

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

TEAMSTERS LOCAL NO. 43, Complainant.

vs.

CITY OF LAKE GENEVA, Respondent.

Case 46
No. 59502
MP-3704

Decision No. 30091-A

Appearances:

Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., Attorneys at Law, by **Ms. Andrea F. Hoeschen**, 1555 North Rivercenter Drive, Suite 202, P.O. Box 12993, Milwaukee, Wisconsin 53212, on behalf of the Union.

Michael, Best & Friedrich, by **Mr. Ronald S. Stadler**, 100 East Wisconsin Avenue, Suite 3300, Milwaukee, Wisconsin 53202, on behalf of the City.

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

Amedeo Greco, Hearing Examiner: Teamsters Local No. 43 (“Union”), on December 22, 2000, filed a prohibited practices complaint with the Wisconsin Employment Relations Commission (“WERC”), alleging that the City of Lake Geneva (“City”), had committed prohibited practices by threatening to discharge City employee Barbara V. Nish because of her desire to be represented by the Union.

On March 15, 2001, the Commission appointed the undersigned to make and issue Findings of Fact, Conclusions of Law and Order as provided in Sections 111.70(4)(a) and Section 111.07, Wis. Stats. The City subsequently filed an Answer that was received on June 12, 2001. Hearing was held in Lake Geneva, Wisconsin on June 12, 2001, and July 30, 2001. The Union on June 12, 2001, moved to amend its Complaint by claiming that the City

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terminated Nish's employment on March 15, 2001, because of her concerted activities and her desire to be represented by the Union. I granted the Union's motion to amend over the City's objection, subject to the City's right to not answer the amendment at that time and to have an additional day of hearing where it could present its defense. I then also granted the City's motion to amend its Answer by claiming that Nish was a confidential employee and that she thus is not entitled to the protections accorded by the Municipal Employment Relations Act ("MERA"). Both parties filed briefs and the City filed a reply brief that was received by November 12, 2001.

Having considered the arguments of the parties and the entire record, I make and file the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Local No. 43, a labor organization within the meaning of Section 111.70(1)(L), Wis. Stats., represents for collective bargaining purposes certain clerical and office personnel employed by the City. The Union maintains its principal office at 1624 Yout Street, Racine, Wisconsin.

2. The City, a municipal employer within the meaning of Sec. 111.70(1)(j), Wis. Stats., operates a city hall where various public functions are performed, including the collection of taxes. The City maintains its principal office at 626 Geneva Street, Lake Geneva, Wisconsin. At all times material herein, Germaine Clifford has served as the City Treasurer, Geri Grabbert has served as the City's Finance Director, and Colleen Alexander has served as the City Clerk. At all times material herein, they have acted on the City's behalf and have served as its agents.

3. At all times material herein, Spyro Condos has served as the City's Mayor, Mike Riley has served as the City Attorney, and Pete Peterson, Tony Saia, Dick Peterson and Sheldon Shepstone have served on the City Council, along with Aldermen Boldt, Folman and Flemming. At all times material herein, all of the aforementioned individuals have acted on the City's behalf and have served as its agents.

4. Nish was hired by the City as a full-time temporary employee in March, 1999, and she became a full-time permanent employee in August, 1999. Her title at that time was Deputy Clerk/Deputy Treasurer. Throughout her employment, Nish was never privy to any confidential matters relating to the City's labor relations; she never participated in the City's collective bargaining negotiations with its various unions; she never had access to confidential personnel files; she never participated in any grievance matters; and she never transcribed any confidential meetings relating to labor relations. In addition, she worked in the same office space as other bargaining unit employees; she answered to the same supervisors; and she never participated in any management meetings.

5. In May, 2000, Nish told City Treasurer Clifford that her brother was delinquent in paying his personal property tax bill of about \$60 because he had given Nish the money to pay for it and that she, Nish had spent it and that she would pay for it when she got paid the following week. Nish then asked Clifford to hold up sending her brother a delinquent tax bill because she would take care of it. Clifford acceded to Nish's request and did not send a notice of delinquency to Nish's brother. When Nish failed to pay the bill the following week, Clifford asked Nish about it and she said she would take care of it when she got paid. Nish did not do so over the next several months during which time, with Clifford's approval, she took the notices of delinquencies that were prepared for her brother and which normally would have been mailed to him. After repeated efforts to obtain payment, Clifford in September, 2000, told Charles Rude, the then-chair of the City's personnel committee, about the situation. Rude told Clifford to instruct Nish to immediately pay the bill, and she did so a few days later on September 7, 2000. Nish at the time was not disciplined over this matter. Nish testified that her brother, in fact, did not give her any money for the back taxes and that she made up the story so that he would not be embarrassed over being unable to pay his own taxes.

6. Nish experienced a number of problems relating to her work performance which included tardiness, difficulty in reconciling bank statements, supposedly drawing a check on the wrong tax account, making errors regarding BID tax statements, arguing with City Finance Director Grabbert in front of taxpayers, not finishing all her tasks on time, cashing a personal check with City funds, not handling licenses properly, and returning late from lunch. Some of those problems – such as signing Grabbert's name to a letter, cashing personal checks, and returning late after lunch – did not recur after they were brought to Nish's attention.

7. Nish received a written warning from Grabbert on August 29, 2000, for drawing a check on the wrong account, for tardiness and for insubordination. The record is unclear whether all or only part of that written warning was eventually converted to an oral warning by the City's personnel committee on August 31, 2000. Nish did not receive any other formal discipline before her termination.

8. In an August 30, 2000 memo, City Treasurer Clifford informed the City's personnel committee:

...

I would like to comment on the letter I have received, concerning the above reference. As a relatively new employee of the City of Lake Geneva, it appears to me that Barb is a hard working employee. She has been very helpful to me, as the new Treasurer, in learning my duties and responsibilities. Barb has been very patient, letting me figure things out, but keeping a watchful eye that I do not make any unnecessary mistakes, which would not be time or cost effective for she or Jeri to correct.

I am a part-time employee and was not aware of the tardiness or compensatory time issue. I was made aware of the check issue on Monday, August 28, 2000, after it had been issued and mailed. I was not aware of the conversations between she and Jeri on Friday, August 25, 2000.

I have not been in employment for a tax season as yet; therefore, I am not familiar with the proper procedures concerning tax issues. I doubt that this check issue is a usual occurrence, however, ultimately the responsibility falls to my office. I am concerned.

If I can be of further assistance, please feel free to contact me.

. . .

9. There was a City-wide referendum in the spring of 2000 to determine whether the City's Treasurer should continue to be an elected position, rather than an appointed position. City voters decided to keep the position as an elected position. The City's personnel committee in May, 2000, voted to retain Nish's position even though that resulted in having one more City Hall employee than would have been the case if City voters decided to abolish the City Treasurer as an elected official.

10. In August, 2000, Nish and several fellow employees became concerned over how they were being treated and they met with several members of the City's personnel committee on or about August 30, 2000, to discuss their working conditions.

11. Nish and fellow employees Sandy Kulik, the Union's steward, and Elaine Schultz subsequently met with members of the City Council's personnel committee on September 27, 2000, to again discuss working conditions. The published agenda for that meeting stated, *inter alia*, that the personnel committee would go into closed session to: "a. Consider specific personnel problems under provisions of Wisconsin Statutes 19.85(1)(b)." The subsequent minutes for that meeting stated, *inter alia*:

. . .

Present:

Committee members: Rude, Boldt, Folman and Shepstone. Also present: Mayor Condos, Aldermen Flemming, Pete Peterson and Tony Saia, Finance Director Grabbert, City Clerk Alexander, Police Chief Meinel, Captain Bauman, Sgts. Reuss, Lee and Fritz and Russ Carstenson. City Hall saff (sic) Sandra Kulik, Elaine Schultz and Barbara Nish attended a portion of the "Closed Session", as did the Clerk, Finance Director, Mayor and Aldermen, when the meeting was called to order at 5:30 P.M. by Chairman Rude.

...

Working and supervisory relationships in the City Hall Office were discussed. No formal action was taken, nor were there any motions made. It was suggested that weekly staff meetings be initiated, in order to open communication lines.

12. Nish earlier that day contacted Union Business Agent Timothy Wagner to represent her for collective bargaining purposes because, in her words: "It was becoming apparent that the Union, the bargaining unit people, had protection from management." She on September 27, 2000, wrote a note stating: "I authorize Teamsters Local 43 to represent me for the purposes of collective bargaining for terms and conditions as an employee of the City of Lake Geneva." That note was hand-delivered on September 27, 2000 to then-personnel committee chair Rude. He acknowledged its receipt by writing: "Delivered to me personally by Teamster Local 43 President Tim Wagner at Lake Geneva City Hall."

13. As a result of that meeting, Grabbert notified employees there would be weekly staff meetings to "open the lines of communication." Grabbert on September 29, 2000, also was told by the personnel committee to provide Nish with extra help so that she could straighten out the bank reconciliations, and Grabbert for several weeks assigned another employee to help her.

14. The City's personnel committee subsequently recommended to the City Council that the City recognize the Union as Nish's collective bargaining representative by allowing her position to be accreted to the bargaining unit.

15. The City Council met on November 13, 2000, to consider the personnel committee's recommendation. Its meeting was televised and a videotape of the meeting was subsequently made.

16. After then-personnel committee chair Rude reported that the City's personnel committee was recommending that Nish's position be accreted, Mayor Condos is shown on the videotape asking "Is there another option too that the position be eliminated?", and he later added that the elimination of her position "is another option you can consider here." Up to that point, there was no discussion whatsoever regarding Nish's alleged performance problems and/or whether her position had become redundant because of the recent City Treasurer's election. Mayor Condos' question therefore was directly related to the Union's bargaining demand. After discussion about the City Treasurer's position, Mayor Condos said: "I think something else that you should consider is when you do negotiate do we need the position? That is another thing that you should also consider." Shortly thereafter he added "All I am saying is we also have our options here too", and that if the Union filed a unit accretion

petition with the Commission, “All I am saying is we also have our options here” and that, “If that was to happen, we have our options.”

17. City Council member Dick Peterson there stated: “Isn’t this something that should be looked at at negotiating time to add a person to the union? Why are we just – You know, we can give something up but we don’t seem to get much in return. I think that we are jumping the gun on this thing, and I see no reason why we should jump into this thing at this time.”

18. City Council member Pete Peterson said near the end of the discussion: “I am no labor lawyer but I think if you suggest to eliminate a position just because they have requested to become a member of the union, you are in violation of some law somewhere.”

19. City Attorney Mike Riley immediately thereafter said: “You shouldn’t even be talking about this. It’s not even on the agenda to eliminate the position. Your discussion shouldn’t even be there. So I would ask you to quit talking about eliminating the position.”

20. Shortly thereafter, a motion to table the Union’s accretion request passed and the City never agreed to include Nish in the bargaining unit.

21. The Union by letter dated December 5, 2000, again asked the City to recognize the Union as Nish’s bargaining representative, but the City never responded to the Union’s demand.

22. Finance Director Grabbert, City Clerk Alexander and City Treasurer Clifford by letter dated February 6, 2001, informed Nish:

• • •

Dear Ms. Nish:

Please be advised that the undersigned, as your supervisors, have reached a decision to recommend your termination from employment with the City of Lake Geneva. There are several reasons why we are recommending your termination, including the following. First, it is our belief that you have engaged in misconduct in public office. You have admitted that your brother gave you money to pay his property taxes and that instead of paying those taxes you converted the money to your own use. Moreover, you also admitted that you were removing reminder statements from the mail so that your brother would not be made aware that his taxes had not been paid. We believe this is an

act in your capacity as an employee that is inconsistent with the duties of your employment as Deputy Clerk/Deputy Treasurer and which was done with an intent to obtain a dishonest advantage for yourself.

We are also recommending your discharge due to your continued misconduct as an employee. For example, you have continually exhibited an insubordinate attitude in interacting with your supervisors, arguing with them and refusing to follow their direct orders without argument. Many of these arguments have taken place in front of other employees and the public. This recommendation is also based on your work performance. For example, you have demonstrated that you are not capable of performing some of the functions of your duties including the reconciliation of bank statements. You also committed numerous errors in completing the BID tax statements, resulting in potential or real monetary loss to the City.

Based upon the above factors, and your previous disciplinary record, we are recommending your discharge. Effective immediately, you will be suspended with pay. You will be granted a hearing in regard to this recommendation if you request one in writing directed to Geri Grabbert on or before 4 p.m. February 21, 2001. You may also voluntarily submit your written resignation from employment with the City of Lake Geneva to Geri Grabbert at any time between now and 4 p.m. February 21, 2001. If you do not request a hearing or voluntarily submit your written resignation we will construe that as your written resignation.

...

23. The City Council subsequently terminated Nish on March 15, 2001, by a 4-3 vote of the City's Council Council members. Aldermen Saia, Dick Peterson, Flemming and Folman voted in favor of her termination and Boldt, Shepstone, and Pete Peterson voted against her termination. Mayor Condos did not vote because the mayor only votes to break a tie and Rude did not vote because he was a witness in that proceeding.

24. Nish engaged in concerted, protected activities when she joined with other City employees in complaining about working conditions to some members of the City's personnel committee on or about August 30, 2000, and September 27, 2000, and when she that day asked the Union to represent her for collective bargaining purposes.

25. The City was aware of Nish's concerted, protected activities because her September 27, 2000, note authorizing the Union to represent her was hand-delivered to Rude that day and because the City Council on November 13, 2000, discussed whether the City should voluntarily recognize the Union as her collective bargaining representative.

26. The statements made at that November 13, 2000, meeting by Mayor Condos and Alderman Dick Peterson, related above at Findings of Fact 16 and 17, reflected their union animus by openly suggesting that Nish's position be eliminated because she had asked the Union to represent her. The City Council's subsequent decision to terminate Nish on March 15, 2001 was tainted, at least in part, by such anti-union sentiment.

Upon the basis of the aforementioned Findings of Fact, I hereby make and issue the following

CONCLUSIONS OF LAW

1. Barbara Nish was not a confidential employee at the time of her termination. She, instead, was a municipal employee under Section 111.70(1)(i), of the Municipal Employment Relations Act.

2. The City discriminated against Barbara Nish because of her concerted, protected activities and it therefore violated Sections 111.70(3)(a)1, and 3 of the Municipal Employment Relations Act when it terminated her, at least in part, because of union animus.

3. The City discriminated against Barbara Nish because of her concerted, protected activities and it therefore violated Sections 111.70(3)(a)1 and 3 of the Municipal Employment Relations Act when it threatened to eliminate her position, at least in part, because of union animus.

Upon the basis of the aforementioned Findings of Fact and Conclusions of Law, I hereby make and issue the following

ORDER

1. IT IS ORDERED that the City shall immediately offer to reinstate Barbara Nish to her former position and it shall make her whole by paying to her all monies and benefits she would have earned from the time of her March 15, 2001, termination to the time of the City's offer of reinstatement, minus any monies she received throughout that time that she would not have received but for her termination.

2. IT IS FURTHER ORDERED that the City shall immediately cease and desist from terminating, or in any other way discriminating against employees, in whole or in part, because of their concerted, protected activities.

3. IT IS FURTHER ORDERED that the City shall immediately cease and desist from threatening to terminate, or in any other way discriminating against employees, in whole or in part, because of their concerted, protected activities.

4. IT IS FURTHER ORDERED that the City shall immediately post the attached Notice To All Employees in prominent places where all bargaining unit members can read it.

Dated at Madison, Wisconsin, this 1st day of February, 2002.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Amedeo Greco /s/

Amedeo Greco, Examiner

APPENDIX "A"

NOTICE TO ALL EMPLOYEES

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

1. WE WILL immediately offer to reinstate Barbara Nish to her former position and we will make her whole by paying to her all monies and benefits that she would have earned from the time of her March 15, 2001, termination to the time of the City's offer to reinstate her, minus any monies she received throughout that time that she would not have received but for her termination.

2. WE WILL NOT terminate, or in any other way discriminate against any employees, in whole or in part, because of their concerted, protected activities and their desire to be represented by the Union.

3. WE WILL NOT threaten to terminate, or in any other way discriminate against any employees, in whole or in part, because of their concerted, protected activities and their desire to be represented by the Union.

CITY OF LAKE GENEVA

By _____

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

CITY OF LAKE GENEVA

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

POSITIONS OF THE PARTIES

The Union claims that the City first threatened to terminate Nish at the City Council's November 13, 2000, meeting and that it subsequently did so at its March 15, 2001, meeting because of her concerted, protected activities and her desire to be represented by the Union, thereby violating Sec. 111.70(3)(a)3, Wis. Stats. It thus argues that the City was aware of Nish's union activity; that the City was "openly hostile to Union activity"; that "the reasons given for Nish's termination were pretext"; and that contrary to the City's claim, Nish was not a confidential employee. The Union asks for a traditional make-whole remedy that includes Nish's reinstatement and backpay.

The City contends that the Union has failed to meet its burden of proving that the City violated Sec. 111.70(3)(a)(3), Wis. Stats. because Nish was not engaged in concerted, protected activity; because, "There is absolutely no evidence that the City was hostile toward any activity conducted by Ms. Nish"; and because, "Nish's misconduct in converting a tax payment to her own use justifies her discharge". The City also argues that there is no evidence that the City has interfered with Nish's statutory rights under MERA.

DISCUSSION

To prevail, the Union has the burden of proving that: (1), Nish was engaged in concerted, protected activities; (2), the City and its agents were aware of those activities; (3), the City was hostile to those activities; and (4), the City's termination of Nish was based, at least in part, on its hostility to those activities. See TOWN OF SPIDER LAKE, DEC. NO. 28038-A (Greco, 12/94); *aff'd by operation of law*, DEC. NO. 28038-C (WERC, 1995); See too, TOWN OF MERCER, DEC. NO. 14783-A (Greco, 3/77), *affirmed*, DEC. NO. 14783-B (WERC, 1977), which stated:

...

. . .it is well established that the search for motive at times is very difficult, since oftentimes, direct evidence is not available. For, as noted in a leading case on this subject, SHATTUCK DENN MINING CORP. v. NLRB, 362 F. 2D 466, 470 (9th Cir., 1966):

Actual motive, a state of mind being the question, it is seldom that direct evidence will be available that is not also self-serving. In such cases the self-serving declaration is not conclusive; the trier of fact may infer motive from the total circumstances proved. Otherwise, no person accused of unlawful motive who took the stand and testified to a lawful motive could be brought to book.” Id., at pp. 6-7.

. . .

In addition, an employer acts unlawfully when it discriminates against an employee if its actions is motivated, at least in part, by anti-union considerations irrespective of whether there are valid, non-discriminatory reasons for any such action. See *MUSKEGO-NORWAY v. WERB*, 35 Wis. 2D. 540 (1967); *EMPLOYMENT RELATIONS DEPT. v. WERC*, 122 Wis. 2D. 132 (1985).

Here, Nish engaged in concerted, protected activities when she and several other City employees met with members of the City’s personnel committee on or about August 30, 2000, and September 27, 2000, to discuss working conditions and when she on September 27, 2000, signed a note authorizing the Union to represent her. Grabbert herself thus testified:

. . .At the September 27th personnel committee meeting apparently Sandy and Barb and Elayne had contacted the personnel committee asking for a meeting to be set up and wanted to discuss what they considered problems with my ability to supervise with the personnel committee. And Sandy, who had been employed by the City for three months, recommended to the personnel committee that they set up someone for me to answer to because I wasn’t capable of doing my job. Sandy has been employed for three months. I had been with the City for 18 years.

Asked here why she wanted the Union to represent her, Nish replied: “It was becoming apparent that the Union, the bargaining people, had protection from management.” Nish’s actions therefore represented an effort on her part to band together with other bargaining unit employees for mutual aid and protection. That joint effort somewhat paid off since Grabbert shortly thereafter notified City employees that as a result of the September 27, 2000 meeting, there would be a bigger effort to “open the lines of communication” and that she was assigning extra staff help to assist Nish.

The City asserts that Nish was only interested in having the Union protect her; that she was “looking for protection for herself”; and that she thus “had no intention of engaging in any ‘concerted’ activity” with any other employees.

As set forth above, Nish in fact was engaged in concerted activity since she attended the August 30, 2000, and September 27, 2000, meetings to discuss personnel issues with some members of the City's personnel committee – something she felt more secure doing on September 27, 2000, with the benefits of union representation she tried to obtain on that day when her note authorizing the Union to represent her was hand-delivered to then-personnel committee chair Rude. She thus was engaged in concerted, protected activity because her behavior involved and furthered “collective concerns”. See CITY OF LACROSSE ET AL., DEC. No. 17084-D (WERC, 10/83), at 5.

The City certainly had knowledge of Nish's concerted, protected activities because: (1), Nish's note authorizing the Union to represent her was hand-delivered to then-personnel chair Rude on September 27, 2000; and (2), the City Council on November 13, 2000, discussed whether the City would accede to the Union's demand that the City recognize it as Nish's bargaining agent.

As for union animus, Mayor Condos and other City Council members on November 13, 2000, discussed eliminating Nish's position even though: (1), the City's personnel committee in May, 2000, voted to keep her position after the City-wide referendum on whether the City should retain an elected City Treasurer; (2), there is no evidence that the personnel committee after May, 2000, ever discussed or voted on whether it should reconsider its earlier decision; (3), there is no evidence that any major events occurred between May, 2000 to November 13, 2000, to warrant reconsideration of the personnel committee's decision to retain that position; (4), there is no evidence that the City Council between May, 2000 – November 13, 2000, ever discussed whether to retain Nish's position; and (5), Nish throughout that time was never told that her job was in jeopardy.

Given this sequence of events, it can be inferred, and I so find, that the November 13, 2000, discussion by City Council members on whether to eliminate Nish's position was triggered by Nish's request that the Union represent her. The Union therefore has made out a prima facie case showing that the November 13, 2000, discussion about eliminating her position was based, at least in part, on union animus.

The City's main brief asks, “how is a mere inquiry into the necessity of a position a threat?”, and it asserts that “the City had valid reasons for its discussion.”

“Mere inquiry”, of course, is not unlawful. But, when that “mere inquiry” is made only after an employee has expressed interest in union representation and only after the circumstances detailed above, such an inquiry becomes discriminatory. Indeed, City Attorney Riley at the November 13, 2000, City Council meeting understood this because, as related in Finding of Fact 19 above, he then warned the City Council members: “You shouldn't even be talking about this. It's not even on the agenda to eliminate the position. Your discussion

shouldn't even be there. So I would ask you to quit talking about eliminating the position." Attorney Riley's comments therefore reflected his understanding that the discussion taking place involved more than a "mere inquiry."

The City could rebut its earlier union animus if it could prove that its March 15, 2001, discussion to terminate her was totally devoid of any anti-union considerations. The City has attempted to do so by showing that Nish was deficient in performing her job duties. As set forth in Finding of Fact 6, the record indeed shows that she experienced a number of work problems.

But, it also is true that: (1), she received only one written warning before her termination and that was in August, 2000; (2), she withheld paying her brother's taxes and withheld his delinquency notices with City Treasurer Clifford's express consent; (3), she was not disciplined over that matter at that time; (4), some of her other deficiencies – such as signing Grabbert's name to a letter, cashing personal checks, and returning late after lunch – immediately stopped when they were brought to Nish's attention; (5), certain other alleged deficiencies were not brought to her attention when they occurred; (6), Nish was never warned that she would be fired if she did not improve her work performance; (7), neither Clifford, Grabbert, nor Alexander spoke to Nish before sending their February 6, 2001, letter which recommended her discharge; and (8), City alderman Shepstone, who has served on the City's personnel committee, testified that he believed Grabbert had treated Nish unfairly over the time-card problems. In addition, and as set forth in Finding of Fact 8, Clifford herself in an August 30, 2000, letter to the personnel committee praised Nish's work, which is something she hardly would have done if her work was that bad at that time.

Hence, there is no proof that Nish was slated for termination - or even serious discipline for that matter - before November 13, 2000, and there is no proof that Nish's work performance after November 13, 2000, deteriorated to such a point that her termination was a certainty.

Given the anti-union statements made at the November 13, 2000, City Council meeting and the close 4-3 vote by the City Council members on March 15, 2001, to terminate Nish, I conclude that the November 13, 2000, discussion on whether to abolish her position and the City's subsequent decision to terminate Nish were based, at least in part, on the anti-union sentiments voiced by Mayor Condos and others at the November 13, 2000, City Council meeting. The City Council's threat to eliminate her position and its subsequent termination of Nish thereby violated Section 111.70(3)(a)1 and 3, Wis. Stats.

To rectify that unlawful conduct, the City shall make Nish whole by immediately offering to reinstate her to her former position and by paying to her all wages and benefits she would have earned between the time of her March 15, 2001 termination to the time of the

City's offer of reinstatement, less any monies that she received only because of her termination. The City also shall post the Notice To All Employees referenced above as Attachment "A".

Lastly, and as I related at the hearing in response to Attorney Stadler's question, the City has the right to litigate in any backpay proceeding whether Nish has mitigated her damages.

Dated at Madison, Wisconsin, this 1st day of February, 2002.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Amedeo Greco /s/

Amedeo Greco, Examiner

