

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

JENNIFER A. PESHUT, Complainant,

vs.

**UNIVERSITY OF WISCONSIN MILWAUKEE (UWM);
NANCY L. ZIMPHER, CHANCELLOR; ERIKA SANDER,
ACTING DIRECTOR OF HUMAN RESOURCES; SHANNON BRADBURY,
LABOR RELATIONS MANAGER; WILLIAM R. RAYBURN,
DEAN OF THE GRADUATE SCHOOL; MARJORIE BJORNSTAD,
ASSISTANT DEAN OF THE GRADUATE SCHOOL; SUSAN BURGESS,
DIRECTOR OF THE CENTER FOR WOMEN'S STUDIES**, Respondents.

Case 465
No. 56793
PP(S)-295

Decision No. 29775-G

JENNIFER A. PESHUT, Complainant,

vs.

**AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES,
COUNCIL 24, WISCONSIN STATE EMPLOYEES UNION (WSEU);
MARTIN BEIL, EXECUTIVE DIRECTOR, KARL HACKER, ASSISTANT
DIRECTOR, JANA WEAVER, FIELD REPRESENTATIVE**, Respondents.

Case 466
No. 56821
PP(S)-296

Decision No. 29776-G

Appearances:

Ms. Jennifer A. Peshut, P.O. Box 11116, Milwaukee, Wisconsin 53211, appearing on her own behalf.

Dec. No. 29775-G
Dec. No. 29776-G

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 American Federation of State, County and Municipal Employees, Council 24, Wisconsin State Employees Union (WSEU); Martin Beil, Executive Director, Karl Hacker, Assistant Director, Jana Weaver, Field Representative.

Attorney Mark J. Wild, Legal Counsel, Department of Employment Relations, 345 West Washington Avenue, P.O. Box 7855, Madison, Wisconsin 53707-7855, appearing on behalf of University of Wisconsin Milwaukee (UWM); Nancy L. Zimpher, Chancellor; Erika Sander, Acting Director of Human Resources; Shannon Bradbury, Labor Relations Manager; William R. Rayburn, Dean of The Graduate School; Marjorie Bjornstad, Assistant Dean of The Graduate School; Susan Burgess, Director of The Center For Women's Studies.

**ORDER AFFIRMING EXAMINER'S FINDINGS OF FACT AND CONCLUSIONS
OF LAW AND AFFIRMING AND MODIFYING EXAMINER'S ORDER**

On February 15, 2002, Examiner Richard B. McLaughlin issued Findings of Fact, Conclusions of Law and Order with Accompanying Memorandum in the above-entitled matters wherein he concluded that Respondents had not committed any of the alleged unfair labor practices except as to an alleged violation of Sec. 111.84(1)(a), Stats., that he found had been committed by Respondent University. As to this unfair labor practice, he made a cease and desist order. He dismissed all of the remaining unfair labor practice allegations.

On February 27, 2002, Complainant Peshut timely filed a petition with the Wisconsin Employment Relations Commission seeking review of the Examiner's decision pursuant to Secs. 111.07(5) and 111.84(4), Stats. The parties thereafter filed written argument in support of and in opposition to the petition-the last of which was received April 17, 2002.

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

Having reviewed the record and being fully advised in the premises, the Commission makes and issues the following

ORDER

- A. Examiner's Findings of Fact 1-24 are affirmed.
- B. Examiner's Conclusions of Law 1-10 are affirmed.

A. Examiner's Order is affirmed as modified to deny Respondents' requests for attorneys fees and costs.

Given under our hands and seal at the City of Madison, Wisconsin, this 3rd day of January, 2003.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Steven R. Sorenson /s/

Steven R. Sorenson, Chairperson

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

DEPARTMENT OF EMPLOYMENT RELATIONS

**MEMORANDUM ACCOMPANYING ORDER AFFIRMING EXAMINER'S
FINDINGS OF FACT AND CONCLUSIONS OF LAW AND AFFIRMING
AND MODIFYING EXAMINER'S ORDER**

Pursuant to our order in STATE OF WISCONSIN, DEC. NOS. 29775, 29776 (WERC, 11/99), although Cases 465 and 466 were consolidated for hearing, the Examiner had the option of issuing separate decisions in each Case. He elected to issue the single consolidated decision that is now before us on review. Accompanying Complainant Peshut's petition for review is a motion wherein she asks that Cases 465 and 466 be severed for purposes of review because the two cases arise from different causes of action and because severance would serve administrative efficiency. We hereby deny that motion. Inasmuch as Cases 465 and 466 have been consolidated for the purposes of hearing and decision before the Examiner and present common or interrelated issues, we are satisfied that the interests of all parties continue to be well served by consolidation as is the interest of administrative efficiency. However, denial of the motion does not mean that each of the two complaints will receive less full consideration.

Alleged Procedural Errors

In STATE OF WISCONSIN, DEC. NOS. 29775-C, 29776-C (McLAUGHLIN, 4/01), the Examiner denied Peshut's motion for further hearing. In her petition for review, Peshut asserts the Examiner erred by doing so because he thereby denied her the opportunity to offer rebuttal testimony.

We have carefully considered this issue and conclude that the Examiner's decision to end the presentation of evidence was an appropriate one under all of the circumstances presented.

In STATE OF WISCONSIN, DEC. NOS. 29775-E, 29776-E (McLAUGHLIN, 7/01), the Examiner deferred ruling on various evidentiary motion made by Peshut. In the decision now before us on review, the Examiner did not grant Peshut's motions and she now cites his failure to do so as procedural error.

We have reviewed the evidentiary matters in question are satisfied that the Examiner resolved them in an appropriate manner.

Case 465

The allegations in Case 465 are that Respondent UWM and certain of its employees committed unfair labor practices as to Peshut. As noted in the preface to our Order, the Examiner dismissed all of the allegations in Case 465 with the exception of one of the alleged violations of Sec. 111.84 (1) (a), Stats.

On review, Peshut asserts the Examiner erred by concluding that Respondent UWM had not committed a unfair labor practice within the meaning of Sec. 111.84(1)(c), Stats., because Respondent UWM was not hostile toward her lawful concerted activity. In large part, Peshut takes issue with the Examiner's view that the hostility evident in the record was personal and professional and that this personal/professional conflict adequately explains the actions taken by Respondent UWM toward her. In particular, Peshut contends that her relationship with Respondent Burgess was a positive one until Burgess learned of Peshut's lawful concerted activity.

The Examiner extensively addressed the issue of hostility in his decision as follows:

The issue thus turns on proof of statutorily proscribed hostility by UWM Respondents toward this exercise of concerted activity. The evidence manifests unmistakable and shared hostility between Complainant and Burgess. The evidence also manifests hostility between Complainant and other UWM Respondents. The evidence fails, however, to manifest that this hostility is that type of hostility regulated by Sec. 111.84(1)(c), Stats., or that it is linked to Complainant's exercise of concerted activity.

As preface to examination of this conclusion, it should be noted that Complainant's arguments concerning the interpretation of law and contract play no significant role in application of this subsection. Those assertions bear on the remaining allegations. They are not, however, helpful or necessary in the application of this subsection, which focuses on the good faith of UWM Respondents' response to Complainant's assertion of concerted activity. As Complainant persuasively contends, the absence of rationale for UWM Respondents' conduct regarding the evaluation process and the grievance procedure can form the basis for an inference of bad faith. Here, however, such inferences are unnecessary. The assertion of pretext for UWM Respondents' explains nothing concerning the long history of hostility. The cause and the course of that hostility are apparent, and bear no relationship to the type of conduct proscribed by Sec. 111.84(1)(c), Stats.

The themes for the conflict Complainant attempts to characterize as retaliatory are evident well before January of 1998, and well before any exercise of concerted activity on her part. Those themes turn on personal and professional issues surrounding the control of the Center. Romenesko's testimony vividly highlights tension within the Center preceding Burgess' arrival as Director. Complainant's and Burgess' views underscore that testimony, differing only on where responsibility for the tension should be placed. What were hairline cracks in the Fall of 1996, became unmistakable rifts by the Fall of 1997 and fissures by the following Winter and Spring. Those issues are

manifested in the stormy staff meetings that prompted Kriviskey's hire. No recourse to anti-union hostility is appropriate to this milieu, as Complainant's testimony concerning the tension at staff meetings demonstrates:

And I was at the meetings, but I was disinvolved. It wasn't about my tasks, they were always about Ms. Romenesko's tasks and duties. (Tr. at 729)

As Romenesko's testimony establishes, the focus changed from her to Complainant. That focus had, however, nothing to do with the assertion of concerted activity. Rather, it turned on issues of control and working relationships within the Center. Those issues had a policy element and a personal element, but no element involving UWM Respondents' desire to encourage or to discourage "membership in any labor organization." The personal and policy-based conflict manifested in this time period devolved into the ongoing conflict culminating in this litigation. This conflict underlies the April 15 evaluation, and the events that follow it.

This course of events does not, however, manifest conduct regulated by Sec. 111.84(1)(c), Stats. Complainant's assertion of pretext provides no assistance in explaining that course of events. Significantly, Complainant's assertion of pretext provides no insight into what UWM Respondents hoped to gain by the complained of conduct. There is no evidence indicating UWM hoped to push Complainant or any other employee toward or away from WSEU or Local 82. No evidence indicates UWM Respondents had any reason to favor either or neither entity. Bradbury's letter of August 26 vented considerable frustration with Complainant's conduct, and is directed to WSEU and Local 82 representatives. Inferring she was hostile, within the meaning of Sec. 111.84(1)(c), Stats., to Complainant's behavior fails to explain why Bradbury took no action on that frustration beyond openly publishing it. No such inference is necessary if, as the evidence establishes, she stated her good-faith frustration with a course of conduct she found inappropriate. UWM Respondents did not follow up on the letter because the letter fully stated her purpose. That purpose was not to push Complainant toward or away from WSEU or Local 82. Rather, it was to push events into what at least Bradbury perceived as an appropriate dispute resolution process. The accuracy of those views is less important to the application of this section than is the good or bad faith with which she espoused them. The evidence affords no basis to doubt her good faith.

A similar tension underlies each of Complainant's attempts to color UWM Respondents' conduct with anti-union hostility. Complainant disputes the timeliness of Burgess' response to her requests for representation, as reflected in

her memo of May 13. The memo highlights the depth of their interpersonal conflict, but is less than convincing as evidence of anti-union hostility. The memo ignores that Complainant made a written request for representation placed in Burgess' mailbox. The evidence indicates Burgess was not at the Center to receive it, yet Complainant took issue with Burgess' failure to respond within forty-eight hours, without regard to when Burgess received the request. Burgess did arrange a meeting with Yasaitis, then moved it forward after Complainant objected and Yasaitis stated he would be available for an earlier meeting. That these arrangements did not satisfy Complainant is evident. However, the fact remains that Burgess twice arranged a meeting with Yasaitis and Complainant. How this squares with the allegation of anti-union animus is less than evident. There is no apparent gain to Burgess in any of this.

Burgess' responses to other requests by Complainant make the inference of anti-union hostility untenable. Burgess disagreed with Complainant's request for representation on April 15, and said so. However, in response to Complainant's persistent requests, Burgess contacted Yasaitis. Her openness in expressing disagreement with the request, then arranging for representation make it difficult to conclude she was seeking to interfere in Complainant's relationship with her representative, or to punish her for it. Complainant's January 31 request to see Keach concerning "the filing of a possible grievance" was addressed not later than February 3. Consistent in the pattern of delay Complainant points to is her own dissatisfaction with any response. Absent, however, is convincing evidence of anti-union animus. Burgess took the requests seriously, and attempted to comply in good faith.

The inference of pretext adds nothing to understanding Complainant's conflict with Burgess. As noted above, the themes for that conflict predate any arguable claim to the assertion of concerted activity. Kriviskey's appointment as facilitator foreshadowed the conflicts played out through the processing of the grievances. Romenesko, Complainant and Burgess commonly perceived a problem within the Center, having both personal and policy dimensions. Romenesko and Complainant initially agreed with the appointment of an outsider, but that appointment came to pull the pre-existing differences with it. Burgess was willing to consider Romenesko's and Complainant's choice for a facilitator, but not to permit them any authority approaching a vote in it. Ultimately, the process reflected the internal struggle for direction of the Center. Kriviskey came to be seen by Center employees' as another of Burgess' attempts to exert control over them and to reconcile them to changes within the Center. This dispute grew in intensity with time. Burgess was unwilling to cede meaningful control over the Center, and the employees remained unconvinced of the quality of her leadership.

This process reached a watershed in the April 15 evaluation. By this time, Complainant had become convinced the struggle within the Center was for nothing less than her personal and professional survival as an employee. She responded in kind, enlisting the support of Local 82. This does not, however, transform a personal and professional conflict into a conflict regulated by Sec. 111.84(1)(c), Stats. The most intense areas of dispute manifest personal and professional conflict. The January 23 incident generated considerable ill-will, and is rooted on what Burgess perceived as a personal and professional snub. By January 26 that perceived snub was generating considerable friction that later surfaced in the evaluation and the written reprimand.

The April 15 evaluation brought the simmering conflict to a boil. Complainant took the evaluation as a personal attack. The “DN” rating contrasts starkly to Complainant’s prior ratings. Elements of the evaluation resemble less a narrow description and evaluation of workplace behavior than a personality critique. The May 5 predisciplinary memorandum and the May 6 reprimand accentuate this theme by including broad character assessments within documents that address office behavior. It is, for example, less than apparent what role is served within a reprimand by a recommendation for an “Employee Assistance Program for use by employees who may be experiencing personal problems which are affecting their work performance.” Complainant’s April 23 response to the evaluation cements an all or nothing conflict into place. The response rejects the entire evaluation document, including those portions of it lauding Complainant’s work.

Coupling existing conflict with union representation does not necessarily color that conflict with anti-union hostility. On this record, none is apparent. Complainant’s assertion that Burgess actively sought her resignation to further such hostility has no evidentiary support. The correspondence concerning Complainant’s transfer undercuts this assertion. More illuminating, however, is the correspondence concerning Complainant’s designation as Steward. Yasaitis advised Bradbury of the designation on August 6, and asked Bradbury to refrain from assigning cases to her, pending further training. Complainant’s August 6 letter to Burgess manifests no such restraint. That letter, copied to Burgess’ supervisors, notifies Burgess of the designation in its first paragraph, then castigates Burgess for contractual and statutory violations in the remaining three. The alleged violations affect only Complainant. This reflects that the designation was, to Complainant, an additional arrow in her quiver of responses to her individual and personal conflict with Burgess. In a similar fashion, Complainant’s becoming a dues paying member corresponds to the growing intensity of her struggle with Burgess. This reflects the palpable pain growing from the struggle. It fails, however, to demonstrate any anti-union component.

That Complainant would enlist the support of WSEU is understandable. This fails, however, to establish anti-union hostility on the part of any of UWM Respondents.

With the exception of Bjornstad, there is no evidence of anti-union hostility warranting extended discussion. The exception turns on Bjornstad's exit interview with Romenesko. During that interview Romenesko understood Bjornstad to articulate a position that it was regrettable that Complainant involved Local 82 representatives in the Kriviskey facilitation effort. It is impossible to reconstruct that conversation with precision. The Findings of Fact, however, take Romenesko's perception as accurate. This reflects Romenesko's credibility as a witness, and is buttressed by the fact that Bjornstad could not recall the conversation in sufficient detail to specifically deny it, beyond noting it did not sound like something she would say.

This statement is discussed in greater detail below, but fails to establish anti-union hostility on Bjornstad's part. It, as the evidence noted above, reflects the tension within the Center. Bjornstad knew little of the conflict beyond its existence. On its face, and in the context of the discussion with Romenesko, the comment reflects Bjornstad's disappointment that the facilitation effort could not diffuse the conflict, and her disappointment that Local 82 took a position adverse to Kriviskey's control over the effort. Her means of stating the disappointment has statutory dimensions, as noted below. It does not, however, establish anti-union animus.

More specifically, the evidence fails to demonstrate any basis for the asserted bad faith on Kriviskey's part. Assuming the statement has the meaning asserted by Complainant, it was not pretextual. Rather, it reflects open hostility for WSEU or Local 82. There is, however, no evidentiary basis to demonstrate a purpose or goal for such hostility on Bjornstad's part. The evidence is silent on a reason for Bjornstad to favor or disfavor either WSEU or Local 82. More significantly, there is evidence establishing good faith on Bjornstad's part. Romenesko and Complainant treated her as a confidant in January of 1998. Bjornstad acted in the same capacity in June of 1998. She was unwilling to testify concerning the substance of the exit interview prior to Romenesko's testimony, because she saw that as a confidential matter involving Romenesko. Her testimony on the point is, in any event, credible. Bjornstad testified consistently that she had limited recall of the conversation. When asked initially about a comment detrimental to Complainant's involvement of Local 82, Bjornstad testified that it did not sound like something she would say. When informed of Romenesko's view, she declined the simple expedient of denying it. Rather, she willingly assumed the accuracy of Romenesko's views, and stated

openly why she would make such a statement. This is difficult to reconcile with the assertion of open, anti-union hostility. It is a simple matter to deny, particularly if one is unconcerned with the truth. Bjornstad's openness on the point manifests a good faith disagreement, not the bad faith regulated by Sec. 111.84(1)(c), Stats.

Evidence concerning anti-union hostility of the remaining UWM Respondents does not warrant extended discussion. That Rayburn returned Complainant's complaint or that Sander took the position that Complainant manifested hostility toward UWM Respondents establishes no more than disagreement. There is no evidence such disagreement manifests anything other than the individual UWM Respondent's good faith opinion of Complainant's positions.

The timeliness of grievance responses by various UWM Respondents does not establish persuasive evidence of anti-union hostility. The evidence establishes the timeliness of responses is a long-standing, unit-wide problem, not an issue unique to Complainant. In any event, Section 4/2/8 of the labor agreement addresses the matter by permitting the processing of unanswered issues further up the processing chain. Complainant's unwillingness to move the grievances forward underscores the depth of her belief regarding her interpretation of the SELRA, but cannot be held against UWM Respondents.

From our review of the record, we are satisfied that the Examiner ably and accurately addressed the issue of hostility. As reflected in the above-quoted portion of the Examiner's decision, the record as a whole establishes that the conflict between Peshut and Burgess predated Peshut's concerted activity and that Burgess' responses to the concerted activity do not establish hostility. Thus, we have affirmed the Examiner's dismissal of the Sec. 111.84(1)(c) Stats., allegation.

On review, Peshut also takes issue with the Examiner's failure to conclude that Respondent UWM committed an unfair labor practice within the meaning of Sec. 111.84(1)(a), Stats., by seeking attorneys fees and costs in its answer. Peshut contends that such a request has a reasonable tendency to interfere with the protected right to file an unfair labor practice complaint with the Commission-particularly where Respondent UWM knew that such fees and costs are not available to respondents. The Examiner did not directly discuss his disposition of this allegation as to Respondent UWM but did specifically discuss and reject Peshut's parallel contention against Respondent WSEU.

We reject Peshut's contention that the request for attorneys fees and costs in an answer violates Sec. 111.84(1)(a), Stats. As we held in STATE OF WISCONSIN, DEC. NO. 30124-C (WERC, 1/03) in response to the same contention, the request for attorneys fees and costs does

not have a reasonable tendency to interfere with the right to file a complaint because a reasonable person knows that such a requests require the approval of a neutral third party (the Commission examiner or the Commission) who in turn can only grant the request if authorized by law to do so. It is this linkage to the need for a neutral third party's approval that precludes a finding of interference.

As Peshut points out, we have held that we do not have the authority to grant such fees and costs to a respondent. STATE OF WISCONSIN, DEC. NO. 29177-C (WERC. 5/99). Thus, in our Order, we dispose of Respondent UWM's request for fees and costs be denying same.

Case 466

The allegations in Case 466 are that Respondent WSEU and certain of its employees committed unfair labor practices as to Peshut. As noted in the preface to our Order, the Examiner dismissed all of the Case 466 allegations.

On review, Peshut argues that the Examiner erred when he concluded that Respondent WSEU did not interfere with her Sec. 111.83(1), Stats. right to present grievances to Respondent UWM through representatives of her own choosing and thereby violated Sec. 111.84(2)(a), Stats.

Peshut's arguments on review mischaracterize both the law and the Examiner's decision. Peshut does indeed have a statutory right under Sec. 111.83(1), Stats. to present grievances to her employer through representatives of her own choosing. However, as we reaffirmed in STATE OF WISCONSIN, DEC. NO. 30124-D (WERC. 1/03):

. . . there is a distinction between the rights, if any, of an employee under a contractual grievance procedure and the State employee's statutorily guaranteed right to present a grievance to the employer under Sec. 111.83 (1), Stats.

Thus, Sec. 111.83(1), Stats. does not give an employee the right to use a contractually bargained grievance procedure. It is a contractually bargained procedure that Peshut here asserts a Sec. 111.83(1), Stats., right to use. Thus, when Respondent WSEU refused to allow Peshut to proceed under the contractually bargained grievance procedure through a representative of her own choosing, it did not interfere with her rights under Sec. 111.83(1), Stats.

Peshut then argues that if the Commission continues to conclude that there is a distinction between a contractually established grievance procedure and Sec. 111.83(1), Stats. rights, the Examiner nonetheless erred when he concluded that she had no contractual right to a representative of her own choosing. In support of her argument, Peshut cites various portions of the grievance procedure contained in Article IV of the 1997-1999 contract.

Peshut is correct when she argues that there are portions of Article IV that on their face can reasonably be interpreted as giving an employee the right to be represented by a representative of the employee's choosing. For instance, she cites that portion of Article IV which states:

Within twenty-one (21) calendar days of receipt of the written grievance, the designated agency representative(s) will schedule a hearing with the employe(s) and his/her representative(s) and a representative of Council 24 (as Council 24 may elect) . . .

However, Article IV of the 1997-1999 contract must be viewed in the context of record evidence that Respondent WSEU and the State agreed that the following language from prior contracts would not be included in the 1997-1999 agreement:

Individual employees or groups of employees shall have the right to present grievances in person or through representatives of their own choosing at any step of the grievance procedure . . .

This bargaining history satisfies us that Peshut's proposed interpretation of Article IV is not correct. Thus, we reject her claim that the Examiner erred in this regard.

Peshut next argues on review that the Examiner erred when he found that no violation of Sec. 111.84(2)(b), Stats., 1/ was committed "by inducing the grievant Yasaitis to renounce Ms. Peshut as his chosen representative."

1/ Section 111.84(2)(b), Stats., provides:

(2) *It is unfair practice for an employee individually or in concert with others:*

. . .

(b) To coerce, intimidate or induce any officer or agent of the employer to interfere with any of the employer's employees in the enjoyment of their legal rights including those guaranteed under s.111.82 or to engage in any practice with regard to its employees which would constitute an unfair labor practice if undertaken by the officer or agent on the officer's or agent's own initiative.

As to this allegation, the Examiner stated:

This subsection focuses on Union Respondents' coercion of employer representatives to take action on the Union Respondents' behalf. No such conduct has been proven regarding Complainant's removal as Steward in the Yasaitis grievance or any other transaction questioned by this litigation. Union Respondents acted consistently toward Complainant based on its own internal policies. Complainant's disagreement with those policies falls short of establishing coercion within the meaning of this section.

That UWM Respondents could not remove Complainant as Steward has no bearing on whether Union Respondents may do so. If it did, Yasaitis' August 6 and September 9 requests of Bradbury to hold cases back from Complainant as Steward would be evidence of coercion. Complainant acknowledges that Union Respondents are not responsible for the "freezing" of the grievances at Step Two. The issue on the processing of those grievances turns on the interpretation of the labor agreement and Sec. 111.83(1), Stats. There is, in sum, no proven violation of Sec. 111.84(2)(b), Stats.

Peshut argues on review that the Examiner did not address her theory that Respondent WSEU's conduct violated Sec. 111.84(2)(b), Stats., because it engaged in conduct which would be illegal if undertaken by the Respondent UWM. As reflected in the above-quoted portion of the Examiner's decision, Peshut is incorrect for the Examiner directly stated:

That UWM Respondents could not remove Complainant as Steward has no bearing on whether Union Respondents may do so.

Thus, it is clear that the Examiner understood Peshut's theory in this regard but found it to have no merit. As the Examiner correctly concluded Sec. 111.84(2)(b), Stats., prohibits certain union conduct that coerces the employer to act on the union's behalf. Here, there was neither relevant conduct by Respondent UWM as to the Yasaitis matter nor an effort by Respondent WSEU to coerce Respondent UWM to engage in such conduct. Thus, the Examiner correctly dismissed this allegation.

Lastly, Peshut contends on review that the Examiner erred when concluding that Respondent WSEU did not commit an unfair labor practice within the meaning of Sec. 111.84(2)(a), Stats., by requesting attorneys fees and costs in its answer to the complaint. We affirm the Examiner's rejection of this claim for the reasons above recited as to the parallel allegation made against Respondent UWM under Sec. 111.84 (1)(a), Stats.

SUMMARY

Given all of the foregoing, we have affirmed the Examiner in all respects except for the modification of his Order to reflect rejection of the requests for attorneys fees and costs.

Dated at Madison, Wisconsin, this 3rd day of January, 2003.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Steven R. Sorenson /s/

Steven R. Sorenson, Chairperson

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner