, or the location of equipment and furnishings changed in any manner; neither shall there be hung upon the walls of any Department building any calendar, poster, picture, advertising matters, or other things, except those relating to or essential for police purposes, without the approval of the Chief of Police.

RULE 4, SECTION 2/385.00:

Department stationery shall not be used for personal correspondence nor shall any Department property be used for private purposes.

Sgt. Haynes reached her conclusions that Officer Burgoyne had violated MPD Rule 4, Sections 2/350.00 and 2/385.00 based solely upon statements contained in Lt. Bohl's "Matter Of." These conclusions are reasonable. Sgt. Haynes did not interview Officer Burgoyne because she considered the "Matter Of" prepared by Sgt. Bohl to contain admissions that Officer Burgoyne had violated MPD Rule 4, Sections 2/350.00 and 2/385.00. Sgt. Haynes considers the MPA bulletin board to be a "wall" for the purposes of MPD Rule 4, Section 2/350.00. Sgt. Haynes conclusion that the opinion contained in the UPAF note was "personal" was based upon her reading of the note. Sgt. Haynes' conclusion that MPD stationery was used to write

the UPAF note was based upon the fact that the note was written on a MPD form. Sgt. Haynes assumed that that the “personal” opinion reflected in the UPAF note was that of Officer Burgoyne because Officer Burgoyne was the author of the note. MPD Rule 4, Section 2/385.00 may be reasonably construed to prohibit Officer Burgoyne’s use of the “Milwaukee Police Department Request for Trade of Regular Off Day” form to write the UPAF note. MPD Rule 4, Section 2/350.00 may be reasonably construed to prohibit Officer Burgoyne from posting the UPAF note on the MPA bulletin board without permission from the Chief of Police or his designees. Officer Burgoyne did not have such permission. During the time in which she investigated Officer Burgoyne, Sgt. Haynes did not know that Officer Burgoyne was a MPA Steward; did not consider the note to represent the opinion of the MPA; and understood that all materials that were posted, including materials on MPA bulletin boards, needed to be authorized by the Police Chief, or his designee. Sgt. Haynes did not know where Officer Burgoyne obtained the MPD form upon which she wrote the note, but considers Officer Burgoyne’s claim that she retrieved the form from the trash to be irrelevant because even if discarded, the form would be MPD stationery. Capt. Schunk reviewed the “Complaint Against Police Officer Carol Kuchenreuther,” concurred with its findings, and, on August 15, 1997, issued the following:

Police Officer Kuchenreuther:

There is reason to believe that you have violated Department Rules and Regulations, including but not limited to the following rule which is detailed in the enclosed copy of Charges and Specifications:

Rule 4, Section 2/350.00

Rule 4, Section 2/385.00

Included with this letter is a summary of the investigation. If you wish to do so, you are hereby afforded the opportunity to respond in writing to the information contained in the summary of the investigation. Your “Matter Of” may include the following:

- a.) A written statement of your side of the story including the names, addresses and phone numbers of additional witnesses you wish the Department investigators to interview, specifying the nature of the information possessed by the additional witnesses.
- b.) Any mitigating factors or circumstances you may wish the Chief to consider in determining a possible penalty.

You have the right to consult with your union representative in the preparation of your written response. The Chief of Police will carefully consider the contents of your "Matter Of" before making any decision on your guilt or innocence. Similarly, he will weigh any mitigating circumstances against the nature and seriousness of the charges before deciding upon any possible penalty. If you choose not to take this opportunity, the Chief will be compelled to base his disciplinary decisions solely upon the information possessed by the Department.

Your "Matter Of" must be received in the Office of the Internal Affairs Division no later than 4:00 P.M. on or before the seventh (7th) day following the date you received this notice. If the seventh (7th) day falls on a Saturday, a Sunday, or a holiday, your Matter Of may be received on the next regular business day.

If you have any questions regarding this mater, please contact the Internal Affairs Division at 935-7942.

Attached to this letter were the following two Charges:

CHARGE

RULE 4, SECTION 2/350.00:

The furniture, files and other equipment of the Police Department buildings shall remain where officially placed and shall not be moved from such offices or places, or the location of equipment and furnishings changed in any manner; neither shall there be hung upon the walls of any Department building any calendar, poster, picture, advertising matters, or other things, except those relating to or essential for police purposes, without the approval of the Chief of Police.

SPECIFICATION

RULE 4, SECTION 2/350.00:

On Thursday, February 27, 1997, Sergeant Thomas BOHL recovered an unauthorized note taped to Memorandum 97-24 on District Three MPA bulletin board in the assembly room. Officer KUCHENREUTHER admitted to placing the note on the bullein (sic) board.

...

CHARGE

RULE 4, SECTION 2/385.00:

Department stationery shall not be used for personal correspondence nor shall any Department property be used for private purposes.

SPECIFICATION

RULE 4, SECTION 2/385.00:

The note written by Police Officer Carol KUCHENREUTHER was on the back of a Milwaukee Police Department Request for Trade of Regular Off Day, PR-27 form. The note reads, "When you donate to U.P.A.F. you help the Chief and his Administration look good! Do you want to help the cause?" The note was posted on the Milwaukee Police Association board at District Three.

Capt. Schunk signed the above Departmental Charges based upon his review of and concurrence with the materials submitted by Sgt. Haynes. With the assistance of MPA President DeBraska, Officer Burgoyne prepared a response to the above, which is dated August 21, 1997 and which states as follows:

IN THE MATTER OF: CONFIDENTIAL INTERNAL INVESTIGATION

TO: ARTHUR L. JONES
Chief of Police

SIR:

Please accept this Matter-Of as responsive to the allegations as set forth in the Department's August 15th, 1997 correspondence (attachments 1 through 7), i.e. Charges/Specifications and Summary (dated August 4, 1997); pertaining to Rule 4 Section 2/350.00 and Rule 4, Section 2/385.00. I wish to reserve further comment irrespective of the contents of this Matter-Of and further, this response should not be construed in any fashion as waiving my rights to exercise any or all of my guarantees to pursue relief from acts or omissions by the MPD in regards to this investigation regardless of disposition.

Perhaps it would be most appropriate to address the two (2) Charges/Specifications in chronology as set forth on the 'Charges' document which is repeated on the 'Summary' document.

The allegations of misconduct, in particular Rule 4, Section 2/350.00 and Rule 4, Section 2/385.00, reads in their entirety as follows:

CHARGE

RULE 4, SECTION 2/350.00:

The furniture, files and other equipment of the Police Department buildings shall remain where officially placed and shall not be moved from such offices or places, or the location of equipment and furnishings changed in any manner; neither shall there be hung upon the walls of any Department building any calendar, poster, picture, advertising matters, or other things, except those relating to or essential for police purposes, without the approval of the Chief of Police.

SPECIFICATION

RULE 4, SECTION 2/350.00:

On Thursday, February 27, 1997, Sergeant Thomas BOHL recovered an unauthorized note taped to Memorandum 97-24 on District Three MPA bulletin board in the assembly room. Officer KUCHENREUTHER admitted to placing the note on the bulletin board.

and

CHARGE

RULE 4, SECTION 2/385.00:

Department stationery shall not be used for personal correspondence nor shall any Department property be used for private purposes.

SPECIFICATION

RULE 4, SECTION 2/385.00:

The note written by Police Officer Carol KUCHENREUTHER was on the back of a Milwaukee Police Department Request for Trade of Regular Off Day, PR-27 form. The note reads, "When you donate to U.P.A.F. you help the Chief and his Administration look good! Do you want to help the cause?" The note was posted on the Milwaukee Police Association board at District Three.

Neither has no basis in fact. Preeminent in these particular allegations is the obvious avoidance of the truth. Clearly this issue, voicing my opinion and thoughts regarding solicitation of money for a nonprofit charitable organization, is a freedom-of-speech matter not dissimilar to the recent efforts by the Chief of Police soliciting donations for the United Negro College Fund (UNCF) (Attachments 8 and 9). The fact that I chose to use a discarded piece of paper from the recycling bin (Memorandum 97-24) and expressed my opinion by placing it on the Milwaukee Police Association bulletin board; results in an inconsequential difference identifiable by the Chief and I, that is the Chief supports different or perhaps the same 501C(3)s that I do. Surely this investigator has preferred similar charges against the Chief's interests?

It's somewhat interesting that supervisors have differing opinions in regards to the expression of speech. On Friday, February 28, 1997, Sergeant Bohl expressed his opinion and thoughts regarding this matter/internal investigation at Roll Call. Attached hereto (Attachments 10, 11, 12 and 13) are his statement(s), leaving little doubt that Sergeant Bohl considered my actions as a First Amendment right. To make comments in that context Sergeant Bohl was inaccurate to spin this matter away from the truth into a note (discarded piece of paper on the MPA bulletin board) placed upon the walls of a Department building is inappropriate.

On May 17, 1984 the Board of Fire and Police Commissioners suspended Rule 4 Sections 27 and 28 of the MPD rules. With such suspension came the right to exercise First Amendment privileges even if it means condemnation of department rules, standard operating procedures, policies, etc. in critical, derogatory, defamatory or otherwise obscene expression. The same suspension (attachments 14 through 22) the Chief utilized to support UNCF. Further, I expressed my opinion on the MPA bulletin board not on the walls of

the Department. I don't believe I need authorization to express my opinion from the Chief nor to place my thoughts on the MPA bulletin board.

To support this fact I draw your attention to excerpts of a Fact Finding Decision dated October 29, 1971 by a Mr. Thomas P. Whelan (attachments 23 through 28). At the time, limitations were placed upon what type of material could be posted as well as the requirement to obtain prior approval from the Commanding Officer of the work location was necessary. This is evidenced by the actual contract language (attachments 29 through 30) from the January 1, 1971 through November 3, 1972 labor agreement. Control, meaning content and approval, remained with the Commanders through the January 1, 1983 through December 31, 1984 labor contract (attachments 31 and 32). Then by way of the January 1, 1985 through December 31, 1986 labor contract the City of Milwaukee and the Chief of Police relinquished control as to the content of the material placed on the MPA bulletin boards and the Commanding Officer's advance/prior approval for posting was removed as a requisite. This fact is reflected in the 85-86 contract language (attachments 33 through 34).

This language remained unchanged from January 1, 1985 through and including December 31, 1997. The specific language in part is worth repeating, "The material being placed upon such boards. . .and any other matter approved by the Association. . ." As asserted by Sergeant Bohl I contacted Mr. Bradley DeBraska, President of the MPA and received approval to place these thoughts on a discarded piece of paper on the MPA controlled bulletin board. This contract language (attachments 35, 36 and 37) not only allows my conduct as permissible, it advocates such conduct which the City and Chief agreed to.

The allegations of misconduct are untrue and constitute a rouse to chill my First Amendment rights. Therefore, I hereby request immediate cessation of this investigation and expungement from my personnel files. Thank you in advance for your cooperation.

Officer Burgoyne provided no other response to the August, 1997 Charges. After IAD received Officer Burgoyne's written response, the written response was submitted to Capt. Reinke, head of Personnel, for review of her claims regarding MPA contractual rights. It is common for Personnel to review such claims prior to the Police Chief's decision on the Charges. On December 19, 1997, Captain Reinke conveyed to Officer Burgoyne the discipline that had been imposed by the Police Chief. At the time that she received this discipline, Officer Burgoyne was assigned to Property, which was attached to Administration. At the time that Officer Burgoyne was disciplined, Administration was under the command of Commander Collins. In Commander Collins' absence, the next highest-ranking person under

his command had the responsibility to convey discipline to Officers under Commander Collins' command. Personnel had the highest-ranking officer under Commander Collins' command, i.e., Capt. Reinke. The discipline imposed upon Officer Burgoyne by the Police Chief on December 18, 1997 included a District/Division Reprimand for violating MPD Rule 4, 2/385.00 and a two day suspension for violating MPD Rule 4, 2/350.00. The following imposed the latter discipline:

PERSONNEL ORDER 97-258
December 18, 1997

RE: DISCIPLINARY ACTION

POLICE OFFICER CAROL M. KUCHENREUTHER (53902), Property Control Section, charged with violation of Department Rules and Regulations as follows: Posting unauthorized information in a Department building.

The charge having been substantiated, she is found guilty as charged, and it is hereby ordered that POLICE OFFICER CAROL M. KUCHENREUTHER be suspended without pay for two (2) consecutive working days commencing January 5, 1998. POLICE OFFICER CAROL M. KUCHENREUTHER shall returned to duty on January 7, 1998.

The decision to discipline is made only by the Chief of Police and is issued as an Order. Each disciplinary order is read at roll call in each District for three days.

8. On March 5, 1997, Officer Burgoyne attended an in-service at the MPD Training Academy. At the start of the in-service, Officer Burgoyne and the other attendees were advised that Police Chief Jones would make an appearance and respond to questions from the audience. Officer Burgoyne was adamantly opposed to the Police Chief's new handcuff policy, which policy restricted street officers to one set of handcuffs, because she believed that the new policy was unsafe. This belief stemmed from her own experiences as a street Officer and her understanding that MPA considered the new policy to be unsafe. Officer Burgoyne questioned the Police Chief as to the reason why he had instituted the new handcuff policy and received a response to this question. Officer Burgoyne also questioned the Police Chief about a change in conveyance policy and received a response to this question. When Officer Burgoyne continued to question the Police Chief about the handcuff policy by attempting to describe situations where arresting officers found more than one set of handcuffs to have come in handy, the Police Chief and Officer Burgoyne engaged in a discussion. This discussion is reflected in the contemporaneous notes of Officer Burgoyne, which indicate that the Chief said "I have heard enough; that Officer Burgoyne said "You are not here to listen;" and that the

Chief then said "I am, and I have heard enough." In Officer Burgoyne's opinion, the Police Chief was quite irate with her. When Officer Burgoyne sat down, she made notes on the back of a handout that had been provided to in-service attendees by the MPD. Officer Burgoyne made notes so that she could share the Chief's positions with other MPA stewards and District #3 members. Following his presentation, the Police Chief approached then Deputy Inspector James Warren, who was the director of the Training Bureau until his retirement on March 14, 1997. The Police Chief, who appeared to be mildly upset, pointed to an Officer, later identified to be Officer Burgoyne, and asked who was the Officer taking notes and why was the Officer taking notes. The Police Chief indicated that he wanted to know the substance of these notes to determine if they were inappropriate or comported with what had gone on. Deputy Inspector Warren, who had been present throughout the Police Chief's presentation, had not observed the note taking. Dennis Draskowski, then a Lieutenant at the Police Academy, retired from the MPD in January 2001 as a Captain, but is referred to herein as Lt. Draskowski. In Lt. Draskowski's opinion, it was appropriate for Officer Burgoyne to ask the Police Chief to explain his rationale for the handcuff policy, but it was discourteous of Officer Burgoyne to persist in questioning the Police Chief on this issue. In Lt. Draskowski's opinion, the Police Chief appeared slightly flustered by the repeated questioning of Officer Burgoyne. After the Chief finished his presentation at the in-service, he directed Lt. Draskowski to retrieve Officer Burgoyne's notes. Officer Burgoyne's contemporaneous notes reflect and establish the following: Lt. Draskowski approached Officer Burgoyne; asked what she was writing; Officer Burgoyne responded taking notes; Lt. Draskowski asked why; Officer Burgoyne responded she was a union steward and needed to give her people accurate info; Lt. Draskowski asked for her name and she responded Carol Kuchenreuther; that Lt. Draskowski asked what District did she work at; Officer Burgoyne responded why; Lt. Draskowski responded he just wanted to know; Officer Burgoyne asked if he was ordered to find this out; Lt. Draskowski responded yes; Officer Burgoyne asked if this was by the Chief; Lt. Draskowski responded yes; and that when Lt. Draskowski asked to see her notes, she responded no. Lt. Draskowski then left the area and told his immediate supervisor, Deputy Inspector Warren, that Officer Burgoyne would not produce her notes. Deputy Inspector Warren responded that the Police Chief was waiting for the notes and that the Police Chief personally wanted to see the notes. Lt. Draskowski returned to the in-service room to speak with Officer Burgoyne. Lt. Draskowski again requested the notes; again was refused and told Officer Burgoyne to accompany him. Officer Burgoyne asked to telephone a union representative and Lt. Draskowski agreed to this request. Officer Burgoyne then had a telephone conversation with a union representative, during which she was advised to do what she was told. Lt. Draskowski and Officer Burgoyne met Deputy Inspector Warren in the hall. Officer Burgoyne refused Deputy Inspector Warren's request to turn over her notes. Deputy Inspector Warren then told Lt. Draskowski to order Officer Burgoyne to turn over notes and that, if she refused this order, she would be charged with failure to obey a lawful order emanating from a superior officer. Lt. Draskowski then ordered Officer Burgoyne to turn over her notes and she immediately complied with this order without further comment. These

notes were reviewed and copied by Deputy Inspector Warren and returned to Officer Burgoyne later that day. When Deputy Inspector Warren reviewed these notes, he did not find anything to be inappropriate. Subsequently, but on the same day, Deputy Inspector Warren spoke with the Police Chief; advised the Police Chief that he had found nothing inappropriate in the notes; and forwarded a copy of these notes to the Chief's Office. During this conversation, Deputy Inspector Warren identified the note-taking Officer by name, but did not identify her status as a MPA steward. At the time of this conversation, Deputy Inspector Warren was not aware of the fact that Officer Burgoyne was a MPA steward. In Deputy Inspector Warren's opinion, the Police Chief conducted this telephone conversation in a normal tone of voice and did not sound upset. Lt. Drazkowski reviewed the notes and found nothing inappropriate. On Wednesday, March 5, 1997, Lt. Drazkowski, at the request of Deputy Inspector Warren, prepared the following "Matter Of":

REPORT

Training Bureau
Wednesday, March 5, 1997

In the matter of: INCIDENT INVOLVING P.O. CAROL
KUCHENREUTHER AT IN-SERVICE TRNG.

To: JAMES R. WARREN
DEPUTY INSPECTOR OF POLICE

Sir:

On Wednesday, March 5, 1997 at approximately 9:55 A.M., Chief Arthur JONES appeared before the in-service class as he has done in all of the previous classes since February 3, 1997, to answer any questions they might have regarding his new administration and to explain the direction he intends to lead the department.

P.O. Officer Carol KUCHENREUTHER of District #3-Late Power, asked the first question relative to the policy of allowing officers to carry only one set of handcuffs. She felt it was an unsafe policy. The chief gave his explanation to which she was not satisfied. She persisted and the chief again stated his position. She continued to persist on the issue. The chief again made his point and told her that he had heard enough and was moving on to another topic. P.O. KUCHENREUTHER argued back and the Chief terminated their discussion so that he could move on and answer other questions. As the Chief continued on with his presentation, P.O. KUCHENREUTHER was observed writing down notes. The Chief concluded his presentation at about 10:50 A.M., and immediately instructed me to find out what she was writing during his presentation.

The class was given a short break. I approached P.O. KUCHENREUTHER and had her step to the back of the room. I asked her name and she replied. I asked her what she was writing during the chief's presentation and she replied notes on his comments. I asked to see them and she refused. She then related to me that she was the union steward at District #3 and was going to take these notes back to her work location and keep the officers informed. She asked who wanted to see her notes and I replied, the chief. I told her that I heard her discussion with the chief and that his position is very clear at this class, and prior classes, that he stands firm on officers carrying only one set of handcuffs. She understood that and continued on with me why the officers need additional handcuffs for safety reasons. I again asked for her notes and she refused.

A short time later I met Deputy Inspector James WARREN in the hallway and explained that Officer KUCHENREUTHER's writings were notes from the chief's presentation and that she would not produce them. He explained that the chief was waiting and that he personally wanted those notes.

I returned to Room 182 and again spoke with Officer KUCHENREUTHER and asked for her notes. She again refused and asked if she could call a union representative, which I allowed. After the telephone conversation we proceeded in the direction of the office and again met D/I WARREN in the hallway. D/I WARREN explained the need for her to produce the notes and she refused. D/I WARREN stated to me that I was to order her to provide the notes and if she declined she would be charged with 'Failure to obey a lawful order emanating from of superior officer.' At 11:07 A.M., I ordered Officer KUCHENREUTHER to give me her notes. She complied immediately and without comment.

Her notes were written on the two reverse sides of a 'Quality of Life' city ordinance summary handout. It consisted of one full page and a small portion of a second page. The notes were hand printed and divided into 12 different areas which paraphrased the topics the chief had spoken about. Only facts were written down and there were no derogatory comments on the sheets. A copy of these notes are attached to this report.

Officer KUCHENREUTHER was instructed to go back into class, which she did. Union representative Patrick DOYLE arrived about ½ hour later and met with Deputy Inspector James WARREN.

This “Matter Of” is an accurate account of the events related therein. Deputy Inspector Warren did not tell Lt. Drazkowski why he wanted the “Matter Of” and the request to prepare the “Matter Of” did not surprise Lt. Drazkowski because it was common to document incidents. Ms. Watson considers the handout upon which Officer Burgoyne wrote the notes to be MPD property and, further, considers the Police Chief to have the right to review these notes.

9. Evaluated under all the circumstances, Thomas Bohl’s conduct in telling Police Officers on February 28, 1997 that “If you think you can put your opinion up on the board, we’ll take it down, show the Captain and start an internal investigation. If you have an opinion about the Chief, rules or policies, keep it to yourself. Don’t put up signs.,” has a reasonable tendency to interfere with, restrain, or coerce municipal employees in the exercise of their Sec. 111.70(2) rights.

10. Evaluated under all the circumstances, Thomas Bohl has not engaged in any other conduct that has a reasonable tendency to interfere with, restrain or coerce municipal employees in the exercise of their Sec. 111.70(2) rights.

11. Thomas Bohl and Arthur Jones have not engaged in any conduct that demonstrates that they are hostile toward the MPA, or Officer Burgoyne’s lawful, concerted activity upon behalf of the MPA.

12. Evaluated under all the circumstances, James Bartholomew’s conduct in removing the April 14, 1997 posting, entitled “Union Notes,” from the Milwaukee Police Association bulletin board and referring this posting to the IAD has a reasonable tendency to interfere with, restrain or coerce Carol Burgoyne’s and other municipal employees’ exercise of their Sec. 111.70(2) rights.

13. Evaluated under all the circumstances, James Bartholomew has not engaged in any other conduct that has a reasonable tendency to interfere with, restrain or coerce Carol Burgoyne’s or any other municipal employees’ exercise of their Sec. 111.70(2) rights.

14. James Bartholomew’s conduct in removing the April 14, 1997 posting, entitled “Union Notes,” from the Milwaukee Police Association bulletin board and referring this posting to the IAD demonstrates that James Bartholomew is hostile toward Carol Burgoyne’s lawful, concerted activity in posting the April 14, 1997 “Union Notes.”

15. James Bartholomew has not engaged in any other conduct that demonstrates that James Bartholomew is hostile toward the MPA, or Carol Burgoyne’s lawful, concerted activity.

16. Evaluated under all the circumstances, Arthur Jones has not engaged in any conduct that has a reasonable tendency to interfere with, restrain or coerce Carol Burgoyne's or any other municipal employees' exercise of their Sec. 111.70(2) rights.

17. The City of Milwaukee, Arthur Jones, Thomas Bohl, and James Bartholomew have not been actively involved in creating or supporting the MPA; have not subjugated the MPA to their will; so controlled the MPA that it is presumably incapable of effectively representing employee interests; or "interfered" with MPA to such an extent that MPA's independence is threatened.

CONCLUSIONS OF LAW

1. Complainant Milwaukee Police Association is a labor organization within the meaning of Sec. 111.70(1)(h), Stats., and the Police Officers represented by the Milwaukee Police Association are municipal employees within the meaning of Sec. 111.70(1)(i), Stats.

2. Complainant Carol Burgoyne, f/k/a as Carol Kuchenreuther, is a municipal employee within the meaning of Sec. 111.70(1)(i), Stats., and has engaged in lawful, concerted activity on behalf of the Milwaukee Police Association.

3 Respondent City of Milwaukee is a municipal employer within the meaning of Sec. 111.70(1)(j), Stats., and at all times material hereto, Robert Ley, Arthur Jones, James Bartholomew, Dennis Drazkowski, Dale Schunk, James Warren, Linda Haynes and Thomas Bohl have been supervisory employees of the City of Milwaukee and have acted on behalf of the City of Milwaukee.

4. The conduct of Arthur Jones, James Bartholomew, and Thomas Bohl which gives rise to Complainants' claim of prohibited practices does not involve any conduct that is outside the scope of their employment as supervisory employees of the City of Milwaukee.

5. Complainants have not established, by a clear and satisfactory preponderance of the evidence, that Arthur Jones or Thomas Bohl has engaged in any conduct that demonstrates hostility toward the Milwaukee Police Association, or Carol Burgoyne's lawful, concerted activity on behalf of the Milwaukee Police Association.

6. Complainants have not established, by a clear and satisfactory preponderance of the evidence, that Arthur Jones has engaged in any conduct in violation of Sec. 111.70(3)(a)1 or 3, Stats.

7. Carol Burgoyne's posting of the UPAF note on the Milwaukee Police Association bulletin board on February 27, 1997 does not involve the exercise of Sec. 111.70(2) rights and this conduct is not lawful, concerted activity.

8. Complainants have not established, by a clear and satisfactory preponderance of the evidence, that Thomas Bohl has engaged in any conduct in violation of Sec. 111.70(3)(a) 3, Stats.

9. By telling Police Officers on February 28, 1997 that "If you think you can put your opinion up on the board, we'll take it down, show the Captain and start an internal investigation. If you have an opinion about the Chief, rules or policies, keep it to yourself. Don't put up signs.," Thomas Bohl engaged in conduct that has a reasonable tendency to interfere with, restrain or coerce municipal employees in the exercise of their Sec. 111.70(2) rights and by this conduct of its supervisory employee, Thomas Bohl, the City of Milwaukee has violated Sec. 111.70(3)(a)1, Stats.

10. Complainants have not established, by a clear and satisfactory preponderance of the evidence, that Thomas Bohl has engaged in any other conduct in violation of Sec. 111.70(3)(a)1, Stats.

11. Carol Burgoyne's posting of the "Union Notes" on the Milwaukee Police Association bulletin involves the exercise of her Sec. 111.70(2) rights and this conduct is lawful, concerted activity.

12. James Bartholomew's conduct in removing the April 14, 1997 posting, entitled "Union Notes," from the Milwaukee Police Association bulletin board and referring this posting to the IAD has a reasonable tendency to interfere with, restrain or coerce Carol Burgoyne's and other municipal employees' exercise of their Sec. 111.70(2) rights and, by this conduct of it supervisory employee James Bartholomew, the City of Milwaukee has violated Sec. 111.70(3)(a)1, Stats.

13. James Bartholomew's conduct in removing the April 14, 1997 posting, entitled "Union Notes," from the Milwaukee Police Association bulletin board and referring this posting to the IAD demonstrates, by a clear and satisfactory preponderance of the evidence, that James Bartholomew is hostile toward Carol Burgoyne's lawful, concerted activity in posting the April 14, 1997 "Union Notes."

14. Complainants have established, by a clear and satisfactory preponderance of the evidence, that James Bartholomew's removal of the April 14, 1997 posting, entitled "Union Notes," from the MPA bulletin board at District #3 and his referring this posting to internal affairs was motivated, in part, by hostility toward Carol Burgoyne's lawful, concerted activity

in posting the April 14, 1997 “Union Notes” and, by this conduct of its supervisory employee James Bartholomew, the City of Milwaukee has violated Sec. 111.70(3)(a) 3, Stats.

15. Complainants have not established, by a clear and satisfactory preponderance of the evidence, that James Bartholomew has engaged in any other conduct in violation of Sec. 111.70(3)(a)1 or 3, Stats.

16. Complainants have not established, by a clear and satisfactory preponderance of the evidence, that the City of Milwaukee, or any individual acting on behalf of the City of Milwaukee, has violated Sec. 111.70(3)(a)1 or 3, Stats., by threatening to conduct an internal affairs investigation of Carol Burgoyne for posting the UPAF note on the Milwaukee Police Association bulletin board; by conducting an investigation of Carol Burgoyne for posting the UPAF note on the Milwaukee Police Association bulletin board; by issuing disciplinary charges against Carol Burgoyne for posting the UPAF note on the Milwaukee Police Association bulletin board; or by disciplining Carol Burgoyne for posting the UPAF note on the Milwaukee Police Association bulletin board.

17. Complainants have not established, by a clear and satisfactory preponderance of the evidence, that the City of Milwaukee, Arthur Jones, Thomas Bohl, James Bartholomew, or any other individual acting on behalf of the City of Milwaukee, has violated Sec. 111.70(3)(a)2, Stats.

ORDER

1. Complainants’ allegations that Respondents’ City of Milwaukee, Arthur Jones, Thomas Bohl and James Bartholomew have violated Sec. 111.70(3)(a) 2, Stats., are dismissed in their entirety.

2. With the exception of the Sec. 111.70(3)(a)3, Stats., violation found in Finding of Fact 14 above, Complainants’ allegations that Respondents’ City of Milwaukee, Arthur Jones, Thomas Bohl and James Bartholomew have violated Sec. 111.70(3)(a)3, Stats., are dismissed in their entirety.

3. With the exception of the Sec. 111.70(3)(a)1, Stats., violations found in Findings of Fact 9 and 12 above, Complainants’ allegations that Respondents’ City of Milwaukee, Arthur Jones, Thomas Bohl and James Bartholomew have violated Sec. 111.70(3)(a)1, Stats., are dismissed in their entirety.

4. To remedy the violations of Sec. 111.70(3)(a)1 and 3, Stats., found in Findings of Fact 9, 12 and 14 above, the City of Milwaukee and its agents at the Milwaukee Police Department District #3 shall immediately:

(a) Cease and desist from violating Sec. 111.70(3)(a)1, Stats., by interfering with, restraining or coercing employees in the exercise of their rights guaranteed in Sec. 111.70(2), Stats., by

- (1) Stating that all opinions of the Officers regarding the Milwaukee Police Department Police Chief and Milwaukee Police Department rules or policies that are posted on the Milwaukee Police Association bulletin at District #3 will be taken down by District #3 supervisory staff; shown to the Captain of District #3; and referred to internal affairs for investigation.
- (2) Removing postings of Milwaukee Police Association stewards from the Milwaukee Police Association bulletin board that involve lawful, concerted activity and referring such postings to IAD without a valid business reason for such removal and referral.

(b) Cease and desist from violating Sec. 111.70(3)(a)3, Stats., by discouraging membership in the Milwaukee Police Association by discriminating against Milwaukee Police Association stewards by

- (1) Removing Milwaukee Police Association stewards' postings from the Milwaukee Police Association bulletin board when such removal is based, in part, on hostility toward lawful, concerted activity.
- (2) Referring Milwaukee Police Association stewards' postings on the Milwaukee Police Association bulletin board when such referral is based, in part, on hostility toward lawful, concerted activity.

(c) Take the following additional affirmative action that the Examiner finds will effectuate the purposes and policies of the Municipal Employment Relations Act:

- (1) Notify employees represented by the Milwaukee Police Association, by posting in conspicuous places in Milwaukee Police Department District #3 where such members are employed, copies of the Notice attached hereto and marked "Appendix A." This notice shall be signed by an authorized representative of the Milwaukee Police Department and shall be

posted immediately upon receipt of a copy of this Order and shall remain posted for a period of thirty (30) days. Reasonable steps shall be taken to insure that this Notice is not altered, defaced or covered by other material.

- (2) Notify the Wisconsin Employment Relations Commission within twenty (20) days following the date of this Order of the steps taken to comply herewith.

Dated at Madison, Wisconsin, this 5th day of December, 2002.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Coleen A. Burns /s/

Coleen A. Burns, Examiner

APPENDIX A

**NOTICE TO EMPLOYEES REPRESENTED
BY THE MILWAUKEE POLICE ASSOCIATION**

Pursuant to an order of the Wisconsin Employment Relations Commission, and in order to effectuate the purposes of the Municipal Employment Relations Act, we hereby notify our employees that:

1. WE WILL NOT interfere with, restrain or coerce municipal employees in the exercise of their rights guaranteed in Sec. 111.70(2), Stats., by:

a) Stating that all opinions of Officers regarding the Milwaukee Police Department Police Chief and Milwaukee Police Department rules or policies that are posted on the Milwaukee Police Association bulletin at District #3 will be taken down by District #3 supervisory staff; shown to the Captain of District #3; and referred to internal affairs for investigation.

b) Removing postings of Milwaukee Police Association stewards from the Milwaukee Police Association bulletin board that involve lawful, concerted activity and referring such postings to IAD for investigation without a valid business reason for such removal and referral.

2. WE WILL NOT discourage membership in the Milwaukee Police Association by discriminating against Milwaukee Police Association stewards by:

Removing Milwaukee Police Association steward postings from the Milwaukee Police Association bulletin board and referring such postings to IAD because we are hostile toward lawful, concerted activity.

CITY OF MILWAUKEE POLICE DEPARTMENT

THIS NOTICE WILL BE POSTED IN THE LOCATIONS CUSTOMARILY USED FOR POSTING NOTICES TO EMPLOYEES IN MILWAUKEE POLICE DEPARTMENT DISTRICT STATION #3 FOR A PERIOD OF THIRTY (30) DAYS FROM THE DATE HEREOF. THIS NOTICE IS NOT TO BE ALTERED, DEFACED, COVERED OR OBSCURED IN ANY WAY.

CITY OF MILWAUKEE (POLICE DEPARTMENT)

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

On October 1, 1997, the Milwaukee Police Association and Carol Kuchenreuther filed a Complaint with the Wisconsin Employment Relations Commission wherein it was alleged that the City of Milwaukee, Police Chief Arthur Jones, Police Captain James Bartholomew, and Police Sergeant Thomas Bohl, had violated Sections 111.70(3)(a)1, 2 and 3, Stats. On January 25, 2002 Complainants filed an amended Complaint, without objection from the Respondents, in which the Complainants alleged that Respondents had violated Sections 111.70(3)(a)1, 2, and 3, Stats., by removing materials from the MPA bulletin board; threatening to investigate Officer Burgoyne, f/k/a Carol Kuchenreuther, for placing the items on the board; and issuing internal disciplinary charges against Officer Burgoyne for placing items on the board. Respondents filed an Answer to the Complaint and amended Complaint denying that it had violated Sections 111.70(3)(a) 1, 2 and 3, Stats., as alleged by the Complainants. Respondents Answer to the amended Complaint also stated, as an affirmative defense, that Complainants have not claimed that Arthur Jones, James Bartholomew, or Thomas Bohl engaged in any activity outside the scope of their employment for which any of them should be deemed individually responsible for any prohibited practices and, thus, these individuals should be dismissed as individually named Respondents.

POSITIONS OF THE PARTIES

Complainants

The City of Milwaukee has engaged, and continues to engage, in prohibited practices contrary to the provisions of Section 111.70(3)(a)1, 2 and 3, Stats., by 1) removing properly posted MPA items from the MPA bulletin board at the District #3 police station; 2) threatening to investigate police officer Carol Burgoyne, a/k/a Carol Kuchenreuther, for placing the items on the bulletin board; and 3) conducting an internal investigation of, and issuing charges against, Officer Burgoyne for such actions. In doing so, the City coerced Officer Burgoyne and other police officers in the exercise of their statutorily enumerated rights under Section 111.70(2), Stats., by attempting to interfere with the administration of, and discourage membership in, the MPA.

The UPAF note was responsive to Assistant Chief Koleas' memo and was posted in an effort to alert MPA members to the MPA's position on employee contributions to the UPAF via payroll deductions. This note was consistent with discussions held during the steward's meeting and had the approval of MPA President DeBraska. Inasmuch as it was meant to keep members informed of the MPA's position, it was exactly the type of document that would

normally be placed on the MPA's board. Officer Burgoyne posted this note in her capacity as a MPA steward.

Inasmuch as the form upon which Officer Burgoyne wrote the UPAF note had been discarded and was in the recycling bin, Officer Burgoyne did not feel she was using departmental property. As she was using the note to convey the MPA's position on UPAF donations via payroll deductions, she did not feel she was using it for her own private purposes.

Prior to the start of her shift on February 28, 1997, Officer Burgoyne observed that the MPD's UPAF memo remained on the MPA's board, but that her note had been removed. At roll call that same day, she observed that Sgt. Bohl, her immediate supervisor, was on a "tirade", yelling at officers and telling (them) to "keep (their) mouths shut and that (they) don't have the right to express (their) opinion." Concerned that Sgt. Bohl would link her notes and the MPA opinion she had espoused with an internal investigation, she advised Sgt. Bohl that she had placed the note on the MPA's board and that MPA President DeBraska had given her authorization to do so. Sgt. Bohl responded by telling her that he had turned the matter over to Capt. Bartholomew.

Several days later, Officer Burgoyne attended an "in-service" session at the training academy where she questioned the Chief as to several newly enacted policies. When she persisted in questioning the Chief about his recent policy changes, he became "quite irate" telling her that he was done talking to her and that she should sit down and be quiet. When she explained that she had been told the question and answer session was meant to be an "open dialogue", the Chief responded that he had heard enough from her and again ordered her to sit down and be quiet. She complied with this order and began taking notes of their interaction.

After the Chief had left the in-service session, Lieutenant Dennis Drazkowski, approached Officer Burgoyne, requested her name, work location, and the content of her notes and admitted to her that he was doing so at the behest of the Chief. He then requested that she turn over her notes. Because she had advised Lt. Drazkowski that she was taking the notes as a MPA steward in order to advise MPA members at District #3 of the Chief's position, she believed Lt. Drazkowski, either on his own or on behalf of the Chief, was taking action against her because she was a MPA steward. This caused her sufficient concern that she felt she needed Union representation.

When she refused to comply with his request to turn over the notes, Lt. Drazkowski left the room and returned with his supervisor, Deputy Inspector Warren. Lt. Drazkowski advised Officer Burgoyne that the Chief had ordered him to order her to turn over her notes. She was then allowed to call the Union. After doing so, she complied with the order. Lt. Drazkowski assured her that she had not been discourteous, insubordinate or rude in her questioning of the Chief. Her notes were returned in approximately one hour.

On March 13, 1997, while answering questions from other officers as to what had occurred at the in-service session, Officer Burgoyne was approached by Sergeant Boyle who stated that after roll call, "It is your job to hit the streets and go 10-8. Don't sit around and talk or have little meetings. You will be watched and followed and you will be investigated." Officer Burgoyne understood this to be simply another attempt at intimidation and threats of internal investigations. She took her concerns to Sgt. Bohl's immediate supervisor, Lieutenant Galezewski.

Soon thereafter, Officer Burgoyne requested and was granted time off by Lieutenant Galezewski in order to visit her brother who had recently taken ill. He advised her of the specific procedure to follow in order to get that time approved, which she followed. Upon returning to work, after visiting her brother, Sgt. Bohl advised her that her request had been denied because she had not followed the correct procedure. When she asked him how to resolve the matter, he told her he would get back to her, and never did.

Consistent with her practice as a MPA steward, Officer Burgoyne placed her minutes of the April 14, 1997 MPA stewards meeting on the MPA bulletin board at District #3 in order to relay information to the MPA members at District #3. These minutes were subsequently removed from the MPA's board. In response to this removal, Officer Burgoyne approached Capt. Bartholomew and was told that he had removed the minutes because they were inaccurate. Although she questioned him as to what was "inaccurate", he did not reply. She explained that she had spoken with MPA President DeBraska who had reiterated that the MPA's board was for MPA business and that it was her job as a MPA steward to keep the board current. She told Capt. Bartholomew she felt harassed. He responded by asking her to leave his office.

On April 19, 1997, Officer Burgoyne was approached by Lieutenant Galezewski and warned that a petition to re-elect then-Governor Thompson, which she had placed on the MPA's boards, could not be posted regardless of the MPA's endorsement of the Governor's re-election bid. That petition was later removed from the board.

Subsequently, Officer Burgoyne posted her minutes of the May 17, 1997 steward's meeting on the MPA's board which minutes had been approved by MPA President DeBraska. These minutes were also removed.

Some time thereafter, Officer Burgoyne received documents from the MPD's Internal Affairs Division (IAD) advising her that she had violated two departmental rules. With the assistance of MPA President DeBraska, Officer Burgoyne responded to those charges.

On September 10, 1997, Officer Burgoyne posted on the MPA's board a copy of a magazine article referencing a National Labor Relations Board (NLRB) decision. The posting was with the approval of MPA President DeBraska. This article was removed.

Due to the fact that her postings had been removed from the MPA's board, Officer Burgoyne created a document indicating that the Board had been "silenced," which document was approved by MPA President DeBraska prior to having been posted. This exhibit remained on the MPA's board until Officer Burgoyne was transferred. While the "silenced" memo remained on the MPA's board, Capt. Bartholomew drafted and published a memo "to all hands" requiring prior approval for all postings, with no exceptions.

Sergeant (now Lieutenant) Bohl stated that his primary reason for removing the UPAF note was that it was inappropriate and the secondary reason for removing the note was that it appeared to be written on an MPD form. Significantly, Sgt. Bohl admitted that 1) he had never questioned her as to whether her UPAF note constituted her personal opinion as opposed to that of MPA and 2) had she used an MPD form to draw a "happy face" and placed that on the MPA's board, he did not know whether she would have been investigated at all but was certain that it would not have gone to IAD.

Sgt. Bohl confirmed that he had planned to continue the investigation at the District level until things changed and IAD took over. Things changed after Officer Burgoyne attended the in-service session in early March of 1997. After that, IAD became involved at the behest of the Chief.

Although he claimed that any item placed on the MPA bulletin board had to be stamped as approved by a MPD supervisor unless it came directly from the MPA (regardless of whether or not it was stamped), Sgt. Bohl acknowledged that 1) for the most part, the MPA had control over what was placed on the MPA's board; 2) MPA stewards placed documents on the MPA's boards which are not received directly from the MPA's office; 3) that Complainants' Exhibit #13 was on the MPA's board without either a stamp or approval for posting and 4) that he was unaware of the bulletin board provision of the MPA's collective bargaining agreement.

Sgt. Bohl also claimed "controversial" matters could not be placed on the MPA's board. He classified an item as "controversial" if it would anger an upper-level boss and he would remove such items in order to avoid being the brunt of a boss' anger. He recalled Capt. Bartholomew admitting that he had removed Officer Burgoyne's minutes of the April 14, 1997 MPA stewards meeting because they were, in the Captain's words, "inaccurate".

At all relevant times, Capt. Bartholomew was the highest in command at District #3 and, as such, was Officer Burgoyne's commanding officer. Capt. Bartholomew commenced the internal investigation of Officer Burgoyne as the result of a UPAF note by contacting IAD. He thought it was controversial because it could have caused friction or division among the troops. He acknowledged that Sgt. Ley had called him at home about an internal investigation pertaining to that UPAF note and Sgt. Bohl's "Matter Of".

Capt. Bartholomew removed Officer Burgoyne's minutes of the April 14, 1997 steward meeting. At that time, he was aware of her status as a MPA steward; understood that it was MPA's duty to keep the MPA bulletin board current; that the MPA had the right to remove obsolete material; and that the MPA had assigned stewards for those tasks. Capt. Bartholomew felt that Officer Burgoyne's posting violated the MPD's rule which prevented anything from being hung on a wall without prior supervisory approval, which rule was his basis for understanding that all items placed on the MPA's board required a supervisor's prior approval. He believed the rule allowed him to remove anything he felt was inappropriate or controversial, but acknowledged that he never checked with his supervisors as to whether his understanding in that regard was correct.

Capt. Bartholomew also believed that the April 14, 1997 minutes were controversial because it might prevent officers from talking to IAD, and because "it didn't create harmony between the rank and file." He acknowledged, however, that if IAD wanted to talk to the officer, the officer would be ordered to respond to IAD's questions. He believed that the April 14, 1997 minutes were controversial because it referred to Mayor John Norquist as "Johnny O.", and he believed he was the arbiter of controversy at District #3.

Capt. Bartholomew's October 9, 1997 memo "to all hands" was his policy prior to the memo's date. Capt. Bartholomew admitted that he would have removed any item from the MPA bulletin board that did not contain an MPD supervisory stamp, regardless of whether it was controversial. Capt. Bartholomew admitted that the only posting he did not believe to be controversial was Officer Burgoyne's final note stating that the MPA bulletin board had been "silenced". He admitted that MPD supervisors would "probably" have "silenced" the MPA's board, however he never removed the "silenced" memo from the MPA's board even though there was no indication that it had been stamped as approved by a supervisor.

Lieutenant Dennis Drazkowski stated that other than being persistent in questions to the Chief, the manner in which she posed them was acceptable. Lt. Drazkowski further stated that after the Chief had finished addressing officers, he approached Lt. Drazkowski and told him to obtain Officer Burgoyne's notes; Lt. Drazkowski understood that to have been an order, and he knew the Chief to be waiting for the notes. Lt. Drazkowski examined the notes and believed them to be appropriate. He knew that Officer Burgoyne was a MPA steward and that he typed the "Matter Of" because he had been advised to do so by his boss, Deputy Inspector

Warren. Lt. Draskowski acknowledged that the "Matter-Of" would have been written if he were summarizing events about which a subordinate was being investigated and that he could not think of any other reason Deputy Inspector Warren would have asked him to do so.

While working as the Acting Lieutenant at District #3 in early March of 1997, Sergeant Robert Ley received a telephone call from the Chief who asked him whether he was aware of a note Officer Burgoyne had placed on a bulletin board at District #3. Being unaware of any such posting, Sgt. Ley advised the Chief that he would call Capt. Bartholomew at home to find out more about it, and the Chief said that he would call back. Sgt. Ley contacted Capt. Bartholomew at home and advised him of the Chief's telephone call. Capt. Bartholomew advised Sgt. Ley that Officer Burgoyne's "note" and Sergeant's Bohl's report could be found in his desk. The Chief then called back and ordered Sgt. Ley to retain the "note" and report and that he would send Captain Schunk to District #3 to pick them up. Ten to fifteen minutes later, Captain Schunk arrived and took control of the items. At that time, Captain Schunk was assigned to IAD.

At all relevant times, Lieutenant Linda Haynes was assigned to IAD. She conducted the internal investigation against Officer Burgoyne and recommended that she be charged for 1) placing the UPAF note on the MPA's board without a supervisor's prior approval and 2) using MPD "stationery" for personal reasons.

In regards to the rule requiring prior approval when placing items on MPD walls, Lieutenant Haynes admitted that 1) the MPA has approval to have a bulletin board on the MPD walls at each work location 2) Officer Burgoyne had not placed anything on the walls and 3) prior to issuing the charges, IAD had never distinguished between placing something on MPA's board as opposed to the wall itself. She believed Officer Burgoyne had violated the rule prohibiting the use of MPD stationery for private/personal reasons because the UPAF note was her own personal opinion, but admitted that 1) she never considered the note to have conveyed the MPA's opinion; 2) she never asked Officer Burgoyne whether the content of the note was her own personal opinion as opposed to that of the MPA; and 3) IAD could have determined whose opinion it was, given its established procedure for obtaining answers to questions relating to internal investigations. Lieutenant Haynes admitted she did not know where Officer Burgoyne had obtained the piece of paper upon which the UPAF note was written.

At all relevant times, Mr. Bradley DeBraska has been the President of MPA. MPA President DeBraska stated that the primary functions of a MPA steward are to 1) assist members in filing grievances; 2) review all MPD orders and memos to ensure compliance with the collective bargaining agreement; 3) maintain and keep the MPA's bulletin boards clean, updated and free from non-MPA approved material and 4) communicate to the rank and file the information and opinions disseminated from the MPA's Executive Board.

MPA President DeBraska described communication as critically important, and that the primary methods of communication are word of mouth and posting minutes, etc., on the MPA's boards at the various work locations. He confirmed that MPA stewards place the following types of information/documentation on the MPA's board: 1) internal election material; 2) external elections for political office in which the Executive Board involves itself and 3) all litigation pertinent to the MPA, including pleadings of lawsuits where MPA has sued the City. MPA President DeBraska stated that prior to Officer Burgoyne having posted her UPAF note, the MPA had "extensive discussions" regarding the UPAF, employee contributions thereto and the impact on the MPD hierarchy and that Officer Burgoyne had discussed the content of the UPAF note with MPA President DeBraska and had obtained his permission to post it on the MPA's District #3 board. He stated that stewards were asked to post minutes of their meetings on the MPA's board, and that he felt that the April 14 and May 17, 1997 minutes were completely acceptable. He also stated that the Executive Board had passed out the article referencing an NLRB decision at a steward's meeting and its content was completely acceptable.

MPA President DeBraska confirmed that it had not supported UPAF contributions via payroll deduction since 1996. He stated that every year when the UPAF drives commences, he makes a point of speaking to the stewards about the MPA's position in that regard. DeBraska considers Capt. Bartholomew's "Matter-Of" to be in violation of the collective bargaining agreement because the MPA president is the only person who can approve material to be placed on the MPA bulletin boards. He contacted Capt. Bartholomew and advised him that removing items from the MPA's board and requiring prior departmental approval was inappropriate and that if the MPD felt something was inappropriately posted, the appropriate remedy would be to file a prohibited practice action with the WERC.

The 1985-86 collective bargaining agreement most immediately followed the FPC's repeal of the two rules addressing the bulletin board provision. As of that agreement, the commanding officer no longer had authority to require prior approval of postings on the MPA bulletin board. MPA President DeBraska described the direct correlation between the FPC's repealing the rules, which had theretofore prevented an officer from publicly criticizing the MPD and members within the MPD, and the collective bargaining agreement which had removed the commanding officers' right to censure material placed on the MPA's board by no longer providing the right to require prior supervisory approval for MPA postings. From that day forward, the MPA had complete control over the MPA's boards and possessed sole discretion to determine what is controversial under the collective bargaining agreement.

MPA determines what is controversial on a monthly basis. Information disseminated to stewards via meetings, is, by its very nature, classified as non-controversial. When MPA members want to place something on the MPA's board, a determination as to "controversy" is made on a case-by-case basis and always with the above referenced FPC's repeal of the rules in mind.

MPA President DeBraska uses the FPC's repeal of the rules as a "bar" when he determined whether to approve the items posted by Officer Burgoyne. MPA President DeBraska found Officer Burgoyne's discipline to be unusual in that Inspector Reinke, who was assigned to the MPD's personnel division, signed the document even though Officer Burgoyne's investigation was conducted by IAD and an IAD commander should have signed it.

The fact that the head of personnel, a division attached directly to the Chief's office, did so instead indicates that the Chief was personally involved in the investigation of Officer Burgoyne. Based upon MPA President DeBraska's experience, it is very rare that the Chief would be personally involved in investigating a police officer.

The rights guaranteed under Sec. 111.70(2), Stats. include the right to organize and join labor organizations, as well as to engage in lawful, concerted activities for the purpose of mutual aid or protection. By their very nature, those rights require a labor organization to be able to affiliate and communicate with its members. It follows, therefore, that a municipal employer's interference with that communication unquestionably has an adverse impact on the proper and lawful functioning of a union.

The MPA has demonstrated that the bulletin board provision of the parties' collective bargaining agreement has evolved to where, in its current form, the MPA has sole control over the content of the postings on its board and is the sole arbiter of what is deemed "controversial" under the collective bargaining agreement. Inasmuch as the collective bargaining agreement was the product of knowing and willful negotiations between the City, the MPD and the MPA, the City and MPD are fully aware that they have relinquished authority and control over the MPA's board, as well as the discretion to determine what is controversial within the meaning of the collective bargaining agreement's bulletin board provision. Nonetheless, beginning in February of 1997 and continuing thereafter, the MPD took unilateral action which can only be described as self-help, when it usurped the MPA's authority and removed items from the MPA's bulletin board which 1) had been properly approved for posting by the MPA; 2) had been determined by the MPA to have been non-controversial; 3) had been appropriately posted on the MPA's board and 4) were intended to serve as communication from the MPA to its members.

If the MPD had chosen to remove items which were not meant as communication between the MPA and its members, it would be far less egregious and its action would have been limited to a violation of Sec. 111.70(3)(a)5, Stats., for failing to adhere to the collective bargaining agreement. However, the MPD removed printed material that had been created in order to convey to the MPA rank and file various members of Union concern. Moreover, the material removed was obviously meant as a communication from the MPA to its members. Removal of such written communication makes the MPD's actions all the more abhorrent. This is especially true when one considers that the only communication posted by

Officer Burgoyne that was allowed to remain on the MPA's board was their final memo that stated that the MPA's board had been silenced.

The only reasonable basis for the MPD taking such concerted action would be to drive home to the MPA rank and file the message that, unless pre-approved by the MPD, communication from the MPA to its members would be silenced. Such action can only be described as interference, restraint, and coercion of police officers in the exercise of their right to associate with the MPA and an attempt to interfere with the proper and lawful functioning of the MPA. There are few more obvious or effective methods to discourage membership in a labor organization, other than threatening to investigate, actually conducting an investigation, and then issuing public discipline against a member of that organization as a result of that member having taken action to further the organization's goals.

The MPD has discouraged membership in the MPA, thereby, violating Section 111.70(3)(a)(3), Stats., by threatening to investigate, investigating, and subsequently issuing the discipline against Officer Burgoyne, as a result of her actions in posting MPA-approved items on the MPA's District #3 board.

The rule prohibiting the use of MPD stationery for personal reasons is most reasonably meant to prevent actions that lend themselves to misconduct in public office. The purpose for issuing a discipline under that rule would be to teach the officer and others that members of the MPD should not imply that they are acting with the MPD's sanction or authority when using MPD stationery for personal letters. Disciplining Officer Burgoyne for violating this rule does not serve the purposes of this rule.

By writing the UPAF note, she was not seeking any unlawful benefit for herself or another, but rather, was obviously conveying a MPA message to the rank and file. The only way the discipline makes sense is if it was meant to stifle Officer Burgoyne's ability, as well as that of the MPA itself, to communicate with the MPA rank and file regarding matters of Union concern. When one considers that disciplinary orders are read during roll call at each workstation, the discipline would unquestionably have the effect of discouraging membership within the MPA.

The rule prohibiting placement of other matters on the walls of MPD buildings without prior approval is most reasonably meant to prevent non-MPD approved items from cluttering the walls at workstations. Through collective bargaining, the City and MPD have provided the MPA with the right to have a bulletin board on the wall at each District. The fact that the UPAF note was posted on the MPA bulletin board, as opposed to the wall itself, demonstrates the rule's inapplicability and the pretextual nature of the discipline. By issuing such discipline, the MPD demonstrated to other MPA members that they would be next if they also furthered the MPA's position.

The fact that Officer Burgoyne had placed numerous other items on the MPA's board without suffering additional counts of discipline demonstrates that the discipline had nothing to do with the stated purpose, i.e., placing non-approved items on the walls, but was due to the content of the note itself and its potential for enhancing the MPA's ability to challenge the Chief's authority. In that regard, it is significant that 1) the note questioned whether MPA members wanted to make the Chief look good by donating to UPAF via payroll deduction; 2) Officer Burgoyne had angered the Chief at the March, 1997 in-service by questioning his policy decisions; 3) the Chief had ordered Lt. Draskowski to order Officer Burgoyne to turn over her notes of that session; 4) the Chief had personally involved himself in her discipline by contacting Sgt. Ley and ordering IAD to take the investigation and 5) that IAD involvement came only after she had flustered him during the March, 1997 in-service session. The underlying purpose for the discipline was therefore to discourage membership in the MPA by demonstrating that other MPA members would also be disciplined if they communicated a position of the MPA that was adverse to that of the Chief. As such, the discipline is clearly impermissible under Sec. 111.70(3)(a)3, Stats.

The rationale offered for disciplining Officer Burgoyne for violating MPD Rule 4, Sections 2/350.00 and 2/385.00 are pretextual. The real reason for the discipline was to discourage membership in the MPA by demonstrating that MPA members who take action to further MPA's goals would suffer discipline.

The Examiner should find the City has engaged, and continues to engage, in prohibited practices contrary to the provisions of Sec. 111.70(3)(a)(1),(2) and (3), Stats., when it removed properly posted MPA items from the MPA's District #3 board; threatened to investigate Officer Burgoyne for placing items on that board; conducted an internal investigation of Officer Burgoyne and disciplined her for such actions. In doing so, the City coerced Officer Burgoyne and other police officers in the exercise of their statutorily enumerated rights under Sec. 111.70(2), Stats., and attempted to interfere with the administration of, and discourage membership in, the MPA.

The MPA would also request this Examiner find Officer Burgoyne's discipline was pretextual and without just cause.

The MPA requests that this Examiner order the City to cease and desist from (1) attempting to exercise control over the MPA bulletin board because the parties' collective bargaining agreement provides the MPA with complete authority to determine what should be posted on MPA bulletin boards and (2) from removing any items posted thereon, regardless of whether the MPD considers such items "controversial" because the City, through collective bargaining, has relinquished that right to the MPA. If the MPD believes a posting is controversial, its remedy would be to file a prohibited practices complaint with the Wisconsin Employment Relations Commission.

The City should be ordered to rescind the discipline issued against Officer Burgoyne and make her whole for all losses incurred thereby. Inasmuch as Officer Burgoyne's discipline was without just cause, she should be made whole for the losses incurred thereby.

Respondents

The only matter IAD investigated and for which discipline was imposed was Officer Burgoyne's February 27, 1997 placement of a note next to the UPAF memorandum from Police Chief Jones and Assistant Chief Koleas, which memorandum encouraged MPD personnel to support UPAF. An IAD file regarding this note was opened by District #3 personnel on February 28, 1997 and subsequently investigated by Sgt. Haynes.

Numerous legitimate grounds may be cited for initiating the investigation. The note, by any objective measure, discourages officers from donating to UPAF in order to somehow avoid making management "look good." Thus, the note smacks of insubordination and disrespect. It attempts to suborn management through the odd and dubious means of sabotaging a local charity. The fact that the note was written upon the back of a MPD form suggests a prohibited use of MPD property for personal purposes. The note, on its face, fails to comply with the bargaining agreement provision limiting postings on the MPA bulletin board to non-controversial items.

Officer Burgoyne failed to sign the note and acted so suspiciously that Sgt. Bohl was moved to inspect the bulletin board after she had left the area. This conduct suggests that she knew that she was stretching the bounds of propriety and that she was violating the bargaining agreement provision that prohibits the conduct of any union business during working hours.

Capt. Bartholomew and Sgt. Bohl reasonably believed that the note entailed a number of potential violations of MPD rules. Sgt. Haynes, who conducted the IAD investigation, did not know that Officer Burgoyne was a MPA Steward; was never given to understand that the investigation was anything other than routine; and based her conclusions solely upon her assessment of the facts and rules.

That the Police Chief called District #3 and arranged to have the note picked up and delivered to IAD a week or so after Burgoyne placed it on the board is not noteworthy. The note implicated both the Chief and his administration and expressed intent to undermine both them and UPAF. From the onset, Capt. Bartholomew had regarded the note to be appropriate for an IAD investigation, as opposed to a District level investigation. As Deputy Chief Dale Schunk testified, this is the type of matter that would have been mentioned by him to the Chief in their weekly briefings. The facts of this case provide no legitimate basis for concluding that the investigation of Officer Burgoyne was improper, as alleged in the Complaint.

Officer Burgoyne, with the assistance of MPA President DeBraska, provided a written response to the charges and investigative summary. Nowhere in the three-page response is there a claim that she was engaged in the expression of any union-related activity. Rather, she repeatedly references her UPAF note in terms that identify the sentiments expressed in her note as hers alone and emphasizes her right to post the note as a purely First Amendment speech right.

Nothing in Officer Burgoyne's written response could lead the MPD to reasonably conclude that her UPAF note represents an expression of union, as opposed to purely personal, sentiment. The written response does not indicate that MPA President DeBraska gave her prior approval to post the note. Significantly, MPA President DeBraska specifically denied that he either reviewed the note, or gave prior approval for the note.

The MPD's actions and intent must be gauged in connection with the only response provided by Officer Burgoyne in connection with the investigation. The Union's post hoc rationalization that Officer's Burgoyne's action in placing the note constitutes core MPA Steward activity is irrelevant. The record provides no reasonable basis to impute retaliatory, coercive, discriminatory, or otherwise invidious motives.

In precluding matters of controversy from the union bulletin board, the parties can be assumed to have intended the word "controversial" to be given its customary meaning. Common understanding, as well as the dictionary definition, indicates that controversial matters are those that trigger debate, disputation, or clashing opinions. Such a conclusion would be consistent with MPD Personnel Department head Watson's construction of the term, *i.e.*, the parties intended the union's bulletin board to be reserved for informational postings of a type that would not stir up officers and distract them from their duties, undermine authority within the MPD, or impact negatively upon morale and efficiency. Controversial matters may be taken up by the union elsewhere, *e.g.*, in the union newspaper, at union meetings, and via mailings.

The overt content of the note - withholding donations to an arts group to avoid making management look good - as well as its subtext - generally avoiding actions that might make the Chief of Police and other MPD management look good - fits squarely within the concept of the term controversial. The fact that Officer Burgoyne sneaked the note onto the board and posted it anonymously indicates that she herself recognized it as controversial.

The collective bargaining provision, however, is applicable to union postings, not mere expressions of personal opinion. Thus, Officer Burgoyne's note was subject to the general MPD rule requiring prior approval before placing anything upon MPD walls. As consistently stated by management staff, the fact that the note was on a bulletin board rather than a MPD wall is a distinction without a difference.

If the note had been posted by Officer Burgoyne in her capacity as MPA Steward; had expressed union-sanctioned sentiments; and the provisions of the collective bargaining agreement were relevant, then Officer Burgoyne's note would fall outside the scope of the protection of this provision because it was controversial. Thus, management was entitled to engage in "self-help" by taking a controversial posting down.

MPA President DeBraska links the rescission of two MFPC rules to certain modifications in Article 45 of the collective bargaining agreement to conclude that the union has absolute control over the bulletin board; that the union has sole discretion in determining what is non-controversial; and that the MPD is absolutely precluded from ever removing any matter from the union bulletin board. MPA President DeBraska's conclusions are speculative and unconvincing.

Nothing in the bulletin board provision precludes the MPD from resorting to self-help in circumstances where controversial matters are posted. Under the union's view, the union could post anything, regardless how inflammatory, outrageous, or potentially illegal and the MPD's only recourse would be to leave the offensive matter posted and file a grievance or complaint. The District's right to take down a controversial posting is also consistent with the plain language of the provision, common sense, and general workplace practices regarding bulletin boards.

Sgt. Bohl observed Officer Burgoyne at the time clock, where the pad of MPD forms is kept, just before she posted the UPAF note. The note was not in a condition that suggested that it had been discarded. One may logically conclude, therefore, that she took the form from the pad. However, regardless of whether or not the form was found in a recycling bin, it constituted MPD stationery because, as management testified, materials retain their status as MPD stationery as long as they are on the MPD premises.

Private purposes means for any purpose other than work related. Thus, for the purposes of applying this rule, it is immaterial whether the note was union-related or a personal opinion.

The fact that Sgt. Bohl admitted that she would not have been disciplined if her note had contained nothing more than a smiley face signifies nothing. Her note was not a smiley face, but rather, urged members to passively-aggressively undermine the Chief and his administration through the dubious means of withholding donations to a respected local charitable organization.

The Union has not offered any evidence that the two-day suspension that Officer Burgoyne received for using a MPD form was inappropriate or excessive as compared with the discipline imposed upon others for violation of the same rule. Nor has the Union suggested, or implied, that Sgt. Haynes was improperly motivated in her analysis.

IAD did not become involved only at the behest of the Chief. Rather, Sgt. Haynes was assigned to investigate the matter on February 28, 1997. The fact that Captain Reinke issued the discipline was neither unusual, nor extraordinary.

On March 5, 1997, Officer Burgoyne attended an in-service training session at the MPD's training academy. In view of her argumentative manner, the Chief logically had concerns about the content of her notes and requested Lt. Drazkowski to find out what she was writing. When Officer Burgoyne eventually provided the Lieutenant with a copy of these notes, they were reviewed, found to be accurate, and returned to Officer Burgoyne. The Chief's conduct does not give rise to any violation of MERA.

Officer Burgoyne claims that she was taking notes so as to be able to report the meeting to union members. The collective bargaining agreement precludes the conduct of union business during working time, rendering this line of argument by the Union irrelevant.

In early March of 1997, Sgt. Bohl observed a posting that stated the word "meeting" and referenced "free beer." After being informed by his Lieutenant that it probably referenced a Union meeting, Sgt. Bohl spoke with Officer Burgoyne. Consistent with his understanding that the general rule on prior supervisory approval of postings applied to union bulletin boards, Sgt. Bohl advised Officer Burgoyne that such matters should be stamped by a supervisor before they are posted and that he had no problem reviewing and stamping such postings. Sgt. Bohl removed the notice, stamped it, and promptly returned it to the bulletin board.

Sgt. Bohl's understanding regarding prior supervisory approval is consistent with that of Capt. Bartholomew and Sgt. Ley. Given the wording of the general MPD rule, as well as the fact that the bulletin board provision is silent on the issue of prior approval, the supervisors had a reasonable basis to conclude that the postings were governed by the general MPD rule. The Union's argument that the removal of the prior approval requirement from the contract in the mid-eighties indicates that the parties intended to remove the prior approval requirement is not pertinent because the instant case does not involve a breach of contract claim.

Capt. Bartholomew removed the posting of April 14, 1997 because he believed it contained inappropriate content and had not been initialed by a supervisor. Because he questioned the propriety of the posting, Capt. Bartholomew forwarded the note to IAD, which opted not to conduct an investigation.

The posting of April 14, 1997 indicated, among other things, that officers who felt they had done nothing wrong might nonetheless face discipline from IAD and contained several sarcasms about the administration in general, Police Chief Jones and the Mayor. Inasmuch as the note contained various controversial assertions, the Captain was within his rights to take it down. The Captain acted independently based upon his view of the notice. The Captain's conduct was not retaliatory or otherwise in violation of MERA.

The Complaint alleges that MPD also removed a posting of May 17, 1997 and one on September 10, 1997. The record fails to demonstrate that MPD removed either posting.

It was entirely reasonable for Sgt. Bohl and Capt. Bartholomew to assume that the MPD rule regarding supervisory approval of items hung upon walls was applicable to postings on the Union bulletin board. Given the evidence that each removed postings in reliance upon a good faith belief that the postings did not comply with this work rule, or upon a good faith belief that the posting was controversial, it would not be reasonable to impute hostile or invidious motives.

The Union discusses several incidents that are not alleged in the complaint, or amended complaints, presumably to indicate that Officer Burgoyne was singled out or picked upon by District #3 management because of her status as a MPA Steward. The first involves Sgt. Bohl advising her to get back to work when she was idling in conversation with other officers and advising her that a continuing failure to do so would result in discipline. The second involves a perceived slight resulting from Sgt. Bohl's alleged failure to resolve a denial of FMLA "sickness in the family leave." However, neither Wisconsin nor federal FMLA law provides leave for the illness of a sibling. The third incident involves a Lieutenant advising her that she could not post an election petition on the Union bulletin board, the appropriateness of which advice was confirmed by MPA President DeBraska.

Viewed objectively, these incidents show a tendency upon Officer Burgoyne's part to step out of line and act without thinking. Any conclusion that management conduct involves union animus results from her exaggerated sense of persecution and a misplaced sense of what constitutes reasonable action on the part of management.

The Union's assertion that, at the roll call of February 28, 1997, Sgt. Bohl engaged in a tirade is belied by the testimony of Sgt. Bohl. This testimony indicates that Officer Burgoyne argued vehemently with Sgt. Bohl, who had to cut her off to finish roll call.

The Complaint is without merit. The Complaint should be dismissed.

DISCUSSION

Pleadings

At the conclusion of Complainants' case-in-chief, Complainants made a motion to amend the Complaint to include an allegation that Respondents have violated Sec. 111.70(3)(a)5, Stats., by violating the collective bargaining agreement between the MPA and the City. Respondents objected to this motion on the basis that it was untimely and the motion was denied by the Examiner at hearing. Complainants' allegations that Respondents have violated Sec. 111.70(3)(a)1, 2, and 3, Stats., are appropriately before the Examiner.

Applicable Statutes and Law

Sec. 111.70(3)(a)1

Section 111.70(3)(a)1, Stats., provides that it is a prohibited practice for a municipal employer individually or in concert with others:

1. To interfere with, restrain or coerce municipal employees in the exercise of their rights guaranteed in sub. (2).

Section 111.70(2), Stats., referred to above, states:

Municipal 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, and to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection, . . .

An independent violation of Sec. 111.70(3)(a)1, Stats., occurs when employer conduct has a reasonable tendency to interfere with, restrain or coerce employees in the exercise of their Sec. 111.70(2) rights. WERC v. EVANSVILLE, 69 WIS. 2D 140 (1975). Section 111.07(3), Stats., which is made applicable to this proceeding by Sec. 111.70(4)(a), Stats., provides that “the party on whom the burden of proof rests shall be required to sustain such burden by a clear and satisfactory preponderance of the evidence.”

Concluding that it is impossible to define “concerted acts” in the abstract, the Commission stated that it is necessary to examine the facts of each case to determine whether the employee behavior should be afforded statutory protection and that, at root, this determination demanded an evaluation of whether the behavior manifests and furthers purely individual or collective concerns. CITY OF LA CROSSE, DEC. NO. 17084-D (WERC, 10/83).

If after evaluating the conduct in question under all the circumstances, it is concluded that the conduct has 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 no employee felt coerced or was, in fact, deterred from exercising Sec. 111.70(2) rights. 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). However, employer conduct which may well have a reasonable tendency to interfere with employee exercise of Sec. 111.70(2) rights will generally not violate Sec. 111.70(3)(a)1, Stats., if the employer had a valid business reason for its actions. BROWN COUNTY, DEC. NO. 28158-F (WERC, 12/96); CITY OF OCONTO, DEC. NO. 28650-A (CROWLEY, 10/96), AFF'D BY OPERATION OF LAW, 28650-B (11/96); MILWAUKEE BOARD OF SCHOOL DIRECTORS, DEC. NO. 27867-B (WERC, 5/95).

Sec. 111.70(3)(a)2

Section 111.70 (3)(a)2, MERA makes it a prohibited practice for an employer to "initiate, create, dominate or interfere with the formation or administration of any labor or employee organization or contribute financial support to it" aside from wages for time spent in grievance processing and conferences with the employer. This statutory proscription contemplates a municipal employer's active involvement in creating or supporting a labor organization. MENOMONIE JT. SCHOOL DISTRICT NO. 1, DEC. NO. 14811-C (MCGILLIGAN, 3/78) Sec. 111.70(3)(a)2 "interference" is of a magnitude which threatens the independence of a labor organization as the representative of employee interests." COLUMBIA COUNTY, DEC. NO. 22683-B (WERC, 1/87) "Domination" involves the actual subjugation of the labor organization to the employer's will. BARRON COUNTY, DEC. NO. 26706-A (JONES, 8/91) A dominated labor organization is so controlled by the employer that it is presumably incapable of effectively representing employee interests. KEWAUNEE COUNTY, DEC. NO. 21624-B (WERC, 5/85)

Sec. 111.70(3)(a)3

Section 111.70(3)(a)3, Stats., provides that it is a prohibited practice for a municipal employer:

3. To encourage or discourage a membership in any labor organization by discrimination in regard to hiring, tenure, or other terms or conditions of employment; but the prohibition shall not apply to a fair-share agreement.

A violation of Sec. 111.70(3)(a)3, Stats., results in a derivative violation of Sec. 111.70(3)(a)1, Stats.

To establish a violation of Sec. 111.70(3)(a)3, Stats., the complainant must establish, by a clear and satisfactory preponderance of the evidence: (1) that a municipal employee engaged in lawful concerted activity; (2) that the municipal employer, by its officers or agents, was aware of said activity and hostile thereto; and (3) that the municipal employer took action against the municipal employee based at least in part upon said hostility. GREEN BAY AREA PUBLIC SCHOOL DISTRICT, DEC. NO. 28871-B (WERC, 4/98); EMPLOYMENT RELATIONS DEPT. V. WERC, 122 WIS.2D 132 (1985); MUSKEGO-NORWAY C.S.J.S.D. NO. 9 V. WERC, 35 WIS. 2D 540 (1967).

Conduct of Sgt. Bohl

Complainants allege that Sgt. Bohl removed materials from the MPA bulletin board; threatened to investigate Officer Burgoyne for placing materials on the MPA bulletin board;

and investigated Officer Burgoyne for placing materials on the MPA bulletin board. Complainants allege that, by engaging in this conduct, Sgt. Bohl has interfered with Officer Burgoyne's exercise of Sec. 111.70(2) rights; MPA's right to communicate with its bargaining unit members; and MPA's bargaining unit members' right to associate with MPA. Complainants further allege that Sgt. Bohl's professed reasons for engaging in this conduct are pretextual and that Sgt. Bohl engaged in this conduct with the intent to interfere with the administration of, and discourage membership in, the MPA. Complainants assert that this conduct of Sgt. Bohl violates Sec. 111.70(3)(a)1, 2 and 3, Stats.

Removal of the UPAF Note on February 27, 1997

Sgt. Bohl acknowledges that, on February 27, 1997, he removed the UPAF note from the MPA bulletin board. The UPAF note was authored and posted by a MPA steward, i.e., Officer Burgoyne.

Officer Burgoyne did not sign the note. Thus, the UPAF note, on its face, was not attributable to Officer Burgoyne, or any other municipal employee.

The UPAF note was posted on the MPA bulletin board. Thus, one may reasonably infer that the note was intended to be communication to members of the MPA bargaining unit. Given that the UPAF note was anonymous, handwritten on the back of a MPD form, and did not reference the MPA or a MPA activity, the UPAF note, on its face, did not have the appearance of a communication from the MPA. Rather, it had the appearance of an anonymous communication.

The UPAF note was written on the back of a MPD form and posted directly above a memo from Assistant Chief of Police Koleas and Chief of Police Jones, which memo contained a personal plea to generously support the UPAF campaign. In context, the UPAF note offers an anonymous personal opinion regarding the effect of donating to a local charity, i.e., that the Police Chief and his administration will look good, and asks the members of the MPA bargaining unit whether they want to help that "cause." It is unclear from the face of the note whether the "cause" is the UPAF charity that has been personally endorsed by the Police Chief and his Assistant Chief, or making the Police Chief and his administration look good.

At an earlier MPA Stewards meeting, MPA representatives, including Officer Burgoyne, expressed opinions that were similar to, if not identical, to that expressed in the UPAF note. As MPA President DeBraska stated at hearing, he expects MPA Stewards, such as Officer Burgoyne, to reduce discussions of MPA Stewards meetings to "minutes" and to disseminate the same to bargaining unit members. The evidence of the "minutes" prepared by Officer Burgoyne indicates that such "minutes" are typewritten and contain headings such as "Union Notes" or "Union Meeting Notes."

It is not evident that Officer Burgoyne, in particular, or MPA representatives in general, normally communicated MPA opinions to MPA bargaining unit members by writing anonymous notes on the back of MPD forms without any reference to the MPA or a MPA activity. Rather, the evidence indicates that communications from MPA representatives are normally on MPA letterhead; reflect the name of the MPA representative that authored the communication; or contain an express reference to the MPA or a MPA activity.

Assuming arguendo, that MPA President DeBraska had pre-approved the posting of the UPAF note, neither the fact that MPA President DeBraska approved of the sentiments contained in the UPAF note, nor the fact that he approved the posting of the UPAF note upon the MPA bulletin board, is sufficient to confer MERA protection upon the note. Rather, such protection is warranted only if the note involves an exercise of a Sec. 111.70(2) right.

The UPAF note, evaluated under all the circumstances, was not a communication from the MPA, or a communication of a MPA opinion. Rather, it was a communication of an anonymous personal opinion that furthered an individual, rather than a collective concern. Accordingly, Officer Burgoyne's posting of the UPAF note on the MPA bulletin board does not involve an exercise of a Sec. 111.70(2) right.

Complainants argue that Sgt. Bohl's stated reasons for removing the UPAF note are pretextual. Initially, Sgt. Bohl stated that his decision to remove the UPAF posting was motivated by two concerns, i.e., that the note anonymously expressed an inappropriate personal opinion about the Police Chief, his command staff, and a charity and that this opinion was inappropriately written on a MPD form. Upon further questioning, Sgt. Bohl acknowledged that this removal was also motivated by his concern that his superior officers would be displeased to find such a note posted at a MPD District station; would want to know who had authorized the posting of the note; and that he would be the recipient of his supervisors' displeasure if he permitted the note to remain on the MPA bulletin.

Given the paramilitary structure of police departments, it is plausible that a supervisory officer, such as then Sgt. Bohl, would consider it inappropriate to suggest that that Police Officers question whether or not they wanted the Police Chief and his administration to "look good" or wished to donate to a local charity that has been personally endorsed by the Police Chief and his Assistant Chief. It is also plausible that a supervisory officer, such as then Sgt. Bohl, would be concerned that his superior officers would be displeased with him if he permitted the UPAF note to remain on the MPA bulletin board.

On February 27, 1997, Sgt. Bohl knew that Officer Burgoyne was a MPA steward and, as set forth in Sgt. Bohl's February 28, 1997 "Matter Of," he suspected that she had posted the UPAF note. MPA stewards, such as Officer Burgoyne, may have personal opinions that are unrelated to their activities as a MPA steward. Given this fact, as well as the fact that the

UPAF note was anonymous, Sgt. Bohl's claim that he considered the UPAF note to be an anonymous expression of personal opinion is plausible.

According to Sgt. Bohl, the use of a MPD form to write the UPAF note is inappropriate because it violates MPD Rule 4, Section 2/385.00, which states as follows:

Department stationery shall not be used for personal correspondence nor shall any Department property be used for private purposes.

Although not disputing that the UPAF note was written on the back of a MPD form, Complainants argue that the above Work Rule may not be reasonably interpreted to prohibit Officer Burgoyne from writing the UPAF note on the back of the MPD form.

Complainants' arguments regarding the underlying purpose of Rule 4, Section 2/385.00 are not based upon any record evidence and, thus, are speculative. Absent evidence regarding either the reasons for implementing this rule or examples of the prior application of this rule, the "purpose" of the rule must be derived from the plain language of the rule.

The plain language of the rule prohibits the use of Department stationery for personal correspondence and of any Department property for private purposes. The "Milwaukee Police Department Request for Trade of Regular Off Day" form may be reasonably construed to be either "Department stationery" or "Department property." Officer Burgoyne's conduct in using the MPD form to write the UPAF may be reasonably construed to be use of the form for "private purposes." The UPAF note may be reasonably construed to be "personal correspondence."

It may be, as Officer Burgoyne claims, that she removed the MPD form from the recycling bin. However, at the time that Sgt. Bohl removed the UPAF note from the MPA bulletin board, he had no reasonable basis to conclude that the form had been discarded, rather than removed from the form pad.

Additionally, Rule 4, Section 2/385.00, on its face, does not provide an exemption for discarded Department stationery or property. Thus, Ms. Watson's claim that, if the form upon which the UPAF note was written had been discarded and retrieved from a recycling bin, then it would remain MPD property, because materials discarded in recycling bins remains under the control and custody of the Chief of Police until such time as MPD custodial workers remove the recycling bin and discard the materials contained therein is a reasonable claim.

Sgt. Bohl maintains that, as part of his normal duties, he occasionally inspected District #3 bulletin boards to ensure that objectionable items or non-approved items were not on the bulletin boards. The record does not demonstrate otherwise.

As Complainants argue, the record provides a reasonable basis to conclude that Sgt. Bohl was more concerned about the content of the UPAF note than the fact that it was written on the back of a MPD form. Sgt. Bohl maintains, however, that even if the form had been used to write a “happy face,” he would have removed the note. The record does not demonstrate otherwise.

Notwithstanding Complainants’ arguments to the contrary, MPD Rule 4, Section 2/385.00 may be reasonably interpreted to prohibit Officer Burgoyne from writing the UPAF note on the back of the MPD form. Sgt. Bohl’s claim that he removed the UPAF note because it was written on a MPD form is plausible, as is his other stated rationale for removing the UPAF note from the MPA bulletin board.

Roll call of February 28, 1997

According to Sgt. Bohl, he raised the issue of unauthorized postings at roll call on February 28, 1997 by indicating that, the day before, he had found a note attached to a UPAF memorandum on the bulletin board; that he considered the note to be inappropriate and that he took down this note. Sgt. Bohl recalls that he then let the attending Officers know that the note appeared to be an individual’s opinion and that it probably shouldn’t be on the bulletin board. Sgt. Bohl further recalls that, following these statements, Officer Burgoyne raised her hand; confirmed that she had written the note and posted it on the bulletin board; stated that MPA President DeBraska had told her that she could put whatever she wants to on the MPA bulletin board; that Sgt. Bohl responded that she could not put whatever she wants on the MPA bulletin board; and that when Officer Burgoyne began to argue the point, Sgt. Bohl cut her off and told her that he would bring the matter up to the Captain for his review.

Officer Burgoyne recalls that, at roll call on February 28, 1997, Sgt. Bohl was irate and yelling at officers that they should keep their mouths shut and that they did not have the right to express an opinion. Officer Burgoyne further recalls that Sgt. Bohl did not confront her directly at roll call, but that she spoke with him after roll call. According to Officer Burgoyne, she then expressed the opinion that he should not be yelling at everyone; that no one likes to be yelled at by their boss before the start of their tour; that she did not think that anyone appreciated it; and that if he had a problem with the union bulletin board, he should talk to her because she was the steward and the one that is putting things up there. Officer Burgoyne recalls that she also told Sgt. Bohl that she had placed the UPAF note on the MPA bulletin board and that MPA President DeBraska had authorized the note. According to Officer Burgoyne, Sgt. Bohl responded that he had turned it over to Captain Bartholomew.

Shortly after the roll call on February 28, 1997, Officer Burgoyne made the following notes:

If you think you can put your opinion up on the board, we'll take it down, show the Captain and start an internal investigation. If you have an opinion about the Chief, rules or policies, keep it to yourself. Don't put up signs.

Given the length of time between the events of February 1997 and the date of hearing, the Examiner considers Officer Burgoyne's contemporaneous notes to be a more reliable indicator of Sgt. Bohl's opening remarks than either individual's memory. Crediting these notes, the Examiner is persuaded that, during roll call on February 28, 1997, Sgt. Bohl made statements that may be reasonably construed to be a blanket prohibition on the posting of all opinions on District bulletin boards, including the MPA bulletin board, regarding the Police Chief and the rules and policies of the MPD. Additionally, he made statements that may be reasonably construed to be a threat to respond to such postings by taking the postings down and starting an internal investigation.

Sgt. Bohl did not distinguish between "opinions" of Police Officers that are protected under Sec. 111.70(2), Stats., and those "opinions" that are not protected under Sec. 111.70(2), Stats. Thus, his threat to remove posted opinions and start an internal investigation is likely to have a chilling effect upon the Police Officers' willingness to post opinions on the MPA bulletin in furtherance of lawful, concerted activity for the purpose of collective bargaining or other mutual aid and protection.

Officer Burgoyne and Sgt. Bohl agree that Sgt. Bohl began his roll comments with a general directive regarding "opinions" and that his introductory comments were not directed towards Officer Burgoyne, the MPA, or representatives of the MPA. Evaluated under all the circumstances, Sgt. Bohl's introductory comments do not reasonably give rise to an inference that Sgt. Bohl is hostile toward the MPA, or Officer Burgoyne's lawful, concerted activity on behalf of the MPA.

While each agrees that there was further discussion regarding the UPAF note, they disagree as to the timing and the nature of this discussion. Giving consideration to the fact that Sgt. Bohl's February 28, 1997 "Matter Of" was written on the day of the discussion, as well as to the probability that a Police Officer would be careful when preparing a "Matter Of," the Examiner considers the "Matter Of" to be a more reliable indicator of the discussion between Officer Burgoyne and Sgt. Bohl than either individual's memory. Thus, to the extent that either testimony is inconsistent with the "Matter Of," it has not been credited.

Given the statements contained in the "Matter Of," the Examiner is persuaded that Officer Burgoyne is incorrect when she recalls that her discussion with Sgt. Bohl occurred after roll call and that Sgt. Bohl is correct when he recalls that this discussion occurred during roll call. Moreover, given Officer Burgoyne's persistence in questioning the Police Chief at the in-service in March of 1997, it is likely that she would argue with Sgt. Bohl during roll call.

Officer Burgoyne's failure to recall that her discussion with Sgt. Bohl occurred during the roll call persuades the undersigned that her memory of this event is less reliable than that of Sgt. Bohl. Crediting Sgt. Bohl's testimony in a manner that is consistent with his "Matter Of," the Examiner is persuaded that during the roll call discussion, Officer Burgoyne confirmed that she had written the UPAF note; advised Sgt. Bohl that she had called MPA President DeBraska and was told by MPA President DeBraska that she had every right to post notes such as the UPAF note upon the MPA bulletin board; that Officer Burgoyne began to contest Sgt. Bohl's assertion that she did not have such a right; and that Sgt. Bohl ended the discussion by advising Officer Burgoyne that he would refer the matter to Capt. Bartholomew.

As discussed above, Sgt. Bohl's opening remarks regarding the posting of opinions were over broad. However, the discussion between Sgt. Bohl and Officer Burgoyne was not a discussion of Officer Burgoyne's general right to post materials on the MPA bulletin board. Rather, it was a discussion about her right to post very specific materials upon the MPA bulletin board, i.e., notes such as the UPAF note.

As Sgt. Bohl's introductory roll call remarks indicate and Sgt. Bohl confirmed at hearing, Sgt. Bohl considered the UPAF note to be an expression of a personal opinion. As discussed above, the UPAF note, on its face, is an expression of personal opinion.

To be sure, Officer Burgoyne advised Sgt. Bohl that MPA President DeBraska told her that she had every right to post notes such as the UPAF note upon the MPA bulletin board. It is not evident, however, that Officer Burgoyne stated that the UPAF note was a communication from MPA President DeBraska, or that she stated that the UPAF note was an expression of MPA's opinion. Thus, the dispute between Officer Burgoyne and Sgt. Bohl was not over MPA's right to post MPA opinions on the MPA bulletin board.

According to Sgt. Bohl, his intent at the start of the roll call was to provide a general direction to his entire shift and he did not decide that it was necessary to refer the matter to Capt. Bartholomew for internal investigation until Officer Burgoyne made certain public statements. The first of these public statements confirmed that she wrote the note, thereby, in his opinion, admitting to a violation of a work rule because the note was written on a MPD form. The second public statement contested Sgt. Bohl's assertion that Officer Burgoyne did not have a right to post notes such as the UPAF note on the MPA bulletin board.

Sgt. Bohl's claim regarding his intent at the start of the roll call is consistent with Officer Burgoyne's notes. As is the evidence that, on February 27, 1997, he had shown the UPAF note to his Lieutenant and advised the Lieutenant that he had removed the note, without any apparent direction from the Lieutenant to either refer the matter to the Captain, or to start an investigation.

Officer Burgoyne's statements on February 28, 1997 provided Sgt. Bohl with a reasonable basis to conclude that she had admitted to a violation of MPD Rule 4, Section 2/385.00. They also provided Sgt. Bohl with a reasonable basis to conclude that Officer Burgoyne would not accept her immediate supervisor's opinion that she did not have the right to post notes such as the UPAF note on the MPA bulletin board.

By arguing with Sgt. Bohl about her right to post on the MPA bulletin board, Officer Burgoyne was, in fact, indicating that she did not agree with her immediate supervisor about a working condition. Within a paramilitary organization such as the MPD, it would not be unusual for a front line supervisory employee, such as then Sgt. Bohl, to conclude that, when one of the employees under his supervision admitted to a rule violation and did not agree with him about a working condition, then the matter needed to be referred to a higher authority for resolution. Sgt. Bohl's stated rationale for referring the UPAF note to Capt. Bartholomew is plausible.

Following the roll call of February 28, 1997, Sgt. Bohl referred the matter of the UPAF note to Capt. Bartholomew. Capt. Bartholomew instructed Sgt. Bohl to obtain an IAD number; prepare a "Matter Of" and begin an investigation about the note.

Thereafter, Sgt. Bohl's only participation in the investigation of Officer Burgoyne was to contact IAD to receive an IAD number and to prepare the "Matter Of." It is not evident that Sgt. Bohl's conduct in contacting the IAD and preparing the "Matter Of" was motivated by any factor other than that he had been directed to do so by his Captain.

"Free Beer" Posting and Conversation of March 12, 1997

Sgt. Bohl's testimony demonstrates that, in early March of 1997, he observed a posting on the MPA bulletin board that referenced a meeting and free beer; he discussed this posting with his Lieutenant; was told that the posting probably referenced a MPA meeting because such meetings normally had free beer; was told to stamp the posting and replace it on the MPA bulletin board; and, thereafter, he stamped the posting to indicate that he had authorized the posting and replaced it upon the MPA bulletin board. The "free beer" posting was, in fact, a notice of a MPA meeting and had been posted by MPA Steward Burgoyne.

It is not evident that Sgt. Bohl's conduct in removing, approving and reposting the "free beer" meeting notice was motivated by any factor other than that he had been directed to do so by his Lieutenant. Assuming *arguendo*, that Sgt. Bohl did not have the right to remove, approve and repost the "free beer" meeting notice, an erroneous temporary removal of material from a union bulletin board does not give rise to a Sec. 111.70(3)(a)1 violation. STATE OF WISCONSIN, DEC. NO. 29448-C; 29495-C; 29496-C; 29497-C (WERC, 8/00)

Sgt. Bohl and Officer Burgoyne agree that they had a discussion about the “free beer” posting. Officer Burgoyne’s recollection of this discussion is not exactly the same as that of Sgt. Bohl, but provides no reasonable basis to discredit Sgt. Bohl’s testimony regarding this conversation.

Officer Burgoyne’s testimony demonstrates that the conversation occurred on March 12, 1997. Sgt. Bohl’s testimony demonstrates that he told Officer Burgoyne that the “free beer” posting had not been authorized; that he had removed, stamped and replaced the posting; and that if she were posting items on the MPA bulletin board that did not come from the union, she should run them by him and if they were ok, then he would approve them, stamp them, and put them up on the bulletin board and that way, if anyone had a question about a posting, then they would discuss the matter with Sgt. Bohl.

Prior to this time, Officer Burgoyne had never had her MPA postings reviewed or approved by MPD supervisors prior to posting them on the MPA bulletin board. Thus, these statements of Sgt. Bohl provided Officer Burgoyne with a reasonable basis to conclude that a new policy had been established with respect to her right as a MPA steward to post materials on the MPA bulletin board at District #3, *i.e.*, materials that were not from the union would have to be submitted to Sgt. Bohl for his approval prior to posting.

Sec. 111.70(2), Stats., does not provide MPA, or its stewards, with an unrestricted right to communicate with municipal employees, including members of the MPA’s bargaining unit, via postings on a union bulletin board on the employer’s premises. Rather, MERA provides the MPA with certain rights to bargain with the City over the right to communicate with MPA members via bulletin boards. For example, a proposal providing the exclusive bargaining representative with the right to post materials that are primarily related to collective bargaining and contract administration would be a mandatory subject of bargaining. SHULLSBURG SCHOOL DISTRICT, DEC. NO. 20120-A (WERC, 4/84); CITY OF SHEBOYGAN, DEC. NO. 19421 (WERC, 3/82); whereas proposals providing the exclusive bargaining representative with a right to post materials that have no substantial relationship to the exclusive collective bargaining representative’s responsibilities and functions as the exclusive collective bargaining representative would be a permissive subject of bargaining. SHULLSBURG, SUPRA; JANESVILLE SCHOOL DISTRICT, DEC. NO. 21466 (WERC, 3/84).

Inasmuch as collective bargaining rights may be enforced under a valid Sec. 111.70(3)(a)5 claim, MERA recognizes that an employer has a valid business interest in asserting its contractual rights, including a contractual right to approve, disapprove, remove or otherwise restrict postings on the MPA bulletin board. Additionally, MERA recognizes that an employer has a valid business interest in keeping its workplace free from offensive literature that is racist, sexist, or derogatory to ethnic groups. CITY OF OSHKOSH, DEC. NO. 28971-A (MAWHINNEY, 8/97); AFF’D BY OPERATION OF LAW (WERC, 9/97).

During the March 12, 1997 conversation, Sgt. Bohl did not define what was, or was not, “ok” to post. Thus, on their face, his remarks were content neutral.

Sgt. Bohl’s remarks indicate that his concern was with posting materials that did not come from the union. This stated concern is consistent with his conduct in removing the personal opinion UPAF note from the MPA bulletin board. It is also consistent with his testimony that he routinely posted materials on the MPA bulletin board that were sent to District #3 from MPA on MPA letterhead and with a “please post” stamp. Neither Sgt. Bohl’s testimony, nor any other record evidence, demonstrates that Sgt. Bohl ever reviewed such materials for content.

At this time, Sgt. Bohl had permanently removed and, thus not approved one posting, i.e., the UPAF note, and had approved the “free beer” notice. Thus, as of the date of this conversation, Sgt. Bohl had not exercised his right to “ok” posted materials in a manner that interfered with Sec. 111.70(2) rights or evidenced hostility toward the MPA, or Officer Burgoyne’s lawful, concerted activity on behalf of the MPA.

Discussion of March 13, 1997

Following roll call on March 13, 1997, Sgt. Bohl approached Officer Burgoyne as she was engaged in conversation with another Police Officer. According to Officer Burgoyne’s contemporaneous notes, Sgt. Bohl made the following statements:

After Roll Call it’s your job to hit the streets & go 10-8. Don’t sit around + talk or have little mtgs. You will be watched and followed and you will be investigated.

Officer Burgoyne considered these comments to be an attempt at intimidation and threats.

Sgt. Bohl does not recall this specific conversation. He recalls that he observed Officer Burgoyne pulling Officers into a back room for little meetings; that he assumed that she was conducting union business on work time, in violation of the collective bargaining agreement; that he would break these meetings up; and that he told all of the Officers that they were supposed to be working on the streets after roll call. Officer Burgoyne acknowledges that she is not entitled to conduct MPA business on work time.

As her notes of February 28, 1997 establish, the pronoun “you” may refer to more than one individual. Officer Burgoyne’s testimony indicates that Sgt. Bohl’s remarks were made while Officer Burgoyne was having a discussion with another Officer. Sgt. Bohl’s testimony indicates that he would direct such remarks to everyone involved in the “meetings” and that he had never made such remarks directly to Officer Burgoyne. Accordingly, the Examiner is

persuaded that these remarks of Sgt. Bohl were not directed solely towards Officer Burgoyne, but rather, were also directed to whoever was involved in the discussion with Officer Burgoyne.

Sgt. Bohl claims that he was not advised by Capt. Bartholomew, or any other District #3 supervisory personnel, to be watchful of Officer Burgoyne and he was not aware that any other supervisor had placed Officer Burgoyne under closer scrutiny than any other Officer. The record does not demonstrate otherwise.

Sgt. Bohl's comments on March 13, 1997 evidence hostility toward Officers who sit around in the station house having discussions or meetings at times when these Officers are supposed to be working the streets. They do not evidence hostility toward the MPA, or Officer Burgoyne's lawful, concerted activity.

Denial of Sickness in the Family Day

Officer Burgoyne's testimony demonstrates that, at some point in time, her brother became seriously ill; she telephoned Lt. Galezewski to ask for the day off; was granted the day off; was advised to write a "Matter Of" regarding sickness in the family day leave; that pending a response to this "Matter Of", she was granted another type of off day; that when she came back to work, Sgt. Bohl advised her that her request for sickness in the family day was denied because it was not within the parameters of a sick day; and that Sgt. Bohl told Officer Burgoyne that he would look into the denial, but that she heard nothing further about her request for a sickness in the family day. While it is evident that Officer Burgoyne considers this denial to be suspicious, the record provides no reasonable basis to conclude that this denial was due to any reason other than she did not qualify for the sickness in the family day leave.

Removal of Other MPA Postings

On April 14, 1997, Officer Burgoyne posted a document entitled "Union Notes" on the MPA bulletin board at District #3 and on May 17, 1997, Officer Burgoyne posted a document entitled "Union Meeting Notes" on the MPA bulletin board at District #3. Believing that prior notices may have been taken off the Board, Officer Burgoyne placed a copy of the "Union Notes" behind each Officer's time card. Neither of these postings were stamped or approved by District #3 supervisors. On September 10, 1997, Officer Burgoyne posted a copy of a newspaper article that she had received from her brother. All of these postings were removed from the MPA bulletin board by someone other than Officer Burgoyne.

Sgt. Bohl denies that he permanently removed any posting from the MPA bulletin board other than the UPAF note. The record does not demonstrate otherwise.

Summary

A violation of Sec. 111.70(3)(a)1, Stats., unlike that of Sec. 111.70(3)(a)3, Stats., does not require a finding of discriminatory motive. Rather, as set forth above, it is sufficient if, after evaluating the conduct in question under all the circumstances, it is concluded that the conduct has a reasonable tendency to interfere with, restrain or coerce a municipal employee in the exercise of Sec. 111.70(2) rights.

As discussed above, Officer Burgoyne was not engaged in lawful, concerted activity when she posted the UPAF note. Evaluated under all the circumstances, Sgt. Bohl's conduct in removing the UPAF note from the MPA bulletin board on February 27, 1997 does not have a reasonable tendency to interfere with, restrain or coerce municipal employees in the exercise of their Sec. 111.70(2) rights. This conduct of Sgt. Bohl does not violate Sec. 111.70(3)(a)1, Stats., and does not reasonably give rise to an inference that Sgt. Bohl is hostile toward the MPA, or Officer Burgoyne's lawful, concerted activity on behalf of the MPA.

Evaluated under all the circumstances, Sgt. Bohl's statement that Officer Burgoyne did not have the right to post notes such as the UPAF note on the MPA bulletin board; his statement that he was referring the UPAF note to Capt. Bartholomew; and his participation in the investigation of Officer Burgoyne do not have a reasonable tendency to interfere with, restrain or coerce municipal employees in the exercise of their Sec. 111.70(2) rights. This conduct of Sgt. Bohl does not violate Sec. 111.70(3)(a)1, Stats., and does not reasonably give rise to the inference that Sgt. Bohl is hostile toward the MPA, or Officer Burgoyne's lawful, concerted activity on behalf of the MPA.

During roll call on February 28, 1997, Sgt. Bohl made statements that may be reasonably construed to be a blanket prohibition on the posting of all opinions on District bulletin boards, including the MPA bulletin board, regarding the Police Chief and the rules and policies of the MPD. Additionally, he made statements that may be reasonably construed to be a threat to respond to such postings by taking the postings down and starting an internal investigation.

Evaluated under all the circumstances, the above statements of Sgt. Bohl have a reasonable tendency to interfere with, restrain or coerce municipal employees in the exercise of their Sec. 111.70(2) rights. Accordingly, by this conduct of its supervisory employee Sgt. Bohl, the City of Milwaukee has violated Sec. 111.70(3)(a)1, Stats.

Evaluated under all the circumstances, Sgt. Bohl's conduct in removing, approving, and reposting the "free beer" meeting notice and his March 12, 1997 statements to Officer Burgoyne do not have a reasonable tendency to interfere with, restrain or coerce Officer Burgoyne, or any municipal employee, in the exercise of Sec. 111.70(2) rights. This conduct of Sgt. Bohl does not violate Sec. 111.70(3)(a)1, Stats., and does not reasonably give rise to

the inference that Sgt. Bohl is hostile toward the MPA, or Officer Burgoyne's lawful, concerted activity on behalf of the MPA.

Evaluated under all the circumstances, Sgt. Bohl's comments of March 13, 1997 do not have a reasonable tendency to interfere with, restrain or coerce Officer Burgoyne, or any municipal employee, in the exercise of their Sec. 111.70(2) rights. These comment of Sgt. Bohl do not violate Sec. 111.70(3)(a)1, Stats., and do not reasonably give rise to the inference that Sgt. Bohl is hostile toward the MPA, or Officer Burgoyne's lawful, concerted activity on behalf of the MPA.

Evaluated under all the circumstances, the evidence of the removal of the postings of April 14, 1997; May 17, 1997 and September 10, 1997 does not demonstrate that Sgt. Bohl engaged in any conduct that has a reasonable tendency to interfere with, restrain or coerce Officer Burgoyne, or any municipal employee, in the exercise of Sec. 111.70(2) rights, or that Sgt. Bohl has engaged in any conduct that violates Sec. 111.70(3)(a)1, Stats. Nor does this evidence reasonably give rise to the inference that Sgt. Bohl is hostile toward the MPA, or Officer Burgoyne's lawful, concerted activity on behalf of the MPA.

Sgt. Bohl's blanket prohibition against posting opinions and his threat to start an internal investigation on such postings may reasonably give rise to an inference that Sgt. Bohl is hostile toward the exercise of Sec. 111.70(2) rights. However, evaluated under all the circumstances, neither this conduct of Sgt. Bohl, nor any other conduct of Sgt. Bohl, is sufficient to demonstrate, by a clear and satisfactory preponderance of the evidence, that Sgt. Bohl is hostile toward the MPA, or Officer Burgoyne's exercise of lawful, concerted activity on behalf of the MPA.

To establish a violation of Sec. 111.70(3)(a)3, Stats., Complainants must establish, by a clear and satisfactory preponderance of the evidence: (1) that a municipal employee engaged in lawful concerted activity; (2) that the municipal employer, by its officers or agents, was aware of said activity and hostile thereto; and (3) that the municipal employer took action against the municipal employee based at least in part upon said hostility.

A clear and satisfactory preponderance of the evidence establishes that, during her tenure at District #3, Officer Burgoyne was engaged in lawful, concerted activity on behalf of the MPA and that Sgt. Bohl had knowledge of this activity. A clear and satisfactory preponderance of the evidence, however, does not establish that Sgt. Bohl's conduct in removing materials from the MPA bulletin board, including the UPAF note; in threatening to investigate employees, including Officer Burgoyne; and in investigating Officer Burgoyne was motivated, in any part, by hostility toward the MPA, or Officer Burgoyne's lawful, concerted activity on behalf of the MPA. Complainants' allegation that Sgt. Bohl has engaged in conduct that violates Sec. 111.70(3)(a) 3, Stats., is without merit.

Conduct of Capt. Bartholomew

Complainants allege that Capt. Bartholomew removed materials from the MPA bulletin board and investigated Officer Burgoyne for placing materials on the MPA bulletin board. Complainants allege that, by engaging in this conduct, Capt. Bartholomew has interfered with Officer Burgoyne's exercise of Sec. 111.70(2) rights; MPA's right to communicate with its bargaining unit members; and MPA's bargaining unit members' right to associate with MPA. Complainants further allege that Capt. Bartholomew's professed reasons for engaging in this conduct are pretextual and that Capt. Bartholomew engaged in this conduct with the intent to interfere with the administration of, and discourage membership in the MPA. Complainants assert that this conduct of Capt. Bartholomew violates Sec. 111.70(3)(a)1, 2 and 3, Stats.

UPAF Note

Capt. Bartholomew recalls that he contacted IAD regarding the UPAF posting. The Examiner, however, considers Sgt. Bohl's recollection of events to be more reliable and, thus, is persuaded that Capt. Bartholomew instructed Sgt. Bohl to obtain an IAD number; prepare a "Matter Of" and begin an investigation about the UPAF note.

Capt. Bartholomew claims that he started the investigation because he considered the UPAF note to be inappropriate, controversial and possibly in violation of work rules. It is not evident that Capt. Bartholomew gave Officer Burgoyne, or any other individual, another reason for his decision to initiate an investigation of the UPAF note.

Capt. Bartholomew's testimony does not clearly establish which work rules were "possibly" violated. Capt. Bartholomew claims, however, that throughout his tenure at District #3, he construed MPD Rule 4, Section 2/350.00, to provide MPD supervisors with a right to review and approve all documents posted on Department bulletin boards, including the MPA bulletin board. This claim is corroborated by the testimony of Sgt. Ley and Sgt. Pridmore-Dahlke.

Rule 4, Section 2/350.00 states as follows:

The furniture, files and other equipment of the Police Department buildings shall remain where officially placed and shall not be moved from such offices or places, or the location of equipment and furnishings changed in any manner; neither shall there be hung upon the walls of any Department building any calendar, poster, picture, advertising matters, or other things, except those relating to or essential for police purposes, without the approval of the Chief of Police.

Complainants assert that one may not reasonably construe the above Work Rule as providing Capt. Bartholomew with the right to police the MPA bulletin board because, under Article 45 of the parties' collective bargaining agreement, the MPA has the sole right to control what is posted and removed from the MPA bulletin board. Given the absence of a valid Sec. 111.70(3)(a)5 claim, the Examiner makes no determination with respect to Article 45 rights.

Complainants do not argue, and the record does not demonstrate, that the UPAF note related to or was essential for police purposes. Complainants argue, however, that the claimed reliance upon Rule 4, Section 3/350.00 is unreasonable, *per se*, because the UPAF note was "hung upon" a bulletin board, rather than directly "hung upon" a wall. As Respondents argue, this fact is a difference without distinction because a bulletin attached to a wall may be reasonably construed to be an extension of the wall.

Although Capt. Bartholomew's construction of Rule 4, Section 2/350.00 conflicts with MPA President DeBraska's view of the MPA's contractual rights, it is a reasonable construction of this Work Rule. Thus, it is plausible that Capt. Bartholomew considered the UPAF note to have possibly violated MPD Work Rules.

According to Capt. Bartholomew, the UPAF note is inappropriate because it is disrespectful to the Chief and his administration, of which Capt. Bartholomew was a part, and is controversial because many Officers donate to UPAF and it is a charity. Capt. Bartholomew also maintains that the note could cause division among his Officers, which division would adversely impact his ability to run the station. It is plausible that a supervisory officer, such as Capt. Bartholomew, would consider the UPAF note to be inappropriate and controversial as claimed by Capt. Bartholomew.

Capt. Bartholomew's stated rationale for referring the UPAF note for investigation is plausible. It is not evident that, at the time that Capt. Bartholomew referred this note for investigation, that Capt. Bartholomew had engaged in any conduct that evidences hostility toward the MPA, or Officer Burgoyne's lawful, concerted activity on behalf of the MPA.

At the time that he initiated the investigation of the UPAF note, Capt. Bartholomew was aware of the fact that Officer Burgoyne was a MPA steward and that she had posted the UPAF note upon the MPA bulletin board. Union stewards, however, may have personal opinions that are unrelated to their union activity. Given this fact, as well as the nature of the UPAF note, Capt. Bartholomew's conduct in referring the UPAF note for investigation does not, in and of itself, provide a reasonable basis to infer that Capt. Bartholomew was hostile toward the MPA, or Officer Burgoyne's lawful, concerted activity on behalf of the MPA.

April 14th Posting

Officer Burgoyne's testimony demonstrates that the April 14, 1997 "Union Notes" were a summary of topics discussed at the union stewards meeting; that Officer Burgoyne prepared these "Union Notes" for the purpose of keeping District #3 members informed of these topics; and that, consistent with her prior practices, Officer Burgoyne posted these notes on the MPA bulletin board. Captain Bartholomew admits that he removed this posting.

According to Capt. Bartholomew, he removed this posting because he considered it to be inappropriate, controversial and contrary to MPD rules and procedures. Capt. Bartholomew claims that the April posting was contrary to MPD rules and procedures because it was not stamped or approved by a supervisor.

Capt. Bartholomew recalls having a conversation with Officer Burgoyne regarding his removal of the April posting. According to Capt. Bartholomew, Officer Burgoyne came in to his office; asked about the postings; he told her that they were inappropriate; and she then left.

Officer Burgoyne's contemporaneous notes of this meeting are as follows:

#3 Captain

-Admitted Taking notes down due to the fact that they are "inaccurate"

-Looking for Bldg is okay

-What is inaccurate?

No example

-Turned notes over to Internal Affairs

-Board is for Union our responsibility

-Took pen & paper out for specifics

None given

-I advised him I feel it is harassment.

Officer Burgoyne recalls that she repeatedly asked Capt. Bartholomew why he was objecting to her notes and the he responded by saying that they were inaccurate. Officer Burgoyne further recalls that, when she told Capt. Bartholomew that she felt that she was being harassed because she was a union steward, he asked her to leave the office.

Officer Burgoyne's contemporaneous notes are a more reliable indicator of the conversation with Capt. Bartholomew than either individual's memory. Crediting these notes, the Examiner is persuaded that, when questioned by Officer Burgoyne, Capt. Bartholomew told Burgoyne that the April posting was inaccurate and that he had referred the posting to the IAD. The Examiner is further persuaded that, when Officer Burgoyne asked for an example of what was inaccurate, Capt. Bartholomew did not provide such an example.

The April 14, 1997 posting, on its face, is a communication from MPA stewards to members of the MPA bargaining unit. Information communicated includes notice of MPA meeting times and dates; status of a pending court proceeding; a recommendation to ask for union representation when talking to an IAD investigator; and an announcement of a change in the attorneys that are representing MPA, as well as opinions regarding certain conduct of City representatives.

By stating only that he considered the notes to be “inaccurate,” Capt. Bartholomew’s conduct reasonably gives rise to the inference that he removed the posting solely because he objected to the content of the posting. The April 14th posting reminds, and, thus advises, members of the MPA bargaining unit of their right to MPA representation when being questioned by IAD. By posting the April 14th posting on the MPA bulletin board, Officer Burgoyne exercised her Sec. 111.70(2) rights and engaged in lawful, concerted activity on behalf of the MPA.

Officer Burgoyne’s testimony demonstrates that she posted a Tommy Thompson election petition on the MPA bulletin board because MPA had endorsed him as a candidate. Her testimony further demonstrates that on April 29, 1997, Lt. Galezewski told her that the petition could not be on the board because it was political and that, thereafter, she removed this election petition from the MPA bulletin board. Officer Burgoyne believes that she discussed this posting with MPA President DeBraska and was told that Lt. Galezewski was correct.

Officer Burgoyne posted two other documents that were subsequently removed from the MPA bulletin board, i.e., a May 17, 1997 document entitled “Union Meeting Notes” and a September 10, 1997, copy of an article about a NLRB decision. Capt. Bartholomew does not admit that he removed any material from the MPA bulletin board other than the April 14th posting.

The MPA bulletin board is not encased and materials on this board are accessible to any MPD employee that has access to the assembly room. At times, members of the MPA bargaining unit remove materials from the MPA bulletin board, presumably for the purpose of reading these materials. Neither Officer Burgoyne’s testimony, nor any other record evidence, demonstrates that Capt. Bartholomew removed, or caused to be removed, any postings from the MPA bulletin board other than the April 14th posting.

After the above mentioned postings were removed, Officer Burgoyne posted the following note on the MPA bulletin board:

The Union Board has been temporarily silenced. If you would like a Union meeting notes or updates, see your shift steward. Any questions. . .you can call Brad DeBraska at the Union office, 273-2515.

Capt. Bartholomew states that it is probable that he saw the above note on the MPA bulletin board and understood there to be an implication that supervisors at District #3 would silence the MPA bulletin board. Capt. Bartholomew does not consider such an implication to be controversial.

Although the “temporarily silenced” note had not been stamped or approved by any MPD supervisor, Capt. Bartholomew did not remove it. The failure of Capt. Bartholomew to remove the “temporarily silenced” note from the MPA bulletin board reasonably gives rise to the inference that his decision to remove, or to not remove, postings from the MPA bulletin board was not a function of whether or not the postings had been reviewed and approved by a MPD supervisor. However, the failure of Capt. Bartholomew to remove a note that, on its face, communicates MPA business, does not reasonably give rise to the inference that Capt. Bartholomew is hostile toward the MPA, or toward any municipal employee for engaging in lawful, concerted activity on behalf of the MPA.

On October 9, 1997, Capt. Bartholomew issued a memorandum to “**ALL HANDS**” regarding “**INSTRUCTION TO MEMBERS**”. These instructions included the following:

BULLETIN BOARDS: Nothing will be placed on any bulletin board within this district without prior authorization from a supervisor. Supervisors who approve items for posting will date and initial the same. **NO EXCEPTIONS.**

The issuance of this “Instruction” is consistent with Captain Bartholomew’s claim that he always understood that MPD Rule 4, Sec. 2/350.00 provided MPD supervisors with the right to approve materials posted on Department bulletin boards, including MPA bulletin boards.

The above “Instruction to Members” is content neutral and, thus, does not discriminate against lawful, concerted activity. Given this fact; the fact that MERA does not provide MPA, or any municipal employee, with an unrestricted right to post materials on the MPA bulletin board; and the existence of MPD Rule 4, Section 2/350.00, Capt. Bartholomew’s issuance of the above “Instruction to Members” does not reasonably give rise to the inference that Capt. Bartholomew is hostile toward the MPA, or any municipal employee, for engaging in lawful, concerted activity.

Summary

The “change” in the posting procedures experienced by Officer Burgoyne coincided with the arrival of Capt. Bartholomew at District #3. It is evident that, at all times that he was in command of District #3, Capt. Bartholomew considered MPD supervisors to have the authority to approve and, conversely to remove non-approved, materials from District #3 bulletin boards.

Capt. Bartholomew, however, did not exercise this authority by automatically removing any posted material that had not been approved by a MPD supervisor; rather he removed only one posting, i.e., the April 14th posting of Officer Burgoyne. By posting the April 14th posting on the MPA bulletin board, Officer Burgoyne was exercising her Sec. 111.70(2) rights and was engaged in lawful, concerted activity.

When confronted by Officer Burgoyne, Capt. Bartholomew did not offer a legitimate business reason for his removal of the April 14th posting and his referral of this posting to IAD, e.g., that it violated the collective bargaining agreement or a MPD Work Rule. Rather, he offered only one explanation, i.e., that he considered the posting to be inaccurate. When asked to describe what was inaccurate, Capt. Bartholomew declined to do so.

Evaluated under all the circumstances, Capt. Bartholomew's conduct in removing the April 14th posting from the MPA bulletin board and referring this posting to the IAD, is likely to have a chilling effect upon Officer Burgoyne's and other MPA's stewards willingness to communicate with members of the MPA bargaining unit in furtherance of lawful, concerted activity for the purpose of collective bargaining or other mutual aid and protection. Thus, Capt. Bartholomew's conduct in removing the April 14th posting and referring this posting to IAD has a reasonable tendency to interfere with, restrain or coerce municipal employees, including Officer Burgoyne, in the exercise of their Sec. 111.70(2) rights. By this conduct of its supervisor Capt. Bartholomew, the City of Milwaukee has violated Sec. 111.70(3)(a)1, Stats.

The evidence demonstrates that Capt. Bartholomew removed the April 14th posting and referred that posting to IAD solely on the basis that he objected to its content. The content of the April 14th posting, unlike that of the UPAF posting, involved lawful, concerted activity.

Evaluated under all the circumstances, Capt. Bartholomew's conduct in removing the April 14th posting from the MPA bulletin board and referring this posting to IAD is sufficient to demonstrate, by a clear and satisfactory preponderance of the evidence, that Capt. Bartholomew was hostile toward Officer Burgoyne's exercise of lawful, concerted activity upon behalf of MPA and that his conduct in removing the April 14th posting and referring this posting to the IAD was motivated, in part, by his hostility towards Officer Burgoyne's lawful, concerted activity on behalf of the MPA. Accordingly, by this conduct of it supervisor Capt. Bartholomew, the City of Milwaukee has violated Sec. 111.70(3)(a)3, Stats.

Neither the removal of the Tommy Thompson election petition, nor the removal of the May 17th and September 10th postings, reasonably gives rise to the inference that Capt. Bartholomew has interfered with, restrained, or coerced Officer Burgoyne, or any municipal employee, in the exercise of their Sec. 111.70(2) rights. The removal of these postings does not demonstrate that Capt. Bartholomew has violated Sec. 111.70(3)(a)1, Stats.

Nor does this evidence reasonably give rise to an inference that Capt. Bartholomew is hostile

toward the MPA, or Officer Burgoyne's lawful, concerted activity on behalf of the MPA.

Evaluated under all the circumstances, Capt. Bartholomew's issuance of the October 9th "Instruction to Members" does not have a reasonable tendency to interfere with, restrain, or coerce municipal employees in the exercise of their Sec. 111.70(2) rights. By issuing the October 9th "Instruction to Members," Capt. Bartholomew has not violated Sec. 111.70(3)(a)1, Stats. Nor has he engaged in conduct that reasonably gives rise to an inference that Capt. Bartholomew is hostile toward the MPA, or Officer Burgoyne's lawful, concerted activity on behalf of the MPA.

The record does not establish a nexus between the hostility displayed in the April 14th posting matter and Capt. Bartholomew's decision to refer the UPAF note to internal investigation. Rather, the record provides a reasonable basis to conclude that Capt. Bartholomew's decision to refer the UPAF note was based solely upon his conclusion that the statements contained in the UPAF note were inappropriate, controversial and possibly in violation of MPD Work Rules.

Evaluated under all the circumstances, Capt. Bartholomew's conduct in referring the UPAF note for investigation does not have a reasonable tendency to interfere with, restrain or coerce municipal employees, including Officer Burgoyne, in the exercise of their Sec. 111.70(2) rights. This conduct of Capt. Bartholomew does not violate Sec. 111.70(3)(a)1, Stats., and does not reasonably give rise to an inference that Capt. Bartholomew is hostile toward the MPA, or Officer Burgoyne's lawful, concerted activity on behalf of the MPA.

A clear and satisfactory preponderance of the evidence does not demonstrate that Capt. Bartholomew's decision to initiate an internal investigation on the UPAF note was motivated, in any part, by hostility toward the MPA, or Officer Burgoyne's lawful, concerted activity. Accordingly, Capt. Bartholomew's conduct in initiating an investigation of the UPAF note does not give rise to a violation of Sec. 111.70(3)(a)3, Stats.

Conduct of Police Chief Arthur Jones

Complainants allege that Police Chief Arthur Jones investigated and disciplined Officer Burgoyne for posting MPA approved materials on the MPA bulletin board and that, by engaging in this conduct, Police Chief Jones has interfered with Officer Burgoyne's exercise of Sec. 111.70(2) rights; MPA's right to communicate with its bargaining unit members; and MPA's bargaining unit members' right to associate with MPA. Complainants further allege that Police Chief Jones engaged in this conduct with the intent to interfere with the administration of, and discourage membership in the MPA. Complainants maintain that this conduct violates Sec. 111.70(3)(a)1, 2 and 3, Stats.

On March 5, 1997, Officer Burgoyne attended an in-service at the MPD training academy. At the start of this in-service, Officer Burgoyne and the other attendees were advised that Police Chief Jones would make an appearance and respond to questions. It is not evident that Officer Burgoyne, or any other attendee, attended the in-service in their capacity as a representative of the MPA. As stated above, Officer Burgoyne acknowledges that she does not have the right to conduct MPA business on work time.

At the time of this in-service, the Police Chief had instituted a new handcuff policy that prohibited street officers, such as Officer Burgoyne, from carrying more than one set of handcuffs. Officer Burgoyne adamantly opposed this change in policy. Her opposition was based upon the fact that her own personal experiences had lead her to conclude that the change in policy placed officers at risk and her understanding that MPA had taken the position that the change in handcuff policy adversely impacted officer safety.

At the in-service, Officer Burgoyne questioned the Police Chief about his handcuff policy and about a change in the conveyance policy. The Police Chief responded to these questions. Officer Burgoyne sought to follow-up her question on the handcuff policy by relating experiences that, in her opinion, demonstrated that it was “handy” to have more than one set of handcuffs.

The Police Chief and Officer Burgoyne then engaged in a discussion. As set forth in Officer Burgoyne’s contemporaneous notes, the Police Chief then told Officer Burgoyne that he had heard enough; that Officer Burgoyne told him “You’re not hear to listen” and the Police Chief responded “I am” and “I’ve heard enough.”

Officer Burgoyne then sat down and made notes throughout the Police Chief’s presentation. It is not evident that, during this exchange, Officer Burgoyne identified herself or made any statement to the Police Chief that would indicate that she was attending the in-service on behalf of the MPA, or was otherwise acting on behalf of the MPA.

To be sure, a municipal employee, such as Officer Burgoyne, may raise issues of safety that involve mutual aid and protection. As Lt. Drazkowski’s “Matter Of” establishes, Officer Burgoyne raised her safety concerns regarding the handcuff policy; the Police Chief responded with his explanation; Officer Burgoyne again questioned the Police Chief regarding the handcuff policy; that the Police Chief again responded by stating his position; and that when Officer Burgoyne continued to persist on the issue, the Police Chief again explained his position and then told Officer Burgoyne that he had heard enough. As this evidence demonstrates, the Police Chief was willing to listen to and respond to Officer Burgoyne’s

concerns, but he was not willing to allow Officer Burgoyne to monopolize his time by

rehashing matters that had been addressed by the Police Chief.

In Officer Burgoyne's opinion, the Police Chief appeared to be quite irate with her. Assuming arguendo that Officer Burgoyne's perception is correct, the evidence of their exchange provides no reasonable basis to conclude that his irritation was evidence of hostility toward the MPA, or Officer Burgoyne's lawful, concerted activity on behalf of the MPA.

Deputy Inspector Warren did not testify at hearing. Statements contained in his June 8, 1998 deposition, demonstrate that, following his presentation, the Police Chief pointed to an Officer, later identified to be Officer Burgoyne; asked who was the Officer taking notes and asked why she was taking notes. These statements further demonstrate that the Police Chief wanted to know the substance of the notes to determine if they were inappropriate or comported with what had gone on and that, at that time, the Police Chief appeared to be mildly upset.

Crediting Lt. Drazkowski's contemporaneous "Matter Of," which is consistent with Officer Burgoyne's recollection of events, the Examiner is persuaded that Deputy Inspector Warren is mistaken when he states that he then approached Officer Burgoyne to discuss the notes. Rather, as Lt. Drazkowski and Officer Burgoyne recall, Lt. Drazkowski first approached Officer Burgoyne about her note taking.

Officer Burgoyne's contemporaneous notes reflect the following: Lt. Drazkowski approached Officer Burgoyne; asked what she was writing; Officer Burgoyne responded taking notes; Lt. Drazkowski asked why; Officer Burgoyne responded she was a union steward and needed to give her people accurate info; Lt. Drazkowski asked for her name and she responded Carol Kuchenreuther; that Lt. Drazkowski asked what District did she work at; Officer Burgoyne responded why; Lt. Drazkowski responded he just wanted to know; Officer Burgoyne asked if he was ordered to find this out; Lt. Drazkowski responded yes; Officer Burgoyne asked if this was by the Chief; Lt. Drazkowski responded yes; and that when Lt. Drazkowski asked to see her notes, she responded no. These notes are consistent with Lt. Drazkowski's "Matter Of."

Lt. Drazkowski's "Matter Of" demonstrates that he then left the in-service room; met Deputy Inspector Warren in the hallway; told Deputy Inspector Warren that Officer Burgoyne would not produce her notes; Deputy Inspector Warren responded that the Police Chief was waiting for the notes and that the Police Chief personally wanted to see the notes; and that Lt. Drazkowski returned to the in-service room to speak with Officer Burgoyne.

At that point, Officer Burgoyne's notes become less detailed. Crediting

Lt. Drazkowski's "Matter Of," and the testimony that is consistent with this "Matter Of," the Examiner is persuaded that the Lt. Drazkowski again asked for the notes and Officer Burgoyne again refused his request; Lt. Drazkowski asked Officer Burgoyne to accompany him; Officer Burgoyne asked to telephone a union representative; Lt. Drazkowski agreed to this request; during the ensuing telephone conversation, the union representative told Officer Burgoyne to do what she was told; that Lt. Drazkowski and Officer Burgoyne met Deputy Inspector Warren; Officer Burgoyne refused Deputy Inspector Warren's request to produce her notes; Deputy Inspector Warren told Lt. Drazkowski to order Officer Burgoyne to turn over her notes and that if she refused this order, she would be charged with failure to obey a lawful order emanating from a superior officer; Lt. Drazkowski ordered Officer Burgoyne to turn over the notes and she immediately complied without further comment.

Deputy Inspector Warren's uncontradicted deposition statements demonstrate that he reviewed Officer Burgoyne's notes, found nothing inappropriate and copied the notes; he spoke with the Police Chief, told the Police Chief that he had found nothing inappropriate; he forwarded a copy of these notes to the Police Chief's Office; and that during this conversation, Deputy Inspector Warren identified Officer Burgoyne as the note taker, but did not identify her to the Police Chief as a MPA steward. As Deputy Inspector Warren's testimony demonstrates, at the time of the telephone conversation, he did not know that Officer Burgoyne was a MPA steward.

In summary, the evidence of the events of March 5, 1997 demonstrates that Lt. Drazkowski was aware of Officer Burgoyne's status as a MPA steward and her claim to be taking notes for the purpose of giving her people accurate information. This evidence does not demonstrate that Deputy Inspector Warren, or the Police Chief were aware of either of these facts.

To be sure, such knowledge could be obtained from reading Lt. Drazkowski's "Matter Of." The record, however, fails to establish that Deputy Inspector Warren read this "Matter Of" at any time prior to discussing Officer Burgoyne with the Police Chief. The record also fails to establish that the Police Chief had any knowledge of the statements contained in this "Matter Of."

It is not evident that Lt. Drazkowski's or Deputy Inspector Warren's request, or order, to Officer Burgoyne to turn over her notes was motivated by any factor other than that the Police Chief wanted to see the notes. Although the Police Chief did not testify at hearing, statements he made to Deputy Inspector Warren indicate that he wanted to see the notes to determine if they accurately reflected what had transpired.

The evidence of the events of March 5, 1997 does not reasonably give rise to an

inference that the Police Chief was either aware of Officer Burgoyne's lawful, concerted activity on behalf of MPA, or hostile thereto. Evaluated under all the circumstances, the Police Chief's reaction to her questioning and his request to see Officer Burgoyne's notes do not have a reasonable tendency to interfere with, restrain or coerce Officer Burgoyne, or any municipal employee, in the exercise of Sec. 111.70(2) rights. The March 5, 1997 conduct of Police Chief Jones does not violate Sec. 111.70(3)(a)1 or 3, Stats.

March 10, 1997

The testimony of Sgt. Ley establishes the following chain of events: Sgt. Ley received a telephone call from the Police Chief at a time in which Sgt. Ley was serving as acting Lieutenant at District #3; the Police Chief asked Sgt. Ley if he was aware of a note that Officer Kuchenreuther had placed on a District #3 bulletin board; Sgt. Ley said no, but he would find out about it; Sgt. Ley called Capt. Bartholomew at home and Capt. Bartholomew told Sgt. Ley that the UPAF note and Sgt. Bohl's "Matter Of" were in the Captain's desk; Sgt. Ley retrieved the note and the "Matter Of," contacted the Police Chief and told the Police Chief that he had these documents; the Police Chief told Sgt. Ley that he would send Capt. Schunk to pick up the documents; and approximately fifteen minutes later, Capt. Schunk retrieved these documents. In 1997, Capt. Schunk was head of the IAD and reported to the Police Chief regarding pending IAD matters.

The IAD stamp on the "Matter Of" prepared by Sgt. Bohl establishes that the Capt. Schunk received this document on March 10, 1997. Given Sgt. Ley's recollection that these materials were retrieved on the same day that he had his conversation with the Police Chief, it is reasonable to conclude that Sgt. Ley's conversation with the Police Chief occurred on March 10, 1997.

It is evident that the Police Chief interjected himself into the investigation of Officer Burgoyne after the in-service of March 5, 1997. However, neither the testimony of Sgt. Ley, nor any other record evidence, establishes a nexus between the events of March 5, 1997 and the Police Chief's involvement in the investigation of the UPAF note.

The evidence that the Police Chief called Sgt. Ley about the UPAF note and the evidence that the Police Chief sent Capt. Schunk to pick-up the UPAF materials provides a reasonable basis to infer that the Police Chief had a personal interest in the UPAF note. This evidence, however, does not provide a reasonable basis to infer that the Police Chief was either aware of Officer Burgoyne's lawful, concerted activity, or that he was hostile toward such activity.

Capt. Schunk does not recall picking up the UPAF materials from District #3, but does

not deny that he did so. While it may be unusual for the head of IAD to pick-up materials from a District station, having an IAD supervisor, rather than a District supervisor, investigate the UPAF note, was consistent with Police Chief Jones' policies. Capt. Schunk does not recall any specific conversation with the Police Chief regarding Officer Burgoyne, but believes that it is likely that he had such a conversation because of the nature of the investigation and the fact that the UPAF note referenced the Police Chief.

Capt. Schunk claims that he was not under any pressure from the Police Chief to make the investigation of Officer Burgoyne a priority or to deal with Officer Burgoyne in any particular fashion. Not only are these claims not contradicted by the record evidence, but also, these claims are consistent with Sgt. Haynes' claim that she did not give the investigation of Officer Burgoyne any particular priority, as well as MPA President DeBraska's claim that the investigation took longer than normal. Presumably, a priority investigation would take less than the normal amount of time.

It is not evident that, after picking-up the UPAF materials from Sgt. Ley, Capt. Schunk had any involvement with the IAD investigation of Officer Burgoyne until April of 1997, when he received the April 14th posting from Capt. Bartholomew. Capt. Schunk states that he reviewed this posting; concluded that the posting was bordering on disrespect; but did not consider the posting to give rise to a rule violation. The record does not demonstrate otherwise.

It is not evident that Capt. Schunk, or any other MPD supervisory employee, gave any further consideration to the April 14th posting. Nor is it evident that the Police Chief had any knowledge of this posting. Capt. Schunk did not have any further involvement in the IAD investigation of Officer Burgoyne until he reviewed Sgt. Haynes' "Matter Of" in August of 1997.

Sgt. Haynes does not recall who assigned her to the IAD investigation of Officer Burgoyne, but considers this investigation to have started on February 28, 1997, when it was assigned an IAD investigation number. Sgt. Haynes assumes that she would have been given the assignment shortly after that date, but confirms that the assignment would have been made after IAD received the written reports. Given the evidence that IAD did not have the UPAF materials until Capt. Schunk retrieved them on March 10, 1997, it is reasonable to conclude that Sgt. Haynes did not receive the assignment prior to March 10, 1997.

Sgt. Haynes claims that, at the time that she was assigned this investigation, she was not told how to conduct the investigation and she did not consider the investigation to be a priority. The record does not demonstrate otherwise.

Sgt. Haynes claims that she reached her conclusion that Officer Burgoyne had violated

MPD Rule 4, Sections 2/350.00 and 2/385.00 without any input from anyone else. Sgt. Haynes also claims that she based these conclusions upon admissions of Officer Burgoyne contained in Sgt. Bohl's "Matter Of." The record does not demonstrate otherwise.

Sgt. Haynes claims that, for the purposes of MPD Rule 4, Section 2/350.00, the MPA bulletin board is a "wall." As discussed above, this claim is reasonable.

MPD Rule 4, Section 2/350.00 may be reasonably interpreted to prohibit Officer Burgoyne from posting the UPAF note on the MPA bulletin board without the approval of the Police Chief, or his designee. Inasmuch as Officer Burgoyne did not have such approval, Sgt. Haynes' conclusion that Officer Burgoyne violated MPD Rule 4, Section 2/350.00 is reasonable.

Sgt. Haynes claims that, for the purposes of MPD Rule 4, Section 2/385.00, the MPD form upon which Officer Burgoyne wrote the UPAF note is Department stationery. As discussed above, this claim is plausible. Sgt. Haynes' conclusion that Officer Burgoyne violated MPD Rule 4, Section 2/385.00 is reasonable.

Sgt. Haynes claims that, at the time that she reached her conclusions that Officer Burgoyne had violated MPD Rule 4, Section 2/350.00 and MPD Rule 4, Section 2/385.00, she did not know that Officer Burgoyne was a MPA steward and considered the UPAF note to reflect the personal opinion of Officer Burgoyne. The record does not demonstrate otherwise.

Capt. Schunk signed the Departmental Charges against Officer Burgoyne on August 15, 1997. Capt. Schunk claims that his decision to sign the Departmental Charges was based upon his review of and concurrence with the materials submitted by Sgt. Haynes. The record does not demonstrate otherwise.

Officer Burgoyne was provided with an opportunity to respond to the Departmental Charges of August 15, 1997 and filed a written response that is dated August 21, 1997. MPA President DeBraska drafted this written response. This written response states, inter alia, as follows:

. . . Preeminent in these particular allegations is the obvious avoidance of the truth. Clearly this issue, voicing my opinion and thoughts regarding solicitation of money for a nonprofit charitable organization, is a freedom-of-speech matter not dissimilar to the recent efforts by the Chief of Police soliciting donations for the United Negro College Fund (UNCF) (Attachments 8 and 9) The fact that I chose to use a discarded piece of paper from the recycling bin (Memorandum 97-24) and expressed my opinion by placing it on the Milwaukee Police

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Association bulletin board; results in an inconsequential difference identifiable

by the Chief and I, that is the Chief supports different or perhaps the same 501C(3)s that I do. Surely this investigator has preferred similar charges against the Chief's interests?

It's somewhat interesting that supervisors have differing opinions in regards to the expression of speech. On Friday, February 28, 1997, Sergeant Bohl expressed his opinion and thoughts regarding this matter/internal investigation at Roll Call. Attached hereto (Attachments 10, 11, 12 and 13) are his statement(s), leaving little doubt that Sergeant Bohl considered my actions as a First Amendment right. To make comments in that context Sergeant Bohl was inaccurate to spin this matter away from the truth into a note (discarded piece of paper on the MPA bulletin board) placed upon the walls of a Department building is inappropriate.

On May 17, 1984 the Board of Fire and Police Commissioners suspended Rule 4 Sections 27 and 28 of the MPD rules. With such suspension came the right to exercise First Amendment privileges even if it means condemnation of department rules, standard operating procedures, policies, etc. in critical, derogatory, defamatory or otherwise obscene expression. The same suspension (attachments 14 through 22) the Chief utilized to support UNCF. Further, I expressed my opinion on the MPA bulletin board not on the walls of the Department. I don't believe I need authorization to express my opinion from the Chief nor to place my thoughts on the MPA bulletin board.

To support this fact I draw your attention to excerpts of a Fact Finding Decision dated October 29, 1971 by a Mr. Thomas P. Whelan (attachments 23 through 28). At the time, limitations were placed upon what type of material could be posted as well as the requirement to obtain prior approval from the Commanding Officer of the work location was necessary. This is evidenced by the actual contract language (attachments 29 through 30) from the January 1, 1971 through November 3, 1972 labor agreement. Control, meaning content and approval, remained with the Commanders through the January 1, 1983 through December 31, 1984 labor contract (attachments 31 and 32). Then by way of the January 1, 1985 through December 31, 1986 labor contract the City of Milwaukee and the Chief of Police relinquished control as to the content of the material placed on the MPA bulletin boards and the Commanding Officer's advance/prior approval for posting was removed as a requisite. This fact is reflected in the 85-86 contract language (attachments 33 through 34).

This language remained unchanged from January 1, 1985 through and including December 31, 1997. The specific language in part is worth repeating,

“The material being placed upon such boards. . .and any other matter approved by the Association. . .” As asserted by Sergeant Bohl I contacted Mr. Bradley DeBraska, President of the MPA and received approval to place these thoughts on a discarded piece of paper on the MPA controlled bulletin board. This contract language (attachments 35, 36 and 37) not only allows my conduct as permissible, it advocates such conduct which the City and Chief agreed to.

The allegations of misconduct are untrue and constitute a rouse to chill my First Amendment rights. Therefore, I hereby request immediate cessation of this investigation and expungement from my personnel files. Thank you in advance for your cooperation.

As Officer Burgoyne acknowledged at hearing, this is the only response that she made to the Departmental charges involving the UPAF note.

Capt. Schunk claims that he considered the April 14th posting to be union correspondence, but viewed the UPAF note to be Officer Burgoyne’s opinion. He further claims that, in reaching the latter view, he considered the content of the UPAF note, which in his opinion did not convey a union opinion or union business, as well as Officer Burgoyne’s response to the Department Charges, which in his opinion reiterated that the UPAF note was Officer Burgoyne’s opinion.

As discussed above, the UPAF note, on its face, expresses an anonymous personal opinion. As a review of Officer Burgoyne’s written response to the Department Charges reveals, she consistently asserts that she was voicing her own opinion or thoughts. She claims a right to exercise First Amendment privileges and focuses upon freedom of speech rights. She also claims rights under the MPA collective bargaining agreement. She does not claim any MERA rights.

At hearing, Officer Burgoyne claimed that the First Amendment also protects freedom of association and that this freedom would include her right to associate with and engage in union activities. Her written response of August 21st, however, does not express, nor reasonably imply, that she is asserting such a freedom of association right. Nor does it express, or reasonably imply, that she is acting on behalf of the MPA.

Capt. Schunk’s claim that he viewed the April 14th posting to involve union business and the UPAF note to not involve union business is plausible. Capt. Schunk’s decision to not take any action on the April 14th posting reasonably gives rise to an inference that Capt. Schunk is not hostile toward the MPA, or to Officer Burgoyne’s lawful, concerted activity on behalf of the MPA.

After IAD received Officer Burgoyne’s written response, the written response was

submitted to Capt. Reinke, head of Personnel, for review of her claimed mitigation regarding MPA contractual rights. It is common for Personnel to review such claims prior to the Police Chief's decision on the Charges.

Capt. Reinke did not testify at hearing. The record does not establish that Capt. Reinke had any discussions with the Police Chief regarding Officer Burgoyne, or the IAD investigation of the UPAF note.

On December 18, 1997, the Police Chief issued a Personnel Order regarding disciplinary action to be taken against Officer Burgoyne. This disciplinary action included a reprimand for violating MPD Work Rule Section 2/385.00 and a suspension for violating MPD Work Rule Section 2/350.00.

The Police Chief is the only MPD official with authority to impose discipline upon Officer Burgoyne. Presumably, the Police Chief had access to the UPAF note, Lt. Bohl's "Matter Of"; Sgt. Haynes' "Matter Of;" Capt. Schunk's Charges and letter of August 15, 1997; and Officer Burgoyne's written response thereto. These documents would provide the Police Chief with a reasonable basis to know that Officer Burgoyne had claimed that she had MPA President DeBraska's approval to post the UPAF note on the MPA bulletin board. These documents, however, would not provide the Police Chief with a reasonable basis to conclude that Officer Burgoyne either claimed to be, or was in fact, engaged in MPA activity at the time that she posted the UPAF note. However, as discussed above, the UPAF note, on its face, as well as Officer Burgoyne's response to the Charges, would provide the Police Chief with a reasonable basis to believe that the UPAF note expressed the personal opinion of Officer Burgoyne.

At the time that Officer Burgoyne received her discipline, she was assigned to the Property section of the MPD and, thus, was under the Command of Commander Collins. In Commander Collins' absence, the next highest-ranking officer under his command has the responsibility to convey the Police Chief's disciplinary actions to the officer receiving the discipline. At the time that Officer Burgoyne was disciplined, this next highest-ranking officer was Capt. Reinke.

Capt. Reinke conveyed the discipline to Officer Burgoyne. The record fails to demonstrate that Commander Collins was available to convey this discipline. Thus, the record does not provide a reasonable basis to conclude that this conduct of Capt. Reinke is contrary to normal procedure or indicative of hostility toward Officer Burgoyne's lawful, concerted activity.

The record demonstrates that the Police Chief had a personal interest in the UPAF note and facilitated the IAD investigation of that note by having Capt. Schunk retrieve the UPAF materials from District #3. However, a clear and satisfactory preponderance of the evidence does not demonstrate that the Police Chief was hostile toward the MPA, or Officer Burgoyne's lawful, concerted activity. Nor does a clear and satisfactory preponderance of the evidence demonstrate that the Police Chief's facilitation of the investigation of the UPAF note, or his decision to discipline Officer Burgoyne for posting the UPAF note, was motivated, in any part, by hostility toward Officer Burgoyne's lawful, concerted activity.

Officer Burgoyne was not engaged in lawful, concerted activity when she posted the UPAF note on the MPA bulletin board. Evaluated under all the circumstances, Police Chief Jones' participation in the investigation of Officer Burgoyne for posting the UPAF note on the MPA bulletin board and his disciplining of Officer Burgoyne for posting the UPAF note on the MPA bulletin board does not have a reasonable tendency to interfere with, restrain, or coerce municipal employees in the exercise of their Sec. 111.70(2) rights. This conduct of Police Chief Jones does not violate Sec. 111.70(3)(a)1 or 3, Stats.

Alleged Violation of Sec. 111.70(3)(a)2, Stats.

There is no evidence that the Respondents have been actively involved in creating or supporting the MPA. Nor is it evident that Respondents have subjugated the MPA to its will; so controlled the MPA that it is presumably incapable of effectively representing employee interests; or "interfered" with MPA to such an extent that MPA's independence is threatened. A clear and satisfactory preponderance of the evidence does not demonstrate that Respondents have violated Sec. 111.70(3)(a)2, Stats., as alleged by Complainants. Complainants' allegations that the City of Milwaukee, Thomas Bohl, James Bartholomew, and Arthur Jones have engaged in conduct that violates Sec. 111.70(3)(a)2, Stats., are without merit.

Conclusion

As discussed above, certain of the February 28, 1997 roll call comments of Sgt. Bohl have a reasonable tendency to interfere with, restrain or coerce municipal employees, including Officer Burgoyne, in the exercise of their Sec. 111.70(2), Stats., rights. Thus, by these comments of its supervisory employee Sgt. Bohl, the City of Milwaukee has violated Sec. 111.70(3)(a)1, Stats. A clear and satisfactory preponderance of the evidence does not establish that Sgt. Bohl has engaged in any other conduct that violates either Sec. 111.70(3)(a) 1 or (3), Stats.

Capt. Bartholomew's conduct in removing the April 14th posting and referring this posting to IAD has a reasonable tendency to interfere with, restrain or coerce municipal employees,

including Officer Burgoyne, in the exercise of her Sec. 111.70(2) rights. By this conduct of its supervisor Capt. Bartholomew, the City of Milwaukee has violated Sec. 111.70(3)(a)1, Stats.

A clear and satisfactory preponderance of the evidence demonstrates that Capt. Bartholomew's conduct in removing the April 14th posting and referring this posting to the IAD was motivated, in part, by his hostility towards Officer Burgoyne's lawful, concerted activity on behalf of the MPA. Accordingly, by this conduct of its supervisor Capt. Bartholomew, the City of Milwaukee has violated Sec. 111.70(3)(a)3, Stats. A clear and satisfactory preponderance of the evidence does not establish that Capt. Bartholomew has engaged in any other conduct that violates Sec. 111.70(3)(a)1 or 3, Stats.

The appropriate remedy for the violations of MERA established by Complainants is to order the City of Milwaukee to cease and desist from engaging in the conduct that gives rise to these violations and the Examiner has so ordered. The appropriate remedy is also to order the City of Milwaukee to post a notice. Inasmuch as the unlawful conduct was limited to actions of District #3 supervisors, it is appropriate that the notice be posted solely at District #3 and the Examiner has so ordered.

Dated at Madison, Wisconsin, this 5th day of December, 2002.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Coleen A. Burns /s/

Coleen A. Burns, Examiner

CAB/gjc

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