

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

PAUL WRIGHT, Complainant,

vs.

**AFSCME COUNCIL 24 and THE STATE OF WISCONSIN,
DEPARTMENT OF CORRECTIONS**, Respondents.

Case 464
No. 56753
PP(S)-294

Decision No. 29448-B

**THE WISCONSIN STATE EMPLOYEES UNION (WSEU),
AFSCME, COUNCIL 24, AFL-CIO**, Complainant,

vs.

**WISCONSIN ASSOCIATION OF PROFESSIONAL CORRECTIONAL
OFFICERS (WAPCO)**, Respondent.

Case 468
No. 56891
PP(S)-298

Decision No. 29495-B

No. 29448-B
No. 29495-B
No. 29496-B
No. 29497-B

**WISCONSIN ASSOCIATION OF PROFESSIONAL
CORRECTIONAL OFFICERS, Complainant,**

vs.

**AFSCME COUNCIL 24 and the STATE OF WISCONSIN,
DEPARTMENT OF CORRECTIONS, Respondents.**

Case 470
No. 56952
PP(S)-299

Decision No. 29496-B

**WISCONSIN ASSOCIATION OF PROFESSIONAL
CORRECTIONAL OFFICERS and DAVID FREDERICK, Complainants,**

vs.

**AFSCME COUNCIL 24 and the STATE OF WISCONSIN,
DEPARTMENT OF CORRECTIONS, Respondents.**

Case 471
No. 56991
PP(S)-300

Decision No. 29497-B

Appearances:

Ms. Sally A. Stix, Attorney at Law, 122 West Washington Avenue, Suite 740, Madison, Wisconsin 53703, appearing on behalf of Wisconsin Association of Professional Correctional Officers (WAPCO), Paul Wright and David Frederick.

Lawton & Cates, S.C., by **Attorney P. Scott Hassett**, Ten East Doty Street, Suite 400, P.O. Box 2965, Madison, Wisconsin 53701-2965, appearing on behalf of Wisconsin State Employees Union (WSEU), AFSCME, Council 24, AFL-CIO.

Mr. David C. Whitcomb, Chief Legal Counsel, State of Wisconsin, Department of Corrections, 149 East Wilson Street, P.O. Box 7925, Madison, Wisconsin 53707-7925, appearing on behalf of the Department of Corrections.

Mr. David J. Vergeront, Chief Legal Counsel, State of Wisconsin, Department of Employment Relations, 345 West Washington Avenue, P.O. Box 7855, Madison, Wisconsin 53707-7855, appearing on behalf of the State of Wisconsin, Department of Employment Relations.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The respective Complainants filed their respective complaints in Cases 464, 468, 470 and 471, above, with the Wisconsin Employment Relations Commission (WERC), alleging that the respective Respondents had committed unfair labor practices within the meaning of the State Employment Labor Relations Act, Sec. 111.80, *et seq.* On September 18, 1998, Coleen A. Burns, a member of the Commission's staff, was appointed Examiner to issue Findings of Fact, Conclusions of Law and Order in Case 464, as provided in Sec. 111.84(4) and Sec. 111.07(5), Stats. On December 3, 1998, the WERC issued an order consolidating the above complaints for hearing before Examiner Burns. The Examiner conducted a hearing concerning the complaints on October 16, 1998; December 2, 1998; December 8, 1998; January 12, 1999; February 23, 1999; February 25, 1999; March 18, 1999; April 8, 1999; and April 19, 1999, in Madison, Wisconsin. Briefing was completed on September 15, 1999.

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

FINDINGS OF FACT

1. Wisconsin State Employees Union, AFSCME, Council 24, AFL-CIO (WSEU or AFSCME) is a labor organization with offices at 8033 Excelsior Drive, Suite "C," Madison, Wisconsin 53717-1903. WSEU is the collective bargaining representative of employees of the State of Wisconsin who are in the Security and Public Safety (SPS) collective bargaining unit. The Department of Corrections positions of Correctional Officer, Youth Counselor, and Psychiatric Care Technician are included in the SPS collective bargaining unit. The positions

of Lieutenant, Captain, and Warden are supervisory and/or managerial employees and, as such, are not included in the SPS collective bargaining unit. Lieutenants, Captains and Wardens have authority to act on behalf of DOC in enforcing DOC policies.

2. The State of Wisconsin is the State Employer. The State's Department of Employment Relations (DER) is statutorily designated to represent the interests of the State for purposes of conducting labor relations involving state employees. DER has offices at 345 West Washington Avenue, Madison, Wisconsin 53707-7855.

3. Another of the State's operating departments is its Department of Corrections (DOC), which has offices at 149 East Wilson Street, Madison, Wisconsin. DOC has responsibilities that include the operation of prisons and correctional centers in the State of Wisconsin. The DOC operated prisons and correctional centers include Green Bay Correctional Institution (GBCI), Racine Correctional Institution (RCI), the Drug Abuse Correctional Center (DACC) at Winnebago Mental Health Center, Oak Hill Correctional Institution (Oak Hill), Oshkosh Correctional Institution (OCI), Jackson Correctional Institution (JCI), Taycheedah Correctional Institution (TCI), Racine Youthful Offender Correctional Facility (RYOCF), Dodge Correctional Institution (DCI), and Fox Lake. All of the prisons, except Oak Hill, are classified as either maximum or medium security. Oak Hill is classified as minimum security, as are all of the correctional centers. As of February 19, 1999, the State Adult Institutions had an operating capacity of approximately 10,595 inmates and an inmate population of 13,965. On that same date, DOC had placed several thousand inmates in contract beds, a substantial majority of which were located outside the State of Wisconsin. The DOC manages three secure juvenile correctional facilities, i.e., Ethan Allen School, Lincoln Hills School, and Southern Oaks Girls School. Increases in the inmate population have caused the DOC to reduce inmate living space and to transfer and house inmates out of State. Increases in the inmate population have caused the DOC to reduce or eliminate inmate privileges, e.g., reduction of personal property allowances, prohibitions on the wearing of personal clothing, reductions in recreational and educational opportunities, and reductions in visitation rights. All of these changes have increased inmate tension and made it more difficult for DOC staff to manage the inmate population. It is common for inmates to monitor DOC staff behavior and to attempt to manipulate DOC staff. One result of the overcrowding at correctional institutions is that inmates have more idle time.

4. The Wisconsin Association of Professional Correctional Officers (WAPCO) is an organization with a constitution that states that:

The purpose and objective of the Association shall be to promote the organization of workers, to bring together and unite all employees for the purpose of advancing their interests, promote their welfare, improve their wages and other terms and conditions of employment.

Jim Wurtz, who is a founder and President of WAPCO and acts on its behalf, resides in Waterford, Wisconsin. Under the WAPCO constitution, the Executive Board of WAPCO, which consists of a President, Executive Vice-President, Executive Treasurer, Executive Secretary and Grievance Coordinator, is recognized as the governing body of WAPCO with authority to supervise and control all of the day-to-day affairs of WAPCO. On or about January 12, 1998, WAPCO initiated a campaign to secure the right to represent DOC Correctional Officers, Youth Counselors, and Psychiatric Care Technicians for the purposes of collective bargaining by issuing a press release and placing an announcement on the WAPCO website. Wurtz, who is a Sergeant at RCI, has been actively involved in the WAPCO organizing campaign since its inception. After August 21, 1998, supporters of WAPCO distributed an authorization card that states as follows:

I, the undersigned, do hereby request an election be held to allow me the right to name the Wisconsin Association of Professional Correctional Officers as my representatives, pursuant to Chapter 111.83 Wisconsin Statutes, and other applicable laws, codes, or policies.

Print Name: _____
Title: _____
Signature: _____
Date: _____

Paul Wright is an individual residing in Cottage Grove, Wisconsin, and is a member of WAPCO. As of February 23, 1998, WAPCO had placed a WAPCO Contact list on the internet which listed the rank, name, institution, post, Ext #, shift, and E-mail address of various DOC employees. This contact list included the names of Jim Cygan, Lori Cygan, Rick Malchow, Dave Frederick, Paul Wright, Don Stuckart, Vince Caporale, Jeff Teletzke, Joe Callahan, and Ted Serrano. During its organizing campaign, WAPCO has published a newspaper, i.e., the Independent, and has manufactured and distributed WAPCO buttons, WAPCO pins, WAPCO pens, WAPCO hats, and WAPCO shirts. The WAPCO pen has the letters "WAPCO" printed on the clip and these letters are visible when the pen is clipped to a shirt pocket. On one side of the pen is written "Wisconsin Association of Professional Correctional Officers" and on the other side of the pen is written "Solidarity and Independence."

5. Dick Verhagen, Administrator of the DOC Division of Adult Institutions (DAI), became aware of WAPCO in late 1997, or early 1998. In January of 1998, Verhagen issued the following:

ADMINISTRATIVE DIRECTIVE

January 16, 1998

AD 14.3

TO: All Wardens
Bureau and Office Directors
Division of Adult Institutions

FROM: Dick Verhagen, Administrator
Division of Adult Institutions

RE: **Professional Appearance of Uniformed Correctional Officers**

Policy:

I. It is the policy of the Department of Corrections that all uniformed correctional officers wear uniforms that are neat, clean and worn in the manner prescribed by this Directive. A professional appearance will assist them in accomplishing their duties in the most effective manner.

II. General:

A. Uniformed Officers

For the purpose of this Directive the classification (sic) listed below are considered uniformed officers at institutions or facilities where uniforms are required.

- Captains (CPT)
- Lieutenants (LT)
- Sergeants (SGT)
- Officer 1 and 2
- CTC Trainers

B. Uniform items to be provided by the employer

- Hat, campaign style for Challenge Incarceration Program (CIP) only, 1 ea.
- Hat, or baseball cap, 1 ea.
- Jacket, blue, three season, 1 ea.
- Shirt, blue (Sergeant and below) 5 ea.
- Shirt, white (Lieutenant and above) 5 ea.
- Trousers, blue, 3 each
- Tie, navy blue (clip-on for males and butterfly for females), 2 ea. as needed.

C. Accessory items provided by employer

- Badge with belt holder, 1 ea. (gold – Lieutenant and above indicating rank; silver sergeant indicating rank; silver – officers)
- Insignia of rank collar, 2 sets (gold – lieutenant and above)
- Insignia of rank shoulder, 2 sets (gold – lieutenant and above)
- Name tag, 3/4” high with 3/8” letters, 3 ea. (gold with black lettering – lieutenant and above; silver with black lettering – sergeant and below), metal only.
- Stripes, sergeants (3 stripes), 6 pair
- Stripes, officer 2 (2 stripes), 6 pair

D. Specialty and accessory items provided by the employer for correctional officers in the Challenge Incarceration Program (CIP)

- Badge, hat (gold – Lieutenant and above indicating rank; silver – sergeant indicating rank), 1 ea.
- Badge, shirt (gold – Lieutenant and above indicating rank; silver – sergeant indicating rank), 1 ea.
- Braid for campaign hat (gold – Lieutenant and above indicating rank; silver – sergeant indicating rank), 1 ea.
- Hat, campaign style, dark blue, 1 ea.

E. Accessory items to be provided by the employee

- Gloves (Section III, Paragraph D)
- Scarves (Section III, Paragraph D)
- Socks (Section III, Paragraph F)
- Sweaters (Section III, Paragraph N)
- Tie tack or bar (Section III, Paragraph L)
- Hat (Section III, Paragraph K)

F. Uniforms

Officers are authorized to wear the uniform prescribed below:

- Belt with buckle
- Hat, baseball cap, knit or stocking cap, or winter hood, black or navy only.

- Insignia of rank
- Jacket
- Name tag
- Overshoes as appropriate
- Shirt
- Shoes or boots
- Tie (as stated in III L)
- Trousers

III. Manner of dress uniformed officers

A. Shirts

Issued shirts with authorized accessories and insignia, depicted in Exhibit 1, are required to be worn.

B. Trousers

Issued trousers, depicted in Exhibit 2, are required to be worn.

C. Wearing the uniform

- Shirt and trousers will be neat, clean, pressed and in good repair.
- Accessories and insignia are to be positioned and worn in accordance with Exhibit 1 or 2.
- Button and zipper openings are to be fully closed, except the collar button may be open when worn without a tie.

- When the shirt is worn without a tie, a clean, neat, white crew neck T-shirt or undershirt or turtleneck (no mock turtlenecks) may be worn. No other colors will be permitted.

D. Scarves / gloves

- Plain black or navy blue scarves / gloves may be worn; the scarf ends must be tucked inside the jacket. Exception may be made by Institution Warden for special circumstances such as honor guards.

E. Shoes / Boots

- Shoes or boots will be worn (see VII A)

F. Socks

- Socks will be worn at all times when wearing the uniform
- Plain black, navy blue, or white are acceptable

G. Overshoes

- Black overshoes or rubbers may be worn with authorized footwear in inclement weather.
- Trouser legs may be bloused or folded inside the overshoes when snow is deep.
- Buckles and zippers on overshoes must be fully closed

H. Other authorized items for wear with the uniform

- Earrings, stud or clip-on type only that do not extend lower than the ear lobe.
- Hair pins, clips or braided elastics. (plain black or navy only).

- Medical Alert tag may be worn either as a necklace, bracelet or both
 - Rings (limit of three)
 - Tie tacks or pins that reflect association with the union can be worn on the uniform without ties as long as they are worn in a professional manner.
- I. Unauthorized items, not to be worn on or with the uniform
- Jewelry with obscene or offensive lettering or design
 - Earrings not meeting the standards as listed in paragraph H of this section.
 - Decorative hair or hair ornaments other than (sic) those items listed in paragraph H in this section.
 - Exposed necklaces or similar jewelry, except for Medical Alert tags
 - Any other symbol, insignia, jewelry, etc. that has not been specifically authorized by the Directive.
- J. Insignia of rank

Insignia of rank, described below, will be positioned as shown on Exhibit 1.

1. On shirts:

Captain – double gold bars on collar tab

Lieutenant – single gold bar on collar tab

Sergeant – three silver chevrons on sleeve, cloth

Officer 2 – two silver chevrons on sleeve, cloth

2. On jacket:

- Insignia of rank for lieutenant and above will be worn on the epaulets of the jacket centered on the epaulet and 3/4 inch from the outer seam.
- Insignia of rank sergeants and officers 2 will be worn on the sleeves of the jacket as shown on Exhibit 1

K. Hats and caps

Only authorized uniform hat or caps will be worn.

- Authorized hats (except for CIP) are the baseball type or knit stocking cap, black or navy only, with 2" DOC hat patch attached and worn to the front.
- The campaign style hat is authorized for CIP officers only and will have the appropriate braid (gold for the lieutenants and above; silver for sergeants).
- Baseball caps for supervisory staff will have visors with the appropriate gold oak leaf braid. All other visors will be plain black.
- On baseball caps - insignia of rank for lieutenants and above will be worn centered just below DOC patch.

L. Tie

A DOC issued tie will be worn when an officer will have substantial contact with the public (funeral / Death bed trips, court appearances, or public meetings).

- Tie tacks or tie bars will be gold or silver in color. Inscription on tie tacks may reflect association with the State of Wisconsin, DOC, WCA, ACA, the institution, or union.
- All other tie tacks or tie bars will be plain in nature. Those reflecting association with any fraternal, religious or similar organization are prohibited.

M. Belt

A belt will be worn (see VII A)

N. Uniform jackets / sweaters

- Whenever an outer garment is worn over the uniform shirt, it will be an issued uniform jacket except that a navy blue or black sweater, sleeved or sleeveless, pullover or cardigan, with V-neck, may be worn over the uniformed shirt.
- The jacket, when worn, is considered part of the uniform.

O. Name tags

- Name tags will be worn on the left breast pocket flap of the shirt and jacket, with the top of the name tag being even with the stitching on the top of the flap as shown in Exhibit 1. For jackets with no breast pockets, the name tag shall be worn in the same area as the shirt name tag.
- When wearing a sweater, the name tag must be visible and placed in approximately the same location as for a shirt or jacket.

P. The Wisconsin Department of Corrections Patch

The DOC patch will be worn on the left sleeve of the uniform shirt and the jacket, located 3/4 inch from the top left shoulder seam and centered on the seam as shown in Exhibit 1.

Q. Undergarments

Undergarments include but are not limited to thermal underwear and will not extend beyond the cuff of the uniform shirt or hem of the trousers. Exposed undergarments will be white only.

R. Badges

Officers will wear the badge on a belt holder on the right front. Badges will be as follows:

- Captains and Lieutenants – gold with rank indicated
- Sergeants – silver with rank indicated
- Officer – silver, identified as officer

IV. Maintenance of Uniforms

A. Uniformed staff are responsible for the maintenance of the uniform and accessories.

B. Uniforms or accessories damaged in the line of duty may be turned in for replacement.

C. Issued uniform items that become unserviceable due to fair wear and tear will be replaced through procedures established by the employer.

D. Lost or negligently damaged issued uniform items will be replaced by the employer after the employee has paid the appropriate replacement cost.

E. Uniform items being exchanged for size or turned in due to separation from the Division of Adult Institutions must be cleaned and on hangers so they are ready for re-issue. For inter-institutional transfers, all uniform items will accompany the officer, with the exception of the badge and holder. Issued equipment will be turned in prior to transfer.

F. Uniform items issued to staff will be recorded on DOC-171 form

V. Unauthorized use of Uniform.

A. Uniforms or portions of uniforms will not be worn in combination with civilian clothing for non-official activities.

B. Personnel will not wear the uniform or any identifiable part thereof while off duty in any place / location where intoxicants are being served and / or consumed. During periods of suspension personnel will not wear the official uniform.

cc: Assistant Administrators
Office of the Secretary

Administration Directive 14.3 Division of Adult Institutions

Replaces Administrative Directive 14.2 Dated November 1, 1991.

The above referenced "Exhibit 1" contains four diagrams that demonstrate the proper placement of sleeve patches, shoulder insignia, collar insignia, and name tags. The above referenced "Exhibit 2" is an illustration of a male figure wearing the prescribed uniform. Some correctional officers, including those that work in the corrections center system or those who are community based, are not required to wear a uniform. On March 3, 1998, Verhagen sent the following E-mail to various DOC supervisory and administrative staff:

It has come to my attention that some officers are wearing a WAPCO pin as part of their uniform. This is not an allowable item per Administrative Directive 14.3 (Professional Appearance of Uniformed Correctional Officers). Please see section III-H which states "Tie tacks or pins that reflect association with the union can be worn on the uniform without ties as long as they are worn

in a professional manner” and Section III-L which states “Tie tacks or tie bars will be gold or silver in color. Inscription on tie tacks may reflect association with the State of Wisconsin, DOC, WCA, ACA, the institution, or the union. All other tie tacks or tie bars will be plain in nature. Those reflecting association with any fraternal, religious or similar organization are prohibited”. The only exception to this is a pin portraying the U.S. flag. WAPCO is not recognized as a union and therefore, the pin is not recognized as a union pin and is not an allowable item to be worn on the uniform.

If you have any questions on the above, please contact me.

On April 6, 1998, Secretary Michael J. Sullivan, the chief executive officer of the DOC, issued the following:

MEMORANDUM

TO: Appointing Authorities
FROM: Michael J. Sullivan, Secretary
RE: Communications Regarding Labor Relations Activities

The recent Labor Relations activities of some DOC correctional officers have raised questions for management as to which activities are permissible and which activities should be prohibited. This memo provides guidelines for handling (sic) communications should be followed consistently throughout the Department.

DOC recognizes AFSCME Council 24, WSEU as the sole labor organization representing our correctional officers and we are committed to the implementation of the Master and all our Local agreements. We will, however ensure, as required by law, that DOC remains otherwise neutral in dealing with the involved groups and that management and supervisory staff shall not support or encourage employees to take sides in this issue.

What kinds of “communication” are we talking about? (Solicitation & Distribution)

There are two basic ways information can be communicated – orally (solicitation) and written (distribution).

Oral Communication (Solicitation)

Public employer regulation of employee speech is subject to the First Amendment. Generally, we can restrict the time, place, and manner of these communications. We can regulate the content of what employees say only to ensure that it does not pose a threat to security, is not offensive or coercive or otherwise negatively effects (sic) the effective and efficient fulfillment (sic) of the institution’s responsibilities. We can only require employees to restrict their conversations to non-work time. Conversations may occur in both work and non-work areas, but both parties must be on non-work time. (See definitions below)

Written Communication (Distribution)

The greater concern is with written communication – it is lasting and easily regulated. Once again, we can not (sic) regulate the content of the written document (unless it is offensive, coercive or poses a security concern). We can regulate where the written documents can be posted or distributed.

Bulletin Boards and Mailboxes

The employing units must allow these groups to utilize “General Interest” bulletin boards. There are three categories of bulletin boards – management, union and general interest. The general interest bulletin boards allow employees to post information such as for sale notices or community interest postings. Management bulletin boards only contain information posted by management (we would not allow an employee to post a for sale notice on this type of board). The union bulletin boards are for WSEU only – as negotiated in the contract and therefore other groups may not post any material on the union bulletin boards. However, they may utilize “General Interest” type bulletin boards (bulletin boards where employees have been allowed to post general interest information). *Axelson, 257 NLRB 576 (1981)*.

Handing out information

Information may be handed out to other employees in non-work areas during all parties' non-working time. Written information shall not be distributed in any work area. (See definitions below)

Wearing pins

The uniform policy indicates that pins that reflect association with the union may be worn as well as tie tacks or bars which reflect association with the State of Wisconsin, DOC, WCA, ACA, the institution, or the union. Any other symbol, insignia, jewelry, etc. not specifically authorized by the policy can not (sic) be worn. Therefore, uniformed staff may not wear other pins or any items not specifically authorized in the uniform policy.

When can this happen? (Work time vs. non-work time)

Non-work time is the employee's own time (breaks, meal periods, vacations, time before or after a shift, or an approved leave). Distribution of literature and oral communications shall only occur during both the distributor's and the recipient's non-work time.

Where can this happen? (Work areas vs. non-work areas)

Work areas include offices, work stations (including posts), conference rooms, corridors leading directly to these locations, any locations where an employee performs her or his official duties. Non-work areas include lobbies, employee cafeterias, employee break rooms and public areas.

Can non-employees either solicit or distribute at the institutions?

Either non-employees or employees not in work-status can communicate with DOC employees regarding other groups. They must schedule the solicitation or distribution with the appointing authority. The appointing authority shall designate the non-work area where the communications will occur. Again, the parties involved must be on non-work time.

Cc: Ave M. Bie, Deputy Secretary
Michael Rogowski, Executive Assistant
David Whitcomb, Chief, Office of Legal Counsel
Hamdy Ezalarab, Ph.D., Director, BPHR

Prior to April 6, 1998, Verhagen initiated several telephone conference calls with DOC Wardens for the purpose of receiving information on WAPCO activities at the various correctional institutions and to ensure that the correctional institutions responded to these activities in a consistent manner. DOC legal counsel staff and personnel staff participated in these telephone conference calls. Verhagen participated in the development of Secretary Sullivan's memorandum of April 6, 1998. When developing guidelines and directives regarding DOC's response to WAPCO activities, Verhagen sought to provide WAPCO with an opportunity to communicate with staff in a manner that did not adversely impact upon the business operations of the correctional institutions. Prior to the issuance of the April 6, 1998 memorandum, Verhagen advised the Wardens to remain neutral with respect to the AFSCME and WAPCO competition to represent DOC employees. Verhagen considers the memorandum of April 6, 1998, to be applicable to both AFSCME and WAPCO, but recognizes that the memorandum does not provide DOC with any right to violate any collective bargaining agreement between the State and AFSCME. Verhagen interprets the memorandum of April 6, 1998, to prohibit distribution or oral communications at the work site in pay status. Verhagen believes that such a prohibition is necessary to avoid bad employe morale and employe conflict at the work site. Verhagen seeks to avoid employe conflict at the work site because he believes that such conflict distracts employes from their job responsibility to monitor and supervise inmates and provides fodder for inmates who seek to exploit conflicts between employes.

6. At all times material hereto, the State and WSEU have been parties to a master collective bargaining agreement, as well as to local collective bargaining agreements. The master collective bargaining agreement provides as follows:

ARTICLE II

Recognition and Union Security

. . .

Section 3: Bulletin Boards

2/3/1 The Employer shall provide bulletin boards at locations mutually agreed upon for use by the local Unions to enable employes of the bargaining unit to see notices posted thereon. Such mutual agreement shall be arrived at locally.

The normal size of new bulletin boards will be eight (8) square feet. The Employer will maintain bulletin boards provided under prior negotiated collective bargaining agreements and they need not conform to the normal size. In the event any new bulletin boards are mutually agreed upon, the Employer shall pay fifty percent (50%) and the Union shall pay fifty percent (50%) of the cost of such new boards. All notices shall be posted by the President of the local Union or his/her designee and shall relate to the matters listed below:

- A. Union recreational and/or social affairs;
- B. Union appointments;
- C. Union elections;
- D. Results of Union elections;
- E. Union meetings;
- F. Rulings or policies of the International Union or other Labor Organizations with which the Union is affiliated;
- G. Reports of Union standing committees;
- H. Any other material authorized by the Employer or his/her designee and the President of the local Union or his/her designee; and
- I. Official Union publications.

. . .

2/3/3 No political campaign literature or material detrimental to the Employer or the Union shall be posted. The bulletin boards shall be maintained by the President of the local Union or his/her designee. Any material determined by the Employer to not be in compliance with the provisions of this section shall be brought to the attention of the local Union/Chapter President or his/her designee and said material shall be discussed prior to its removal from the board.

2/3/4 (BC,SPS,T,PSS,LE) The location, size, type and number of bulletin boards shall not be subject to the grievance procedure in Article IV. In determining the location and number of new bulletin boards at assigned work sites, consideration shall be given to diverse factors including but not limited to: normal traffic patterns; the number of employees at such work location; the type of work performed; the general location of employee gathering places, such as break rooms and lounges; and access of the public to such locations. The location, size, type and number of new bulletin boards shall be subject to the grievance procedure in Article IV. For the purposes of this paragraph only, “assigned work sites” shall mean the facility or location to which the employee is normally assigned by the Employer and from which he/she performs his/her assigned duties.

...

Section 5: Union Activity

2/5/1 Bargaining unit employees, including Union officers and representatives shall not conduct any Union activity or Union business on State time except as specifically authorized by the provisions of this Agreement.

Section 10: Mail Service

2/10/1(BC, T, SPS, PSS, LE) Local Unions shall be allowed to use the existing inter-departmental and/or intra-departmental mail system(s) of the State of Wisconsin for a maximum of two membership mailings per month to members of their respective locals. Local Unions shall be allowed to use intra-institutional mail service (if available). Such mailings must be of a reasonable size and volume and prepared by the local Union in accordance with prescribed mail policy. The Employer shall be held harmless for the delivery and security of such mailings. The content of such mailings shall relate to the matters listed below:

- A. Union recreational and/or social affairs;
- B. Union appointments;
- C. Union elections;
- D. Results of union elections;

- E. Union meetings;
- F. Rulings or policies of the International Union or other Labor Organization with which the Union is affiliated;
- G. Reports of standing committees.

...

2/10/2 No political campaign literature or material detrimental to the Employer or the Union shall be distributed.

2/10/3 Local Union use of the mail systems involved shall not include any U.S. mails or other commercial delivery services used by the state as part of or separate from such mail system(s). The Union's use of the mail service shall be the responsibility of the President or a designee of the local Union.

In October of 1998, Correctional Officer Joel Tyryfer, an AFSCME Steward at RYOFCF, attended an AFSCME information meeting that was chaired by Local Union President Rick Gondard. At this meeting, individuals wanted to know what changes might occur if WAPCO were to be successful in its organization drive. WSEU Field Representative Jana Weaver responded to questions, including questions concerning the impact upon the ongoing negotiations of class and grid changes.

7. On July 2, 1998, GBCI Correctional Officer 2 Declan Sexton filed an Incident Report with GBCI stating that at 9:45 p.m. on July 1, 1998, "I WAS BEING RELIEVED BY C.O. II ASPATORE IN F-TOWER. IN CONVERSATION WITH C.O. II ASPATORE HE STATED TO ME THAT IF WAPCO TAKES OVER AS THE UNION AND IF WE EVEN LOSE ONE BENEFIT THAT HE WOULD BE ONE OF THE GUYS IN BLACK HOODS BREAKING PEOPLE'S KNEECAPS. END OF REPORT." The incident report indicates that GBCI supervisory staff conferred with Sexton as to a resolution and that Sexton's only request was "to have it stopped and talk to Officer Aspatore." The incident report further indicates that GBCI supervisory staff spoke with Aspatore; warned Aspatore about inappropriate comments and advised Aspatore of consequences of making inappropriate comments. On July 3, 1998, Correctional Officer 2 Paul Aspatore filed an incident report with GBCI in which he stated "CAPTAIN HECKEL CALLED ME THE EVENING OF 9/2/98 ASKING IF I HAD A CONVERSATION AND MADE THREATS TOWARD OFFICER SEXTON. I IMPLICITLY (sic) DENY MAKING THREATS TOWARD OFFICER SEXTON AND WOULD FURTHERMORE ASK MANAGEMENT TO MAKE SURE THAT I NOT RELIEVE (SIC) MR. SEXTON ON A ONE TO ONE BASIS SO THAT NO MORE FALSE +

MALICIOUS ALLEGATIONS ARE LEVELED AGAINST MY (SIC) BY HIM.” Sexton’s Incident Report did not result in any discipline of Aspatore, a third shift AFSCME steward. Aspatore denies that he made any threats to Sexton or that he made any statements about breaking knee caps if he lost any benefits. Aspatore does not recall having any conversation with anybody at GBCI regarding people in black hoods.

8. Sheila Garrigan is employed at GBCI as a Correctional Officer 2. Beginning in early summer of 1998, Garrigan, a WAPCO member, discussed WAPCO with other employees at GBCI. Garrigan did not distribute any WAPCO materials other than authorization cards. While on work time, Garrigan provided Sgt. Denise Camp with WAPCO authorization cards. When Camp accepted the authorization cards, she told Garrigan that she had not made up her mind. The following day, Garrigan and Correctional Officer Linjer went to Camp’s work area and asked Camp if she had signed the card. When Camp responded that she was not going to sign the card, they said sign the card. When Camp reiterated that she was not going to sign the card, one of the two asked that the cards be returned. Correctional Officer Steven Yelmene then stated that he would discuss the card with Camp. Subsequently, Garrigan returned to Camp’s workstation and Yelmene gave Garrigan two authorization cards that had been signed by Camp. Prior to signing the authorization cards, Camp had a discussion with Yelmene in which Yelmene described a prior experience with two unions competing for representation rights and enunciated his views on the pros and cons of competing unions. During this discussion, Yelmene told Camp that, by signing the card, she was providing WAPCO with a chance for a vote, but that if it came to a vote, she did not have to vote for WAPCO. Prior to the time that Yelmene gave the authorization cards to Garrigan, Camp had not told Yelmene that she felt pressured to sign the cards. Yelmene and Camp had not only worked together, but also were good friends. Previously, Correctional Officer Don Stuckart had given Yelmene WAPCO authorization cards, but had refused to discuss the cards with Yelmene on work time. The day after she had signed the authorization cards, Camp notified WSEU that she had signed the WAPCO authorization cards under duress and that she wanted the cards back. When Linjer became aware of the fact that Camp was bothered by solicitation on behalf of WAPCO, she apologized. Correctional Officer Rannier discussed WAPCO with Camp while Camp was in the bathroom. Prior to August 29, 1998, Camp telephoned Bob Rudey, the WSEU Local Union President at Taycheedah, to complain about WAPCO organizing activities at GBCI. Camp, who was on permissive probation at GBCI, was concerned that various Correctional Officers at GBCI were discussing WAPCO on work time and pressuring people into signing WAPCO authorization cards. On August 29, 1998, as a result of her telephone call to Rudey, Camp was called into Lt. Melman’s office and questioned about WAPCO activity occurring at GBCI. Camp told Melman that she did not want to be dragged into any investigation and that she had called Rudey to stop things. Melman told Camp that if she refused to answer his questions, then he would write her up for impeding an investigation. Following this meeting with Melman, Camp went to the north cell and was questioned by Correctional Officer Lori

Cygan about the investigation into WAPCO activity. In response to Camp's request for a lighter, Lori Cygan lit the lighter and stated that she hoped that this did not threaten Camp. Camp did not make any response other than to stare at Lori Cygan. Later in the shift, Lori Cygan dangled a WAPCO pen from her mouth, removed the pen, and stated to Camp that she hoped that she had not offended Camp and that she would not want to intimidate Camp. Camp rolled her eyes, shook her head, and, subsequently, reported Cygan's conduct to Melman. The following day, Camp heard the words "snitch, snitch lets go talk" as she walked by Correctional Officers Stuckart and Garrigan and, when she left work, she observed Jim and Lori Cygan standing on the steps. Camp considered the Cygans to be standing in her way and walked around them. Camp was called bitch. Camp had been told by WSEU to report any concerns to Correctional Officer Mercer. Camp told Mercer that she was concerned that Jim and Lori Cygan were "going to screw" with her as she left work and Mercer escorted Camp to her car. On August 31, 1998, as Camp was returning from break, Lori Cygan stood outside her unit and made a statement to Camp about leaving GBCI. That night, as Camp was escorted to her car, Jim and Lori Cygan were standing at the stairs. Thereafter, at the end of the shift, Camp would wait to be escorted to her car. After Melman questioned Camp concerning WAPCO activity at GBCI, Camp's automobile was vandalized. In early September of 1998, Garrigan was called into Melman's office and questioned concerning allegations of harassment and intimidation involving the signing of WAPCO cards. Melman asked whether or not Garrigan had distributed cards on work time and if Garrigan knew that she was not allowed to do that. Garrigan told Melman that she had consulted the GBCI manual and that this manual stated that employees were allowed to talk union and that it did not specify which union. The section of the GBCI manual consulted by Garrigan states as follows:

. . .

B. Interpersonal Relationships

1. Staff-to-Staff

- a. The nature of our work demands a harassment-free environment.
- b. Always treat other staff members with the respect, kindness and tolerance which you, yourself would wish to receive.
- c. Be professional, maintain self-control and discipline and exercise patience and discretion.
- d. While on duty or while on Institutional grounds you shall not solicit other staff members to join any organization other than an employee's union or association.
- e. Department Work Rules prohibit "unauthorized solicitation for any purpose while on duty or on state property."

- f. Confidentiality – If you should be assigned to a confidential mission or task, you should not discuss that assignment with another employee or officer unless such discussion is necessary to the fulfillment of that assignment.
- g. Do not discuss personal matters or sensitive issues relating to yourself, other employees or the institution in the presence of inmates.
- h. Supervisory personnel shall express appreciation for extra endeavor in the prompt completion of orders and shall give constructive criticism upon evidence of faulty execution of responsibility.
- i. You shall at all times be ready and willing to perform any duty assigned to you by your superior officer or supervisor.
- j. You shall carry out promptly any and all legal orders which are issued by persons officially authorized by the institution administration to command or direct your activities.

...

Garrigan relied upon this section of the GBCI manual when she distributed the WAPCO authorization cards. Garrigan was aware of Secretary Sullivan's memorandum at the time that she distributed WAPCO authorization cards and did not consider authorization cards to be literature within the meaning of the memorandum. Following this conversation with Melman, Garrigan continued to distribute WAPCO authorization cards, but did not do so on work time. Approximately one month after her conversation with Melman, Garrigan was called into Melman's office. Melman offered Garrigan union representation. Garrigan refused the union representation, but requested a witness. Melman stated that she was not allowed a witness, but did allow Captain Brant to accompany Garrigan. During this second conversation with Melman, Melman told Garrigan that she had been charged with "Unauthorized solicitation of staff on duty." On October 14, 1998, Warden Bertrand issued the following to Correctional Officer Sheila Garrigan:

WRITTEN REPRIMAND
HAND DELIVERED

Dear Ms. Garrigan:

This is an official letter of reprimand for violation of the Department of Corrections (sic) Work Rule #18 which lists as prohibited conduct:

“A.18. Unauthorized solicitation while on duty.”

This action is being taken because it is clear that you approached co-workers while on duty for the purpose of discussing the formation of a new union. You also passed out sign-up (interest) cards on work time. A pre-disciplinary meeting was held on 09/07/98 with Patrick Melman, Supervising Officer 1 and you in attendance. You declined Union representation. In this meeting, you admitted distributing cards at work saying “I’m not going to lie about it.” You also indicated that you had read Secretary Sullivan’s memorandum but did not “think it applied to handing out interest cards.”

Secretary Sullivan’s memorandum is clear as it states regarding Oral Communication (solicitation): “... We can only require employees to restrict their conversations to non-work time. Conversations may occur in both work and non-work areas, **but both parties must be on non-work time.**” Regarding the sign-up or interest cards the memorandum is again clear: “... We can regulate where the written documents can be posted or distributed.” And: “...Distribution of literature and oral communication shall only occur during both the distributor’s and the recipient’s non-work time.”

It is your obligation to follow the letter and spirit of the Secretary’s directive. The policy set forth in this memorandum establishes a neutral and fair position for DOC Management. When you deviate from the policy you impinge on the rights of others.

This incident represents your first violation of Category “B” of the DOC Disciplinary Guidelines in the past 12 months. Any future work rule violations will lead to further discipline up to and including discharge. If you feel this action is not based on just cause, you may appeal it through the grievance procedure provided in Article IV of the Collective Bargaining Agreement.

Garrigan, who admits that she had people sign WAPCO authorization cards on work time, grieved this written reprimand and the grievance is being processed by WSEU. On September 15, 1998, Camp prepared an Adult Conduct Report in which she stated that, on September 11, 1998, she had given an inmate several direct orders to remove beads from his hair; that she had advised Sgt. LeSatz of this order; that when she returned to the unit, the inmate had not removed the beads; and that the inmate, who was standing next to Correctional Officer Laufenberg, was rotating his head to clank the beads in a defiant manner. Camp had previously heard Sgt. LeSatz refer to the north cell as WAPCO central. On September 15, 1998, Camp prepared an Incident Report in which she recounted her interaction with the

inmate wearing the hair beads and indicated that, at the time that she observed the inmate clanking his hair beads, she also observed a piece of paper, on which was written the word "WAPCO," taped to the back of Correctional Officer Laufenberg's shirt. Camp concluded her report with the following statements:

. . . Since the investigation of the WAPCO I've had to tolerate silly things like this and statements such as "this is WAPCO central" from Sgt. Lezates (sic). Their little "click" in the North Cell Hall makes everyone aware of the fact that it's their way or no way. They are aware of the fact I don't want to hear about "WAPCO", yet they continue to cram it in my face."

Laufenberg and LeSatz were subsequently disciplined. Following the submission of this incident report, Camp was voluntarily removed from second shift and placed on third shift. On the first night that Camp was on third shift, she overheard Lori Cygan and Sgt. Stuckart laughing after Lori Cygan made a mocking comment about Camp receiving an escort to her car. On a subsequent night, Camp went to Gate 4, where she was to await an escort to the north cell hall, and observed that Laufenberg was sitting on the bench where she intended to sit and that Lori Cygan was on the other side of the gate. Camp reported this to supervisory staff and Cygan and Laufenberg were ordered to return to their posts. On the following day, which was October 12, 1998, Camp found a piece of paper in her mailbox on which were written the words "Whiny little bitch, why don't you suck a little more white shirt cock to get what you want." Subsequently, Yelmene and Correctional Officers Reid, Linjer, Bastien, Hamilton, and Johnson were at a gate, waiting to go home. Camp, who was crying, overheard laughter and Camp directed several comments at this group of Correctional Officers. On October 13, 1998, Yelmene prepared and submitted the following "Incident Report":

AT 9:40 p.m. I WAS standing in front of Gate 3 waiting for it to release so I could Leave. I saw Sgt. Camp coming through Gate 2A with Lt. Vangheem. Sgt. Camp started yelling I hope all you mother Fuckers are happy you finally got your wish. She then said I'll Kick all you mother Fuckers asses. OFFICER BASTIEN was attempting to get Through Gate 3A at The time but was unable to make it and started Laughing. Sgt. Camp The(sic) saw her laughing and said, "Stop laughing Bitch or I'll Kick your fucking Ass. This comment was made while Sgt. Camp was pointing at Officer Bastien. No one other than Sgt. Camp made any comments, They Just stood there in Astonishment. Lt. Vangheem was present during this incident and made no effort to stop Sgt. Camp from making the verbal comments directed at us. END OF REPORT

Yelmene submitted the Incident Report because he believed that Camp had acted unprofessionally and he wanted CYA documentation. When Yelmene told Camp that he had

written her up because of her unorthodox behavior, Camp told Yelmene that she had received a threatening note. Following the submission of this report, Yelmene was interviewed regarding interactions between Camp, Lori Cygan and Garrigan. Yelmene was also asked to submit a handwriting analysis. Yelmene understood that this request was part of an investigation into the note that had been placed in Camp's mailbox. Camp went on a stress-related leave of absence from work on October 12, 1998. While on leave, Camp received a number of anonymous telephone calls at home. Camp returned to GBCI for a short period of time in November 1998 and then transferred to Taycheedah. Camp continues to take medication for anxiety.

9. During the course of his employment with DOC, Sergeant Jim Wurtz has observed the following pins being worn on Correctional Officer uniforms: Green Bay Packer pins; VFW pins; blood donor pins and AFSCME pins. At the end of March of 1998, Wurtz wore a WAPCO pin on his uniform, while at work, and was told to remove this pin by Captain Mulnar. Wurtz immediately removed the pin and was not disciplined for this incident. At that time, Wurtz was also wearing a Corrections and Criminal Justice Coalition pin. Wurtz wore the WAPCO pin and the Corrections and Criminal Justice Coalition pin on the left pocket flap of his uniform shirt, under his nametag. Neither Captain Mulnar, nor any administrator at RCI, made any comment to Wurtz regarding the Corrections and Criminal Justice Coalition pin, which pin Wurtz wore for approximately four months. Wurtz does not consider the Corrections and Criminal Justice Coalition pin to be allowed under the uniform policy. In the latter part of September of 1998, Christopher Ellert, the Security Director at RCI, advised Wurtz that DOC was really cracking down on the wearing of WAPCO pins and asked Wurtz to advise "his people" that they could not wear WAPCO pins on their uniforms, including on "personal apparel." Wurtz believes that this conversation was precipitated by Ellert's receipt of an E-mail. At the time of this conversation, Wurtz had a WAPCO pin on his glove pouch. Wurtz understood "personal apparel" to be a reference to that portion of the uniform that is not required, but rather, is purchased by the employee, such as belts. RCI has a union bulletin board and a number of other bulletin boards in the administration building, including general use bulletin boards. WAPCO has posted WAPCO materials on the general use bulletin boards at RCI, which materials are generally removed by persons unknown to, and without the authorization of, WAPCO. Wurtz has not brought this removal to the attention of the Warden, nor has he complained to the administrative staff regarding this removal. WAPCO supporters have distributed WAPCO cards and literature at RCI. Correctional Officers at RCI have been allowed to wear a WAPCO pen on which a piece of tape with the word "Censored" has been placed on the clip, thus covering the letters "WAPCO."

10. Donald Stuckart, a Sergeant employed at GBCI, became a member of WAPCO in December, 1997 or January, 1998. On or about July 3, 1998, Stuckart clipped a WAPCO pen to his uniform in such a manner as to display the letters "WAPCO." When Gary Lonzo,

President of GBCI AFSCME Local Union 32, received a complaint from his membership regarding Stuckart's wearing of a WAPCO pen, he telephoned Captain Delvaux to discuss the matter. When Lonzo asked if WAPCO pens could be worn, Delvaux responded that he did not know, but would check into the matter. Lonzo did not have any further involvement in the matter of Stuckart wearing a WAPCO pen. Michael J. Delvaux is an Administrative Captain at GBCI. Following his conversation with Lonzo, Delvaux asked GBCI Personnel Manager Brad Nuss if Correctional Officers were allowed to wear WAPCO pens. Nuss advised Delvaux that he did not know and would need to call "Madison." Subsequently, Nuss advised Delvaux that the WAPCO pens could not be displayed, but could be tucked in a pocket. A few days after Stuckart first wore the WAPCO pen, Lt. Taerud told Stuckart that he could not wear the pen. Stuckart, who did not believe that the pen conflicted with Secretary Sullivan's memorandum of April 6, 1998, then met with GBCI Personnel Manager Nuss. At that meeting, Nuss stated that the April 6, 1998 Memorandum from Secretary Sullivan was being interpreted to mean that Correctional Officers could not wear the WAPCO pen. Nuss further stated that Captain Delvaux had brought the pens to Nuss' attention after Delvaux had received a complaint from Lonzo. Stuckart, who had observed other Correctional Officers wearing Green Bay Packer pens and pens with figures and corporate logos while at work, asked Nuss if a memorandum would be issued banning these other pens and Nuss responded "no." Stuckart told Nuss that the policy was not being uniformly enforced as required by Sullivan's memorandum because WAPCO was being singled out. During this conversation, Nuss raised the issue of professionalism. Stuckart told Nuss that he thought the pens were professional, but that people were wearing AFSCME pins from other states in a nonprofessional manner. Nuss responded that, if WAPCO was trying to get support, it should not anger people. The conversation between Nuss and Stuckart lasted approximately ten minutes and was cordial. Immediately after this conversation, Stuckart had a conversation with Delvaux regarding Delvaux's conversation with Lonzo and the WAPCO pens. Later that day, the following memorandum was posted on the bulletin board at GBCI:

July 6, 1998

To: Jeffrey Jaeger, Security Director
Security Office

From: Brad Nuss
Personnel Manager

Re: WAPCO Pens

Late Friday, 07/03/98, it came to my attention that some of our officer staff were wearing pens with the WAPCO insignia on the clip and when the clip was

used to hold the pen in place in the shirt pocket the insignia was clearly visible. I contacted Ken Kissinger, DOC Employment Relations Supervisor, and he indicated that: "if the insignia shows they cannot wear the pen".

I am including a copy of a 03/03/98 E-mail from Dick Verhagen, DAI Administrator, establishing the policy.

CC: Daniel R. Bertrand

Attached to this memorandum was a copy of the March 3, 1998 E-mail in which Verhagen addressed the wearing of WAPCO pins. The E-mail indicated that, on March 3, 1998, various supervisors at GBCI were directed to "Please monitor staff and advise them of this ruling. If an employee refuses to remove the pin contact the Warden's office immediately." Stuckart had not seen the E-mail of March 3, 1998, until it was posted on July 6, 1998. On July 21, 1998, Verhagen sent the following E-mail to various DOC supervisors and administrators:

It has come to my attention that some officers are wearing pens with WAPCO printed on the clip so that it would publicly appear on their shirt pocket. Per my E-mail of March 3, 1998 (below) this is not an allowable item to be worn with the uniform. Please advise all such employees of this policy.

Thank you for your attention to this matter.

On many occasions, WAPCO material was removed from the GBCI bulletin board. Beginning in January of 1998, Stuckart distributed WAPCO materials in the GBCI break room, before and after shifts, and while on break. In September, 1998, GBCI Security Director Jaeger called Stuckart into his office and told Stuckart that he could not distribute WAPCO materials while on pay status and that supervisory personnel had been told to tell people that they could not distribute WAPCO materials while on pay status. Stuckart responded that he understood that Sullivan's memorandum allowed WAPCO to distribute materials on break time in non-work areas, such as the break room, lobby, the time room, and the Gate 4 area, and that GBCI had been allowing this since the Sullivan memorandum came out. Stuckart asked if WAPCO material could be distributed while on break time in non-work areas, and Jaeger responded that he would need to discuss it with the Warden. Subsequently, Jaeger told Stuckart that the Warden said that pay status included break time. Stuckart received the directive restricting distribution of WAPCO materials while in pay status within a few days after he began to distribute WAPCO authorization cards at GBCI. Stuckart considers the directive prohibiting the distribution of WAPCO material while in pay status to make it nearly impossible to distribute such materials at GBCI because employees generally do not come in early, or remain after their shift. From the time of Sullivan's April 6 memorandum until the time that Stuckart

was informed that he could not distribute WAPCO materials while in pay status, GBCI did not prohibit WAPCO from distributing any particular type of literature. In September of 1998, following his conversation with Jaeger on distributing WAPCO material while in pay status, Stuckart was called into Lieutenant Melman's office. Melman told Stuckart that no one was accusing Stuckart of anything; that he had been ordered to talk to Stuckart, but that he was not at liberty to disclose who gave the order; and then asked if Stuckart had seen anyone intimidating, harassing, or coercing anyone. Stuckart, who understood the question to be a reference to the conduct of WAPCO supporters, responded "No." Stuckart considers the conversation with Melman to be an attempt to frighten him off. Approximately one week after his conversation with Melman, Jaeger called Stuckart into his office and told Stuckart that he had not been found guilty of any wrongdoing. Stuckart thought that this was a strange remark because, to his knowledge, he had not been charged with any wrongdoing. Jaeger reiterated his position on distributing WAPCO materials and displaying WAPCO items and stated that GBCI did not want any problems. Stuckart construed Jaeger's remarks as an attempt to impress upon him that management was watching. Jaeger told Stuckart that AFSCME had complained about the fact that Stuckart was displaying a WAPCO shirt on the dashboard of his personal vehicle. Jaeger told Stuckart that he could not prevent this display. Stuckart concluded that Jaeger did not sound happy about this. In the summer of 1998, WAPCO supporters, including Stuckart, Wurtz, and Jim Cygan, went to DCI to distribute WAPCO literature. The three were not employed at DCI. Initially, the three distributed the WAPCO newspaper at the main entrance to DCI. Shortly after their arrival, DCI supervisory employees came out and requested that the three leave the grounds. Following this request, the three left the DCI grounds. In September of 1998, the Coalition of Correctional Institutions a/k/a COCI published and distributed a newsletter that contained, inter alia, the following:

CORRECTIONS UPDATE 98

An official publication of the Coalition of Correctional Institutions

September, 1998

...

AFSCME and the CCJCAfter the CCJC reorganized and dumped those who wanted to use this group for their own gain, AFSCME Corrections United and CCJC have joined forces. This "new" group now represents over ¾ of all correctional officers in the country. All involved are there now to take care of business. We will be working together on issues of importance to Correctional Officers throughout the country. This "new" group will be a major player in Washington.

...

Watch Out-There have been reports of harassment and intimidation by supporters of wapco. Don't let them get away with this. These cards are not to be signed on the job, or on state time. Contact your Union stewards right away. These people will do and say anything to make you sign one of their cards. Don't believe a word that they tell you. These cards are for one purpose, that is to decertify this Union. They are also asking you to sign 2 cards. The report we get is they will use the 2nd card to make you become a member of wapco if they would win, or to use it at some other time. This card is not for the purpose to have a separate bargaining unit as some are telling you. Clearly it is to decertify AFSCME. If they get 30% of all employees in the SPS bargaining unit, there will be a vote on which Union will represent you. Any other Union can be on the ballot by getting a 10% showing of interest. No Union will also appear on the ballot. At most institutions the second shift is their stronghold. Most of these newer Officers, YCs, and PCT's don't know the hard work that went into getting everything they currently have. These people will tell you that you will lose "nothing". That is an outright lie. State Statutes guarantee that your pay and many benefits remain the same, but you will lose the contract itself, as well as the local agreements. Just look at the covers of these agreements. They state AFSCME, Council 24 and your local Union. If these are gone, it is only common sense these agreements will also be gone! You will have the same protections as the white shirts. No grievance procedure, (you will have to use the personal (sic) commission) no posting to positions, (you could be moved from your position or shift) no transfers from one institution to another (unless management approves this). Pay status vs. work status will also be gone. Currently you get time and one half after 40 hours in **PAY** status. (this includes vacation, holiday or sick leave time used) The FLSA guarantees you time and one half after 40 hours in **WORK** status. Also, **ALL** negotiating notes, memorandum of understandings and negotiated agreements will be gone. (dress code, sick leave policy, etc) While we would prefer to have no sick leave policy, without the one we currently have management could order you to bring in a doctors (sic) slip every time you call in sick. They also could make you pay for it, as the current contract language would be gone. And you wonder why, as wapco states, "management is silently cheering them on"? (sic) You bet they are! But these items are only the tip of the iceberg. All restraints and protections would be gone. Management could just about do as they pleased and impose any policies they choose. The rest break agreements would also be gone, remember they were negotiated by AFSCME. Nothing in the state statutes on this one. Since 1972 AFSCME/Council 24 has continued to add language to our contract to protect employees. From a contract of about 15 pages to a current contract with 275 pages, language protections have been

important to members in the Security and Safety Bargaining Unit, as well as all State employees. It took 27 years to get where we are today. Much of this language didn't come easy. How anyone could believe that "nothing would be lost" is unbelievable! Or, is this some of the casualties that Wurtz talked about?

In wapco's last newsletter they state;

- * wapco can guarantee that you won't lose any benefits-
- * They guarantee that your working conditions will be get better-
- * they guarantee that you will get a substantial raise-
- * **"We promise ALL the above"**

They want you to commit to them. Before you sign one of their cards tell them you want a commitment from them. Tell them to put the above in writing, and have them sign it. Tell them that if they don't come through with their promises, they will be responsible to make it good. If they want to talk the talk, make them walk the walk! It took 27 years to get all the protections you currently have. Many of which management have tried to remove over the past several contract negotiations sessions.

One last point of interest.....wapco has had discussions with some legislators on proposing legislation having a unit for **ONLY** Correctional Officers, not including YC's and PCTs or any other class in the unit. If you remember, this is the same thing wapco advocated from the very start, then found out that they couldn't win an election that way! Seems some things never change.

. . .

In September of 1998, a copy of this COCI newsletter was placed in the time boxes at GBCI. The time boxes are assigned to individual Correctional Officers for the purpose of receiving paper work, such as memorandums and time sheets. Page two of this newsletter, which is set forth above, was displayed under the glass of the north cell Sergeant's desk. Stuckart complained to Jaeger about the COCI newsletter, stating that other people can say the word "WAPCO" a hundred times, but if a WAPCO supporter utters that word, they get written up. Stuckart also complained to Jaeger that AFSCME people can say anything that they want about WAPCO, as often as they want, but that WAPCO people could not. Jaeger responded that he

would check into the matter and get back to Jaeger. When Jaeger got back to Stuckart, he stated that AFSCME was the recognized Union. In September of 1998, Stuckart had a telephone conversation with Verhagen in which Stuckart identified himself as a WAPCO contact person at GBCI and stated that Sullivan's memorandum was being enforced more vigorously at GBCI than at other institutions. When Verhagen asked for names of specific people and institutions, Stuckart declined to furnish this information. When Stuckart questioned why WAPCO materials could not be distributed on break time since the employee was not working, Verhagen responded that it was "their nickel," which Stuckart understood to mean that it was GBCI's money. Stuckart never wore a WAPCO pin on his uniform. In early October of 1998, Jaeger called Stuckart into his office and questioned Stuckart about an incident that occurred on the steps of GBCI. When Stuckart responded that he was not working on the date in question, the conversation ended.

11. Mike Drexler is employed at DACC as a Sergeant. Correctional Officers employed at DACC, with the exception of Transportation Officer Frederick Mueller, wear street clothes to work. DACC Superintendent Sutton does not permit non-uniformed Correctional Officers to wear any clothing with beer labels, shorts, or any hat that is not a baseball type cap issued by the Wisconsin Correctional Center. Sutton has had difficulty in enforcing the "no shorts" restriction. Sutton first became aware of WAPCO in March of 1998, when WAPCO literature and paraphernalia appeared at the institution. Sutton discussed this appearance with his supervisors, but did not take any action with respect to WAPCO literature and paraphernalia until Sullivan issued the memorandum of April 6, 1998. Following the issuance of this memorandum, DACC employees were told that WAPCO could be discussed on non-work time in a non-work area. Non-work areas were defined as being the front lobby and outside the building toward the parking lot. Following the issuance of the April 6, 1998 memo, DACC management personnel observed DACC employees wearing WAPCO pins, pens, or hats, and distributing WAPCO information within the institution. The management personnel told the employees to take off the WAPCO paraphernalia and to stop distributing the information within the institution. Sutton received complaints from WAPCO supporters regarding his interpretation of the April 6 memorandum and received complaints from AFSCME regarding WAPCO supporters wearing pins and distributing literature in violation of the policy. Sutton responded to all complaints by reiterating the policy and stating that the policy had to be followed. Following the issuance of the April 6 memo, Sutton, who considers DACC employee mailboxes to be for state business, told WAPCO supporters not to distribute WAPCO materials through the mailboxes. From May to July, 1998, Captain Torsella monitored DACC employee mailboxes and frequently removed materials that appeared to be of WAPCO origin. Sutton did not want WAPCO material on the units because of accessibility to inmates and potential agitation among staff. WAPCO produces and distributes tee shirts with the letters "WAPCO" printed on the front. Below these letters is printed the WAPCO logo. In June of 1998, DACC management employees observed Sgt. Spillski wearing a WAPCO tee shirt, but did not make

any comment to Spillski about his tee shirt. Subsequently, DACC management consulted with DOC personnel employees and understood that they could ignore the Spillski incident, but that WAPCO shirts were not to be worn while on work time or in work status because of potential conflict between staff. In early July of 1998, supervisory staff at DACC observed a number of employees wearing WAPCO pens. Although the employees removed the pens when requested to do so, one DACC supervisor filed an incident report relaying her belief that employees were removing the pens and then giving the pens to other employees to wear. Drexler altered a WAPCO tee shirt by placing tape over the WAPCO logo and writing on the tape, in black marking pen, "we are politically correct officers." In July of 1998, Drexler wore this altered tee shirt to work. Drexler had not previously worn this altered tee shirt to work. When Drexler arrived for work, he told a group of Correctional Officers that his shirt did not stand for WAPCO, but rather, stood for "we are politically correct officers." Less than one hour later, Captain Torsella told Drexler to report to Sutton's office. When Drexler reported to Sutton's office, Torsella and Drexler went into Sutton's office, and Sutton asked Drexler about the shirt. Drexler indicated that it was not a WAPCO shirt and that the letters stood for "we are politically correct officers." Sutton told Drexler that the tee shirt was inappropriate and that Drexler was disrupting the institution by wearing the tee shirt. Drexler asked how he was disrupting the institution and Sutton responded that Drexler was being a disruption. Drexler said that, if he was being reprimanded, he did not have a Union Steward present. Sutton then told Drexler that, if Drexler wanted a Steward, then Drexler could go into the next door conference room and use the phone to contact a Steward. Drexler was told that he could not leave the office while wearing the tee shirt. At some point in time, Drexler was advised that he could change into other personal clothing or institution clothing. Drexler responded that he did not have a change of clothing at DACC. Drexler understood "institution" clothing to be a reference to the clothing issued to inmates. Drexler went into the conference room; telephoned WSEU Steward Dave Walker at his home; and waited at least forty-five minutes for Walker to arrive at DACC. While Drexler was waiting in the conference room, Torsella brought Drexler an inmate's green shirt and told Drexler to change into the green shirt. Drexler went into the bathroom and changed into the green shirt. When Walker arrived at the conference room, he told Drexler to take off the shirt and Drexler responded that he could not take it off because it was the only shirt that he had. Walker and Drexler had a brief conversation and then Torsella and Sutton came into the conference room. At that time, Walker asked why Drexler was there and why Drexler was wearing an inmate's shirt. Walker was advised that Drexler was disrupting the institution by wearing the altered tee shirt. Walker asked how it was a disruption and Sutton responded that he would be the judge of whether or not clothing was disruptive. During the discussion, Sutton told Drexler that further disciplinary action would be taken if Drexler wore that shirt again. Following the discussion, Drexler was allowed to go home, in pay status, to change his clothing. When Drexler left Sutton's office, he walked through areas that contained inmates. Drexler has filed a grievance over the altered tee shirt incident. Drexler had previously worn tee shirts with writing on them to work, including one

that had UAW printed on it. No one at DACC had commented on the UAW shirt, or required Drexler to remove the UAW shirt. Drexler did not intend to engage in organizing activity on the part of WAPCO at the time that he wore the altered tee shirt to work. Drexler, who is a WAPCO supporter, wore the tee shirt for the purpose of making a statement that, as a non-uniformed officer, he should be able to wear what he wanted to work. Torsella obtained the green shirt from Correctional Officer 3 Steven Docta. Docta, who knew the shirt was for Drexler, informed Torsella that he could provide a white tee shirt. Torsella responded that he was instructed to come up and get a green shirt for Drexler. The green inmate shirt worn by Drexler had DACC stamped on the back. Inmates at DACC generally wear street clothes and are only allowed to wear "greens" in specific situations, such as medical transport. The "institution clothes" worn by inmates include a blue sweatshirt, as well as the green short sleeved button shirt worn by Drexler. DACC staff members have worn institution clothes when performing dirty jobs. Sutton has worn the institution blue sweatshirt and the institution green shirt. In Sutton's opinion, Drexler's wearing the green inmate shirt did not create an unsafe work environment. On the second occasion that Sgt. Spillski was observed wearing a WAPCO tee shirt, Sutton told Spillski that it was not acceptable for Spillski to wear the tee shirt in work status and that Spillski needed to remove the shirt. When Sutton asked Spillski if he had any alternative clothing and received a negative response, Sutton offered Spillski a choice of wearing either the institution blue sweatshirt or the green shirt. When Spillski said that he would wear neither, Sutton told Spillski to go home in non-pay status until he changed his clothes and complied with his directive. Approximately two hours later, Spillski called in sick. Spillski filed a grievance over this incident. Sutton did not permit employees to wear the WAPCO tee shirt because he considered the shirt to be written material in violation of the directives set forth in Sullivan's April 6th memo. Sgt. Frederick Mueller, who is employed at DACC as a Sergeant, is an AFSCME supporter and was an AFSCME Union Steward until he was voted out of office in May of 1998. Mueller, who believes 75% of the SPS staff at DACC are WAPCO supporters, has observed WAPCO newsletters in the DACC employee mailboxes and has observed DACC employees wearing WAPCO pins, hats, sweatshirts and tee shirts, and using WAPCO pens. Mueller observed a DACC employee distributing the WAPCO newsletter at the work site and told the employee that such distribution was not appropriate and that the individual should go to the lobby. Mueller observed WAPCO meeting dates inserted on work site calendars. Mueller received Sullivan's memo of April 6, 1998, in his capacity as AFSCME Union Steward and understands that management informed DACC employees that WAPCO information could be distributed in the lobby, but that there would be no WAPCO material or paraphernalia within the institution. In late 1998 or early 1999, Mueller observed that the toilet had been used in his private bathroom and not flushed; that there were footprints and coffee spills on his calendar; and that a newspaper photo of Mueller engaging in AFSCME activities had been mutilated. Mueller reported this disturbance of his office to Torsella and Sutton. Neither Mueller, nor DACC management, was able to identify who had disturbed Mueller's office. Mueller found a copy of the WAPCO newsletter, with the inscription "To

Fred from Vinnie, you're CSH buddy," in his office. Mueller correctly assumed that Vince Caporale had sent the newsletter. On one occasion, a fellow employe told Mueller that Mueller was not open minded about WAPCO and Mueller responded that WAPCO was trying to force things on people and had disseminated false information. Mueller has observed correctional staff at DACC wearing Green Bay tee shirts and a tee shirt with an UAW logo. DACC management has directed Mueller to remove his AFSCME coat because it was not acceptable at the work site. When Sutton contacted DOC personnel about the fact that Drexler was wearing an AFL-CIO tee shirt, he was instructed to ignore it because it did not relate to the AFSCME versus WAPCO competition. DACC has an AFSCME bulletin board, a management bulletin board, and an inmate treatment bulletin board, but does not have a general use bulletin board. Sutton has not received a request from WAPCO to post materials at DACC. DACC is housed on the grounds of the Winnebago Mental Health Institution. Neither Winnebago, nor DACC are fenced. The resource center and DACC share a parking lot. DACC inmates may be found in all areas of DACC, but generally are not found in the lobby. Sutton does not allow WAPCO to distribute WAPCO information in the cafeteria because of the presence of inmates.

12. Complainant Paul Wright is a Sergeant and has worked at Oak Hill Correctional Institution for more than nine years. One day, in the spring of 1998, Wright wore a uniform to work that had a WAPCO pin attached to the left pocket and was directed by Captain Spoerl to remove the pin. Wright advised Spoerl that, if he were required to remove the pin, then he would file a complaint against Spoerl. Lt. Timothy Leavitt, who is employed at Oakhill, understands that the DOC uniform pin authorizes a DOC pin, an AFSCME pin, and an American flag pin. Leavitt has required uniformed correctional officers to remove other types of pins or buttons such as a POW pin and an American/Irish flag pin. Leavitt has never observed a uniformed correctional officer wearing either a UAW pin or an American Bowling Congress Pin. In July of 1998, while at work, Wright had a WAPCO pen and a Green Bay Packer pen clipped to his uniform pocket. The initials "WAPCO" were visible on one pen clip, and a Green Bay Packers helmet was visible on the other pen clip. When Leavitt came onto Wright's unit, he directed Wright to remove the pen, stating that "they" were instructed by the Security Director, Dave Lemke, to not allow the letters WAPCO to be displayed. Wright had worn the Green Bay Packers pen in this manner since he went to uniform on December 22, 1996. Wright had not previously worn a WAPCO pen. Wright removed his WAPCO pen, but was not required to remove his Green Bay Packers pen. Wright then placed his WAPCO pen in his uniform pocket, which Leavitt allowed. Leavitt did not pursue any discipline with respect to the Wright WAPCO pen incident, but did make a notation in the shift log. Lt. James must approve all materials that are posted on the general use bulletin board at Oak Hill. In the spring of 1998, when Wright made his first request to post WAPCO materials on the general use bulletin board at Oak Hill, James told Wright that he needed to talk to the

Security Director. The materials were time sensitive in that they included a notice of a meeting to be held in Madison in April. By the time that the Security Director responded to Wright's request, the meeting had been held. Thereafter, Wright's request to post WAPCO materials on the general use bulletin board at Oak Hill have been approved in a manner that Wright considers to be timely. WAPCO supporters at Oak Hill have been permitted to distribute the WAPCO newsletter in the Oak Hill parking area and in the squad room. Correctional Officers at Oak Hill have not been permitted to wear WAPCO pins or pens. Correctional Officers at Oak Hill are expected to wear a white tee shirt under their uniform. Wright considers Secretary Sullivan's memorandum of April 6, 1998, to be unclear with respect to the use of mailboxes. When Wright asked his Warden if he could put information in the mailboxes at Oak Hill, the Warden said "no."

13. Sergeant Dan Oaks is a Correctional Officer who has been employed at Oak Hill for more than six years. On one occasion, in March of 1998, Oaks wore a WAPCO pin on his uniform while at work. On that occasion, Lt. Carol Caldwell told Oaks that he could not wear the pin because it was not part of the uniform. For approximately two months after this incident, Oaks wore a UAW pin on his uniform while at work and no one commented upon this pin. Oaks continues to wear an American Bowling Congress pin on his uniform while at work and no one has commented upon this pin. On May 7, 1998, Oaks was scheduled to work third shift, beginning at 11:00 p.m. At or about 10:45 a.m., Oaks was in the squad room in Cottage 1. At that time, Oaks, who was wearing a WAPCO hat, took his hat off and asked Sgt. Estrella Schnering if she wanted to purchase a WAPCO hat. Schnering replied no and, subsequently, saw Oaks place the WAPCO hat in a clear plastic bag that contained other WAPCO hats. While Oaks was in the squad room, he had a conversation with Caldwell. Approximately five minutes to eleven, Oaks and Schnering left the squad room and walked downstairs. Schnering stopped at the bottom of the stairs. Oaks walked to the area in front of the control room; showed CO Don Owens a WAPCO hat and asked Owens if Owens wanted one. Oaks and Caldwell had a second conversation. Schnering left Cottage 1 a step or two ahead of Oaks. When Schnering looked back, she observed that Oaks did not have his WAPCO hat on and, jokingly, offered to be his witness if he needed one. Oaks carried the plastic bag containing the WAPCO hats as he and Schnering walked to their posts. Caldwell filed the following written statement on an "Employee Disciplinary Investigation":

In the squad room during shift check in for 3rd shift on May 7, 1998, I noticed that Sgt. Dan Oaks was wearing a ball cap that was not state issue. It had WAPCO's insignia on it. As not to correct Sgt. Oaks in front of his peers, I elected to wait until he came down stairs to go to his unit to confront him. After checking everyone in upstairs, I went down stairs to wait in front of control for the release of 2nd shift. At 10:55 p.m. I was in front of control talking with Officer Derleth, when Sgt. Oaks came up to me and I asked him about his hat.

He said "It's a WAPCO hat, why do you want to buy one?" I said no, and informed him that he could not wear the hat because it was not state issue and he was out of uniform. He said "well just write me up". Officer Derleth said to Sgt. Oaks "take the hat off you know you can't wear that here". I told Sgt. Oaks again to take the hat off that he could not wear it out back. Again he said "Just write me up". This conversation could also be heard by Officers Goiver and Diehl who were in control. At this time Sgt. Oaks walked away from me, out of C-1 and to his unit.

Caldwell confirms that the statements in her report are true. Oaks disagrees with Caldwell's statement that he was wearing a WAPCO hat by the control room or that he said, "well just write me up." On May 17, 1998, Caldwell interviewed Officers Derleth, Goiver, and Diehl. These Officers, who did not recall any specific interaction between Caldwell and Oaks on May 7, 1998, neither confirmed, nor denied, Caldwell's statement concerning her interaction with Oaks on May 7, 1998. In mid-May, 1998, Capt. Spoerl questioned Oaks concerning Caldwell's statement. On June 11, 1998, Dennis Feggstad issued the following to Correctional Officer Daniel Oaks:

Dear Mr. Oaks:

You are hereby notified that this letter constitutes a written reprimand for violation of Department Work Rules A1, "Insubordination, disobedience, or failure to carry out assignments or instructions," and Work Rule A2, "Failure to follow policy or procedures, including but not limited to the DOC Fraternalization Policy and Arrest and Conviction Policy."

In an investigatory hearing held on Tuesday, May 12, 1998, which included you, union representative Tony Kremm, and Captain James Spoerl: and in a pre-disciplinary hearing held on Thursday, May 21, 1998, which included you and Captain Zurbuchen (you declined union representation), you were found to have violated Work Rule A1 by your behavior toward Lt. Caldwell (you would not remove your hat with the WAPCO pin after being asked twice to remove it, you commented twice "just write me up," and you walked away from the Lieutenant and out of Cottage 1), and Work Rule A2 by being out of uniform (Administrative Directive 14.3 - Professional Appearance of Uniformed Correctional Officers).

Your disrespect and insubordination toward your supervisor, Lieutenant Caldwell, is especially troubling. For the proper and smooth operation of this institution, it is essential that Officers and all other staff follow the instructions and directives of their supervisor.

Failure to follow Administrative Work Rules in the future may result in further disciplinary action up to and including discharge.

This is your first violation of DOC disciplinary Guidelines – Category B.

Caldwell denies that the WAPCO hat had a pin, as stated in Paragraph Two of the written reprimand and states that the hat displayed WAPCO insignia. Oaks grieved the written reprimand and AFSCME is supporting the grievance. On July 24, 1998, at the request of Feggstad, Sgt. Estrella Schnering prepared and submitted a written statement. In that statement, Schnering recalls that, as Caldwell was standing by the Control Station, Caldwell told Oaks that he could not wear “that hat” out back and that Oaks replied “I know, you’ll write me up if I do.” Schnering also stated that “I observed that Sgt. Oaks did not wear the WAPCO hat out back.” Schnering’s written statement neither confirms, nor denies, that Oaks was wearing a WAPCO hat at the time of his conversation with Caldwell by the Control Station.

14. Brian Droke has been employed as a Sergeant at Taycheedah Correctional Institution (TCI) since September 13, 1998. Prior to that time, he had been employed as a Correctional Officer 2 at Oshkosh. Droke has been a WAPCO supporter since July of 1998. On August 10, 1998, Droke’s supervisor, Lt. Sarinski removed a WAPCO pen from Droke’s uniform pocket and asked Droke what Droke would do if he (Sarinski) were to drop the pen on the ground and step on it. Droke responded by asking for his pen back. Sarinski gave back the pen and told Droke not to wear it in a displaying manner on his uniform again. Sarinski told Droke that he could not display the pen because it was not part of his uniform. When Droke asked how could a pen be part of a uniform, Sarinski responded that people found it to be offensive. Droke responded that he found Packer pens to be offensive. Droke, who had not known that he could not display the WAPCO pen, stopped displaying the pen on his uniform. OCI Warden Judy Smith had no knowledge of this incident until she read the allegations in the complaint filed by WAPCO. After receipt of Sullivan’s memorandum of April 6, 1998, TCI Warden Kris Krenke distributed the memorandum to TCI administrative staff and discussed the memorandum at an administrative staff meeting. Krenke considers TCI’s regular business operations to be in compliance with the memorandum and, therefore, did not implement any specific directives in response to the memorandum. TCI has union bulletin boards and institution bulletin boards. TCI has a bulletin board policy that requires all staff to provide the Warden’s office with a copy of materials to be posted. The Warden or the

Warden's designee reviews the material and if the material is not obscene or profane and appears appropriate, then the material is posted. No one has requested permission to post any WAPCO material at TCI and Krenke has never observed any posted WAPCO material. Following his transfer to Taycheedah, Droke supported WAPCO by discussing WAPCO with fellow employees during his break time. Droke did not know whether or not these fellow employees were on break. If the fellow employees indicated that they were not interested in WAPCO, he would let them be. If the fellow employees indicated that they had an interest in receiving information about WAPCO, he would tell them that he had newspapers and authorization cards. On or about September 25, 1998, Mary Jo Nelson drafted the following:

**TAYCHEEDAH CORRECTIONAL INSTITUTION
MEMORANDUM**

09/25/98

Reported by C.O.R. Rudey, President Local #26, to M.J. Nelson, Personnel Director on 09/25/98.

Sgt. Droke discussed WAPCO; promoting WAPCO, offering literature and asking to sign cards outside of work, all this done on work time, sign cards off work time.

- C.O. Monti said Sgt. Droke promoted WAPCO
- Sgt. Glendinning said Sgt. Droke just talked about WAPCO, but no promotions
- Sgt. Lambrecht said Sgt. Droke wanted him to read about WAPCO and offered materials about WAPCO

Krenke, who has not received any other complaints against Droke or anyone else concerning WAPCO activities at TCI, did not investigate the complaint to determine if it were true. Following advice received from BPER, Krenke directed TCI Security Director James Zanon to prepare a memorandum and attach copies of a letter from Martin Beil, dated April 14, 1998; a letter from Sullivan, dated April 16, 1998; and a portion of the policy manual relating to posting. The memorandum prepared by Zanon states as follows:

September 28, 1998

TO: Brian Droke
Sergeant

FROM: James Zanon
Security Director

RE: Work Time Activities

Local #126 has reported you have promoted WAPCO while on work time at Taycheedah Correctional Institution. This memorandum serves as official notice that it is not appropriate to do so.

Enclosed for your review are several documents that will enhance your understanding of the requirements of information distribution.

- Secretary Sullivan's memo dated 041698 – Work time vs. Non work time
- Mr. Beil's memo dated 041498
- TCI P&P #1540

Please review these documents and address any questions to your supervisor.

In closing, I want to reaffirm that conducting any sort of promotion of any organization on work time is inappropriate.

CC: Personnel
Local #126
M. Frahm, BPHR

Attached to Zanon's memorandum was an April 14, 1998 letter from Martin Beil, Executive Director of AFSCME Council 24, to Secretary Sullivan that states as follows:

Dear Secretary Sullivan:

On April 6, 1998 you issued a memo to all of your appointing authorities advising them in reference to communications and labor relations activities. In reviewing this policy, we have noticed a change in policy related to work time, bulletin boards and non-employee solicitations and distributions.

- A. It is now the policy of the Department of Corrections that breaks (15 minutes per ½ shift) and meal periods are the employee's time. That means that the employee does whatever he/she wants to on their own time and you will relieve them.
- B. Any interested parties may use the "general" interest" bulletin boards to post whatever they want as long as it does not violate the security of the institution.
- C. Any non-employee has the same right to access and solicit in your institutions as provided for in your 4/6/98 memo.
- D.

If I have incorrectly interpreted your policy please specifically advise as to where. If I hear nothing I would assume my interpretations are correct.

Sincerely,

Beil /s/

Martin Beil
Executive Director

MB:lm

CC: COCI Presidents
Staff Representative
Scott Hassett

Attached to Zanon's memorandum was a letter dated April 16, 1998, from Secretary Sullivan to Executive Director Beil that states as follows:

Dear Mr. Beil:

This is in response to your letter dated April 14, 1998. You contend that the Department of Corrections has changed its policies relating to work time, bulletin boards and non-employee solicitations and distributions. I want to assure you that we are committed to the implementation of all of our agreements with the Union. We are also committed to guarantee our employees their statutory and constitutional rights.

- **Working vs. Non-working Time** – Working time is that time when an employee’s duties require that she or he be engaged in work tasks. Employee time is generally non-work time and the employee may utilize that time for her and his convenience, subject to the type of post breaks and the associated restrictions. The employee activities during rest breaks may also be regulated in accordance with the Department work rules and the effective and efficient fulfillment of the institution’s responsibilities. Relieving an officer from her/his post during their break will be in accordance with the rest breaks agreements.
- **General Interest Bulletin Boards** – These bulletin boards exist for the employees’ general benefit. Information that may be of general interest such as for sale notices, and community activities may be posted on these bulletin boards. Posted materials may not pose a threat to security, may not be offensive or coercive or otherwise negatively effect (sic) the fulfillment of the institution’s responsibilities.
- **Non-Employees Solicitation and Distribution at the Institution** – As indicated in the 4/6/98 memo this is a very regulated activity (type, time, place, and manner) and is subject to prior authorization by the appointing authority.

I hope I have answered your concerns.

Attached to Zanon’s memorandum was a copy of the following:

DEPARTMENT OF CORRECTIONS
DOC-1025 (Rev. 01/90)
POLICY AND PROCEDURE MANUAL

WISCONSIN

TAYCHEEDAH CORRECTIONAL INSTITUTION WARDENS APPROVAL:

EFFECTIVE DATE:
12-11-94

PAGE 1 OF 2

PROCEDURE NUMBER:
1540

MANUAL SECTION;
ADMINISTRATION/PERSONNEL

SUBJECT:
POSTING DOCUMENTS – STAFF

REFERENCE: WSEU, WEAC, WPEC BARGAINING AGREEMENTS

POLICY: TO ENSURE APPROPRIATE UTILIZATION OF EMPLOYEE BULLETIN BOARDS

DEFINITIONS: UNION BULLETIN BOARDS

Location of WSEU Union bulletin board's are designated by Local Agreement

Items to be posted on these board's (sic) are regulated by applicable Bargaining Agreements

EMPLOYER BULLETIN BOARDS

Officially designated bulletin boards for posting and staff notification will be:

1. In Gower Hall – Across from Security Office
2. In Power Plant

Required postings will be on these two boards ONLY.

NOTE: Personal items to be posted on Employer bulletin board's (sic) should be submitted to the Warden's Secretary for approval. The information will be screened for appropriateness and date stamped so that it may be removed in a timely manner.

PROCEDURE:

A. WARDENS (sic) RESPONSIBILITIES

1. Designate documents and length of time for posting
2. Review personal items for appropriateness of posting
3. Forward to secretary.

B. PERSONNEL MANAGER RESPONSIBILITIES

Ensure appropriate personnel documents are posted

C. EMPLOYEE RESPONSIBILITIES

Submit personal items for posting to Wardens (sic) Secretary

D. WARDENS (sic) SECRETARY RESPONSIBILITIES

1. Receive and date stamp personal employee items
2. Forward to Warden
3. Copy and distribute documents for posting

On or about September 28, 1998, Captain Coon provided Droke with a copy of Zanon's memorandum with attachments and told Droke that the union had notified TCI that Droke had been supporting WAPCO at work. Coon also told Droke that Droke could not support WAPCO while on the grounds. The night after he received Zanon's memorandum, Droke sought clarification of the memo and was told by Captain Melman and Captain Kronager that he could not discuss WAPCO while on the grounds because he could not leave his building and go to a break area. Droke was also told that "the grounds" meant inside of the fenced perimeter. Droke works a straight eight-hour shift. Droke is in pay status throughout his eight-hour shift; is not relieved for his break; and takes his break at his post. While on paid break, Droke may smoke a cigarette or attend to other personal concerns. Following his receipt of Zanon's memorandum, Droke did not engage in WAPCO activities inside of the TCI fence. The TCI parking lot is outside of the fenced perimeter. Droke has not been disciplined for his WAPCO activity at Oshkosh or TCI.

15. Joseph Callahan is a Sergeant at Oshkosh Correctional Institution (OCI) and has been a member of WAPCO since at least March of 1998. Callahan has been allowed to distribute WAPCO literature and to discuss WAPCO in the lobby and break areas of the OCI administration building during times in which he is not in pay status. The Warden at OCI told Callahan that WAPCO materials could not be posted on the bulletin board at OCI without approval of the Warden's office. Since 1986, OCI has had a policy of requiring Warden approval of materials posted on the general use bulletin board. The general use bulletin board also is used to post management notices. AFSCME is not required to submit materials to the Warden for approval prior to posting the materials on AFSCME bulletin boards. The Warden's office has approved the posting of all WAPCO materials submitted by Callahan. WAPCO materials that have been posted by the Warden's secretary have been subsequently removed by a person or persons unknown. In response to this unauthorized removal of WAPCO materials, Callahan has supplied the Warden's secretary with multiple copies of all posted materials. When Callahan complained to the Warden's secretary that it takes several

days to repost WAPCO materials, the secretary responded that she does the best that she can to replace the materials. In the opinion of OCI Warden Judy Smith, the DOC uniform policy does not allow officers to wear a WAPCO pin, pen, button, or tee shirt. Smith is aware that one individual wore a WAPCO tee shirt in the OCI parking lot after work and that another individual wore a WAPCO tee shirt at off-site training without response from OCI management staff. Smith considers the uniform policy to permit United States flag pins, certain pins of AFSCME affiliation, and an institution pin if approved by the appointing authority. Smith does not consider Green Bay Packer pins or buttons to be allowed under the uniform policy and does not know of any instance in which non-approved pins, other than WAPCO pins, were worn on uniforms after the issuance of Sullivan's memorandum of April 6, 1998. At various times in 1998, Smith participated in conference calls with other Wardens and DOC administrative staff. On occasion, WAPCO was discussed for the purpose of keeping abreast of issues confronting the institutions, such as the wearing of WAPCO pens, and for receiving direction as to how to respond to WAPCO issues. Smith understood that DOC management wanted the institutions to respond to WAPCO/AFSCME representation issues in a consistent and neutral manner. To that end, Smith discussed Secretary Sullivan's April 6, 1998 memorandum with her managers and directed that any questions concerning the application of that memorandum be forwarded to the Warden, Deputy Warden, or Security Director. In prior years, Smith has had conference discussions with other Wardens and DOC administrative staff about AFSCME affecting the climate of the institutions. Smith has neither received a request to distribute WAPCO material in the OCI parking lot and lobby, nor has she issued any restriction on such distribution. While making rounds at OCI, Smith has sensed tension between AFSCME and WAPCO supporters, but does not believe that such tension has affected any employee's ability to perform job responsibilities. In April of 1998, Callahan wore a white WAPCO button of approximately one inch in diameter on his uniform while at work. At that time, Captain Risto told Callahan that he could not wear the button inside the institution. Following this conversation with Risto, Callahan wore the white WAPCO button to and from work for a few weeks until Lieutenant Sarinski told Callahan that he could not wear the button on his uniform at any time. In August of 1998, Callahan clipped a WAPCO pen to his uniform in such a manner that the initials "WAPCO" were displayed. When Lt. Trapanier saw the WAPCO pen, she told Callahan to take the pen out of his pocket. When Callahan asked why, Trapanier responded that the policy was that you could not wear WAPCO pens or pins on the uniform. On one occasion, a Correctional Officer wore a red tee shirt to work and was instructed to remove the tee shirt because it was not permitted under the uniform policy. OCI has not disciplined any WAPCO supporter for engaging in WAPCO activities in support of WAPCO. Prior to August of 1998, two petitions were circulated at OCI. One petition requested that Correctional Officers, Psychiatric Care Technicians, and Youth Counselors be placed in a separate collective bargaining unit. The other petition claimed that Gary Lonzo was not properly representing the interests of Correctional Officers and requested OCI AFSCME delegates to vote for another candidate or to withhold their votes at the July

convention. At the July 1998 convention, Lonzo's position as President of Council 24, AFSCME, was reaffirmed for two more years. Prior to August of 1998, the petitions, signed by members of the SPS bargaining unit, were presented to the OCI local AFSCME union, but were not accepted. Callahan then asked the OCI COCI representatives to present the petitions to Lonzo at the August meeting of COCI. These representatives refused this request, but invited Callahan to deliver the petitions at the next COCI meeting. COCI is a voluntary coalition of local AFSCME units that represent Correctional Officers, Psychiatric Care Technicians and Youth Counselors. COCI is supported financially by the member AFSCME locals, which pay \$10/month. COCI meetings are held once every two months for the purpose of discussing corrections issues. COCI initially organized with the intention of decertifying AFSCME and representing correctional officers. From 1985, when Lonzo became the Chair, COCI, as a body, has never disagreed with positions taken by AFSCME. Lonzo chaired the August 1998 meeting of COCI. On August 19, 1998, Callahan attended the COCI meeting, which was held at a labor hall in the Oshkosh area. Shortly after Callahan entered the labor hall, Andy Bath asked Callahan who he was. After Callahan identified himself, Bath and Callahan had a conversation. During this conversation, Bath told Callahan that, as a WAPCO fuck, Callahan was not welcome there and Callahan responded that he was an AFSCME member; that he had been invited to attend the meeting by his AFSCME local; and that he intended to attend the meeting. Bath replied that Callahan would not be an AFSCME member much longer, that we are taking care of that, and that Callahan would be paying dues for the rest of his career for nothing. Bath shoved Callahan and reiterated, in a vulgar manner, that Callahan was not coming into the room. At that point, a few people, including Patty Longdin, restrained Bath and commented that his conduct was not appropriate. Bath then went into the meeting room and told Gary Lonzo that he was making a motion to "throw his ass out." Lonzo responded that the meeting had not yet started and that Bath could not make any motions. Lonzo asked the Oshkosh COCI representatives if Callahan could be there and they responded "yes." Callahan entered the meeting room and sat silent through the one and one-half hour meeting. When the meeting ended, Callahan presented the two petitions to Lonzo by throwing them down on the table that was in front of Lonzo. Lonzo asked Callahan what Lonzo should do with the petitions and Callahan responded that he did not expect that Lonzo would do anything with the petitions. Bath told Lonzo to give Bath the petitions so that Bath could stick the petitions up Callahan's skinny ass. When Callahan responded that he expected such a comment from a small man, Bath swore and chased after Callahan. Several individuals, including Longdin, restrained Bath and Callahan made a remark about AFSCME thugs. Longdin, a Correctional Officer 2 at KMCI and an AFSCME Union Steward, followed Callahan up the stairs and had a conversation with Callahan during which she was apologetic. At times during the evening, Bath's verbal statements to Callahan were accompanied by physical contact. Callahan did not complain of Bath's conduct to the police or to DOC. The petitions presented to Lonzo were not circulated by WAPCO and were not presented to Lonzo

on behalf of WAPCO. Callahan did not attend the COCI meeting as a representative of WAPCO. Prior to the COCI meeting, Callahan had written articles, under his signature, in the WAPCO Independent that were critical of AFSCME in general, and of Gary Lonzo and Andy Bath in particular. Bath, who confirms that he was very angry at Callahan, believes that Callahan presented the petitions for the purpose of agitating people and starting trouble. In October of 1998, Callahan, Mark Towne, and Jeff Teletzke distributed WAPCO literature and authorization cards outside the entrance to Fox Lake Correctional Institution. As Bath exited the institution he engaged Towne in a two to three minute conversation about WAPCO and AFSCME and, in an angry and loud voice, questioned why Towne was there and told Towne that he was a fucking loser. Callahan was never disciplined for any of his WAPCO activities.

16. Kraig Byron is an associate in the law firm of Elbert, Pfitzinger & Byron, which has offices in Juneau, Waupun, and Fox Lake, Wisconsin. Bruce Elbert and Brian Pfitzinger are partners in the firm. In late winter or early spring of 1998, Byron began representing WAPCO. Subsequently, Andy Bath, Bob McClin, Todd Wetzell, and Ed Gizma met with Elbert in his firm's Juneau office. Bath is the President of the Fox Lake local AFSCME union and McClin is the President of the Waupun local AFSCME union. Prior to this meeting with Elbert, Correctional Officers had come to Bath, in his capacity as Union President of Fox Lake, to question Bath about Elbert's firm's name appearing on WAPCO organizational material. During this meeting, Bath advised Elbert that WAPCO was attempting to decertify AFSCME and provided Elbert with a copy of a letter written by Byron. The letter was written on the firm's letterhead and, in Elbert's view, was highly critical of AFSCME. Elbert was taken aback by the letter because he believed that the letter would alienate many union members who belonged to AFSCME. Elbert did not feel threatened or coerced by Bath, or any of the other Correctional Officers who were present during the conversation. Elbert told Bath that he did not want his firm to be caught in the middle; that it was not good for business; and that he wanted Byron to cease representing WAPCO. Elbert's firm has represented Bath on legal matters and Elbert's firm acted as Fox Lake City Attorney during the period in which Bath served four terms on the Fox Lake City Council. Bath and Elbert, who have known each other for more than fifteen years, do not have a close personal relationship. Elbert's firm receives a significant amount of business from Correctional Officers. Following Elbert's meeting with Bath, Byron met with Pfitzinger to discuss Byron's representation of WAPCO. Following this meeting, Byron had a telephone conversation with Elbert in which Elbert told Byron that Byron should cease representing WAPCO because such representation was not in the best interests of the law firm. Shortly after this conversation with Elbert, in early summer of 1998, Byron notified WAPCO President Jim Wurtz that Byron would no longer represent WAPCO. Byron has not represented WAPCO since he had this conversation with Elbert.

17. Richard Malchow is employed at Jackson Correctional Institution as a Utility Sergeant. Malchow is the Secretary of WAPCO and has been involved with WAPCO since the

middle of 1997. In February or March of 1998, JCI Personnel Director Dougherty learned that material critical of AFSCME had been distributed in the JCI mailboxes, as well as placed in the security break room and at some correctional officer workstations. These materials were not identified as WAPCO materials. Dougherty did not know who was responsible for this distribution and did not attempt to learn who was responsible for this distribution. JCI security officers confiscated some of these materials. In late March or early April of 1998, Dougherty had a conversation with Malchow in which Malchow identified himself as a member of the WAPCO leadership and Dougherty learned that WAPCO was an organization that was attempting to secure the representational rights of the SPS bargaining unit. Prior to April of 1998, JCI did not have any written policies regarding the distribution of materials in break rooms, but did have a practice of placing management materials on the break room tables and of removing any other materials on a daily basis. With the approval of the Warden, the break room contained one or two three-ring binders that contained listings of local realtors. JCI has three rooms that are primarily break rooms, *i.e.*, one in the administration building, one in the security building, and one in the education building. JCI has three bulletin boards, one that is for the exclusive use of management, one that is for the exclusive use of the AFSCME local union, and one general use bulletin board. The management bulletin board and the union bulletin board are locked. The general use bulletin board, which is not locked, may be used by employees to distribute information, including for-sale notices and party invitations. JCI policy requires that all materials be submitted to and approved by the Warden's office prior to posting on the general use bulletin board. Any materials that are not approved by the Warden's office are removed. AFSCME is not required to obtain approval from the Warden's office prior to posting materials on the AFSCME bulletin board. The backs of the mailboxes at JCI are open to the mailroom and the fronts of the mailboxes, which are locked, open onto a corridor. Each employee has a key to his/her mailbox, as do selected security officers. Mailboxes at JCI are used to distribute management materials, such as time sheets and schedules, as well as AFSCME materials. Donald Gudmanson has been the Warden of JCI since April of 1996. Prior to April 6, 1998, Gudmanson participated in several conference calls with DOC Secretary Sullivan, other Wardens, and other DOC administrative staff in which the Wardens described WAPCO activities at their institutions and asked for direction. At that time, WAPCO organizing literature had been found within the perimeter of JCI and Gudmanson raised a question about this. After Gudmanson received the April 6th memorandum, he and Dougherty had a discussion in which Gudmanson clarified his interpretation of the memorandum. Following this discussion, Dougherty drafted a memorandum addressed to the security supervisors. Dougherty provided Malchow with a copy of Secretary Sullivan's memorandum and Dougherty's memorandum so that Malchow would be aware of DOC's guidelines. At or about this time, Dougherty told Malchow that the Warden wanted to know what was going on with WAPCO and AFSCME and Dougherty questioned Malchow about legal parameters and ramifications. Malchow responded that WAPCO had retained an attorney

and was having discussions with DOC regarding appropriate conduct. Dougherty told Malchow that there was concern that there would be conflict and confrontation at JCI; that it was his intention to remain neutral with respect to the rights of AFSCME and WAPCO supporters; and that he could see some positives in either direction. Malchow and Dougherty also discussed WAPCO's right to use JCI mailboxes. The memorandum drafted by Dougherty and provided to Malchow identified three non-work areas, i.e., the security break room; the lobby; and the parking lot and clarified that WAPCO literature could be distributed in non-work areas on a face-to-face basis. Following receipt of the April 6th memorandum, JCI designated a specific area on the general purpose bulletin board in the security break room for WAPCO related items and WAPCO items submitted to the Warden's office for approval were approved for posting. The April 6th memorandum did not have any effect on JCI mailbox practices. JCI administrative staff has given Malchow approval to set up a booth in the JCI lobby for the purpose of distributing WAPCO literature and selling WAPCO paraphernalia and Malchow has done so on one occasion. On May 14, 1998, approximately fifteen minutes prior to the time that he was to start his shift, Malchow entered the multipurpose room at JCI for the purpose of receiving his work assignment for that day. At that time, Malchow wore his uniform, a uniform jacket, and a baseball cap with a WAPCO logo. Malchow believed that he could wear his WAPCO cap as long as he was not in pay status. On or about May 14, 1998, Malchow prepared and submitted the following written statement to Lt. Kevin Tegels, his supervisor:

At 6:15 am on the 14th day of May, 1998, you issued me a direct order to remove a navy blue hat I was wearing on the grounds that it was not state issued. When I asked if you would be willing to put that direct order in writing, you stated, "well, not right now." I appreciated how busy you were at that moment, but I am respectfully requesting that I receive your written order in a timely fashion. I am also requesting that you submit an overtime slip on my behalf for the time frame of 6:15 am til 6:30 am.
Thank you for your cooperation.

. . .

cc: Warden Gudmanson
Security Director Berz
Administrative Captain Thran

Dougherty responded to the overtime request by verbally informing Malchow that Malchow was not on duty at the time and that Malchow would not be paid the requested overtime. Dougherty also told Malchow that the issue was not whether or not he was on state time, but rather, what he was doing with the uniform. On May 18, 1998, Malchow reported to work in

uniform and wearing the WAPCO cap. Tegels observed that Malchow was wearing the WAPCO cap while in uniform and reported this observation to his supervisor Captain Proft. Tegels also wrote out the following "Employee Disciplinary Investigation" report:

At 0615 hours on 5/14/98 I issued you a direct order to remove a navy blue hat you were wearing on the grounds that (sic) it was not state issue. This hat had WAPCO printed on the front and had other correctional "garnish" such as handcuffs printed on it as well. While you did remove said hat at that time when you reported for duty 5/18/98 you were again wearing it. Cpt. Proft spoke with you about this hat not being in compliance with Administrative Directive 14.3. It is alleged that your response was that your attorney states you may wear this hat until 0629.

Under the portion of the report entitled "Possible DOC Work Rule(s) Violated," Tegels stated:

A.1. Insubordination, disobedience, or failure to carry out assignments or instructions

A.23. Inappropriate dress, grooming or personal hygiene including, but not limited to, the improper (sic) use of prescribed uniform, badge, or other article of identification.

Proft observed Malchow wearing the WAPCO hat on May 18, 1998, and asked Malchow if he could wear the hat. Malchow responded that it was a gray issue and that he would be getting clarification from his attorney. On May 31, 1998, Capt. Proft held an investigatory interview with Malchow and WSEU Representative Dan Milnthorpe. At that time, Proft read aloud written statements of Lt. Tegels. Malchow took issue with some of the statements attributed to Lt. Tegels, but did not deny that he had been wearing a WAPCO hat on May 14 and May 18, 1998. On May 31, 1998, Proft completed his portion of the "Employee Disciplinary Investigation" report and recommended that Malchow be disciplined. Some time later, Proft forwarded this report to the Human Resources Director. Dougherty reviewed all of the materials in Malchow's file and discussed the incident with Deb Grant at the DOC's Bureau of Human Services in Madison. Following this discussion with Grant, Dougherty and the Warden decided to issue a written reprimand, which discipline is standard for a Category B violation. On September 10, 1998, Donald Gudmanson, the Warden of the Jackson Correctional Institution, issued the following to DOC Correctional Officer Richard Malchow:

Dear Sergeant Malchow

This letter will serve as a formal written reprimand for violation of DOC work rule A23 which states, "Inappropriate dress, grooming or personal hygiene including, but not limited to, the improper use of a prescribed uniform, badge, or other article of clothing or identification." This is the result of an incident on May 14, 1998 when you reported for work while wearing a baseball cap that is not a proper part of your uniform. You were told at that time that the hat was not to be worn with the uniform. You again reported for work on May 18, 1998 wearing the cap.

This is a category B violation and a written reprimand is the appropriate consequence for the first incident.

If you believe that this action was not taken for just cause, you may appeal through the grievance procedure under Article IV of the collective bargaining agreement.

JCI followed the normal disciplinary process when it disciplined Malchow. Malchow did not ask AFSCME to grieve this reprimand and the reprimand was not grieved. Malchow is the only JCI employe known by Gudmanson to be a WAPCO activist. Gudmanson does not consider Malchow to be entitled to wear a WAPCO cap at any time that Malchow is in uniform. Gudmanson has not observed any correctional officer wearing a Green Bay Packer cap, coat or sweater, or any other Green Bay Packer paraphernalia, to work. Gudmanson considers the memorandum of April 6, 1998, to apply to AFSCME and WAPCO supporters. In July, 1998, Dougherty provided Malchow with a copy of Verhagen's E-mail of July 21, 1998, with a written note advising Malchow that he wanted to give him a "heads-up" to avoid any problems with pens. Prior to this time, JCI security supervisors had seen the WAPCO pens, but did not consider the pens to present a problem. Dougherty is not aware that any JCI employe displayed a WAPCO pen after the issuance of Verhagen's E-mail on pens.

18. David Frederick is employed at Jackson Correctional Institution as a Sergeant. Frederick has been a member of WAPCO since the fall of 1997, at which time he agreed to become a WAPCO contact person. Frederick's WAPCO activities at JCI have been limited to responding to questions about WAPCO. In the spring of 1998, Frederick decided to run for the partisan office of County Sheriff. In June of 1998, Frederick circulated nomination papers for the office of County Sheriff and filed these nomination papers on July 14, 1998. Frederick was on the ballot for the September 8, 1998 primary election and for the November 3, 1998 general election, but was not elected as County Sheriff. Prior to filing his nomination papers on July 14, 1998, Frederick went to the JCI Warden to discover whether or not there were any

work rules regarding running for office. The Warden referred Frederick to JCI Human Resources Director Steven Dougherty. Dougherty told Frederick that he was not aware of any policies that prohibited Frederick from running for office, but that Dougherty would research the matter. Subsequently, on or about July 13, 1998, Dougherty told Frederick that he could not work while he ran for partisan office, but that he could use any accumulated annual leave. On July 14, 1998, prior to filing his nomination papers, Frederick telephoned Dougherty to ask what he should do about work. Dougherty responded that Frederick should finish out the week and then start his two-week vacation. Frederick's two-week vacation had been approved in November of 1997 to start on July 20, 1998. On July 17, 1998, Dougherty sent the following letter to Frederick:

Sergeant Frederick:

I recently became aware of your filing for the office of Sheriff of Jackson County. Chapter 7 of the Employee handbook covers political activities by employees. Chapter 7 states in part; "An employee who becomes a candidate for an elective partisan office must request a formal leave of absence no later than the date on which nomination papers are filed." Section 230.40 of the Wisconsin Statutes also deals with political activity. It states in part; "If a person in the classified service declares an intention to run for partisan political office the person shall be given a leave of absence for the duration of the election campaign and if elected shall separate from the classified service on assuming the duties and responsibilities of such office."

In accordance with Chapter 7 and Section 230.40, you are notified by this letter that you must at once file a request for a leave of absence. The leave of absence will be without pay.

On that same date, Dougherty telephoned Frederick and advised him of the letter's contents. DOC placed Frederick on leave of absence without pay, effective July 16, 1998, thereby denying Frederick his previously approved two-week vacation. Subsequently, the State electronically deposited monies into Frederick's bank account. On that same date, Dougherty met Frederick, who had gone to JCI to pick up his pay stub, and confiscated Frederick's pay stub. Dougherty told Frederick that the electronic deposit was a mistake. The next day, the State electronically withdrew the monies that had been deposited in Frederick's bank account. The mistake in the electronic deposit was due to the fact that the payroll computer had not received a time sheet for Frederick, nor any notice that he was on leave without pay, and, therefore, had defaulted to a payment of eighty hours. Claiming that he was on approved vacation, Frederick refused to submit the leave-without-pay forms requested by Dougherty. In late July and early August, 1998, Dougherty and Frederick had a series of conversations

regarding the State's conduct in placing Frederick on leave without pay and withdrawing the monies that had been deposited in his account. During one of these conversations, Dougherty and Frederick reviewed Sec. 230.40, Stats., and Dougherty apologized for the fact that he had not understood that Frederick would be required to take a leave without pay. Following the denial of his unemployment compensation claim in early August of 1998, Frederick and Dougherty each had discussions with an employe from unemployment compensation on the issue of whether or not Frederick could effectively withdraw from the election and return to his position at JCI. Conversations with DOC legal counsel in Madison led Dougherty to conclude that it was not possible for Frederick to remove his name from the ballot, but that Dougherty could effectively withdraw from the election and return to work by publicly announcing (1) that he was withdrawing from the election and (2) that he would not serve if elected. Dougherty never communicated this conclusion to Frederick. When Frederick learned that the State had cancelled his vacation, he contacted WSEU local union President Dan Milnthorpe and requested that Milnthorpe file a grievance. Milnthorpe, who understood that Frederick wanted to file a grievance over the State's refusal to allow Frederick to use paid leave, responded that he would check into the matter and get back to Frederick. Milnthorpe contacted Karl Hacker, the Assistant Director for AFSCME Council 24. Hacker, who understood that he was being asked about the legality of the State requiring an employe to take a leave of absence without pay while running for Sheriff, told Milnthorpe that the issue was governed by a State statute; that the employe would have to take a leave of absence; and that the employe could not be in pay status. Milnthorpe had one discussion with Dougherty regarding the State's refusal to provide Frederick with paid leave and Dougherty showed Milnthorpe the State statute referenced by Hacker. When Milnthorpe asked about filing a grievance, Hacker responded that Milnthorpe could file a grievance, but that Hacker did not think Milnthorpe would win because the law supersedes. Following the conversation with Hacker, Milnthorpe told Frederick that his request to file a grievance had been discussed with Hacker and that the union would not file a grievance on his behalf. Milnthorpe also gave Hacker's telephone number to Frederick and suggested that Frederick telephone Hacker. After Frederick reviewed the State statute with Milnthorpe, he prepared a letter addressed to the Director and Assistant Director of AFSCME Council 24, requesting, inter alia, that AFSCME lobby to change the State statute so that State employes could use paid leave while campaigning for partisan offices. Milnthorpe gave this letter to Hacker. Milnthorpe never discussed Frederick's involvement with WAPCO with Hacker. Frederick never discussed with Milnthorpe the possibility of dropping out of the campaign and returning to work prior to the end of the campaign. Frederick did not request Milnthorpe to contact the employer for the purpose of returning Frederick to work prior to the end of his campaign for Sheriff. When Frederick learned that the State had withdrawn the electronic deposit, he contacted Milnthorpe to request that a grievance be filed on the withdrawal. Frederick also discussed filing a grievance on the State's withdrawal of the electronic deposit with WSEU local union Vice-President Bruce Hills. Previously, Milnthorpe and Hills, who were personal friends of

Frederick, had teased Frederick about WAPCO. Milnthorpe supported Frederick's bid for Sheriff by displaying one of Frederick's campaign signs in his yard and handing out campaign leaflets.

19. Lori Cygan is a Correctional Officer 2 at GBCI and has been a member of WAPCO since the fall of 1997. Lori Cygan has used a WAPCO pen while at work, but has not worn a WAPCO pin while at work. In late May of 1998, AFSCME Council 24, received the following from then WSEU Steward Gregory Stevens:

Dear Local 32 Executive Board;

I, the below named member, in good standing, of AFSCME Local 32, Green Bay Correctional Institution, do formally file charges under Article X of the AFSCME International Constitution against Lori Cygan, a member of AFSCME Local 32.

Charges:

Violation of Article X, Section 2 E. Any activity which assists or is intended to assist a competing organization within the jurisdiction of the Union.

The above named member of AFSCME Local 32 is also an active member of the Wisconsin Association of Professional Correctional Officers (WAPCO). This organization is actively pursuing the decertification of AFSCME Council 24 as the legal certified representative of the Security and Public Safety Bargaining Unit. As a member of WAPCO, this individual is actively recruiting new members for WAPCO as well as encouraging defection from AFSCME. As a tool in this endeavor, the above named individual has engaged in a campaign of misinformation concerning AFSCME in general and Council 24 and Local 32 in particular.

Penalties:

Because of the serious nature of these charges, and to send a clear message to others that this type of action will not be tolerated, I am requesting that Article X, Section 15 (H), Expulsion from membership be the penalty if found guilty.

Thank you

In July of 1998, Stevens was elected Secretary-Treasurer of Local Union 32. Stevens' charges were forwarded to AFSCME Council 24, which forwarded the charges to the AFSCME International. Lori Cygan received notice of these charges in August, 1998. On July 18, 1998, in response to a posted invitation to staff and spouses to attend a hospitality event, Lori Cygan and her husband, Jim Cygan, went to the WSEU convention hotel in Green Bay, Wisconsin. Another Correctional Officer and his date accompanied the Cygans. Andy Bath approached Lori Cygan and indicated that it was not a good idea for her to be there; that people were there who did not appreciate what was going on; and asked Cygan to leave. At least seventy people were in or about the hospitality suite, including people who were in State bargaining units other than the Security and Public Safety bargaining unit. During the time in which Lori Cygan and her companions were in the hospitality suite, various individuals in and about the hospitality suite directed rude and vulgar comments at Cygan and her companions. Cygan, who was wearing a WAPCO pin, overheard comments that were disparaging of WAPCO. After the Cygan's arrived at the hospitality suite, Police Officers directed individuals who were outside of the suite to either return to the suite, leave or be taken away. On July 19, 1998, Jim Cygan filed an Incident Report with GBCI in which he stated that, on July 18, 1998 at 12:30 a.m., ". . . WHILE ATTENDING THE AFSCME COUNCIL 24 HOSPITALITY ROOM AT THE REGENCY SUITES, SGT. STEVENS CONFRONTED ME IN THE HOTEL ROOM AND IN A HOSTILE MANNER THREATENED ME BY STATING 'YOU BETTER NEVER COME TO FUCKING FIRST SHIFT BUDDY.' I DEEM SGT. STEVENS (sic) ACTIONS TO BE A DIRECT THREAT TO MY SAFETY BEING EMPLOYED BY GREEN BAY CORRECTIONAL INSTITUTION. I EXPECT THIS HARASSMENT FROM SGT. STEVENS OR ANYOTHER (sic) EMPLOYEE TO STOP IMMEDIATELY. END OF REPORT." The incident report indicates that GBCI supervisory staff questioned Stevens about the incident and that Stevens denied making the statement quoted in the report. In the incident report, the GBCI Security Director stated: "Matter of record at this time. J. Cygan alleges G. Stevens made comment & G. Stevens denies. This was at a non work related function durring (sic) off duty hours. Supervisors to monitor for effects on duty." Sgt. Gregory Stevens, who began consuming alcoholic beverages at a late afternoon picnic and continued to consume alcoholic beverages until he left the hospitality suite at approximately 1:00 a.m., continues to deny that he made the statement reported by Jim Cygan. Lonzo and other individuals who were candidates for election to AFSCME offices hosted the hospitality suite. The hospitality suite snacks and beverages were paid for by the individuals running for office and by voluntary contributions. Some of the contributors were AFSCME locals. While any AFSCME member was welcome, the hospitality suite was primarily for convention delegates. On September 2, 1998, Lori Cygan was called in before Lt. Melman for an investigatory hearing involving Sgt. Denise Camp's claim that Lori Cygan had intimidated and harassed Camp. At this hearing, Lori Cygan denied that she had intimidated and harassed Camp and identified witnesses for Melman. Lori Cygan acknowledges that she had a WAPCO pen and that she asked Camp, in a non-sarcastic manner,

if the pen offended her. On September 4, 1998, Lieutenants Melman and Schneider conducted a pre-disciplinary hearing in which they advised Lori Cygan that Camp had reported additional allegations of harassment and intimidation. Lori Cygan denied the allegations and told Melman and Schneider that she had witnesses. Cygan was advised that her witnesses would not be interviewed because Melman and Schneider had a deadline. On September 30, 1998, in Green Bay, Wisconsin, the AFSCME International Union held a trial on the charges filed by Stevens. At this trial, Stevens and Lori Cygan were permitted to present evidence and make statements. On October 14, 1998, Daniel Bertrand, Warden of the Green Bay Correctional Institution, issued the following to DOC Correctional Officer Lori Cygan:

WRITTEN REPRIMAND
HAND DELIVERED

Dear Ms. Cygan:

This is an official letter of reprimand for violation of the Department of Corrections Work Rule #13 which lists as prohibited conduct:

“A.13. Intimidating, interfering with, harassing (including sexual or racial harassment), demeaning, or using abusive language in dealing with others.”

This action is being taken because it is clear that you engaged in activity with a co-worker while in work status that had the effect of creating a hostile work environment for the individual. For the most part, your comments and statements to the co-worker were subtle and open to interpretation in each individual circumstance; but, taken together show that pressure was being applied for the purpose of unauthorized union activity. A pre-disciplinary meeting was held on 09/04/98, with John Schneider, Supervising Officer 1, Patrick Melman, Supervising Officer 1 and you in attendance. You declined Union representation.

As a member of the staff, you had previously received a memorandum issued by DOC Secretary Michael Sullivan. This memorandum established the guidelines for staff interaction as it pertained to Labor Relations Activities at DOC work sites; the main point being that organizing activity will not take place on work time. The memorandum also states that Management “...will ensure... that DOC remains otherwise neutral in dealing with the involved groups and that management and supervisory staff shall not support or encourage employees to take sides in this issue.” Your efforts clearly placed unwanted pressure on a

coworker. Each individual employee has a right to decide these issues for themselves. Management has the obligation to remain neutral; but also, to protect the overall work environment so that all employees feel at ease to make up their own minds free from coercion.

It is your obligation to follow the letter and spirit of the Secretary's directive. The policy set forth in this memorandum establishes a neutral and fair position for DOC Management. When you deviate from the policy you impinge on the rights of others.

This incident represents your first violation of Category "B" of the DOC Disciplinary Guidelines in the past 12 months. Any future work rule violations will lead to further discipline up to and including discharge. If you feel this action is not based on just cause, you may appeal it through the grievance procedure provided in Article IV of the Collective Bargaining Agreement.

On the last day of the time period for filing a grievance on the above reprimand, Lonzo, who understood that Cygan had not yet filed a grievance, instructed Local 32 Vice-President Gary Mercer to file a grievance on her behalf. On that same day, Lori Cygan told Lonzo that she wanted to file a grievance and, following a discussion, provided Lonzo with supplemental materials, which Lonzo gave to Mercer. AFSCME representatives are processing this grievance of Lori Cygan. On or about October 14, 1998, AFSCME Council 24, received a copy of the following:

To: Gary Lonzo, President Local 32

At 2 PM. On 9/21/98 as I was leaving work I looked over my car as I do everyday after other officer's cars were damaged at work. I found what looked like tobacco chew spit on the hood of the car and in checking I found a three inch scratch on the rear drivers side door. This scratch was very deep and looks like a key could have been used. This damage to cars at work seem to be happening to only the staff that are talking against W.A.P.C.O. or like myself who is the treasurer of local 32.

Greg Stevens
Local 32 Treasurer GBCI

Stevens received complaints of vandalized automobiles from three female Correctional Officers, none of whom are AFSCME officers. Stevens does not know who vandalized either his car, or the cars of the three female Correctional Officers. Two Correctional Officers, one of whom was

Denise Camp, complained to Stevens about being pressured to sign WAPCO authorization cards. Stevens does not agree with WAPCO's stance on issues. GBCI employs approximately 189 Correctional Officers. On or about October 17, 1998, Lt. Taerud questioned Lori Cygan about another incident report filed by Camp. Taerud told Lori Cygan that he was conducting an investigatory hearing on the orders of Security Director Jaeger. Lori Cygan has not been advised of any results of this investigation. On October 23, 1998, AFL-CIO Judicial Panel Member John Seferian issued a written document that includes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Article X, Section 2E, of the International Constitution states that it is a chargeable offense to engage in "any activity which assists or is intended to assist a competing organization within the jurisdiction of the union." It is apparent that Lori Cygan is assisting WAPCO in Wisconsin in an attempt to decertify AFSCME as the correctional officers bargaining unit. While Lori Cygan has First Amendment rights as guaranteed by the International Constitution, those rights however do not guarantee her membership status in AFSCME while she is exercising her First Amendments (sic) rights. Aiding a competing organization to decertify AFSCME is a serious offense.

DECISION

Lori Cygan is found guilty of violating Article X, Section 2E of the International Constitution. The penalty assessed is expulsion from AFSCME.

Lori Cygan received notice of this expulsion in October of 1998.

20. Ted Serrano, a Sergeant at Racine Youthful Offender Correctional Facility (RYOCF), is a member of WAPCO. Prior to August of 1998, when Serrano was employed at RCI, he answered questions about WAPCO and distributed WAPCO information. RCI allowed Serrano to distribute WAPCO information through employee mailboxes. When Serrano transferred to RYOCF, in August of 1998, he introduced himself to Warden Buchler as a WAPCO leader and requested permission to use the mailboxes to distribute WAPCO materials. Buchler responded that he would check with his superiors and get back to Serrano. On August 28, 1998, Daniel Buchler, sent the following E-mail to Verhagen:

I received a verbal request today from the RYOCF "WAPCO representative" to have access to staff mailboxes to distribute WAPCO information, flyers, etc.,

during break times. Our mailboxes are in the squad room and are locked boxes. He said that nothing will be derogatory against the institution and would be willing to let me proof-read anything before it goes into the boxes.

I responded that I would have to contact Central Office for guidance before he is given an answer by me.

Please advise...thanks.

Verhagen advised Buchler to have the matter reviewed by Director of BPHR Ezalarab Hamdy, who responded to Buchler with the following E-mail:

They may not use the mailboxes in your institution, other means of distributing the information are available to them. Please give me a call should you need further information. Thanks.

Buchler provided Serrano with a copy of the above E-mails. The mailboxes at RYOFC are locked. Each employe has a key to his/her mailbox, as does the mail room Sergeant and certain security supervisors. The purpose of the mailboxes is to distribute institution-related material. Any letter sent to an employe c/o of RYOFC is placed in the employe's mailbox after it is screened by the Warden's secretary. After transferring to RYOFC, Serrano distributed WAPCO literature and paraphernalia in the parking lot of RYOFC prior to the start of his shift. In early September 3, 1998, Buchler questioned Serrano about the appearance of the WAPCO Independent at work sites and Serrano advised Buchler that he distributed the newsletter when he was outside of the institution. On or about September 20, 1998, Captain Quarles complained to Serrano about the amount of WAPCO material that he was finding at the work sites and told Serrano that he should not be handing out the material. Serrano responded that he was not handing it out on work time. Serrano works a straight eight-hour shift at RYOFC. RYOFC permits AFSCME to distribute materials through the mailbox and to place materials on the counter in the lobby. The squad room at RYOFC contains a locked management bulletin board, a general use bulletin board, and an AFSCME union bulletin board. The management bulletin board is reserved for management postings. Anyone may place material, including WAPCO material, on the general use bulletin board without obtaining prior approval of management. The Warden, who routinely checks the bulletin board, would remove any obscene materials. Serrano has not requested permission to post WAPCO materials on a RYOFC bulletin board. Serrano has not asked for permission to distribute WAPCO materials in any manner other than through the use of the mailbox. Serrano's conversations with Buchler have been congenial. Buchler first learned of WAPCO in the fall of 1997. Buchler was appointed Warden of RYOFC in September of 1997 and RYOFC received its first inmates in May of 1998. RYOFC houses youthful offenders who have been through adult court and who are from 15 to 21 years of age. Prior to

the issuance of Secretary Sullivan's memorandum of April 6, 1998, Buchler participated in conference calls with other Wardens and DOC administrators in which information was elicited concerning the climate in the institutions with respect to the competition between WAPCO and AFSCME and direction was provided with respect to handling issues resulting from the WAPCO and AFSCME competition. The direction provided was consistent with the April 6th memorandum. During these conference calls, Buchler stated that his institution was not experiencing any difficulties with respect to the AFSCME/WAPCO competition. Other than Serrano, who identified himself to Buchler as a WAPCO supporter, Buchler does not know the names of any other WAPCO supporters at RYOFC. Buchler considers the non-work areas at RYOFC to be the squad room, the lobby, the parking lot and the area outside of the lobby entrance. No one has asked Buchler for permission to distribute WAPCO material in the squad room, but Buchler would permit such distribution if both employees were in non-work situations or on break. Buchler has not restricted the distribution of WAPCO materials in the RYOFC parking lot. Buchler does not permit WAPCO pens to be displayed in uniform pockets. Following his receipt of Sullivan's April 6th memorandum, Buchler sent a copy of the memorandum to his supervisors with a cover letter instructing them to follow the memorandum. Buchler understands that DOC has not taken a stance on who should represent correctional officers. Buchler further understands that DOC does not want inmates to be able to identify which officers support WAPCO and which officers support AFSCME because of a concern that inmates will use this information to divide, or manipulate, the staff. Buchler believes that, for RYOFC staff to perform their duties effectively, the staff must work together and be a positive role model for the inmates.

21. Jeffrey Teletzke is employed as a Sergeant at Fox Lake Correctional Institution. Teletzke has been a WAPCO member since late 1997. No later than February 23, 1998, the WAPCO website identified Teletzke as a WAPCO contact person at Fox Lake. In December of 1997, Teletzke distributed wage comparison materials at Fox Lake. Although the materials were prepared by WAPCO, the materials did not display a WAPCO affiliation. Since early January of 1998, Teletzke has distributed materials at Fox Lake that display a WAPCO affiliation. In early January of 1998, Teletzke attended an AFSCME meeting at the Fox Lake Town Hall that was chaired by Andy Bath. Following the meeting, Bath and Teletzke had a conversation in which Bath asked Teletzke why he was distributing WAPCO information. Teletzke responded that it was in the officers' best interest to have sufficient information to make an informed decision. Bath responded that he would do everything in his power to stop Teletzke from distributing WAPCO information at Fox Lake. Within a week of this conversation with Bath, the right tire fell off of Teletzke's Bronco. On or about March, 1998, Teletzke placed a stack of WAPCO Independents in the squad room at Fox Lake. At that time, Bath stated "Why don't you take those papers and shove them up your ass." Teletzke responded that he was allowed to bring the Independents into the squad room and would continue to do so. Immediately after Teletzke left the room, he looked through a window and observed Bath walk over to the area where he had

placed the Independents. Teletzke then heard a trash can open and shut. Bath and the other Correctional Officers who had been in the squad room then left the room. Teletzke then entered the squad room and found all of the Independents in the trash can. Teletzke was required to submit materials to Captain Neuman for approval prior to distributing them at Fox Lake. Upon gaining such approval, Teletzke was permitted to distribute the materials in areas that had been approved by the Warden. Teletzke had permission to bring the Independent into the squad room. In August of 1998, the left front tire fell off of Teletzke's Bronco. Ken Sindali, the Warden of Fox Lake, had a discussion with Bath regarding Teletzke's tire problems and advised Bath that the Warden would not tolerate any threats or unlawful activity. Bath, who denies that he has ever done anything to Teletzke's vehicles, told the Warden that neither he, nor anyone that he knew, had anything to do with Teletzke's tire problems.

22. Vincent Caporale is a Correctional Officer employed by DOC and is assigned to work at the Wisconsin Resource Center, a facility that is operated by the State Department of Health and Family Services. Mr. Macht, a Department of Health and Family Services employe, supervises the Wisconsin Resource Center, and develops the policies and procedures under which the Wisconsin Resource Center is operated. Caporale is a member and acting Treasurer of WAPCO. Caporale has distributed authorization cards and literature on behalf of WAPCO, as well as responded to questions about WAPCO. On May 19, 1998, Caporale went to Dodge Correctional Institution with Jim Wurtz, John Surprise and Jim Cygan to distribute the WAPCO newsletter and discuss WAPCO. Approximately fifteen minutes after they had arrived at the front of the administration building, which is outside of the fenced perimeter, two supervisory employes spoke with Jim Wurtz and then went into the administration building. Approximately ten minutes later, the supervisory employes returned and told Caporale and his colleagues to leave. Caporale and his colleagues left the DCI premises, went to an access road, and continued to distribute WAPCO literature. On May 19, 1998, Kathleen A. Nagle, DCI Security Director, sent the following E-mail to DCI Warden Steve Casperson:

Subject: May 19, 1998 Incident- WAPCO

During the Security supervisors meeting today at approximately 1:00 p.m. we received a call that several people were in the parking lot of DCI placing leaflets on car windshields. The information that was relayed from the officers was that the people had been asked to leave, but would not, and that the information was WAPCO literature. Captain Sutton was dispatched to see what was going on, along with Lt. Rasmussen. Captain Sutton remained in contact with me throughout his contacts with the WAPCO people, and followed the instructions he was given. He later reports that the interaction between him and the WAPCO people was friendly, as most were former DCI employees that he knew. Captain Sutton also reported that one interaction between a WAPCO rep

and an employee reporting for 2nd shift was not pleasant, as the WAPCO rep tried to give the employee the paper. None of the persons were current DCI employees. The following is his report on the incident;

From Captain Steve Sutton-

On 5-19-98 it was brought to my attention that representatives of WAPCO were present on state property in front of DCI. They were handling (sic) out a WAPCO newspaper. I reported to the front of the institution and talked with James Wurtz (a WAPCO Representative). I asked what the WAPCO reps. were doing. Jim stated that they were handling (sic) out papers for WAPCO. Jim produced a memo from Secretary Sullivan with a highlighted paragraph stating that what he was doing was legal per Secretary Sullivan's memo. I told Jim I would check it out and get back to him in a minute. I also told Mr. Wurtz that we don't normally allow solicitors or citizens on institution property without prior approval, except for Institution business. I then went to the Personnel office. I asked Rene Marquardt for her opinion on whether this should be allowed. I also called S.D. Nagle and asked her opinion. I then went out to Mr. Wurtz and told him that he would have to leave the premises. I told him he could contact K. Nagle by phone later. Mr. Wurtz stated, I will have our Lawyers call. Mr. Wurtz and WAPCO reps left the premisis. (sic)

The Warden of DCI allows employes and visitors with business to conduct at DCI, such as visiting inmates, to park in the DCI parking lot. The Warden does not allow other individuals to park in the parking lot or to engage in any other activity in the parking lot, without the prior approval of the Warden. DCI is the State's largest maximum-security prison and houses a variety of functions, including pharmacy, medical transportation, a 24-hour infirmary and medical records. Casperson became aware of WAPCO sometime prior to November 30, 1997, the date on which he became the Warden of DCI. Prior to April 6, 1998, Casperson participated in two telephone conference calls initiated by DOC Secretary Sullivan. Casperson understood the purpose of these telephone calls was to ensure that all of the Wardens responded to WAPCO organizing efforts consistently and in a neutral manner. At the end of these conference calls, the Wardens were asked to report on WAPCO activity at their institutions and the climate of their institutions. Casperson never reported on any WAPCO activity. When Casperson received Secretary Sullivan's memorandum of April 6, 1998, he distributed it to his management staff and discussed it with his executive management team. At a security supervisor's meeting, Casperson discussed the memorandum and stressed the need to remain neutral with respect to the competition between AFSCME and WAPCO. The AFSCME union and DCI management each have bulletin boards at DCI. DCI also has general use bulletin boards. Some employes at DCI have personal bulletin boards. DCI practices in

effect prior to and after April 6, 1998, would permit WAPCO to post materials on the general use bulletin board. All materials posted on a general use bulletin board, including WAPCO materials, would be subject to review by DCI administrative and supervisory staff to ensure that it did not violate DCI policies against sexual harassment or derogatory and inflammatory statements. Casperson has not received any complaints from WAPCO supporters regarding the posting of information. Casperson received a complaint from local AFSCME union officials that WAPCO materials posted in the muster room were inflammatory. When the Security Director and the Warden went to the muster room they did not find such materials. The local AFSCME union complained about WAPCO materials that an employe had posted on his personal bulletin board. DCI administrative/supervisory staff reviewed the material, determined that it was appropriate and allowed the material to remain on the bulletin board. Casperson considers the DCI parking lot to be a work area and has not designated any area at DCI as a non-work area under the April 6, 1998 memorandum. On Saturday, September 26, 1998, Wurtz and Caporale went to Ethan Allen and distributed literature to Youth Counselors who were entering and leaving the gatehouse. Approximately 30 to 40 minutes later, a supervisor came out of the Institution and told Caporale and Wurtz to leave, which they did. On October 2, 1998, Ethan Allen School Security Director Joel Adams completed an Incident Report relaying the following statement of DOC Supervisor Sheila Burdick:

On 9/26/98, at approximately 1330, second shift staff coming into the institution reported to me that WAPCO union representatives were in the parking lot distributing literature. I contacted Security Director Joel Adams for information regarding their being allowed to be on state property. Mr. Adams then contacted Deputy Superintendent Byran Bartow. At about 2:35 PM, Mr. Adams contacted me and told me to ask them to leave the Institution's property. I was also told to let them know they could be at the end of Boys School Road and Highway 83.

I then went to speak to the two gentlemen and explained that I was asking them to leave the institution's property. One of the gentlemen made the statement that they would go to the "subdivision" down the street. I informed them the houses were not a subdivision and were, in fact, state owned houses, and again told them the end of Boys School Road and Highway 83. They packed up their belongings and left within 3-4 minutes without incident.

On this incident report, Bartow stated that "WAPCO reps have been given permission to handout (sic) literature from parking lot on Saturday, Oct 3, 1998 from 1:30 to 3:00 PM." Jean Schneider is the Superintendent of the Ethan Allen School. Ethan Allen is situated on approximately 250 acres, of which approximately 70 acres are enclosed by a fence. Ethan Allen

is accessed from Highway 83 via a driveway that is approximately one mile in length. The Ethan Allen parking lot is outside the fenced perimeter. The fenced compound is accessed from the parking lot via a gatehouse. Bartow made the decision to ask the WAPCO representatives to leave the premises of Ethan Allen on September 26, 1998. Subsequent to September 26, 1998, Caporale and Bartow had a telephone conversation in which Bartow granted Caporale's request for permission to distribute WAPCO literature outside of the gatehouse on Saturday, October 3, 1998. During the conversation, Bartow asked Caporale what he intended to distribute at the work site and Caporale responded that the information would be consistent with information published on the WAPCO website. Caporale gave Bartow the names of the individuals who would be distributing WAPCO materials. Bartow reviewed the information on the WAPCO website. Subsequent to September 26, 1998, individuals from the AFSCME local union advised Bartow that they wanted to be present when WAPCO distributed information in the parking lot and they were told that permission had been given to WAPCO to distribute information on October 3, 1998. Bartow told the individuals from the AFSCME local union that he expected them to comport themselves in a civil and professional manner and that he expected them to refrain from acrimonious conduct and conduct that would compromise the security of Ethan Allen. On the following Saturday, Caporale, Wurtz, and Joe and Sharon Callahan went to Ethan Allen and distributed WAPCO literature outside of the guardhouse. When they arrived at the Institution, they saw AFSCME Field Representative Jana Weaver and other individuals near the gatehouse. As the WAPCO supporters distributed material, Weaver and these other individuals encouraged people that accepted WAPCO materials to throw the materials into a garbage bag. The WAPCO and AFSCME supporters did not engage in any verbal or physical confrontations. On October 3, 1998, Supervising Youth Counselor Scott Paschal completed the following Incident Report:

The following took place during the informational handout session conducted (sic) at EAS on 10-3-98 from 1330 until 1530. The informational literature hand out took place both in the parking lot at EAS and directly in front of the gatehouse. All concerned arrived about 1330. The two WAPCO representatives posted themselves at the main entrance to the parking lot adjacent to the gatehouse and near the handicap parking stall next to Mr. Schneider's parking space. The six AFSCME staff involved posted themselves both in front of the gatehouse and further into the entrance to the parking. As the afternoon progressed the WAPCO stayed where they were, but all AFSCME staff moved to the front of the gatehouse. I checked on them a few time (sic) between 1330 and 1500 and there appeared to be no problems. It appeared that the two groups never talked to each other. Two of the staff representing AFSCME (Pam and Angela Crimmings) reported for duty by 1500, and the remainder (Jana Nue, Julie Peters, Kevin Welch, and Mike Franke) remained until 1530 whereupon they all dispersed. The only complaint received

was from Todd Fraser who came to work at 1430. He refused literature from both factions and took offense at a remark made by Kevin Welch (“We expected that from you!”). Otherwise all went smoothly.

Julie Peters is President of the AFSCME local union at Ethan Allen. Other individuals named in Paschal’s report are Ethan Allen employees who are active in AFSCME. Bartow did not receive any reports that there were problems with any AFSCME or WAPCO supporter on October 3, 1998. At Ethan Allen, supervisors wear uniforms but other staff does not. Bartow is not aware that, in 1998, Ethan Allen had any incidents relating to the wearing of WAPCO pins, buttons, pens, hats, or shirts or the posting of WAPCO literature. Ethan Allen has AFSCME union bulletin boards that are maintained under a local agreement, as well as institutional bulletin boards.

23. Elizabeth Lemery is the Associate Warden for Business at GBCI. On June 26, 1998, Lemery removed a WAPCO meeting notice from the general use bulletin board at GBCI. Subsequently, Lemery contacted Ezalarab to discuss this removal and was advised that she should repost this notice, which she did. GBCI has management bulletin boards, AFSCME union bulletin boards, and general use bulletin boards. GBCI does not have a prior approval process for posting material on the general use bulletin boards. GBCI supervisors monitor materials posted on the general use bulletin board and the supervisors remove materials deemed to be inappropriate, such as obscene cartoons. Daniel Bertrand, who has been the Warden of GBCI since 1996, first heard about WAPCO in January of 1997. Prior to April 6, 1998, Bertrand participated in two telephone conference calls regarding the WAPCO organizational campaign. Bertrand understands that the purpose of these conference calls was to inform the Wardens of what conduct was or was not permissible and to share information concerning activity at the various institutions. During these conference calls, Secretary Sullivan directed the Wardens to remain neutral and to ensure that work rules were followed. After Casperson received Sullivan’s memorandum of April 6, 1998, he posted the memorandum and distributed the memorandum to all supervisory staff. Casperson also had a meeting with GBCI supervisors in which he discussed the April 6, 1998 memorandum. During this meeting, Casperson advised the supervisors to remain neutral and to report any work rule violations through the normal disciplinary process. Casperson has not removed any WAPCO material from GBCI bulletin boards and has not directed that any WAPCO material be removed from GBCI bulletin boards. Casperson understands that the AFSCME collective bargaining agreement permits AFSCME to discuss labor relations matters at the work site and while in pay status. After the April 6, 1998 memorandum was issued, GBCI Correctional Officers were not permitted to wear a WAPCO pin on their uniform or to display the clip of the WAPCO pen on their uniform. GBCI Correctional Officers may have the WAPCO pen in their uniform pocket so long as the letters “WAPCO” are

not displayed. Casperson does not consider Sgt. Stuckart to have been the subject of any ongoing disciplinary investigation, but does consider Sgt. Stuckart to have been a witness in a disciplinary investigation involving Lori Cygan.

24. On October 30, 1998, Wisconsin Association of Professional Correctional Officers filed a petition for election with the Wisconsin Employment Relations Commission. The Commission on October 19, 1999, dismissed this petition for election because WAPCO had not filed the statutorily requisite showing of interest.

25. On August 19, 1998, Andy Bath was acting as an agent of AFSCME Council 24, Wisconsin State Employees Union, AFL-CIO, when he told Joseph Callahan that Callahan would not be an AFSCME member much longer; that we are taking care of that; and that Callahan would be paying dues for the rest of his career for nothing. In January of 1998, Andy Bath was acting as an agent of AFSCME Council 24, Wisconsin State Employees Union, AFL-CIO when he told Jeffrey Teletzke that he would do everything in his power to stop Teletzke from distributing WAPCO information at Fox Lake. This conduct of Andy Bath has a reasonable tendency to coerce or intimidate an employee in the enjoyment of the employee's legal rights, including those guaranteed by Sec. 111.82, Stats.

26. Agents and assigns of DOC have interpreted the uniform policy to prohibit the display of a Wisconsin Association of Professional Correctional Officers pin and enforced this prohibition, while permitting uniformed employees to display a pin reflecting association with AFSCME Council 24, Wisconsin State Employees Union, AFL-CIO. This conduct, which has an unlawful disparate impact upon WAPCO, has a reasonable tendency to interfere with, restrain or coerce employees in the exercise of their rights guaranteed by Sec. 111.82, Stats.

27. Agents and assigns of DOC have established and enforced a policy that prohibits uniformed employees from wearing a pen in such a manner as to display the words "WAPCO," while permitting employees to wear pens that display logos or insignia of other organizations or corporations. This conduct, which has an unlawful disparate impact upon WAPCO, has a reasonable tendency to interfere with, restrain or coerce employees in the exercise of their rights guaranteed by Sec. 111.82, Stats.

28. Agents and assigns of DOC have prohibited non-uniformed employees at DACC from wearing a tee shirt displaying a Wisconsin Association of Professional Correctional Officers insignia while at work, while permitting non-uniformed employees at DACC to wear tee shirts displaying logos or insignia of other organizations or corporations. This conduct, which has an unlawful disparate impact upon WAPCO, has a reasonable tendency to interfere with, restrain or coerce employees in the exercise of their rights guaranteed by Sec. 111.82, Stats.

29. Agents and assigns of DOC have prohibited employes that are on paid break from soliciting on behalf of WAPCO, while permitting employes that are on paid break to take care of personal concerns such as smoking a cigarette. This conduct, which has an unlawful disparate impact upon WAPCO, has a reasonable tendency to interfere with, restrain or coerce employes in the exercise of their rights guaranteed by Sec. 111.82, Stats.

30. Agents and assigns of DOC have enforced against Correctional Officer Sheila Garrigan and Sgt. Brian Droke a rule that prohibits employes from soliciting on behalf of WAPCO while on duty, while maintaining a rule that permits employes on duty to solicit other staff members to join WSEU. This conduct, which has an unlawful disparate impact upon WAPCO, has a reasonable tendency to interfere with, restrain or coerce employes in the exercise of their rights guaranteed by Sec. 111.82, Stats.

31. An agent of DOC removed a WAPCO meeting notice from the General Interest bulletin board at the Green Bay Correctional Institution on June 26, 1998. This conduct has a reasonable tendency to interfere with, restrain, or coerce employes in the exercise of their rights guaranteed by Sec. 111.82, Stats.

32. Agents and assigns of DOC have not allowed WAPCO access to correctional institution and correctional center employe mailboxes for the purpose of distributing information, while permitting WSEU to have access to these mailboxes for the purpose of distributing information that is not necessary to perform its function as exclusive bargaining representative. This conduct, which has an unlawful disparate impact on WAPCO, has a reasonable tendency to interfere with, restrain, or coerce employes in the exercise of their rights guaranteed by Sec. 111.82, Stats.

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

CONCLUSIONS OF LAW

1. Wisconsin Association of Professional Correctional Officers is a labor organization within the meaning of Sec. 111.81(12), Stats.

2. AFSCME Council 24, Wisconsin State Employees Union, AFL-CIO, and its affiliated Locals, are labor organizations within the meaning of Sec. 111.81(12), Stats.

3. The State of Wisconsin is the employer within the meaning of Sec. 111.81(8), Stats., and the Department of Employment Relations has the statutory authority to represent the interests of the State of Wisconsin in labor relations matters involving State employees.

4. The Department of Corrections is a department of the State of Wisconsin and has the statutory authority to promote the objectives for which State correctional institutions are established and to supervise the custody and discipline of all prisoners and the maintenance of State correctional institutions.

5. By interpreting the uniform policy to prohibit the display of a Wisconsin Association of Professional Correctional Officers pin and by enforcing this prohibition, the Department of Corrections has interfered with, restrained, or coerced employees in the exercise of their rights guaranteed by Sec. 111.82, Stats., and, thus, has violated Sec. 111.84(1)(a), Stats.

6. By establishing and enforcing a policy that prohibits uniformed employees from wearing a pen in such a manner as to display the words "WAPCO," the Department of Corrections has interfered with, restrained, or coerced employees in the exercise of their rights guaranteed by Sec. 111.82, Stats., and, thus, has violated Sec. 111.84(1)(a), Stats.

7. By prohibiting non-uniformed employees at DACC from wearing a tee shirt displaying Wisconsin Association of Professional Correctional Officers insignia while at work, the Department of Corrections has interfered with, restrained, or coerced employees in the exercise of their rights guaranteed by Sec. 111.82, Stats., and, thus, has violated Sec. 111.84(1)(a), Stats.

8. By prohibiting employees who are on paid break from soliciting on behalf of Wisconsin Association of Professional Correctional Officers, the Department of Corrections has interfered with, restrained, or coerced employees in the exercise of their rights guaranteed by Sec. 111.82, Stats., and, thus, has violated Sec. 111.84(1)(a), Stats.

9. By enforcing against Correctional Officer Sheila Garrigan and Sgt. Brian Droke a rule that prohibits employees from soliciting on behalf of the Wisconsin Association of Professional Correctional Officers while on duty, the Department of Corrections has interfered with, restrained, or coerced employees in the exercise of their rights guaranteed by Sec. 111.82, Stats., and, thus, has violated Sec. 111.84(1)(a), Stats.

10. By removing a Wisconsin Association of Professional Correctional Officers meeting notice from the General Interest bulletin board at the Green Bay Correctional

Institution on June 26, 1998, the Department of Corrections has interfered with, restrained, or coerced employes in the exercise of their rights guaranteed by Sec. 111.82, Stats., and, thus, has violated Sec. 111.84(1)(a), Stats.

11. By not allowing the Wisconsin Association of Professional Correctional Officers access to correctional institution and correctional center employe mailboxes, the Department of Corrections has interfered with, restrained, or coerced employes in the exercise of their rights guaranteed by Sec. 111.82, Stats., and, thus, has violated Sec. 111.84(1)(a), Stats.

12. The unlawful conduct of the Department of Corrections has a reasonable tendency to interfere with Wisconsin Association of Professional Correctional Officers campaign to obtain the thirty percent showing of interest necessary to support the petition for election filed on October 30, 1998.

13. AFSCME Council 24, Wisconsin State Employees Union, AFL-CIO has not established, by a clear and satisfactory preponderance of the evidence, that the Wisconsin Association of Professional Correctional Officers has violated Sec. 111.84, Stats.

14. Andy Bath, an officer or agent of AFSCME Council 24, Wisconsin State Employees Union, AFL-CIO, has coerced or intimidated employes in the enjoyment of their legal rights, including those guaranteed under Sec. 111.82, by indicating that an affiliation with the Wisconsin Association of Professional Correctional Officers will detrimentally affect AFSCME Council 24, Wisconsin State Employees Union, AFL-CIO representation of employes, and by unlawfully threatening an employe who distributes information on behalf of the Wisconsin Association of Professional Correctional Officers and, thus, AFSCME Council 24, Wisconsin State Employees Union, AFL-CIO, has violated Sec. 111.84(2)(a), Stats.

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

ORDER

1. The State of Wisconsin, its officers and agents, shall immediately:
 - (a) Cease and desist from interfering with, restraining or coercing employes in the exercise of their rights guaranteed in Sec. 111.82, Stats., by interpreting

and enforcing the uniform policy in such a manner as to unlawfully discriminate against the Wisconsin Association of Professional Correctional Officers.

- (b) Cease and desist from interfering with, restraining or coercing employees in the exercise of their rights guaranteed in Sec. 111.82, Stats., by prohibiting non-uniformed employees at DACC from wearing a tee shirt displaying Wisconsin Association of Professional Correctional Officers insignia or logo, while permitting non-uniformed employees at DACC to wear a tee shirt displaying the insignia or logos of other organizations or corporations.
- (c) Cease and desist from interfering with, restraining or coercing employees in the exercise of their rights guaranteed in Sec. 111.82, Stats., by interpreting and enforcing solicitation and distribution policies in such a manner as to unlawfully discriminate against the Wisconsin Association of Professional Correctional Officers.

2. The State of Wisconsin shall take the following affirmative action, which the Examiner finds will effectuate the purposes of the State Employment Labor Relations Act:

- (a) Rescind the written reprimand issued to Correctional Officer Sheila Garrigan on October 14, 1998, for violating Department of Corrections' Work Rule #18 and expunge all reference to this written reprimand from Correctional Officer Sheila Garrigan's personnel file.
- (b) Rescind the September 28, 1998 memo issued to Sgt. Brian Droke regarding Work Time Activities.
- (c) Provide the Wisconsin Association of Professional Correctional Officers with access to the correctional institution and correctional center employee mailboxes for the purpose of distributing information while permitting AFSCME Council 24, Wisconsin State Employees Union, AFL-CIO, access to these mailboxes for the purpose of distributing materials that are not necessary to perform its function as the exclusive bargaining representative.
- (d) Permit employees on paid break to solicit on behalf of the Wisconsin Association of Professional Correctional Officers during times in which the employee is permitted to attend to personal concerns such as smoking a cigarette.

- (e) Permit uniformed employees to display a Wisconsin Association of Professional Correctional Officers pin in the same manner as it permits uniformed employees to display an AFSCME Council 24, Wisconsin State Employees Union, AFL-CIO, pin.
- (f) Permit employees on duty to solicit on behalf of the Wisconsin Association of Professional Correctional Officers in the same manner as it permits employees on duty to solicit other staff members to join AFSCME Council 24, Wisconsin State Employees Union, AFL-CIO.
- (g) Permit employees to display a pen with the Wisconsin Association of Professional Correctional Officers logo or insignia in the same manner as it permits employees to display pens with other organization or corporate logos or insignia.
- (h) Notify all employees in the SPS bargaining unit employed by the Department of Corrections by posting in conspicuous places within the correctional institutions and correctional centers, where such employees are employed, copies of the Notice attached hereto and marked "Appendix 'A.'" That Notice shall be signed by the Secretary of the Department of Corrections and shall be posted immediately upon receipt of a copy of this Order and shall remain posted for thirty (30) days thereafter. Reasonable steps shall be taken by the State of Wisconsin to ensure that said Notice is not altered, defaced or covered by other material.
- (i) Notify the Wisconsin Employment Relations Commission in writing, within twenty (20) days following the date of this Order, as to what steps have been taken to comply herewith.

3. AFSCME Council 24, Wisconsin State Employees Union, AFL-CIO, its agents and assigns, shall immediately:

- (a) Cease and desist from coercing or intimidating an employee in the enjoyment of the employee's legal rights, including those guaranteed by Sec. 111.82, Stats., by indicating that an affiliation with the Wisconsin Association of Professional Correctional Officers will detrimentally affect AFSCME Council 24, Wisconsin State Employees Union, AFL-CIO, representation of the employee.

(b) Cease and desist from coercing or intimidating an employe in the enjoyment of the employe's legal rights, including those guaranteed by Sec. 111.82, Stats., by unlawfully threatening employes who distribute information on behalf of the Wisconsin Association of Professional Correctional Officers.

4. All other complaint allegations of the Wisconsin Association of Professional Correctional Officers against the State of Wisconsin are hereby dismissed in their entirety.

5. Wisconsin Association of Professional Correctional Officers' complaint against AFSCME Council 24, Wisconsin State Employees Union, AFL-CIO, alleging that AFSCME Council 24, Wisconsin State Employees Union, AFL-CIO, has violated a provision of Sec. 111.84, Stats., other than Sec. 111.84(2)(a), Stats., is hereby dismissed in its entirety.

6. The complaint of AFSCME Council 24, Wisconsin State Employees Union, AFL-CIO, against Wisconsin Association of Professional Correctional Officers alleging a violation of Sec. 111.84, Stats., is hereby dismissed in its entirety.

7. Wisconsin Association of Professional Correctional Officers shall be allowed three additional months, from the date of this Order, to gather the thirty percent showing of interest needed to support the election petition filed by Wisconsin Association of Professional Correctional Officers on October 30, 1998.

Dated at Madison, Wisconsin, this 24th day of March, 2000.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Coleen A. Burns /s/

Coleen A. Burns, Examiner

APPENDIX A

**NOTICE TO EMPLOYEES OF
STATE OF WISCONSIN CORRECTIONAL INSTITUTIONS AND CENTERS**

As ordered by the Wisconsin Employment Relations Commission, and in order to remedy violations of the State Employment Labor Relations Act, the State of Wisconsin and the Department of Corrections notifies you of the following:

1. WE WILL NOT prohibit uniformed employes from displaying a Wisconsin Association of Professional Correctional Officers pin, while permitting uniformed employes to display an AFSCME Council 24, Wisconsin State Employees Union, AFL-CIO, pin.
2. WE WILL NOT deny the Wisconsin Association of Professional Correctional Officers access to the correctional institution and correctional center employe mailboxes for the purpose of distributing information while permitting AFSCME Council 24, Wisconsin State Employees Union, AFL-CIO, access to these mailboxes for the purpose of distributing materials that are not necessary to perform its function as the exclusive bargaining representative.
3. WE WILL NOT deny employes on duty the right to solicit on behalf of the Wisconsin Association of Professional Correctional Officers, while permitting employes on duty to solicit other staff members to join AFSCME Council 24, Wisconsin State Employees Union, AFL-CIO.
4. WE WILL NOT prohibit non-uniformed employes from wearing a tee shirt displaying Wisconsin Association of Professional Correctional Officers logo or insignia, while permitting non-uniformed employes to wear tee shirts displaying logos or insignia of other organizations or corporations.
5. WE WILL NOT deny employes the right to wear a pen displaying Wisconsin Association of Professional Correctional Officers logo or insignia, while permitting employes to wear pens displaying logos or insignia of other organizations or corporations.
6. WE WILL NOT deny employes on paid break the right to solicit on behalf of the Wisconsin Association of Professional Correctional Officers during times in which the employe is permitted to attend to personal concerns.
7. WE WILL NOT interfere with, restrain, or coerce employes in the exercise of their Sec. 111.82, Stats., rights to join or assist the Wisconsin Association of Professional Correctional Officers.

By _____
Secretary of the Department of Corrections

THIS NOTICE MUST REMAIN POSTED FOR THIRTY (30) DAYS FROM THE DATE HEREOF, AND MUST NOT BE ALTERED, DEFACED OR COVERED BY ANY OTHER MATERIAL.

DEPARTMENT OF EMPLOYMENT RELATIONS

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

Complainant WAPCO alleges that, during the WAPCO organizing drive, Respondent DOC unlawfully violated Secs. 111.84(1)(a) and (c), Stats., when it prohibited or limited the wearing of WAPCO insignia, the display of WAPCO signs, and solicitation on behalf of WAPCO and when it pursued disciplinary actions against WAPCO supporters for engaging in their protected rights. Respondent DOC asserts that the evidence does not support a finding that DOC violated Sec. 111.84(1)(a) or (c), Stats., and that the complaints of unfair labor practices are without merit.

Complainant WAPCO alleges that, during the WAPCO organizing drive, Respondent WSEU unlawfully violated Secs. 111.84(2)(a) and (b) and Sec. 111.84(3), Stats., when its representatives made physical and verbal threats against WAPCO and its members; failed to process a WAPCO supporter's grievance; took internal actions against WAPCO supporters; and interfered with assistance of counsel for WAPCO. Respondent WSEU asserts that the claims of Complainant WAPCO fail on both legal and factual grounds.

Complainant WSEU alleges that personnel of Respondent WAPCO engaged in a pattern of harassment, intimidation, and retaliation against a WSEU member that coerced and intimidated the employe in violation of Sec. 111.84, Stats. Respondent WAPCO denies that it has violated Sec. 111.84, Stats., as alleged by WSEU.

POSITIONS OF THE PARTIES

WAPCO

Claims Against DOC

During the WAPCO organizing campaign, the DOC unlawfully interfered with, restrained, or coerced employes in the exercise of their protected rights and discouraged membership in WAPCO by discrimination in regard to the terms or conditions of employment in violation of Secs. 111.84(1)(a) and (c), Stats. DOC violated Sec. 111.84(1)(a), Stats., when it prohibited WAPCO supporters from wearing WAPCO insignia, displaying WAPCO signs,

and prohibited or limited distribution of information and solicitation on behalf of WAPCO. DOC violated Secs. 111.84(1)(a) and (c), Stats., when it subjected WAPCO supporters to disciplinary actions for engaging in protected activities.

Given the textual similarities between State and federal labor law, decisions involving the NLRA should be highly persuasive. Labor law in the United States has long recognized that the right of organization includes the right to wear union insignia. The NLRB, in applying federal labor law that is identical to the State's laws, has stated repeatedly that, absent special circumstances, the wearing of union insignia is protected activity.

Under federal labor law, a prohibition on the wearing of union insignia is an unfair labor practice where the prohibition is overly broad and not narrowly constructed to address special work related circumstances. The NLRB has found that substantial evidence of special circumstances, such as interference with production or safety, is required before an employer may prohibit the wearing of union insignia and that the burden of establishing those circumstances rests on the employer. A ban on wearing union insignia is an unfair labor practice where the special circumstances are speculative or there is not evidence of harm to the employer's operations.

DOC's stated concerns about conflicts between employees and manipulation by inmates during the organizing campaign are wholly speculative in nature. The DOC has failed to demonstrate special circumstances that would allow it to ban union insignia other than those of the recognized union.

Under constitutional law, departmental regulations must serve legitimate penological interests. Preventing manipulation of staff by inmates and conflict among staff is not a central penological interest of the State of Wisconsin and cannot preempt State labor laws concerning the right of employees to collectively organize.

Generally, a showing that the employer allowed the wearing of some union insignia at work, or that the employer did not ban the wearing of all union insignia, is sufficient to defeat a special circumstances defense. The NLRB has recognized that for a no-pin policy to be valid, it must be consistently enforced in a non-discriminatory manner. Under the NLRA, it is an unfair labor practice for an employer to allow pins on some occasions, while it discriminatorily applies a no-pin policy to union adherents.

DOC routinely permitted the wearing of insignias and clothing of organizations other than WAPCO. Pens with visible logos have been permitted. DOC has enforced its uniform

policy in an inconsistent manner, singling out WAPCO when enforcing this policy. The DOC was over broad when it applied its prohibition on union insignia in non-uniform institutions and prevented the wearing of insignia during all work hours.

DOC's disparate enforcement of the uniform policy against WAPCO is indicative of hostility towards WAPCO and its supporters. Hostility is further evidenced by one supervisor's forcible removal of a WAPCO pen and threat to step on the pen, and by another supervisor's forcing a WAPCO supporter to wear a State issued inmate shirt while in the presence of inmates. The latter conduct created a safety issue and unlawfully changed the terms and conditions of employment.

The uniform policy, as implemented by DOC, allowed WSEU supporters to act collectively and in concert, while prohibiting WAPCO supporters from engaging in an identical show of support. By prohibiting WAPCO supporters from wearing the WAPCO insignia, DOC has interfered with rights protected by SELRA.

An Assistant Warden removed WAPCO material from a GBCI bulletin board. When the Assistant Warden later reposted the material, it was subsequently removed. Other materials posted at DOC institutions were also removed. By removing WAPCO material from general use bulletin boards, the DOC interfered with the right of WAPCO to organize collectively.

WAPCO, but not WSEU, has been required to obtain approval prior to posting notices on bulletin boards. Not only does this result in unlawful disparate treatment, but also, the delay in obtaining approval harmed WAPCO in that time-sensitive events could not be publicized.

Federal labor law recognizes that an employer unlawfully interferes with concerted activity when it refuses to allow employees to post union notices on bulletin boards that are available for general use by employees and discriminatorily applies rules which require management approval before employees can post such notices. By requiring management approval of WAPCO material prior to posting the material on general use bulletin boards, the DOC has interfered with the right of WAPCO to organize collectively.

By prohibiting or limiting the display of WAPCO signs, the DOC has engaged in conduct that has a reasonable tendency to interfere with, restrain, or coerce WAPCO members in the exercise of their protected rights. When DOC, through its broad censorship of WAPCO activities, prohibited employees from discussing WAPCO and addressing collective concerns, it intimidated WAPCO supporters from posting such messages.

Under federal labor law, no restrictions may be imposed upon an employee's organizing rights absent a showing that such restrictions are necessary to maintain production or discipline. Employers may make and enforce work rules that prohibit union solicitation during working time, but may not forbid distribution in non-work areas during non-work times. No solicitation rules that are overly broad, or confusing, or prohibit protected activities during the entire work shift are invalid and may not be enforced. No solicitation rules must be enforced evenhandedly to all parties.

DOC implemented policies prohibiting or limiting employees soliciting on behalf of WAPCO during working hours and at their work stations. WAPCO supporters were technically able to solicit on behalf of their union when they were on break and in non-work areas.

Organizational activities at prisons face unique obstacles. DOC's prisons tend to be located in remote areas and are isolated within these areas. The spartan design of these institutions, the security precautions surrounding the institutions, and the straight eight-hour work shift makes traditional solicitation both difficult and ineffective. Given the unique situation of Correctional Officers, DOC's policies prohibiting and limiting employees soliciting on behalf of WAPCO effectively banned such solicitation and distribution while on the grounds of these institutions.

DOC's solicitation and distribution policies prevented WAPCO supporters from using normal methods of communication, such as the use of staff mailboxes, and prevented non-uniformed employees from wearing WAPCO paraphernalia. During the same period of time, distribution and solicitation on behalf of other unions and organizations were not prohibited or limited. DOC's policies on solicitation and distribution had an unlawful disparate impact upon WAPCO's protected rights.

The DOC policy is ambiguous with respect to the types of solicitation permitted during work time and the definition of work time and non-work time. The distinction between work areas and non-work areas is highly subjective. The ambiguity of the DOC policy unreasonably subjects WAPCO supporters to discipline.

One employee was prevented from wearing a WAPCO tee shirt in a non-uniform facility. One employee was reprimanded for having WAPCO hats in his possession and attempting to sell the hats on non-work time. One employee was forced to remove his WAPCO hat when he was on non-work time. DOC improperly prevented WAPCO supporters from soliciting their coworkers by wearing and selling WAPCO merchandise, including tee shirts and hats.

Rights or benefits that are granted exclusively to the majority representative, and thus denied to minority organizations, must in some rational manner be related to the functions of the majority organization in its representative capacity and must not be granted to entrench such organization as the bargaining representative. *BOARD OF SCHOOL DIRECTORS V. WERC*, 42 WIS.2D 637, 649 (WIS. 1969). DOC's policies on solicitation and distribution within the institutions served only to entrench the existing WSEU union and were promulgated in a manner that was essentially unrelated to the functions of WSEU in its capacity as bargaining representative. DOC's policies on solicitation and distribution within the institutions were discriminatory, overly broad and confusing and, as such, had a reasonable tendency to interfere with, restrain, or coerce WAPCO members and supporters in the exercise of their protected rights.

DOC improperly limited solicitation on behalf of WAPCO when it delayed or interfered with WAPCO members' attempts to solicit employees and to distribute materials outside of the institutions. DOC's requirement that WAPCO provide prior notice of these activities and DOC's notification to WSEU of these activities prevented WAPCO from lawfully soliciting potential supporters. By allowing WAPCO back on the property after WSEU supporters were notified of WAPCO's presence, DOC was acting in concert with WSEU to coerce or intimidate employees in the enjoyment of their rights under Sec. 111.84(2)(a), Stats.

DOC disciplined WAPCO supporters for engaging in protected activity. These disciplinary actions served to interfere with the exercise of their protected rights and to discriminate against WAPCO supporters by changing the terms and conditions of their employment in violation of Secs. 111.84(1)(a) and (c), Stats.

To their credit, both WAPCO and WSEU supporters were aware of the seriousness of their employment positions and made an effort to prevent the organizing campaign from spilling over into the inmate population. WAPCO does not claim that DOC does not have a right to ensure the safety and security of the Wisconsin correctional system. WAPCO maintains that DOC did not treat WAPCO and its supporters neutrally or without hostility in doing so.

Claims Against WSEU

During the WAPCO organization drive, WSEU representatives made physical and verbal threats against WAPCO and its members; failed to process a WAPCO member's grievance; and took internal actions against WSEU members. By this conduct, WSEU coerced or intimidated employees in the exercise of their protected rights in violation of Sec. 111.84(2)(a), Stats. WSEU violated Sec. 111.84(2)(b) and 111.84(3), Stats., when members of AFSCME interfered with the assistance of counsel to WAPCO.

Counterclaim Against WAPCO

WAPCO has not engaged in an ongoing pattern of threats and intimidation against WSEU members. The incidents relied upon by WSEU involving Officer Camp, a troubled Correctional Officer who provided convoluted and incredible testimony, do not rise to the level of threats or intimidation, nor has WSEU demonstrated that WAPCO was responsible for vandalism to cars.

Remedy Sought

WAPCO requests that the WERC grant affirmative relief by:

- 1) holding a representation election where WAPCO would be represented on the ballot without the required 30% showing of interest. Alternatively, WAPCO requests three additional months to gather the requisite showing of interest.
- 2) WAPCO requests that both WSEU and the State be ordered to cease and desist from engaging in the unfair labor practices cited in this brief, and that both be required to post notices to this effect on the appropriate bulletin boards.
- 3) WAPCO requests remedial relief by removing any record of disciplinary actions taken against WAPCO supporters for engaging in protected and concerted activities.
- 4) WSEU's counterclaim against WAPCO is without merit and should be dismissed.
- 5) WAPCO requests attorney's fees and the costs of this action.

DOC

Generally, the legal analysis applicable to cases brought under MERA are applicable to SELRA. Complainant WAPCO has the burden to prove, by a clear and satisfactory preponderance of the evidence, that DOC has violated SELRA.

Cases brought under Sec. 111.84(1)(a), Stats., involve the question of whether conduct of the employer, considered under all the circumstances, has a reasonable tendency to interfere with, restrain, or coerce employees in the exercise of their rights under Sec. 111.82, Stats. Employer conduct which has a reasonable tendency to interfere with, restrain, or coerce

employees in the exercise of their rights under Sec. 111.82, Stats., is not violative of Sec. 111.84, Stats., if there is a valid business reason for the conduct. In order to establish a violation of Sec. 111.84(1)(c), Stats., a complainant must prove that the employee had engaged in protected, concerted activity; that the employer was aware of said activity and hostile thereto; and that the employer's action was based, at least in part, upon said hostility.

Secretary Sullivan's April 6, 1998 memorandum is neutral on its face and as applied. The stated purpose of this memorandum is to regulate communications regarding labor relations activities. The record is devoid of any evidence that WAPCO supporters were treated differently than WAPCO supporters in regards to labor relations' communications, except as specifically required by the collective bargaining agreement.

WAPCO has a contractual right to a union bulletin board and use of existing inter/intra-departmental mail. These rights are clearly related to the function of the majority organization in its representative capacity. DOC is under no obligation to provide bulletin boards or the use of departmental mail to any other entity. WAPCO and WSEU were treated the same with respect to access to bulletin boards and mailboxes, except as to rights granted to WAPCO by the collective bargaining agreement.

The availability of and right to use the general interest bulletin boards assured WAPCO of a means of getting its message to correctional staff. While the approval process may have taken time, there was no case where permission was denied.

WAPCO material may have been removed from general use bulletin boards. Except for one occasion when WAPCO material was mistakenly removed from the general bulletin board at GBCI, there is no evidence to indicate that DOC was responsible for such removal.

There can be no doubt that it is important to a correctional system to have a uniform policy. The DOC policy allows uniformed officers to wear pins, tie tacks or bars that reflect association with the State, DOC, WCSA, ACA, the institution or the union. These are all entities that have a present, direct, and official responsibility concerning correctional administration. The authorization of the pins and tie tacks is no more than an acknowledgment of this responsibility.

By the terms of the April 6, 1998 memorandum and by implementation of the memorandum, WAPCO pins were not allowed on the uniforms. The memorandum reasserts WSEU's contractual right to have "pins associated with the union" worn with the uniform. The uniform policy, under which the wearing of a union pin is voluntary, cannot be reasonably construed to constitute the "self perpetuation and entrenchment" that would support an unfair labor practice claim.

The DOC has a valid business reason for issuing the April 6, 1998 memorandum. The memorandum was intended to provide guidance to the management of DOC's numerous correctional institutions and facilities to ensure that management's responses to questions or situations at the institutions would be handled in a uniform and consistent manner. Additionally, the memorandum was issued to reduce the risk that the union competition did not spill over into the workplace.

The corrections system is overcrowded and without sufficient resources. The inmate population is young, impulsive, gang affiliated, and resentful about their living conditions. Existing conditions, including inmate dissatisfaction with out-of-state transfers, present a significant potential risk for disturbance. There is a propensity of inmates to exploit divisiveness in the workplace, the effect of which is to undermine the security of the institutions and, therefore, the safety of staff, inmates and the public.

The April 6, 1998 memorandum and its enforcement was critical in ensuring that workplace disruptions relating to the WAPCO/AFSCME competition, which would have jeopardized the security and safety of the institutions, did not occur. Preventing or reducing the likelihood of employe violence or other confrontations at the workplace is a "valid business reason" that ensures no violation of Sec. 111.84, Stats., even if under a very broad reading of the statute there may be a restraint.

It is possible that uniformed staff may have worn non-sanctioned pins. It is not evident, however, that staff did not overwhelmingly adhere to the policy. WAPCO pins, unlike other types of non-sanctioned pins, directly implicate security concerns.

The work rule violations and discipline imposed were not in violation of Secs. 111.84(1)(a) and (c), Stats., and were carried out in compliance with the collective bargaining agreement. The DOC's enforcement of the memorandum of April 6, 1998, or other work rules, does not violate Sec. 111.84, Stats. If an employe disagrees with the discipline, the employe has recourse to the contractual grievance arbitration process.

DCI is a maximum-security correctional institution. Correctional Officer Wurtz and others who appeared in the parking lot of DCI to distribute WAPCO information were not employes of DCI. Nor had they complied with the policy of obtaining prior approval to engage in activity on grounds. WAPCO was not prevented from distributing information at DCI. All that was required was that WAPCO obtain prior approval as required by DOC and DCI policy.

Correctional Officer Caporale and other WAPCO supporters arrived unannounced at Ethan Allen School to distribute WAPCO literature and were told to leave. Subsequently, Caporale obtained prior approval to distribute literature and did so without incident.

Sgt. Serrano was never ordered not to distribute WAPCO material during his break time, but rather, reached such a conclusion based on innuendo. In accordance with the April 6, 1998 memorandum and the collective bargaining agreement, Serrano was advised that he could not use the institution's interdepartmental mail. Serrano distributed WAPCO literature and exchanged WAPCO pins, buttons, and tee shirts at RYOFC.

The evidence does not support Correctional Officer Frederick's complaint that DOC retaliated against him based on his WAPCO activities. Under Sec. 230.40, Stats., an employe running for partisan political office cannot be in pay status. The record is clear that he ran for Sheriff until his defeat. JCI is on a positive time reporting system. The erroneous payment was due to the fact that Frederick did not submit a time sheet reflecting his leave without pay status.

Sgt. Drexler was told to remove his WAPCO tee shirt. Superintendent Sutton also directed Sgt. Mueller to not wear his AFSCME clothing. Sutton was neutral with respect to clothing of the competing unions. The contention that wearing the green shirt created an unsafe work environment for Sgt. Drexler is unfounded.

The prohibitions against WAPCO pins, pens, tee shirts, hats, etc., are not overbroad, but rather, are in response to special work-related circumstances. The antagonistic struggle between two unions for the representational rights of DOC employes manifested itself within the boundaries of several State prisons. Even if the strife were not manifest, it would not make DOC's concerns about staff divisiveness speculative and abstract.

The safety and security of the correctional system could be compromised if DOC allowed the competition between the unions to become an issue at the workplace. Safety of staff and inmates is a central penological interest of any correctional administration. DOC's concerns reflect the predictive judgments of correctional administrators about institutional security issues.

The restrictions imposed upon WAPCO's organizing activities were extremely limited and in response to the prison administrator's judgment that allowing WAPCO to carry out its organizing efforts within the confines of the correctional institutions would create a security threat. A well-settled principle of corrections law is that courts will defer to the judgment of corrections administration with respect to decisions relating to the management and operation of prisons.

The record is devoid of any evidence that DOC was hostile toward WAPCO, or that there was joint activity by DOC and WSEU to thwart WAPCO's organizing efforts. Rather, the record clearly establishes that DOC afforded WAPCO a myriad of opportunities to carry out their campaign at the institutions and that WAPCO was able to meaningfully communicate its message at every single institution of DOC. WAPCO's complaint of unfair labor practices is without merit.

WSEU

Claim Against WAPCO

Officer Camp, a WSEU member, was reluctant to become involved in a WAPCO sponsored campaign to decertify WSEU as the exclusive collective bargaining representative of the SPS bargaining unit. This reluctance, and her reporting to a WSEU officer of the pressures that were placed upon her by WAPCO personnel, resulted in a pattern of threats, harassment, intimidation, retaliation, and coercion that ultimately caused a stress-related leave of absence and transfer to another institution.

Complainant WSEU acknowledges that it cannot link a name to the incidents involving car vandalism and phone calls, but a strong circumstantial case can be made given the context and chronology of events. WAPCO engaged in conduct that is coercion and intimidation under Sec. 111.84, Stats.

Response to Claims of WAPCO

WAPCO cites four incidents in a lengthy campaign involving 4,500 employees and 30 institutions. WAPCO has failed to present any facts alleging those individual incidents, even if true, were sanctioned or authorized by WSEU, or part of a pattern of "employees acting in concert" on behalf of WSEU. While the statute covers "employees individually," as well as "in concert," WAPCO has failed to name any individual employees as respondents and seeks only to charge AFSCME as the responsible party.

The allegations involving Officer Sexton are unproven. Even if true, the statements represent nothing more than emotional statements made in the course of a contested campaign. The complained of conduct was not WSEU sanctioned and does not represent activity "in concert with others" such that it would provide jurisdiction over a labor organization.

Correctional Officer Aspatore is not a labor organization, was not acting in concert with others, was not a union officer or acting in a steward capacity, and had no authority to speak for the Union. Nor was he named individually, as he could have been under Sec. 111.84(2), Stats.

Joe Callaghan provoked a situation in a non-work setting. Callaghan is not a complainant, nor was he engaged in concerted activity on behalf of WAPCO. Andy Bath's response was neither concerted activity on behalf of WSEU, nor supported by other individuals present at the COCI meeting. The incident involved a personal matter between Bath and Callaghan. Bath, like Aspatore, was not named as an individual respondent and was not engaged in concerted activity implicating WSEU. The complaint was brought by WAPCO, and not Callaghan individually; Callaghan denied that he was involved in WAPCO related activity on the night in question; and WAPCO has no standing to assert such a claim.

The hospitality room allegations represent nothing more than rude behavior as the result of provocation. One hopes that the Commission does not extend its jurisdiction to midnight remarks and insults, fueled by alcohol, at union convention activities. WAPCO has failed to plead or establish even a prima facie case on the Teletzke tire allegations.

WAPCO's allegations concerning Officer Frederick are entirely without merit. Frederick did not have a viable grievance and the WSEU decision-maker, Karl Hacker, was unaware of Frederick's involvement with WAPCO.

WSEU did not "interfere with assistance of council" for WAPCO. A secondary boycott or contractual interference allegation is the prerogative of Attorney Ebert's firm and not WAPCO. The decision not to represent WAPCO was Attorney Ebert's decision to make, as senior partner in the firm. WAPCO has not demonstrated that losing Ebert's firm as its representative harmed it. The claim of third-party interference in the attorney-client relationship involves tort law, not a labor law claim.

The claims of WAPCO fail both on legal and factual grounds. WSEU respectfully requests that all of these claims be dismissed.

DISCUSSION

APPLICABLE LEGAL STANDARDS

Complainants have alleged violations of Secs. 111.84(1)(a) and (c), Secs. 111.84(2)(a) and (b), and Sec. 111.84(3), Stats. Section 111.07(3), Stats., made applicable to SELRA by Sec. 111.84(4), Stats., states 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."

Section 111.84(1)(a), Stats., makes it an unfair labor practice for the State to "interfere with, restrain or coerce employes in the exercise of their rights guaranteed in s. 111.82." Section 111.82, Stats., guarantees State employes "the right of self-organization and the right to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing under this subchapter, and to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection. Employes shall also have the right to refrain from any or all of such activities."

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 employe 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 OSHKOSH, DEC. NO. 17084-D (WERC, 10/83).

As Examiner McLaughlin stated in STATE OF WISCONSIN, DEC. NO. 29143-A (4/98):

The Wisconsin Supreme Court has observed that:

It is helpful to compare the wording of MERA and SELRA, whereupon we find that the rights guaranteed to employees under these acts are identical . . . It would be illogical to apply a different test to MERA than SELRA merely because a different group of protected persons are involved (municipal employees versus state employees). STATE OF WISCONSIN, DEPARTMENT OF EMPLOYMENT RELATIONS V. WISCONSIN EMPLOYMENT RELATIONS COMMISSION, 122 Wis.2D 132, 143 (1985).

This observation has been reflected in the test applied by Commission examiners to determine an independent violation of Sec. 111.84(1)(a), Stats., for the test parallels that used to determine an independent violation of Sec. 111.70(3)(a)1, Stats. The test requires that the Union demonstrate that complained-of conduct was "likely to interfere with, restrain or coerce" employes in the exercise of rights protected by Sec. 111.84(2), Stats. See STATE OF WISCONSIN, DEPARTMENT OF ADMINISTRATION, DEC. NO. 15945-A (MICHELSTETTER, 7/79), AFF'D BY OPERATION OF LAW, DEC. NO. 15945-B (WERC, 8/79); STATE OF WISCONSIN, DEPARTMENT OF HEALTH AND SOCIAL SERVICES, DEC. NO. 17218-A (PIERONI, 3/81), AFF'D BY OPERATION OF LAW, DEC. NO. 17218-B (WERC, 4/81); STATE OF WISCONSIN, DEC. NO. 19630-A (MCLAUGHLIN, 1/84), AFF'D BY OPERATION OF LAW, DEC. NO. 19630-B (WERC, 2/84); STATE OF WISCONSIN, DEPARTMENT OF HEALTH AND SOCIAL SERVICES (DHSS), DIVISION OF CORRECTIONS (DOC),

DODGE CORRECTIONAL INSTITUTION (DCI), DEC. NO. 25605-A (ENGMANN, 5/89), AFF'D BY OPERATION OF LAW, DEC. NO. 25605-B (WERC, 6/89). This is an objective test which does not require proof that the State intended to interfere with the exercise of protected rights. See THE STATE OF WISCONSIN, DEPARTMENT OF INDUSTRY, LABOR AND HUMAN RELATIONS, DEC. NO. 11979-B (WERC, 11/75).

A violation of Sec. 111.70(3)(a)(1), Stats., may be established by a showing of a threat of reprisal or a promise of benefit which would tend to interfere with, restrain or coerce employees in their exercise of rights. CITY OF BEAVER DAM, DEC. NO. 20282-B (WERC, 5/84). Statements, as well as the circumstances under which they were made, must be considered in order to determine the meaning which an employee would reasonably place on the statements. CITY OF LACROSSE, DEC. NO. 17084-C (WERC, 4/82). Employer conduct which may well have a reasonable tendency to interfere with employee exercise of Sec. 111.70(2) rights will not be found to violate Sec. 111.70(3)(a)1, Stats., if the employer had valid business reasons for its actions. SCHOOL DISTRICT OF RIPON, DEC. NO. 27665-A (McLAUGHLIN, 1/94) AFF'D BY OPERATION OF LAW, DEC. NO. 27665-B (WERC, 2/94).

Section 111.84(1)(c), Stats., makes it an unfair labor practice for the State to "encourage or discourage membership in any labor organization by discrimination in regard to hiring, tenure or other terms or conditions of employment." To establish a violation of this section, a complainant must establish, by a clear and satisfactory preponderance of the evidence, (1) that complainant was engaged in activity protected by Sec. 111.82, Stats., (2) that the State was aware of the activity and was hostile to it, and (3) that the State acted toward complainant, based at least in part, on that hostility. 122 WIS.2D AT 140.

Section 111.84(2)(a), Stats., makes it an unfair labor practice for an employee individually or in concert with others to "coerce or intimidate an employee in the enjoyment of the employee's legal rights, including those guaranteed under Sec. 111.82, Stats." Section 111.70(3)(b)1, Stats., governs allegations of a breach of duty of fair representation. LOCAL 950, INTERNATIONAL UNION OF OPERATING ENGINEERS, DEC. NO. 21050-C (WERC, 7/84). It follows, therefore, that, under SELRA, a breach of the duty of fair representation is a violation of Sec. 111.84(2)(a), Stats.

As Examiner Gallagher has stated in STATE OF WISCONSIN, DEC. NO. 28735-A (10/96):

The United States Supreme Court has set forth the requirements of the duty of fair representation a union owes to members of bargaining units it represents. VACA V. SIPES, 386 U.S. 171, 177, 64 LRRM 2369, 2371 (1967). The Wisconsin Supreme Court has followed the requirements laid out by our country's highest

court in its own decisions. MAHNKE V. WERC, 66 WIS.2D 524 (1974) Therefore, it is clear that under SELRA, unions must represent the interests of all their members without hostility or discrimination; they must exercise their discretion with good faith and honesty; and they must avoid arbitrary conduct. A union breaches its duty of fair representation when its actions are arbitrary, discriminatory or in bad faith. VACA V. SIPES, SUPRA; COLEMAN V. OUTBOARD MARINE CORP., 92 WIS.2D 565 (1979) In conducting its business, a union is granted a wide range of reasonableness, subject always to complete good faith and honesty of purpose in the exercise of its discretion. FORD MOTOR CO. V. HOFFMAN, 345 U.S. 330, 31 LRRM 2548 (1953) As long as a union exercises its discretion in good faith, it is allowed broad discretion in the performance of its representative duties. WEST ALLIS-WEST MILWAUKEE SCHOOL DISTRICT, DEC. NO. 20922-D (SCHIAVONI, 10/84); AFF'D BY OPERATION OF LAW, DEC. NO. 20922-E (WERC, 10/84); BLOOMER JT. SCHOOL DISTRICT, DEC. NO. 16228-A (ROTHSTEIN, 8/80); AFF'D BY OPERATION OF LAW, DEC. NO. 16228-B (WERC, 8/80) A union is not under any absolute duty to pursue even a meritorious grievance and proof that an underlying grievance was meritorious is insufficient, in itself, to establish a violation of the duty of fair representation. WEST ALLIS-WEST MILWAUKEE SCHOOL DISTRICT, SUPRA. . . .

Section 111.84(2)(b), Stats., makes it an unfair labor practice for an employe individually, or in concert with others, "to coerce, intimidate or induce any officer or agent of the employer to interfere with any of the employer's employes in the enjoyment of their legal rights, including those guaranteed under s. 111.82 or to engage in any practice with regard to its employes which would constitute an unfair labor practice if undertaken by the officer or agent on the officer's or agent's own initiative."

Section 111.84(3), Stats., makes it an unfair labor practice "for any person to do or cause to be done on behalf of or in the interest of employers or employes, or in connection with or to influence the outcome of any controversy as to employment relations, any act prohibited by subs. (1) and (2)."

WAPCO CLAIMS AGAINST DOC

Clothing Policies Affecting Uniformed Personnel

WAPCO Pins

The uniform policy referenced in DOC Administrator Verhagen's Administrative Directive of January 16, 1998, permits uniformed SPS employes to wear "Tie tacks or pins

that reflect association with the union.” This policy also permits uniformed SPS employees to wear a tie tack or tie bar that reflects association with the State of Wisconsin, DOC, WCA, ACA, or the institution.

The uniform policy does not define “union” as the WSEU. Thus, the policy, on its face, is neutral with respect to the rights of the competing WSEU and WAPCO labor organizations.

On March 3, 1998, DOC Administrator Verhagen advised DOC management that the uniform policy did not permit uniformed SPS employees to wear a WAPCO pin because “WAPCO is not recognized as a union and, therefore, the pin is not recognized as a union pin and is not an allowable item to be worn on the uniform.” Subsequently, DOC management enforced the uniform policy, as interpreted by Administrator Verhagen, and prohibited SPS employees from displaying a WAPCO pin on their uniform. DOC’s uniform policy, as interpreted and enforced, permits, but does not require employees to wear pins and/or tie tacks that reflect association with WSEU.

By March 3, 1998, WAPCO had established itself as an organization with an expressed purpose and objective to “promote the organization of workers, to bring together and unite all employees for the purpose of advancing their interests, promote their welfare, improve their wages and other terms and conditions of employment.” On that date, WAPCO was a union with members who were also members of the SPS bargaining unit.

Neither the fact that WSEU is the exclusive collective bargaining representative of members of the SPS bargaining unit, nor the fact that WSEU may have a contractual right to display insignia on DOC uniforms, provides DOC with the right to implement a uniform policy that prohibits the display of WAPCO pins. As WAPCO argues, the Wisconsin Supreme Court has found that rights or benefits that are granted exclusively to the majority representative, and thus denied to minority organizations, must in some rational manner be related to the functions of the majority organization in its representative capacity, and must not be granted to entrench such organization as the bargaining representative. BOARD OF SCHOOL DIRECTORS OF MILWAUKEE V. WERC, 42 WIS.2D 637, 649 (1969).

DOC argues that WSEU is an entity that has a present, direct and official responsibility concerning correctional administration and that authorization of WSEU affiliated pins and tie tacks is no more than an acknowledgment of these facts. Such “acknowledgment,” however, is not rationally related to the performance of the functions of WSEU in its representative capacity and serves to entrench WSEU as the bargaining representative. In interpreting the

uniform policy to prohibit the display of a WAPCO pin and by enforcing this prohibition, DOC has interfered with State employees in the exercise of their rights guaranteed in Sec. 111.82, Stats.

As DOC argues, the Commission has recognized that employer conduct which may well have a reasonable tendency to interfere with an employee's exercise of protected rights will not be found to be unlawful if the employer has a valid business reason for such conduct. DOC asserts that it has valid business reasons to limit the display of "union" insignia to that associated with WSEU.

DOC argues that the safety and security of the correctional institutions could be compromised if DOC allowed the competition between the unions to become an issue in the workplace. According to DOC, the display of competing union insignia provides inmates with information concerning staff differences that may be used by inmates to divide and manipulate staff and may cause dissension in the workplace between employees that do not support the same union.

Under the existing DOC uniform policy, employees have a choice to display, or to not display, WSEU affiliated insignia. By this choice, employees present differences that are fodder for the cannons of inmates who wish to manipulate or divide staff, as well as to staff who wish to take exception to another employee's exercise of rights protected under Sec. 111.82, Stats. Thus, the existing uniform policy does not protect against the disruptive behaviors that the State seeks to avoid with its prohibition against the display of WAPCO pins.

More importantly, however, it is not the person who displays a WAPCO pin that engages in disruptive behavior that threatens the safety and security of DOC institutions. Rather, it is the inmate who seeks to divide or manipulate staff; the employee that permits an inmate to divide or manipulate staff; and the employee that harasses, threatens, or assaults another employee for engaging in rights protected under Sec. 111.82, Stats., that engage in disruptive behaviors.

DOC has a valid business interest in ensuring the security and safety of its institutions. However, this valid business interest is not served by prohibiting uniformed employees from displaying a WAPCO logo or insignia. Rather, this valid business interest is served by prohibiting inmates and employees from responding to this display in a manner that threatens the safety and security of its institutions and by imposing sanctions upon inmates and employees that engage in such responses.

The DOC uniform policy permits State employees to wear pins that reflect association with WSEU, but does not permit State employees to wear pins that reflect association with WAPCO. This uniform policy has a disparate impact upon employees' right to join and assist WAPCO. DOC has not established that it has a valid business reason for such conduct.

By implementing this disparate uniform policy, DOC has interfered with, restrained, or coerced employees in the exercise of rights protected by Sec. 111.82, Stats. Accordingly, the Examiner has found this uniform policy, as interpreted and enforced by DOC, to be in violation of Sec. 111.84(1)(a), Stats.

WAPCO Hats

DOC has a legitimate business interest in distinguishing between inmates and corrections staff. The establishment of a uniform policy serves this legitimate business interest. Consistent with its right to establish a uniform policy, DOC may restrict headgear to that approved by DOC. DOC uniformed employees do not have a Sec. 111.82 right to wear headgear displaying WAPCO insignia unless DOC's prohibition against such headgear has an unlawful disparate impact.

The uniform policy, as written, does not provide employees with the right to wear headgear that reflect association with WSEU. Nor does the record demonstrate that DOC has enforced this policy in a manner that provides employees with such a right. This portion of the uniform policy, as written and enforced, does not provide the majority organization, WSEU, with a right denied to the minority organization, WAPCO.

DOC's uniform policy, as written, does not permit the display of any insignia or logo on headgear, other than that of the employer. WAPCO has not shown that DOC has enforced this portion of the uniform policy in a discriminatory manner.

The record fails to demonstrate that DOC's prohibition against uniformed employees wearing headgear displaying WAPCO insignia has had an unlawful disparate impact. Thus, Sec. 111.82, Stats., does not provide uniformed DOC employees with the right to wear headgear displaying WAPCO insignia. DOC did not interfere with, coerce, or restrain state employees in the exercise of their protected rights and, thus, did not violate Sec. 111.84(1)(a), Stats., when it prohibited uniformed employees from wearing headgear displaying WAPCO insignia.

On May 14, 1998, Lt. Tegels ordered Sgt. Richard Malchow, who was in uniform, to remove a hat displaying WAPCO insignia. On May 18, 1998, Sgt. Malchow reported to work in uniform, wearing a hat displaying WAPCO insignia. On May 31, 1998, Captain Proft held

an investigatory interview with Sgt. Malchow and WSEU representative Dan Milnthorpe. On September 10, 1998, Warden Gudmanson issued a formal written reprimand to Sgt. Malchow for not being in proper uniform when he wore the WAPCO hat on May 14, 1998 and May 31, 1998.

As discussed above, Sec. 111.82 does not provide Sgt. Malchow with the right to wear a hat displaying WAPCO insignia while in uniform. Sec. 111.82 rights were not interfered with, restrained or coerced by Lt. Tegel's conduct toward Sgt. Malchow on May 14, 1998, or by the subsequent investigation and discipline of Sgt. Malchow for wearing a WAPCO hat while in uniform.

The discipline was not imposed until more than three months after Sgt. Malchow wore the WAPCO hat. The discipline was imposed shortly after WAPCO began to distribute authorization cards. The timing of the discipline is suspicious. WAPCO, however, has not proven that the decision to discipline Sgt. Malchow was motivated, in any part, by hostility toward Sgt. Malchow, or WAPCO, for engaging in protected activity. Accordingly, the Examiner has rejected WAPCO's assertion that DOC violated Sec. 111.84(1)(c), Stats., when it disciplined Sgt. Malchow for wearing a WAPCO hat while in uniform.

WAPCO Pens

DOC's uniform policy, as written, is silent with respect to pens. Thus, the uniform policy, as written, does not provide the majority organization, WSEU, with a right denied to the minority organization, WAPCO.

On July 21, 1998, in response to reports that uniformed employees were "wearing pens with WAPCO printed on the clip so that it would publicly appear on their shirt pocket," DOC Administrator Verhagen advised DOC management that such pens were "not an allowable item to be worn with the uniform." At that time, Verhagen directed DOC management to notify employees of this policy. DOC management enforced this pen policy by notifying uniformed employees that the WAPCO insignia on the pen could not be worn in such a manner as to display the WAPCO insignia and by directing uniformed employees who displayed the WAPCO insignia to remove the pen from their uniform.

The pen policy contained in Administrator Verhagen's directive of July 21, 1998, does not prohibit the display of any insignia or logo other than that of WAPCO. Uniformed employees have worn pens displaying Green Bay Packer insignia and other corporate logos. It is not evident that DOC management has objected to this display, or directed employees to remove such pens from their uniform.

The pen policy, as written and enforced, applies only to WAPCO insignia. By implementing a policy that restricts only the display of pens with WAPCO insignia, DOC has unlawfully discriminated against WAPCO. By this conduct, DOC has interfered with, restrained or coerced State employees in the exercise of rights guaranteed in Sec. 111.82, Stats., and, thus, has violated Sec. 111.84(1)(a), Stats.

The pen policy was enforced against Sgt. Stuckart, Sgt. Wright, Sgt. Droke, and Sgt. Callahan. As discussed above, by enforcing the WAPCO pen policy, DOC has interfered with, restrained or coerced SPS bargaining unit members in the exercise of rights guaranteed in Sec. 111.82, Stats. Notwithstanding WAPCO's arguments to the contrary, the record fails to establish that any of these SPS bargaining unit members were disciplined for displaying a WAPCO pen on their uniform.

Tee Shirts

The uniform policy of January 16, 1998, states that "when the shirt is worn without a tie, a clean, neat, white crew neck T-shirt or undershirt or turtleneck (no mock turtlenecks) may be worn. No other colors will be permitted." Unlike tie tacks and pins, the uniform policy as written does not provide employees with the right to wear tee shirts, undershirts, or turtlenecks that reflect association with WSEU. Nor does the record demonstrate that DOC has enforced this policy in a manner that provides employees with such a right. Thus, this portion of the uniform policy, as written and enforced, does not provide the majority organization, WSEU, with a right denied to the minority organization, WAPCO.

DOC's uniform policy, as written, does not permit the display of any insignia or logo on tee shirts. WAPCO has not shown that DOC has enforced this portion of the uniform policy in a discriminatory manner.

Under the facts of this case, Sec. 111.82, Stats., does not provide uniformed employees with the right to wear tee shirts that contains WAPCO insignia, or any other reference to WAPCO. DOC did not interfere with, coerce, or restrain State employees in the exercise of their protected rights when it prohibited uniformed employees of DOC from wearing tee shirts displaying the WAPCO insignia, or any other reference to WAPCO, and, thus, did not violate Sec. 111.84(1)(a), Stats.

Clothing Policies Affecting Non-Uniformed Personnel

With the exception of one employee, DACC is a non-uniformed facility. Thus, with the exception of one employee, the uniform policy of January 16, 1998, and the April 6, 1998 memo of Secretary Sullivan, as it relates to "pins or any items not specifically authorized in the uniform policy," on its face, does not pertain to DACC employees.

DACC does not have a written policy regulating clothing in the workplace. DACC Superintendent Sutton, however, does not permit DACC employees to wear clothing with beer labels, shorts, or any hat that is not a baseball type cap issued by the Wisconsin Correctional Center.

Following the issuance of Secretary Sullivan's memo of April 6, 1998, DACC Superintendent Sullivan adopted the policies set forth in this memo with the result that DACC employees were not permitted to wear WAPCO pins, pens or hats within the institution. DACC management also directed Sgt. Frederick Mueller, the only uniformed employe at DACC, to remove his AFSCME coat.

Superintendent Sutton did not permit employees to wear WAPCO tee shirts because he considered the writing on the shirts to be written material in violation of the directives set forth in Secretary Sullivan's memo of April 6, 1998. DACC employees have been permitted to wear clothing with other types of writing, including Green Bay Packer tee shirts and UAW tee shirts.

By prohibiting tee shirts with WAPCO insignia, but permitting tee shirts with other insignias and logos, DACC management has unlawfully discriminated against WAPCO and, thus, has interfered with, coerced, or restrained State employees in the exercise of their Sec. 111.82, Stats., rights in violation of Sec. 111.84(1)(a), Stats.

Mike Drexler

In July of 1998, Sgt. Drexler altered a WAPCO tee shirt by placing tape over the WAPCO logo and writing on the tape "we are politically correct officers." Drexler wore this altered shirt to work at DACC and, when observed by management, was ordered to remove the tee shirt.

Sgt. Drexler is a WAPCO supporter. However, given the manner in which he altered the tee shirt, it is not reasonable to conclude that he was acting in support of WAPCO, or engaging in any other protected, concerted activity, when he wore the shirt to work at DACC. Indeed, Sgt. Drexler acknowledges that he did not intend to engage in organizing activity on the part of WAPCO, but rather, wore the shirt to make a statement that, as a non-uniformed officer, he should be able to wear what he wanted to at work.

Sgt. Drexler was not engaged in the exercise of Sec. 111.82, Stats., rights at the time that he wore the altered tee shirt to work, but rather, was furthering a purely individual concern. By directing Sgt. Drexler to remove the altered tee shirt and to don a green inmate

shirt, DACCA management did not violate either Sec. 111.84(a)(1) or Sec. 111.84(1)(c), Stats. Nor did such conduct on behalf of DACCA management evidence hostility toward WAPCO or its supporters for engaging in concerted, protected activities.

Policies Involving Solicitation and Distribution

Solicitation

On April 6, 1998, Secretary Sullivan provided DOC appointing authorities with a memo concerning “Communications Regarding Labor Relations Activities” that set forth guidelines on Oral Communication (Solicitation) and Written Communication (Distribution). This memo included the following paragraph:

Oral Communication (Solicitation)

Public employer regulation of employee speech is subject to the First Amendment. Generally, we can restrict the time, place, and manner of these communications. We can regulate the content of what employees say only to ensure that it does not pose a threat to security, is not offensive or coercive or otherwise negatively effects (sic) the effective and efficient fulfillment (sic) of the institution’s responsibilities. We can only require employees to restrict their conversations to non-work time. Conversations may occur in both work and non-work areas, but both parties must be on non-work time. (See definitions below)

The “definitions below” include the following:

When can this happen? (Work time vs. non-work time)

Non-work time is the employee’s own time (breaks, meal periods, vacations, time before or after a shift, or an approved leave). Distribution of literature and oral communications shall only occur during both the distributor’s and the recipient’s non-work time.

Where can this happen? (Work areas vs. non-work areas)

Work areas include offices, work stations (including posts), conference rooms, corridors leading directly to these locations, any locations where an employee performs her or his official duties. Non-work areas include lobbies, employee cafeterias, employee break rooms and public areas.

The above policies, as written, are not limited to WAPCO. WAPCO argues that the ambiguity of the oral communication policy unreasonably subjects employees to discipline. Specifically, WAPCO argues that employees are unable to distinguish between work areas and non-work areas and work time and non-work time.

The written policy defines non-work time as breaks, meal periods, vacations and time before and after a shift, or an approved leave. Contrary to the argument of WAPCO, the non-work time identified in the written policy is not ambiguous.

To be sure, DOC employees that work straight eight-hour shifts are required to remain in their work areas during this time. These employees, however, are entitled to take breaks and do take breaks. The record provides no reasonable basis to conclude that an employee cannot determine when he/she has exercised the right to take a break. While it may be less obvious to a supervisor that the employee is exercising his/her right to take a break, the supervisor has the ability to question the employee about the employee's work status.

The policy, as written, does not equate "non-work time" with "time that is not in pay status." Nor does Secretary Sullivan's April 16, 1998 letter to Council 24 Executive Director Beil equate "non-work time" with "time that is not in pay status." In these documents, non-work time is the time in which an employee is not required to be engaged in work tasks and includes vacations, leaves, breaks and meal periods. Thus, under this definition, non-work time may include time in which an employee is in pay status.

Nonetheless, as established by the testimony of Sgt. Donald Stuckart and DAI Administrator Dick Verhagen, DOC supervisory and managerial employees have interpreted "non-work time" to mean time in which employees are not in pay status. Given the fact that DOC employs Correctional Officers who are allowed to take breaks while in pay status, the written policy that expressly permits solicitation while on breaks is in conflict with the interpretation that employees may not solicit while in pay status. As WAPCO argues, the ambiguity arising from this conflict may unreasonably subject an employee to discipline.

Regardless of whether or not an employee is in pay status when he/she takes a break, the employee is permitted to attend to personal concerns, such as smoking a cigarette. To be sure, attending to personal concerns during a paid break does not relieve the employee of the obligation to return to duty as needed. It is not evident, however, that solicitation on behalf of WAPCO would create any more delay in returning to duty than does smoking a cigarette.

By prohibiting an employee from soliciting on behalf of WAPCO during the employee's paid break, DOC has singled out a protected activity for regulation. DOC has not offered any valid business reason for the disparate regulation of employee activities on paid break. By

prohibiting employees who are on paid break from soliciting on behalf of WAPCO, DOC has interfered with, restrained or coerced employees in the exercise of their Sec. 111.82 rights in violation of Sec. 111.84(1)(a), Stats.

The written policy permits oral communication in work areas and non-work areas if both employees are on non-work time. Since discussion is permitted in either area, an employee's inability to determine whether the employee is in a work area or a non-work area would not unreasonably subject the employee to discipline for violation of the solicitation policy, as written.

In KENOSHA SCHOOL DISTRICT, DEC. NO. 6986-C (2/66), the Commission stated as follows:

Rules established by a municipal employer, in effectuation of its public function, which regulate on a non-discriminatory basis, the activities of its employees and their representatives on employer's time and premises, and which may arguably limit the rights and protected activities of employees, as established in Sec. 111.70, Wisconsin Statutes, shall be presumed valid. Whether said rules constitute grounds for setting aside elections or constitute prohibited practices, will depend on the facts in each case. The rights of the employees and their representatives must be balanced with the obligation and duties of the municipal employer.

These principles were reaffirmed in RACINE EDUCATION ASSOCIATION, DEC. NO. 29047-C (WERC, 7/98).

Given the character of correctional institutions and correctional work, employees may not be on breaks and lunch at the same time or in the same areas. Thus, it may be difficult, if not impossible, for employees to solicit while they are on break or at lunch. However, contrary to the argument of WAPCO, restricting solicitation to non-work time does not effectively deny employees the right to solicit employees at the institution. WAPCO supporters may come in early and stay late to solicit employees who are arriving or leaving for work. Moreover, with the prior approval of the appointing authority, WAPCO supporters have been permitted to set up information stands in public areas of the institutions, such as lobbies.

Applying the principles enunciated in KENOSHA SCHOOL DISTRICT and in RACINE EDUCATION ASSOCIATION, the Examiner concludes that DOC's written policy limiting solicitation within the institution to times when the involved employees are on non-work time does not violate SELRA, *per se*. However, as discussed above, regulation of employee activity on the employer's work premises must be uniformly enforced.

The oral communication policy, as written, does not provide WSEU with rights not provided to WAPCO. Although this policy confirms DOC's commitment to implementing its WSEU collective bargaining agreements, it is not evident that WSEU's collective bargaining agreements provide WSEU with solicitation rights not granted to WAPCO.

The GBCI Handbook includes the following:

B. Interpersonal Relationships

1. Staff-to-Staff

...

- d. While on duty or while on Institutional grounds you shall not solicit other staff members to join any organization other than an employee's union or association.
- e. Department Work Rules prohibit "unauthorized solicitation for any purpose while on duty or on state property."

...

Relying upon her understanding that "union," as that term is used in the above-quoted section of the GBCI handbook, included WAPCO, Correctional Officer Sheila Garrigan solicited employees to sign WAPCO authorization cards while on duty. On or about October 14, 1998, Correctional Officer Sheila Garrigan received an official letter of reprimand for violating the Department of Corrections Work Rule #18 that prohibits "A.18. Unauthorized solicitation while on duty."

The record demonstrates that, for purposes of DOC policies, DOC interprets "union" to mean the recognized collective bargaining representative. Thus, for SPS bargaining unit employees, "union" is WSEU. Soliciting other staff members to join WSEU is not a right or benefit that is rationally related to the functions of the majority organization in its representative capacity. Rather, its purpose is to entrench WSEU as the bargaining representative.

By disciplining Correctional Officer Sheila Garrigan, Warden Bertrand, acting on behalf of DOC, enforced a rule prohibiting WAPCO supporters from soliciting employees on behalf of WAPCO while on duty, while maintaining a rule that permits employees on duty to solicit other staff members to join WSEU. By this conduct, DOC has applied a solicitation rule in a manner that has an unlawful disparate impact upon employees' rights to join and assist

WAPCO and, therefore, has interfered with, restrained or coerced employees in the exercise of their Sec. 111.82 rights. Accordingly, DOC has violated Sec. 111.84(1)(a), Stats. Inasmuch as the written discipline of October 14, 1998, has interfered with Correctional Officer Garrigan's Sec. 111.82 rights, it cannot stand.

Brian Droke

On September 28, 1998, TCI Security Director James Zanon issued a written memo that advised Sgt. Brian Droke that it was not appropriate for Sgt. Droke to promote WAPCO while on work time. Capt. Coon, who presented the memo to Sgt. Droke, told Sgt. Droke that he could not support WAPCO while on the grounds. When Sgt. Droke sought further clarification of this memo from Capt. Melman and Capt. Kronager, he was told that he could not discuss WAPCO while on the grounds of TCI because he could not leave his building to go to a break area.

While the memo of September 28, 1998, as written, does not prohibit Sgt. Droke from soliciting at TCI when all involved employees are on break, TCI supervisory staff interpreted this memo to preclude such activity. By restricting Sgt. Droke's solicitation on behalf of WAPCO while on work time, regardless of whether or not all involved employees are on break time, the TCI supervisory employees have interfered with, restrained, or coerced Sgt. Droke in the exercise of his Sec. 111.82 rights.

The memo of September 28, 1998, as written, prohibits Sgt. Droke from promoting WAPCO while on work time. Given the fact that DOC maintains a rule that permits employees on duty to solicit other staff members to join WSEU, Security Director Zanon, acting on behalf of DOC, has applied a solicitation rule in a manner that has an unlawful disparate impact upon an employee's right to join and assist WAPCO and, therefore, has interfered with, restrained, or coerced employees in the exercise of their Sec. 111.82 rights. Accordingly, DOC has violated Sec. 111.84(1)(a), Stats. Inasmuch as the memo of September 28, 1998, has interfered with Sgt. Droke's Sec. 111.82 rights, it cannot stand.

Distribution

Secretary Sullivan's memo of April 6, 1998, includes the following:

Written Communication (Distribution)

The greater concern is with written communication – it is lasting and easily regulated. Once again, we can not (sic) regulate the content of the written document (unless it is offensive, coercive or poses a security concern). We can regulate where the written documents can be posted or distributed.

The memo then set forth a Bulletin Boards and Mailboxes policy.

Bulletin Boards

WSEU's status as exclusive collective bargaining representative of the SPS unit provides WSEU with rights to a bulletin board that are not available to the general public, including a minority labor organization such as WAPCO. Specifically, an employer may provide the exclusive collective bargaining representative exclusive access to bulletin boards when necessary to perform its function as the exclusive collective bargaining representative. If an employer permits the exclusive collective bargaining representative to post materials other than that necessary to perform its function as the exclusive collective bargaining representative, then the employer is obligated to provide bulletin board access to minority labor organizations. MILWAUKEE BOARD OF SCHOOL DIRECTORS, DEC. NO. 9258 (WERC, 8/69); MILWAUKEE BOARD OF SCHOOL DIRECTORS, DEC. NO. 9258-A (WERC, 11/74).

Under the terms of the collective bargaining agreement between WSEU and DOC, WSEU may post a variety of items on its bulletin board, including "Union recreational and/or social affairs" and "Any other material authorized by the Employer or his/her designee and the President of the local Union or his/her designee." Inasmuch as DOC has permitted WSEU to post materials other than that necessary to perform its function as the exclusive collective bargaining representative, DOC is obligated to provide bulletin board access to a minority union, such as WAPCO.

The bulletin board policy, as set forth in the April 6, 1998 memo, provides WAPCO with access to "General Interest" bulletin boards. Thus, the policy, as written, does not interfere with, restrain or coerce State employees in the exercise of their Sec. 111.82, Stats., rights.

WAPCO claims that its access to "General Interest" bulletin boards is more restrictive than WSEU's access to WSEU bulletin boards. Of specific concern to WAPCO is the fact that some institutions require users of "General Interest" bulletin boards to obtain management approval prior to posting materials.

The Commission has not stated that a minority union is entitled to access bulletin boards in exactly the same manner as the majority union. Nor is the Examiner persuaded that identical access is required in order to effectuate the purposes of SELRA.

The collective bargaining agreement recognizes the type of materials that may be posted by WSEU on WSEU bulletin boards. Other types of materials may be posted with authorization of the employer and the President of the local Union. Thus, in effect, WSEU has obtained prior approval from DOC for materials posted on WSEU bulletin boards.

An employer has a valid business interest in controlling materials that are posted on its bulletin boards. For example, it need not permit the posting of materials that are obscene. Nor need it permit the posting of materials that are racist, sexist or derogatory to ethnic groups. CITY OF OSHKOSH, DEC. NO. 28971-A (MAWHINNEY, 8/97).

DOC policy states that it cannot regulate content unless it is offensive, coercive, or poses a security threat. It is possible that material that DOC deems to be offensive, coercive or posing a security threat may be material that is protected by SELRA. The record, however, does not establish that DOC has failed to approve for posting any materials submitted on behalf of WAPCO. Nor is it evident that, within the institutions that have prior approval requirements for posting on "General Interest" bulletin boards, that these requirements have not been uniformly applied to all that seek to post materials on the "General Interest" bulletin boards. Under the circumstances of this case, DOC's conduct in permitting appointing authorities to require employer approval prior to posting materials on a "General Use" bulletin board has not interfered with, restrained or coerced employees in the exercise of their Sec. 111.82 rights.

In the spring of 1998, when Sgt. Wright made his first request to post WAPCO materials on the "General Interest" bulletin board at Oak Hill, Lt. James told Sgt. Wright that he needed to talk to the Security Director. The WAPCO materials were time sensitive in that they included a notice of a meeting to be held in Madison in April. By the time that the Security Director responded to Wright's request, the April meeting had been held. Thereafter, Sgt. Wright's request to post WAPCO materials on the "General Interest" bulletin board at Oak Hill have been approved and posted to Sgt. Wright's satisfaction.

The record does not demonstrate that the delay in approving Sgt. Wright's first request to post a WAPCO notice was unreasonable under the circumstances, or due to any unlawful conduct on the part of management. The evidence concerning Sgt. Wright's first request to post a WAPCO notice fails to establish that the application of a prior approval requirement interfered with, restrained, or coerced employees in the exercise their Sec. 111.82, Stats.

As WAPCO argues, Sgt. Serrano believes that a request to post material at RYOCF would expose Sgt. Serrano to discipline. The record, however, does not establish that Sgt. Serrano has a reasonable basis to hold such a belief. WAPCO's claim that DOC unlawfully intimidated Sgt. Serrano into not exercising his Sec. 111.82, Stats., right to post WAPCO material on the "General Interest" bulletin board at RYOCF is not proven.

GBCI maintains a "General Interest" bulletin board. GBCI does not have a prior approval process with respect to the use of this "General Interest" bulletin board. GBCI supervisors monitor the "General Interest" bulletin board and remove materials deemed to be inappropriate, such as obscene cartoons.

On June 26, 1998, Associate Warden Lemery removed a WAPCO meeting notice from the GBCI "General Interest" bulletin board. Following the advice of DOC BPHR Director Ezalarab, Lemery subsequently replaced the WAPCO meeting notice on the "General Interest" bulletin board.

By removing the WAPCO meeting notice, Associate Warden Lemery applied GBCI's "General Interest" bulletin board policies in a manner that discriminated against WAPCO. By this conduct, Associate Warden Lemery unlawfully interfered with employees' Sec. 111.82 rights in violation of Sec. 111.84(1)(a), Stats. The interference occurred at the time that Associate Warden Lemery removed the meeting notice and, thus, her subsequent reposting of the meeting notice did not cure the violation of SELRA.

As WAPCO argues, WAPCO materials were frequently removed from "General Interest" bulletin boards at GBCI and other DOC institutions. With the exception of the June 26, 1998 conduct of Associate Warden Lemery discussed above, it is not evident that any agent of DOC removed WAPCO material from any bulletin board.

DOC claims that the removal of the WAPCO meeting notice by Associate Warden Lemery was a mistake. The record does not demonstrate otherwise. Accordingly, the Examiner does not consider it appropriate to order the DOC to cease and desist from removing WAPCO materials from the General Interest bulletin boards.

At least one institution, i.e., Ethan Allen, does not have a "General Interest" bulletin board. It is not evident, however, that any employee sought, or has been denied, the right to post WAPCO information at a facility that does not have a "General Interest" bulletin board.

Mailboxes

Secretary Sullivan's memo of April 6, 1998, references "mailboxes," but does not enunciate a policy on the use of mailboxes. On or about August 28, 1998, Director of BPHR Hamdy Ezalarab, sent an E-mail to RYOCF Warden Buchler, who had queried Director Ezalarab about WAPCO's right to use institution mailboxes. This E-mail states as follows:

They may not use the mailboxes in your institution, other means of distributing the information are available to them. Please give me a call should you need further information. Thanks.

It is not evident that either the E-mail, or the policy enunciated in this E-mail, was made known to other DOC Wardens. Indeed, the evidence of mailbox policies indicates that there was variation in mailbox policy from institution to institution. For example, RYOCF, DACCA and Oak Hill did not permit employes to use mailboxes to distribute WAPCO materials, but RCI did permit such distribution.

As Administrator Verhagen stated at hearing, DOC recognizes that the collective bargaining agreement provides WSEU with certain rights to use DOC institution mailboxes. DOC may grant exclusive use of its mailboxes to WSEU as long as the use of this mailbox is limited to that which is necessary to perform its function as the exclusive bargaining representative. MILWAUKEE BOARD OF SCHOOL DIRECTORS, DEC. NO. 9258 (WERC, 8/69); MILWAUKEE BOARD OF SCHOOL DIRECTORS, DEC. NO. 9258-A (WERC, 11/74).

By the terms of their collective bargaining agreement with WSEU, DOC has granted WSEU the right to use mailboxes as follows:

Section 10: Mail Service

2/10/1(BC, T, SPS,PSS, LE) Local Unions shall be allowed to use the existing inter-departmental and/or intra-departmental mail system(s) of the State of Wisconsin for a maximum of two membership mailings per month to members of their respective locals. Local Unions shall be allowed to use intra-institutional mail service (if available). Such mailings must be of a reasonable size and volume and prepared by the local Union in accordance with prescribed mail policy. The Employer shall be held harmless for the delivery and security of such mailings. The content of such mailings shall relate to the matters listed below:

- A. Union recreational and/or social affairs;

- B. Union appointments;
- C. Union elections;
- D. Results of union elections;
- E. Union meetings;
- F. Rulings or policies of the International Union or other Labor organization with which the Union is affiliated;
- G. Reports of standing committees.

By permitting WSEU to use correctional institution and correctional center mailboxes to distribute materials that are not necessary to perform its function as the exclusive bargaining representative, such as materials relating to union recreational and/or social affairs, but not permitting WAPCO access to its correctional institution and correctional center mailboxes, DOC has interfered with, restrained or coerced State employees in the exercise of their Sec. 111.82, Stats., rights in violation of Sec. 111.84(1)(a), Stats.

Handing Out Information

The memo of April 6, 1998 contains the following:

Information may be handed out to other employees in non-work areas during all parties' non-working time. Written information shall not be distributed in any work area. (See definitions below)

The "definitions below" include the following:

When can this happen? (Work time vs. non-work time)

Non-work time is the employee's own time (breaks, meal periods, vacations, time before or after a shift, or an approved leave). Distribution of literature and oral communications shall only occur during both the distributor's and the recipient's non-work time.

Where can this happen? (Work areas vs. non-work areas)

Work areas include offices, work stations (including posts), conference rooms, corridors leading directly to these locations, any locations where an employee performs her or his official duties. Non-work areas include lobbies, employee cafeterias, employee break rooms and public areas.

As discussed above, in KENOSHA SCHOOL DISTRICT, DEC. NO. 6986-C (WERB, 2/66), the Commission held that rules established by a municipal employer to regulate, on a non-discriminatory basis, the distribution of materials and other employe activities “on employer’s time and premises” shall be presumed valid. Subsequently, in ACME DIE CASTING CORP., DEC. NO. 8704-B (WERC, 5/69), the Commission adopted a policy in which no-distribution rules which prohibit the distribution of materials during non-working time in non-working areas were presumed invalid. In adopting this rule, the Commission balanced the interests of employes in their right to engage in concerted activities and the right of an employer to maintain production and discipline in its establishment. The Commission concluded that, to overcome the presumption of invalidity, the employer must prove that restriction on distribution in non-working areas during non-working time is actually necessary in order to maintain production or discipline.

DOC’s decision to prohibit the handing out of information in work areas is presumptively valid. DOC has a valid business interest in controlling inmate access to written materials. Unlike solicitation discussed above, it is not evident that DOC has a policy of permitting WSEU to hand out literature, other than that which in some manner is rationally related to the functions of WSEU in its representative capacity, to employes in work areas. Thus, with respect to the prohibition on handing out literature in work areas, the record does not demonstrate that DOC has provided rights or benefits to the recognized bargaining unit that it has not provided to a minority union. Nor is it evident that DOC has otherwise unlawfully discriminated against WAPCO with respect to its policy prohibiting the handing out of materials in work areas.

“Work areas,” as defined in the written policy, includes any locations where an employe performs her or his official duties. In a secured institution, employes perform duties in virtually every area. Thus, such a broad definition suggests that an employe may not hand out literature in any area of the institution. Specifically defining non-work areas to include lobbies, employe cafeterias, employe break rooms and public areas is sufficient to remove any ambiguity concerning DOC’s definition of “work areas.”

If an employe believes that there may be other “non-work” areas within the employe’s particular institution, then the employe may discuss this issue with the appointing authority

prior to handing out information. Contrary to the argument of WAPCO, the definitions of “work areas” and “non-work areas” are not so ambiguous as to unreasonably subject employees to discipline for handing out literature in non-work areas.

It is not evident that any employee has been disciplined for handing out literature in non-work areas. In DACC, employees are not permitted to hand out literature in the cafeteria because inmates are present. The presence of inmates, per se, is not sufficient to convert a “non-work area” into a “work area.” For example, trustees may perform custodial work in public areas. By choosing to provide a trustee with access to a public area, institution management has not converted a non-work area into a work area. The record, however, does not provide sufficient evidence to determine whether or not the DACC cafeteria is a “work area,” rather than a “non-work area.”

Solicitation and Distribution by Non-Employees or Employees Not in Work Status

The memo of April 6, 1998, requires non-employees or employees not in work status to schedule the solicitation or distribution with the appointing authority. Given the general right of an employer to limit access to its property and the specific security concerns of a correctional institution, DOC has a legitimate business interest in controlling access to institution property. The requirement that non-employees or employees not in work status schedule solicitation or distribution activities with the appointing authority and the requirement that the appointing authority designate the non-work area where the communication will occur are facially valid.

It is not evident that members of the public are able to solicit or distribute information on institution grounds without scheduling these activities with the appointing authority or without having the appointing authority designate the non-work area site of the distribution or solicitation. Nor is it evident that WSEU is not subject to the same on-site distribution requirements with respect to activities or information that is not, in some rational manner, related to the functions of the majority organization in its representative capacity. Thus, the record does not demonstrate that this distribution policy of DOC has an unlawful disparate impact upon WAPCO.

DOC did not interfere with, restrain or coerce employees in the exercise of Sec. 111.82 rights when it requested WAPCO supporters to leave the premises of Ethan Allen School and Dodge Correctional Institution because these supporters had not scheduled their distribution activities with the appointing authority. DOC did not interfere with, restrain or coerce employees in the exercise of their Sec. 111.82 rights when, in response to an information request from WSEU representatives, Superintendent Bartow told WSEU representatives when

WAPCO supporters would be distributing information at Ethan Allen School. Nor does this conduct by Superintendent Bartow involve an act in concert with WSEU to coerce or intimidate employees in violation of Sec. 111.84(2)(a), Stats.

Dan Oaks

Contrary to the assertion of WAPCO, Sgt. Dan Oaks was not reprimanded for attempting to sell WAPCO hats. Rather, Oaks was disciplined for his conduct toward Lt. Caldwell, which DOC considered to be disrespectful and insubordinate, and for violating the uniform policy by wearing a hat with a WAPCO insignia. The record does not demonstrate that Sec. 111.82 rights were interfered with, restrained or coerced by Lt. Caldwell's conduct toward Sgt. Oaks on May 7, 1998, or by the subsequent discipline of Sgt. Oaks for his conduct on May 7, 1998. WAPCO's claim that the discipline of Sgt. Oaks violated Sec. 111.84(1)(c), Stats., is without merit.

Allegations of DOC Hostility Toward WAPCO

David Frederick

Notwithstanding WAPCO's arguments to the contrary, it is not evident that any agent of DOC is hostile toward Sgt. Frederick for engaging in rights protected by SELRA. Nor is it evident that Sgt. Frederick was denied use of his annual leave because of his affiliation with WAPCO, or for engaging in any other right protected by SELRA.

The record demonstrates that DOC's conduct in placing Sgt. Frederick on leave without pay, thereby denying him the vacation time that he had previously selected, was motivated solely by DOC's desire to follow policy and statutory requirements. The record further demonstrates that DOC's conduct in recouping monies from Sgt. Frederick's bank account was due to its belief that the monies had been deposited in error. DOC has not been shown to have violated Sec. 111.84(1)(a) or Sec. 111.84(1)(c), Stats., by denying Sgt. Frederick the use of paid leave while he was a candidate for County Sheriff or by recovering monies from Sgt. Frederick's bank account.

Donald Stuckart

As discussed above, the record does not establish that Sgt. Stuckart was disciplined for displaying a WAPCO pen, or for engaging in any other activity protected by SELRA. To be sure, Lt. Melman interviewed Sgt. Stuckart and asked Sgt. Stuckart if Sgt. Stuckart had observed anyone engaged in intimidating, harassing, or coercive behavior. Sgt. Stuckart concluded that this interview was an attempt to discourage him from engaging in activities in

support of WAPCO. The record, however, does not demonstrate that this conclusion was reasonable. Nor does the record demonstrate that the questioning of Sgt. Stuckart was motivated, in any part, by hostility towards WAPCO, or hostility toward any activity protected by SELRA.

Lori Cygan

On October 14, 1998, Correctional Officer Lori Cygan was issued a letter of reprimand for violating DOC Work Rule #13 which prohibits “Intimidating, interfering with, harassing (including sexual or racial harassment), demeaning, or using abusive language in dealing with others.” Contrary to the argument of WAPCO, the record does not establish that DOC could not have found Correctional Officer Denise Camp’s claims against Correctional Officer Lori Cygan to be credible.

The record establishes that DOC has a reasonable basis to believe that Lori Cygan had created a hostile work environment by harassing and intimidating Officer Camp. The question of whether or not DOC correctly concluded that Lori Cygan had violated Work Rule #13 by creating a hostile work environment is a question that must be decided by the grievance arbitrator.

The record fails to demonstrate that Lori Cygan was disciplined for engaging in activity protected by SELRA. Nor does the record demonstrate that the discipline of Lori Cygan was motivated, in any part, by hostility towards WAPCO, or hostility toward any activity protected by SELRA.

Summary

DOC has established and enforced policies that have had an unlawful disparate impact upon WAPCO. This DOC conduct gives rise to an inference that DOC is hostile toward WAPCO and its supporters for engaging in protected, concerted activity.

Individual members of DOC management and supervisory staff have engaged in conduct that gives rise to an inference that these staff members are hostile toward WAPCO and its supporters for engaging in protected concerted activity. As WAPCO argues, incidents of such conduct include Lt. Sarinski’s conduct in removing a WAPCO pen from Sgt. Droke’s pocket; inquiring what Droke would do if Sarinski were to drop the pen and step on it; and commenting that people found the pen to be offensive, as well as Associate Warden Lemery’s conduct in removing WAPCO material from the bulletin board at GBCI.

DOC has disciplined individuals who were known to be actively involved in the organizational campaign of WAPCO. The imposition of this discipline gives rise to an inference that DOC is hostile toward WAPCO supporters for engaging in activities protected by SELRA.

The record as a whole, however, does not demonstrate that the establishment or enforcement of DOC's unlawful disparate policies, or the discipline of any employee, was motivated, in any part, by hostility toward WAPCO or its supporters for engaging in rights protected by Sec. 111.82, Stats. Rather, the Examiner is persuaded that these policies were motivated by DOC's desire to comply with what it understood to be labor contract requirements and its desire to maintain security within the institutions.

Conclusion

WAPCO has demonstrated, by a clear and satisfactory preponderance of the evidence, that DOC has engaged in conduct that violates Sec. 111.84(1)(a), Stats. WAPCO has not demonstrated, by a clear and satisfactory preponderance of the evidence, that DOC has engaged in conduct that violates Sec. 111.84(1)(c), Stats. Nor has WAPCO demonstrated, by a clear and satisfactory preponderance of the evidence, that any agent of DOC acted in concert with WSEU to coerce or intimidate employees in violation of Sec. 111.84(2)(a), Stats.

WAPCO CLAIMS AGAINST WSEU

Allegations of Physical and Verbal Threats

Declan Sexton

On July 2, 1998, Correctional Officer Declan Sexton filed an Incident Report with GBCI alleging that Correctional Officer Aspatore stated "If WAPCO takes over as the union and if we even lose one benefit that he would be one of the guys in black hoods breaking people's kneecaps." Such a statement, if made by Correctional Officer Aspatore, would reasonably tend to intimidate an employee in the enjoyment of an employee's legal rights in violation of Sec. 111.84(2)(a), Stats.

Correctional Officer Aspatore, a WSEU Steward, denies making threats toward Correctional Officer Sexton or any statement about breaking kneecaps if he lost any benefits. There were no witnesses to the alleged conversation other than Correctional Officer Sexton and Correctional Officer Aspatore. The record provides no reasonable basis to credit Correctional

Officer Sexton's account over that of Correctional Officer Aspatore. WAPCO's charge that WSEU, by its agent Correctional Officer Aspatore, made physical and verbal threats in violation of Sec. 111.84(2)(a), Stats., is not proven.

Joseph Callahan

On August 19, 1998, Sgt. Joseph Callahan attended a COCI meeting for the purpose of conveying certain petitions to WSEU President Gary Lonzo. At this meeting, Sgt. Bath, the President of the WSEU local at Fox Lake told Sgt. Callahan that, as a WAPCO fuck, he was not welcome at the COCI meeting. Sgt. Callahan responded that he was an AFSCME member and that he had been invited to attend the meeting by his AFSCME local. Sgt. Bath then stated that Sgt. Callahan would not be an AFSCME member much longer, that "we" are taking care of that, and that Sgt. Callahan would be paying dues for the rest of his career for nothing.

At the time of this meeting, Sgt. Callahan was not acting on behalf of WAPCO. Nonetheless, Sgt. Bath's comments toward Sgt. Callahan indicate that he was addressing Sgt. Callahan in Sgt. Callahan's capacity as a WAPCO supporter.

In DAIRYLAND GREYHOUND PARK, INC., DEC. NO. 28135-B (WERC, 3/98), the Commission has stated as follows:

However, under Wisconsin law, determinations whether a labor organization is responsible for acts of individuals other than its employees are based not only on general agency principles, but also on whether the employe(s) being coerced or intimidated "would have just cause to believe that" the coercive or intimidating statements were made "for and on behalf of the" respondent labor organization. CHRISTOFFEL V. WERC, 243 WIS. 332, 345-46 (1943).

By using the term "we," Sgt. Bath indicated that he was not acting on his own behalf, but rather, was representing a collective interest. Given the subject matter of the conversation, *i.e.*, AFSCME membership, and Sgt. Bath's position as President of the Fox Lake local WSEU union, one may reasonably conclude that the collective interest was that of the WSEU leadership.

Construing Sgt. Bath's comments in the light of surrounding circumstances, the Examiner is persuaded that Sgt. Bath's statements indicate that Sgt. Callahan's affiliation with WAPCO will detrimentally affect WSEU's representation of Sgt. Callahan. Such statements have a reasonable tendency to coerce or intimidate an employe in the enjoyment of rights guaranteed under Sec. 111.82.

The Examiner is persuaded that Sgt. Callahan had just cause to believe that the coercive or intimidating statements of Andy Bath were made for and on behalf of WSEU. The Examiner concludes that WSEU, by its agent Sgt. Bath, has violated Sec. 111.84(2)(a), Stats. As WAPCO argues, by his conduct at the COCI meeting, Sgt. Bath exhibited hostility toward WAPCO.

By words and physical contact, Sgt. Bath sought to prevent Sgt. Callahan from entering the COCI meeting room. When Sgt. Callahan presented the petitions to Gary Lonzo, in his capacity as a WSEU official, Andy Bath told Gary Lonzo to give him the petitions so that he could stick the petitions up Callahan's skinny ass. Following the presentation of the petitions, Sgt. Bath swore at Sgt. Callahan and chased him from the room. By this conduct, Sgt. Bath indicated that WAPCO supporters would not only be denied the opportunity to seek redress from WSEU, but also, would be abused for seeking redress. Other WSEU local union officers at the COCI meeting, however, by action and word, disavowed this specific conduct of Sgt. Bath. Given this disavowal, the Examiner does not find that Sgt. Bath was acting on behalf of WSEU, or that Sgt. Callahan had just cause to believe that Sgt. Bath was acting on behalf of WSEU, when Sgt. Bath interfered with Sgt. Callahan's presentation of the petitions to Gary Lonzo. Sgt. Bath was not named as a respondent and his conduct as an individual cannot be redressed herein.

Lori Cygan and Jim Cygan

On July 18, 1998, Correctional Officer Lori Cygan and her husband, Correctional Officer Jim Cygan visited a hospitality room at a WSEU convention. WSEU President Gary Lonzo and others who were campaigning for WSEU offices hosted the hospitality room. During this visit, Sgt. Bath told Correctional Officer Lori Cygan that it was not a good idea for her to be there; that people did not appreciate what was going on; and asked Correctional Officer Lori Cygan to leave.

Correctional Officer Lori Cygan, who was wearing a WAPCO pin, overheard remarks that were disparaging to WAPCO. Various other individuals directed rude and vulgar remarks at the Cygans. According to Correctional Officer Lori Cygan, one of these individuals was Local 132 Secretary-Treasurer Sgt. Stevens.

The following day, Correctional Officer Jim Cygan filed an Incident Report alleging that Sgt. Stevens threatened him while he was in the hospitality room. Correctional Officer Jim Cygan did not testify at hearing and no witness corroborated his written allegations. Sgt. Stevens, in his testimony at hearing, denied that he made the remarks alleged by Correctional Officer Jim Cygan.

WAPCO has failed to demonstrate that Sgt. Stevens made the threats alleged by Correctional Officer Jim Cygan in his Incident Report. Nor is it otherwise evident that WSEU representatives physically threatened WAPCO members at the hospitality room as claimed by WAPCO.

While visiting the hospitality room, Correctional Officers Jim and Lori Cygan were harassed for being WAPCO supporters. SELRA, however, does not require WSEU members to be congenial to members who attend social functions hosted on behalf of WSEU officers, or any other individual. The evidence of harassment may serve to demonstrate that the harassers were hostile towards WAPCO and activities in support of WAPCO. It does not demonstrate that any individual in the environs of the hospitality room coerced or intimidated Correctional Officers Jim and Lori Cygan in the enjoyment of their legal rights in violation of Sec. 111.84(2)(a), Stats.

In late May of 1998, then WSEU Steward Gregory Stevens filed charges with AFSCME Council 24 alleging that Correctional Officer Lori Cygan had violated the AFSCME International Constitution by engaging in activity which assists or is intended to assist a competing organization within the jurisdiction of the Union. Subsequently, the International heard the matter; found Correctional Officer Lori Cygan to be guilty as charged; and expelled Correctional Officer Lori Cygan from AFSCME.

By bringing charges against Correctional Officer Lori Cygan, Gregory Stevens exhibited hostility toward Correctional Officer Lori Cygan for her activities in support of WAPCO. However, the legal rights conferred upon Correctional Officer Lori Cygan by SELRA do not include an unfettered right to membership in the AFSCME union. Rather, the right conferred upon Correctional Officer Lori Cygan is the right to have fair representation from WSEU in its function as exclusive bargaining representative, irrespective of whether or not Correctional Officer Lori Cygan is a member of the AFSCME union. By concluding that Correctional Officer Lori Cygan had violated the AFSCME constitution and expelling Correctional Officer Lori Cygan from AFSCME membership, AFSCME and its affiliated WSEU did not violate SELRA.

Jeff Teletzke

In January of 1998, Sgt. Jeffrey Teletzke attended an AFSCME meeting at the Fox Lake Town Hall. Following this meeting Sgt. Teletzke had a conversation with Sgt. Andy Bath in which Sgt. Bath asked Sgt. Teletzke why he was distributing WAPCO information. Sgt. Teletzke responded that it was in the officers' best interest to have sufficient information to make informed decisions. Sgt. Bath responded that he would do everything in his power to stop Teletzke from distributing WAPCO information at Fox Lake.

The venue of the conversation; Sgt. Bath's status as President of the Fox Lake WSEU local; and the content of the conversation are sufficient to demonstrate that Sgt. Bath's remarks to Sgt. Teletzke were made in his capacity as an officer in the WSEU local union. The phrase "everything in his power" is sufficiently broad to encompass both legal and illegal acts. Sgt. Bath's statement to Sgt. Teletzke has a reasonable tendency to coerce and intimidate employees in the exercise of Sec. 111.82 rights. Thus, by this conduct of its agent Andy Bath, WSEU has violated Sec. 111.84(2)(a), Stats.

Approximately one week following this conversation with Sgt. Bath, the right front tire fell off of Sgt. Teletzke's car. In August 1998, the left front tire fell off of Sgt. Teletzke's car. The record fails to establish that WSEU, or anyone acting on behalf of WSEU, was in any way responsible for these tire problems.

On or about March, 1998, Sgt. Teletzke placed a stack of WAPCO Independents in the squad room at Fox Lake. At that time, Sgt. Bath stated "Why don't you take those papers and shove them up your ass." As discussed above, SELRA does not require WSEU members, including officers of WSEU locals, to be congenial to bargaining unit members. Unlike Sgt. Bath's comments to Sgt. Callahan, discussed above, Sgt. Bath was not threatening to take action against Sgt. Teletzke. Rather, Sgt. Bath's suggestion to Sgt. Teletzke concerning the disposition of WAPCO materials is essentially a statement in opposition to the WAPCO organizing effort. It is reasonable to conclude that Sgt. Bath's statement is offensive and exhibits hostility toward WAPCO. However, this statement of Sgt. Bath does not have a reasonable tendency to coerce and intimidate an employee in the exercise of the employee's legal rights in violation of Sec. 111.84(2)(a), Stats.

David Frederick

Sgt. David Frederick contacted his local WSEU union President, Dan Milnthorpe, to request that Milnthorpe file a grievance. Milnthorpe understood that Sgt. David Frederick wished to file a grievance over the DOC's refusal to allow Sgt. Frederick to use paid leave. Milnthorpe contacted Karl Hacker, Assistant Director for AFSCME Council 24 to discuss the grievance. Understanding that he was being asked about the legality of the State requiring an employee to take a leave of absence without pay while the employee runs for Sheriff, Assistant Director Hacker told Milnthorpe that the employee would have to take a leave of absence and could not be in pay status. Assistant Director Hacker also told President Milnthorpe that he could file a grievance, but that he did not think that the grievance could be won because the State statute controlled. Following this conversation with Assistant Director Hacker, President Milnthorpe told Sgt. Frederick that the union would not file a grievance on his behalf and suggested that Sgt. Frederick discuss the matter with Assistant Director Hacker.

WSEU did not file a grievance on the State's refusal to allow Sgt. Frederick to use paid leave while he was a candidate for Sheriff. As WAPCO argues, Sgt. Bath's statements to Sgt. Callahan suggest that WSEU would not fairly represent WAPCO supporters. It is not evident, however, that WSEU's decision to not file a grievance on the State's refusal to allow Sgt. Frederick to use paid leave while he was a candidate for Sheriff was due to any factor other than a belief that the grievance was not meritorious.

According to Sgt. Frederick, he also discussed filing a grievance on the State's withdrawal of the electronic deposit. Sgt. Frederick recalls that this discussion was with WSEU local Union Vice-President Hills. The record fails to disclose the nature of these discussions. The record provides no reasonable basis to conclude that WSEU unlawfully refused to file or process a grievance on the withdrawal of the electronic deposit. WAPCO's claim that WSEU violated its duty of fair representation toward Sgt. Frederick is not proven.

Allegation of Interference with Assistance of Council

In BURNETT COUNTY, DEC. NO. 28262-A (5/95), Examiner McLaughlin was presented with a claim of "tortious interference" and appropriately concluded that an administrative agency can act only to the extent of the authority granted it by statute. Thus, whatever implications a reference to "tortious interference" may have as a matter of civil law, the only allegations litigable here are those rooted in SELRA.

In the Spring of 1998, in response to a request from Sgt. Bath, Attorney Bruce Elbert, a partner in the law firm of Elbert, Fitsinger & Byron, met with Sgt. Bath and others. At this meeting, Sgt. Bath advised Attorney Elbert that WAPCO was attempting to decertify AFSCME and provided Attorney Elbert with a copy of a letter that had been written by Attorney Kraig Byron, an associate in Attorney Elbert's law firm. At the time of this meeting, Attorney Byron represented WAPCO.

Attorney Elbert considered the letter to be highly critical of AFSCME and was taken aback by the letter because he felt that the letter would alienate a lot of members of the AFSCME union. Concluding that the representation of WAPCO was not good for business, Attorney Elbert advised Sgt. Bath that he (Elbert) wanted Attorney Byron to cease representing WAPCO. Subsequently, Attorney Elbert told Attorney Byron to cease representing WAPCO because such representation was not in the best interests of the law firm. Following this conversation, Attorney Byron ceased to represent WAPCO.

Sgt. Bath did not approach Attorney Elbert as one friend to another, or one business associate to another. Rather, Sgt. Bath approached Attorney Elbert, acting on behalf of WSEU, for the purpose of dissuading Attorney Elbert's firm from representing WAPCO.

Sgt. Bath's comments to Attorney Elbert do not contain a promise of a benefit if Attorney Elbert's firm ceased representing WAPCO. Sgt. Bath's comments to Attorney Elbert do not contain a threat of reprisal if Attorney Elbert did not cease to represent WAPCO. Rather, Sgt. Bath presented information about the relationship between the law firm and WAPCO and left Attorney Elbert to reach his own conclusions. The Examiner does not find Sgt. Bath's conduct in this matter to have violated SELRA.

Summary

WAPCO has established, by a clear and satisfactory preponderance of the evidence that AFSCME Council 24, Wisconsin State Employees Union, AFL-CIO, by its agent Andy Bath, coerced or intimidated employees in the enjoyment of the employees' legal rights, including those guaranteed under Sec. 111.82, Stats. Accordingly, AFSCME Council 24, Wisconsin State Employees Union, AFL-CIO has violated Sec. 111.84(2)(a), Stats.

It is not evident that Andy Bath's behavior is characteristic of AFSCME Council 24, Wisconsin State Employees Union, AFL-CIO, activities. Rather, the evidence demonstrates that the statutory violations were the actions of one hothead. The multiple violations make it appropriate to order a cease and desist order, but the circumstances do not warrant the posting of any notice.

Conclusion

In remedy of the violation of SELRA, WAPCO asks the Examiner to waive the thirty percent showing of interest requirement and to order a representation election to determine whether the SPS collective bargaining unit should be represented by WAPCO or WSEU. The requirement that WAPCO provide a thirty percent showing of interest is statutory. The object of the showing of interest requirement is to reserve the Commission's election machinery to those instances in which there is a substantial enough interest in a change in representative to warrant the expense, time and disruption entailed by an election. STATE OF WISCONSIN (DER), DEC. NO. 24111-A (WERC, 2/87). Thus, to grant the remedy requested by WAPCO would be contrary to statute and public policy.

There may be factual circumstances in which unlawful conduct is sufficient to render it improbable that employees would not be able to freely choose to support, or to not support, WAPCO's organizing campaign. Such factual circumstances are not present in this case.

The unlawful conduct attributed to WSEU is not pervasive. While the unlawful conduct attributed to DOC is pervasive, the effects of the conduct are not permanent. Thus, it is probable that, upon cessation of this unlawful conduct, WAPCO will be afforded the solicitation and distribution opportunities to which it is legally entitled.

The Examiner is persuaded that the purposes of SELRA will best be effectuated by providing WAPCO with additional time to obtain the requisite thirty percent showing of interest, rather than by waiving the requirement that WAPCO obtain a thirty percent showing of interest. WAPCO has requested three additional months to gather the requisite showing of interest. The Examiner deems this request to be reasonable.

In remedy of the violation of SELRA, WAPCO asks that DOC and WSEU be ordered to cease and desist from engaging in the unfair labor practices and that each be required to post notices on the appropriate bulletin board. The Examiner is persuaded that the purposes of SELRA are effectuated by ordering DOC and WSEU to cease and desist from engaging in the unfair labor practices.

Given the pervasive nature of the DOC violations, the Examiner is persuaded that the purposes of SELRA are effectuated by ordering DOC to post a notice. However, given the limited nature of the WSEU violations, it is not appropriate to order WSEU to post a notice.

In remedy of the violation of SELRA, WAPCO requests removal of any discipline that is violative of SELRA. The Examiner agrees that this is an appropriate remedy and, where the Examiner has found a discipline to be violative of SELRA, she has rescinded that discipline.

WAPCO requests attorney's fees and the costs of this action. Attorney's fees and costs may be awarded to a complainant where a respondent's defense is "frivolous" rather than "debatable." STATE OF WISCONSIN (UW HOSPITAL AND CLINICS), DEC. NO. 29093-B (WERC, 11/98); ROCK COUNTY, DEC. NO. 23656 (WERC, 5/86). Neither the defenses of Respondent DOC, nor the defenses of Respondent WSEU, are frivolous. Accordingly, WAPCO's request for attorney's fees and costs has been denied.

WSEU CLAIMS AGAINST WAPCO

WSEU's complaint against WAPCO arises from a series of incidents at GBCI. In WSEU's view, these incidents constitute a pattern of threats, harassment, intimidation, retaliation, and coercion against Sgt. Denise Camp in violation of Sec. 111.84., Stats.

When Sgt. Camp transferred to GBCI in the summer of 1998, she was on permissive probation and did not want to be involved in any conflict between WSEU and WAPCO. As soon as Sgt. Camp arrived at GBCI, Correctional Officer Kaufmann discussed WAPCO with her.

Sgt. Camp has a Sec. 111.82 right to refrain from joining or assisting WAPCO. Thus, if Correctional Officer Kaufmann continued to solicit Sgt. Camp on behalf of WAPCO, after Sgt. Camp had provided reasonable notice that she did not want to be solicited on behalf of WAPCO, then Correctional Officer Kaufmann would be coercing or intimidating an employee in violation of Sec. 111.84(2)(a), Stats.

In her testimony, Sgt. Camp does not always identify when she is making a statement to another individual as opposed to making a statement about what she was thinking or feeling at the time that she was speaking to another person. According to Sgt. Camp, several times over the course of two months, she told Correctional Officer Kaufmann that she was not going to debate the union and that if he wanted to debate the union, then he should go to a union meeting and talk to Gary Lonzo. It is not clear that Sgt. Camp made any other statement to Correctional Officer Kaufmann regarding his WAPCO activities.

One may reasonably construe Sgt. Camp's statement to mean that Sgt. Camp did not intend to respond to Correctional Officer Kaufmann's statements, rather than that Sgt. Camp did not want Correctional Officer Kaufmann to discuss WAPCO. The evidence of statements made by Sgt. Camp to Correctional Officer Kaufmann does not demonstrate that Correctional Officer Kaufmann knew, or should have known, that Sgt. Camp wanted him to refrain from any discussion of WAPCO. While the evidence demonstrates that Correctional Officer Kaufmann was persistent, the evidence of Correctional Officer Kaufmann's conduct toward Sgt. Camp does not demonstrate that he coerced or intimidated an employee in the enjoyment of the employee's legal rights in violation of Sec. 111.84, Stats.

The day after Sgt. Camp signed the WAPCO authorization card she notified AFSCME that she had signed the card under duress. To be sure, Sgt. Camp felt pressured into signing the WAPCO authorization card. It is evident that the WAPCO supporters who solicited Sgt. Camp to sign a WAPCO authorization card were persistent. It is not evident that their solicitation of Sgt. Camp violated Sec. 111.84, Stats.

Prior to August 29, 1998, Sgt. Camp telephoned Bob Rudey, the WSEU local union president at Taycheedah, to complain about WAPCO activities at GBCI. As a result of this complaint, Sgt. Camp was called into Lt. Melman's office and questioned about WAPCO activity at GBCI. Although Sgt. Camp told Lt. Melman that she did not want to be dragged into the investigation, she was directed to assist in the investigation.

When Sgt. Camp returned to her work site, Correctional Officer Lori Cygan questioned Sgt. Camp about the investigation into WAPCO activity. In response to Sgt. Camp's request for a lighter, Correctional Officer Lori Cygan lit the lighter and stated that she hoped that this did not threaten Sgt. Camp. Later in the shift, Correctional Officer Lori Cygan dangled a WAPCO pen from her mouth, removed the pen, and stated that she hoped that she had not offended Camp and that she would not want to intimidate Camp. Camp reported this conduct of Correctional Officer Lori Cygan to Lt. Melman.

The following day, Sgt. Camp heard the words "snitch, snitch lets go talk" as she walked by Correctional Officers Garrigan and Stuckart, who were both known by Sgt. Camp to be WAPCO supporters. Sgt. Camp was unable to determine if Correctional Officer Garrigan or Stuckart spoke these words.

Construing Correctional Officer Lori Cygan's conduct and remarks in light of surrounding circumstances, one may reasonably conclude that Correctional Officer Lori Cygan was mocking Sgt. Camp for either her complaint of WAPCO activities or her participation in an investigation of WAPCO activities. Construing the remarks "snitch, snitch lets go talk" in light of the surrounding circumstances, one may reasonably conclude that these remarks also mocked Sgt. Camp for either her complaint of WAPCO activities or her participation in an investigation of WAPCO activities.

The conduct of Correctional Officer Lori Cygan and the mocking remarks overheard by Sgt. Camp were unprofessional and offensive. SELRA, however, does not protect an employee from all unpleasantness.

This mocking conduct and remarks were limited in number. Neither the conduct, nor the comments, could reasonably be construed to be a warning against engaging in protected activity; a threat of reprisal for engaging in protected activity; or a promise of benefit for not continuing to engage in protected activity. The Examiner does not consider either the mocking conduct, or the mocking remarks, to involve coercion or intimidation within the meaning of Sec. 111.84(2)(a), Stats.

On one occasion Sgt. Stuckart and Correctional Officer Lori Cygan laughed after Correctional Officer Lori Cygan commented upon the fact that Sgt. Camp was being escorted to her car. On one occasion, as Sgt. Camp was leaving work, she found Correctional Officer Laufenberg sitting on the bench where she intended to sit and observed Correctional Officer Lori Cygan sitting on the other side of Gate 4. The record does not demonstrate that either Officer made any statement to Sgt. Camp. As Sgt. Camp left work, she observed Correctional Officers Jim and Lori Cygan standing on the steps and had to walk around them. It is not evident that the Cygans were intentionally blocking Sgt. Camp's exit, rather than simply

occupying space in Sgt. Camp's preferred pathway. This conduct, while distressful to Sgt. Camp, does not involve coercion or intimidation within the meaning of Sec. 111.84(2)(a), Stats.

On September 11, 1998, Sgt. Camp told an inmate to remove hair beads. Sgt. Camp then told Sgt. LeSatz of this order. When she returned to the area, approximately two hours later, the inmate had not removed the beads. Prior to that time, Sgt. Camp had heard Sgt. LeSatz refer to north cell as WAPCO central.

It is evident that Sgt. LeSatz did not enforce Sgt. Camp's order to the inmate. The record, however, does not demonstrate that this failure to enforce Sgt. Camp's order was due either to Sgt. LeSatz' support of WAPCO, or to Sgt. Camp's complaints against WAPCO. Rather, the record is silent with respect to the reason for Sgt. LeSatz' failure to enforce Sgt. Camp's order. The evidence of Sgt. LeSatz' conduct on September 11, 1998, does not demonstrate that he coerced or intimidated an employe within the meaning of Sec. 111.84(2)(a), Stats.

On September 11, 1998, when Sgt. Camp returned to the area, the inmate with the hair beads was standing next to Correctional Officer Laufenberg. On the back of Correctional Officer Laufenberg's uniform shirt was taped a piece of paper with the word "WAPCO." The record does not demonstrate that Correctional Officer Laufenberg knew of Sgt. Camp's order to remove the hair beads.

The fact that the inmate was standing by Correctional Officer Laufenberg swinging his beads in a defiant manner is not sufficient to demonstrate that there was complicity between the inmate and Correctional Officer Laufenberg to defy Sgt. Camp's order. While Sgt. Camp may have found the display of the WAPCO sign to be offensive, neither the display of the WAPCO sign, nor the other conduct of Correctional Officer Laufenberg, involves intimidation and coercion within the meaning of Sec. 111.84(2)(a), Stats.

WSEU argues that Correctional Officer Lori Cygan told Sgt. Camp that "we will send you back." The record, however, does not establish that Correctional Officer Lori Cygan made such a statement. Rather, Sgt. Camp's testimony is that, on August 31, 1998, Correctional Officer Lori Cygan was standing on the stairs and "she's you can go back, we'll send you back, something to the effect, I don't know the exact words, but I'll be leaving because I'm on permissive probation." (T. at 1354) Inasmuch as the record does not demonstrate what was said by Correctional Officer Lori Cygan, the Examiner cannot conclude that Correctional Officer Lori Cygan's comments violate Sec. 111.84, Stats.

After Lt. Melman had questioned Sgt. Camp about WAPCO activity at GBCI, her automobile was vandalized. The cars of other female Correctional Officers have also been vandalized at GBCI. While this vandalism is criminal and reprehensible, the record does not demonstrate that the vandalism of Sgt. Camp's automobile, or any other automobile, was done by any WAPCO supporter, or on behalf of WAPCO.

Sgt. Camp claims that Sgt. Stuckart "was making people sign authorization cards" at Gate 4. The record, however, does not warrant a finding that this activity of Sgt. Stuckart involved coercion or intimidation in violation of Sec. 111.84(2)(a), Stats.

At times, Sgt. Camp overheard the word "bitch." Sgt. Camp, who assumed that the remarks were directed at her, did not identify the speakers. On October 12, 1998, Sgt. Camp found a note in her mailbox that said "Whiny little bitch, why don't you suck a little more white shirt cock to get what you want." While this note and epithet are undoubtedly offensive, neither is coercive or intimidating within the meaning of Sec. 111.84, Stats. Nor does the record demonstrate that anyone acting on behalf of WAPCO was responsible for the epithet, or for writing the note or placing the note in Sgt. Camp's mailbox.

Sgt. Camp, a vulnerable individual, was harassed by fellow employes to the extent that she had to take a medical leave of absence and transfer to another institution. The harassment of Sgt. Camp was reprehensible. However, the evidence of this harassment, individually or collectively, does not involve coercion or intimidation within the meaning of Sec. 111.84, Stats.

Conclusion

WSEU has failed to demonstrate, by a clear and satisfactory preponderance of the evidence, that WAPCO, or anyone acting on behalf of WAPCO, has threatened, harassed, intimidated, retaliated, or coerced Sgt. Denise Camp in violation of Sec. 111.84, Stats. Accordingly, WSEU's complaint against WAPCO has been dismissed in its entirety.

Dated at Madison, Wisconsin, this 24th day of March, 2000.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Coleen A. Burns /s/

Coleen A. Burns, Examiner