

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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**JENNIFER PESHUT**, Complainant,

vs.

**UNIVERSITY OF WISCONSIN – MILWAUKEE; NANCY L. ZIMPHLER;  
SHANNON BRADBURY and MARY KAY MADSEN**

and

**COUNCIL 24, AMERICAN FEDERATION OF STATE, COUNTY AND  
MUNICIPAL EMPLOYEES, AFL-CIO; WISCONSIN STATE EMPLOYEES UNION;  
MARTIN BEIL and JANA WEAVER**, Respondents.

Case 516  
No. 59886  
PP(S)-320

**Decision No. 30125-E**

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Appearances:

**Mr. Geoffrey R. Skoll**, P.O. Box 11116, Milwaukee, WI 53211, appearing on behalf of the Complainant, Jennifer Peshut.

Lawton & Cates, S.C., by **Attorney P. Scott Hassett**, 214 West Mifflin Street, P.O. Box 2965, Madison, WI 53703-2594, appearing on behalf of the Respondent WSEU.

**Mr. David Vergeront**, Legal Counsel, Department of Employment Relations, P.O. Box 7855, Madison, WI 53707-7855, appearing on behalf of the Respondent, University of Wisconsin-Milwaukee.

**FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND ORDER DISMISSING COMPLAINT**

Daniel Nielsen, Examiner: The above-named Complainant, Jennifer Peshut, having filed with the Commission a complaint, alleging that the above-named Respondents have violated the

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provisions of Ch. 111, Wis. Stats., by interfering with her right to represent another employee, Mary Pichelmann, in a meeting with management; and the Commission having appointed Daniel Nielsen, an Examiner on its staff to conduct a hearing and to make Findings of Fact and Conclusions of Law, and to issue appropriate Orders; and the Examiner having, on May 11, 2001, issued an Order Dismissing the Complaint on the grounds that the rights asserted were not those of the Complainant individually, but derivative rights of Pichelmann and Local 82 (Dec. No. 30125-B); and the Commission having found that the Complainant asserted that the rights were her rights as an employee, that she has thus stated a claim under SELRA, and having therefore reversed the Examiner and remanded the complaint for hearing (Dec. No. 30125-C); and the Complainant having thereafter amended the complaint to allege that the Respondent Jana Weaver interfered with her rights by attempting to remove her as a Steward of Local 82; and a hearing having been on held on the complaint on October 23, 2001, at the State Office Building in Milwaukee, Wisconsin, at which time all parties were afforded full opportunity to present such testimony, exhibits, other evidence and arguments as were relevant to the dispute; and the Examiner having ordered, at the hearing, that the record of the companion complaint filed by Ms. Pichelmann be incorporated to the record of this case; and the parties having submitted post-hearing briefs and responsive briefs, the last of which was received by the Examiner on February 4, 2002; and the Examiner being fully advised in the premises, now makes and issues the following Findings of Fact, Conclusions of Law and Order.

**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.**

### **FINDINGS OF FACT**

1. The Complainant, Jennifer Peshut, is a State employee, working for the University of Wisconsin-Milwaukee as a Program Assistant.

2. The Respondent University of Wisconsin-Milwaukee (“UWM”) is a campus of the University of Wisconsin system offering undergraduate and graduate education to citizens in Milwaukee, Wisconsin. Nancy L. Zimpher is the Chancellor of UWM. Shannon Bradbury is the Labor Relations Coordinator for UWM. Mary Kay Madsen is the Chair of UWM’s Department of Health Sciences. UWM’s business address is 2310 East Hartford Avenue, Milwaukee, Wisconsin.

3. The Respondent American Federation of State, County and Municipal Employees, Council 24, Wisconsin State Employees Union (“WSEU”) is the exclusive bargaining representative for, among others, UWM employees in the classification of Program Assistant. Martin Beil is the Executive Director of the WSEU and Jana Weaver is the WSEU Field Representative assigned to administer the collective bargaining agreement on behalf of WSEU members at UWM. WSEU’s business address is 8033 Excelsior Drive, Suite C, Madison, Wisconsin.

4. The State of Wisconsin and WSEU are parties to a collective bargaining agreement covering State employees in six bargaining units, one of which is described as the Administrative Support bargaining unit. The Program Assistant title is included in the Administrative Support bargaining unit.

5. The collective bargaining agreement between the parties includes a Grievance Procedure, which is set forth in Article IV:

## **GRIEVANCE PROCEDURE**

### **SECTION 1: Definition**

4/1/1 A grievance is defined as, and limited to, a written complaint involving an alleged violation of a specific provision of this Agreement.

4/1/2 Only one (1) subject matter shall be covered in any one (1) grievance. A grievance shall contain a clear and concise statement of the grievance by indicating the issue involved, the relief sought, the date the incident or violation took place, and the specific section or sections of the Agreement involved. The grievance shall be presented to the designated supervisor involved in quadruplicate (on mutually agreed upon forms furnished by the Employer to the Union and any prospective grievant) and signed and dated by the employe(s) and/or Union representative.

4/1/3 If an employe brings any grievance to the Employer's attention without first having notified the Union, the Employer representative to whom such grievance is brought shall immediately notify the designated Union representative and no further discussion shall be had on the matter until the appropriate Union representative has been given notice and an opportunity to be present.

4/1/4 All grievances must be presented promptly and no later than thirty (30) calendar days from the date the grievant first became aware of, or should have become aware of with the exercise of reasonable diligence, the cause of such grievance.

4/1/5 The parties will make a good faith effort to handle filed grievances, discipline and investigations in a confidential manner. A breach of confidentiality will not affect the merits of the grievance, discipline or investigation.

4/1/6 (AS) Representatives of the Union and Management shall be treated as equals and in a courteous and professional manner.

4/2/1 Pre-Filing: When an employe(s) and his/her representative become aware of circumstances that may result in the filing of a Step One grievance, it is the intent of the parties that, prior to filing a grievance, the Union representative will contact the immediate supervisor of the employe to identify and discuss the matter in a mutual attempt to resolve it. The parties are encouraged to make this contact by telephone. The State's DAIN line facilities will be used whenever possible.

4/2/2 If the designated agency representative determines that a contact with the immediate supervisor has not been made, the agency representative will notify the Union and may hold the grievance in abeyance until such contact is made.

4/2/3 The Employer representative at any step of the grievance procedure is the person responsible for that step of the procedure. However, the Employer may find it necessary to have an additional Employer representative present. The Union shall also be allowed to have one additional representative present in non-pay status. Only one (1) person from each side shall be designated as the spokesperson. By mutual agreement, additional Employer and/or Union observers may be present.

4/2/4 All original grievances must be filed in writing at Step One or Two, as appropriate, promptly and not later than thirty (30) calendar days from the date the grievant first became aware of, or should have become aware of, with the exercise of reasonable diligence, the cause of such grievance.

4/2/5 Step One: Within twenty-one (21) calendar days of receipt of the written grievance or within twenty-one (21) calendar days of the date of the supervisor contact provided for in 4/2/1, whichever is later, the designated agency representative will schedule a hearing and respond to the Step One grievance. By mutual agreement of the parties, the parties are encouraged to hold grievance hearings by telephone or video conferencing. The State's DAIN line facilities will be used whenever possible.

4/2/6 Step Two: If dissatisfied with the Employer's answer in Step One, to be considered further, the grievance must be appealed to the appointing authority or the designee (i.e., Division Administrator, Bureau Director, or personnel office) within fourteen (14) calendar days from receipt of the answer in Step One. Upon receipt of the grievance in Step Two, the department will provide copies of Step One and Step Two to the Bureau of Collective Bargaining of the Department of Employment Relations as soon as possible. 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)

and respond to the Step Two grievance, unless the time limits are mutually waived. The Employer and the Union agree to hear Step Two grievances on a regular schedule, where possible, at the work site or mutually agreed upon locations. By mutual agreement of the parties, the parties are encouraged to hold grievance hearings by telephone or video conferencing. The State's DAIN line facilities will be used whenever possible.

4/2/7 Step Three: Grievances which have not been settled under the foregoing procedure may be appealed to arbitration by either party within thirty (30) calendar days from the date of the agency's answer in Step Two, or from the date on which the agency's answer was due, whichever is earlier, except grievances involving discharge, which must be appealed within fifteen (15) calendar days from the agency's answer in Step Two, or from the date on which the agency's answer was due, whichever is earlier, or the grievance will be considered ineligible for appeal to arbitration. If an unresolved grievance is not appealed to arbitration, it shall be considered terminated on the basis of the Second Step answers without prejudice or precedent in the resolution of future grievances. The issue as stated in the Second Step shall constitute the sole and entire subject matter to be heard by the arbitrator, unless the parties agree to modify the scope of the hearing.

### **Time Limits**

4/2/8 Grievances not appealed within the designated time limits in any step of the grievance procedure will be considered as having been adjudicated on the basis of the last preceding Employer answer. Grievances not answered by the Employer within the designated time limits in any step of the grievance procedure may be appealed to the next step within the designated time limits of the appropriate step of the procedure. The parties may, however, mutually agree in writing to extend the time limits in any step of the grievance procedure.

4/2/9 If the Employer representative with whom a grievance appeal must be filed is located in a city other than that in which the grievance was processed in the preceding step, the mailing of the grievance appeal form shall constitute a timely appeal if it is postmarked within the appeal period. Likewise, when an Employer answer must be forwarded to a city other than that in which the Employer representative works, the mailing of the answer shall constitute a timely response if it is postmarked within the answer period. The Employer will make a good faith effort to insure confidentiality.

4/2/10 Arbitration hearing date(s) for discharge cases will be selected within one (1) year from the date of appeal to arbitration, unless the parties mutually agree otherwise in writing.

**SECTION 5: Exclusive Procedure**

4/5/1 The grievance procedure set out above shall be exclusive and shall replace any other grievance procedure for adjustment of any disputes arising from the application and interpretation of this Agreement

**SECTION 6: Number of Representatives and Jurisdictions**

4/6/1 (BC, SPS, T, LE) Council 24 shall designate a total of up to 750 grievance representatives who are members of the bargaining units for the bargaining units.

4/6/2 (AS) Council 24 shall designate a total of up to 500 grievance representatives who are members of the bargaining unit for the bargaining unit.

4/6/2A(P55) Council 24 shall designate a total of up to 115 grievance representatives who are members of the bargaining unit for the bargaining unit.

4/6/3 The Union shall designate the jurisdictional area for each grievance representative and his/her alternate. Each jurisdictional area shall have a similar number of employees and shall be limited to a reasonable area to minimize the loss of work time and travel giving consideration for the geographic area, employing unit, work unit, shift schedule and the right and responsibility of the WSEU to represent the employe of the bargaining unit. Jurisdictional areas shall include other employing units and/or departments where the number of employees in such units or departments are too minimal to warrant designation of a grievance representative.

4/6/4 (BC, T, P55, LE) Each local Union or each chapter of a statewide local Union (for PSS and Department of Transportation SPS only) may appoint one chief steward whom the designated grievance representative of the local or chapter may consult with by telephone pursuant to the provisions of Article II, Section 9 (Telephone Use) in the event the grievance representative needs advice in interpreting the Agreement or in handling a grievance.

4/6/4A(AS) Each local Union may appoint chief stewards, and shall furnish to the Employer, in writing, the name of the Chief Steward for each respective jurisdictional area. The grievance representative of the local may consult with his/her appropriate jurisdictional area Chief Steward by telephone pursuant to the provisions of Article II, Section 9 (Telephone Use) in the event the grievance representative needs advice in interpreting the Agreement or in handling a grievance.

4/6/5 In those instances where there is not a designated grievance representative from an employee's bargaining unit available in the same building, a designated grievance representative from another WSEU represented bargaining unit or local Union within the same building shall be allowed, pursuant to Paragraph 4/8/1, to cross bargaining unit or local Union lines so as to provide grievance representation. Such substitute grievance representative shall obtain approval from his/her supervisor prior to providing such substitute representation.

4/6/6 (BC, SPS, T, P55, LE) The Union shall furnish to the Employer in writing the names of the grievance representatives, and their respective jurisdictional areas within thirty (30) calendar days after the effective date of this Agreement. Any changes thereto shall be forwarded to the Employer by the Union as soon as the changes are made.

4/6/7 (AS) The Union shall furnish to the Employer in writing the names of the grievance representatives, and their respective jurisdictional areas as soon as they are designated and determined but not later than 180 calendar days after the effective date of this Agreement. Any changes thereto shall be forwarded to the Employer by the Union as soon as the changes are made.

4/6/8 The Employer will supply the local Union with a list of supervisors to contact on grievance matters.

#### **SECTION 7: Union Grievances**

4/7/1 Union officers and stewards who are members of the bargaining unit shall have the right to file a grievance when any provision of this Agreement has been violated or when the Employer interpretation of the terms and provisions of this Agreement leads to a controversy with the Union over application of the terms or provisions of this Agreement.

#### **SECTION 8: Processing Grievances**

4/8/1 The grievant, including a Union official in a Union grievance, will be permitted a reasonable amount of time without loss of pay to process a grievance through Step Three (including consultation with designated representatives prior to filing a grievance) during his/her regularly scheduled hours of employment. The employee's supervisor will arrange a meeting to take place as soon as possible for the employee with his/her Union representative through the Union representative's supervisor.

4/8/2 Designated grievance representatives will also be permitted a reasonable amount of time without loss of pay to investigate and process grievances through Step Three (including consultations) in their jurisdictional areas during their regularly scheduled hours of employment. Only one designated grievance representative will be permitted to process any one grievance without loss of pay as above. Further, in a group grievance, only one grievant, appearing without loss of pay, shall be the spokesperson for the group. (Group grievances are defined as, and limited to, those grievances which cover more than one employe, and which involve like circumstances and facts for the grievants involved.) Group grievances must be so designated at the first step of the grievance procedure and set forth a list of all employes covered by the grievance.

4/8/3 The grievance meeting as provided in the Pre-Filing Step and Steps One and Two above shall be held during the grievant's regularly scheduled hours of employment unless mutually agreed otherwise. The Employer shall designate the time and location for pre-filing, first and second step grievance hearings. The grievant's attendance at said hearings, including reasonable travel time to and from the hearing, shall be in pay status.

4/8/4 The designated grievance representative shall be in pay status for said hearing and for reasonable travel time to and from said hearing, provided that the hearing occurs during his/her regularly scheduled hours of work. If the grievant and/or the designated representative has a personally assigned vehicle, he/she may use that vehicle, without charge, to attend such grievance meetings, except that in the State Patrol, a designated grievance representative may only use his/her vehicle to attend a grievance hearing if the hearing occurs during his/her regularly scheduled hours of work. If there is a state fleet vehicle available, at the sole discretion of the Employer, the designated grievance representative may use the vehicle, without charge, to attend such grievance meetings. However, the decision of the Employer is not subject to the grievance procedure.

4/8/4 (BC, AS, SPS, T, LE) The Pre-Filing Step and Step One of the grievance procedure will be held on the grievant's and the grievant's representative's work time if the work time is on the same or overlapping shift. It is understood that the grievance time limits may have to be extended to accommodate this provision and that work schedules need not be changed.

4/8/5 The Employer is not responsible for any compensation of employes for time spent processing grievances outside their regularly scheduled hours of employment. The Employer is not responsible for any travel or subsistence expenses incurred by grievants or Union representatives in the processing of grievances.



4/8/6 (BC, AS) The Employer and the Union may mutually agree to the need for an interpreter in discipline hearings and the Pre-Filing Step and Steps One and Two of the grievance procedure. The interpreter shall be used to assist persons who are hearing impaired or who do not speak English to understand the proceedings. The person selected as the interpreter will be mutually agreed to, and the Union and the Employer shall share the costs equally.

4/8/7 The Employer will send one (1) copy of the answered grievance at Step One to the District Council 24 area representative.

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### **SECTION 9: Discipline**

4/9/1 The parties recognize the authority of the Employer to suspend, demote, discharge or take other appropriate corrective disciplinary action against employees for just cause. An employee who alleges that such action was not based on just cause may appeal a demotion, suspension or discharge taken by the Employer beginning with the Second Step of the grievance procedure. A grievance in response to a written reprimand shall begin at the step of the grievance procedure that is appropriate to the level of authority of the person signing the written reprimand, unless the parties mutually agree to waive to the next step. Any letter issued by the department to an employee will not be considered a written reprimand unless a work rule violation is alleged or it is specifically identified as a letter of reprimand.

4/9/2 An employee shall be entitled to the presence of a designated grievance representative at an investigatory interview (including informal counseling) if he/she requests one and if the employee has reasonable grounds to believe or has been informed that the interview may be used to support disciplinary action against him/her.

4/9/3 Unless Union representation is present during informal counseling or performance evaluation, disciplinary action cannot be taken at such counseling or performance evaluation meetings. The occurrence of an informal counseling or performance evaluation meeting shall not be used as the basis for or as evidence in any subsequent disciplinary action. Such a meeting can be used to establish that an employee had been made aware of the circumstances which resulted in performance evaluation or informal counseling.

4/9/4 If any discipline is taken against an employee, both the employee and local Union president, or his/her designee, will receive copies of this disciplinary action. If the supervisor and the employee meet to explain or discuss the

discipline, a Union representative shall be present, if requested. When an employe has been formally notified of an investigation, and the Employer concludes no discipline will be taken at the present time, the employe shall be so advised.

4/9/5 No suspensions without pay shall be effective for more than thirty (30) days.

4/9/6 Where the Employer provides written notice to an employe of a pre-disciplinary meeting, and the employe is represented by a WSEU statewide local union, the Employer will provide a copy of such notice to the local union. Current practices between other WSEU local unions and the Employer will continue.

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6. The collective bargaining agreement also contains Negotiating Note No. 14, specifying that performance evaluations are not disciplinary, and do not constitute notice of discipline, and directing State managers to refrain from listing specific work rule violations in performance evaluations.

7. Mary Pichelmann is also an employee of UWM, and a member of the bargaining unit represented by Local 82. Ms. Pichelmann was promoted from Program Assistant I to Program Assistant III in 2000, resulting in a pay increase of approximately \$2 per hour. Her promotional position was as a 50% FTE in the Department of Health Sciences, School of Allied Health Professions, working under the general supervision of Department Chair Mary K. Madsen. The promotion rendered her a probationary employee. State statutes require that probationary employees be evaluated during their probationary period. Professor Madsen performed the evaluations on Pichelmann.

8. On November 22, 2000, Professor Madsen conducted the initial probationary evaluation on Ms. Pichelmann. Ms. Pichelmann was rated as having performed poorly throughout the evaluation period.

9. On December 20, 2000, Professor Madsen asked Ms. Pichelmann to meet with her. Pichelmann asked the reason for the meeting, and Madsen told her it would be a performance evaluation. Pichelmann told Madsen that she wanted a Union representative present, and Madsen told her she was not entitled to representation in an evaluation meeting. Pichelmann persisted, and Madsen told her that she would be removed from the premises if she declined to meet without representation. Pichelmann called Peshut, who was the WSEU steward, and Peshut advised her to proceed with the meeting. Madsen reviewed her performance with her, and advised her that she had not passed the probationary period, and would be returned to her former position of PA I in the Graduate School.

10. On the afternoon of December 20<sup>th</sup>, Ms. Peshut sent an e-mail to Professor Madsen, notifying her of the pre-filing of a grievance “pursuant to 4/2/1 of the Agreement between the State of Wisconsin and AFSCME Council 24, Wisconsin State Employees Union, AFL-CIO, and Affiliated Local 82” over the denial of representation during her meeting with Pichelmann. The e-mail stated that Madsen was in violation of section 4/9/3 of the contract, and asserted that the denial of representation and the termination of Ms. Pichelmann’s Program Assistant III job were unjustified, and in retaliation for a Federal lawsuit she had filed against Madsen and other administrators. Madsen replied by e-mail to Pichelmann the following day, advising her that evaluations were not grievable issues. Peshut responded on Pichelmann’s behalf, disputing Madsen’s interpretation of the contract, and demanding a response to the pre-filing by the end of the business day on December 22<sup>nd</sup>.

11. On January 18, 2001, Ms. Pichelmann and Ms. Peshut, filed a Step 1 grievance asserting that (a) Pichelmann had been suspended without just cause between December 20<sup>th</sup> and December 30<sup>th</sup>; (b) Professor Madsen had refused Ms. Pichelmann representation during the December 20<sup>th</sup> meeting leading to the discipline; (c) Madsen threatened to have Ms. Pichelmann forcibly removed if she did not attend the December meeting without representation; (d) the University failed to allow a pre-disciplinary meeting prior to the December 20<sup>th</sup> meeting; (e) the University failed to properly notify the Union of the discipline by instead sending a notice claiming it was a release from promotional probation; (f) Madsen ordered Ms. Pichelmann to sign a time card for the period of the suspension which was later altered to conceal the suspension; (g) Madsen withheld training opportunities from Ms. Pichelmann, contributing to her negative evaluation; (h) Madsen made false, misleading and groundless claims in the December 20<sup>th</sup> evaluation; and (i) that all of these actions were taken in retaliation against Ms. Pichelmann for her filing of a federal suit against Madsen and Dean Randall Lambrecht over their effort to interfere with her constitutional right to free speech.

12. On February 2, 2001, Assistant Dean Elizabeth Bolt denied the grievance at Step 1. Bolt ruled that Madsen was entitled to make the determination as to whether Ms. Pichelmann was adequately performing her job during the probationary period. Bolt further found that there was no evidence of discipline, in that no discipline appeared in Pichelmann’s personnel file, there was no statement or implication that discipline was being taken, and there was no loss of income to Pichelmann. Instead, Bolt determined that the directive to stay home from December 20<sup>th</sup> until January 3<sup>rd</sup> was due to a judgment that it was unproductive for her to report to a job she had been released from, and that the Graduate School was not yet ready to have her start work. Given the lack of discipline, Bolt determined that there was no right to representation.

13. On February 16, 2001, Ms. Pichelmann and Peshut submitted the grievance at Step 2 of the grievance procedure, asserting that Bolt had not answered the grievance, and reiterating the substantive complaints made at Step 1.

14. As Coordinator of Labor Relations, Shannon Bradbury is responsible for scheduling and hearing Step 2 grievances on behalf of the University. She does so in conjunction with Union Field Representative Jana Weaver, and the timing of the hearing is generally dictated by Weaver's schedule. Weaver is responsible for representing State employees in 14 locals across 4 counties in southeastern Wisconsin. Bradbury does not take action to schedule a Step 2 hearing until Weaver contacts her to arrange for a meeting. Step 2 hearings at UWM are not usually conducted within the 21 days contemplated by the collective bargaining agreement, because of the time demands created by Weaver's workload.

15. On Sunday, March 11, 2001, Ms. Peshut sent an e-mail to Shannon Bradbury, noting that Step 2 grievance hearings are to be held within 21 days of filing at Step 2, and that more than 21 days had passed since the filing of Ms. Pichelmann's grievance. Peshut stated that neither she nor Pichelmann had waived the time limit and that "[if] you do not schedule a grievance hearing immediately, I must conclude that you intend to violate both the contract and state law and I will proceed accordingly." Bradbury replied the following day, stating that the Step 2 hearings were scheduled to accommodate the WSEU Field Representative, and suggesting that Pichelmann contact Jana Weaver. Peshut wrote back, telling Bradbury that, as the University's designated representative, she was responsible for scheduling the Step 2 grievances in a timely manner, and warning that if the hearing was not scheduled by the end of the day, she would assume that Bradbury was refusing to schedule it and acting in violation of the contract and state law. Bradbury forwarded the correspondence to Weaver. On March 21<sup>st</sup>, Bradbury wrote back to Peshut and advised her that Step 2 hearings had been scheduled for April 5<sup>th</sup>, and that Pichelmann's grievance would be heard on that day.

16. On Saturday, March 31, 2001, Ms. Pichelmann sent an e-mail to Ms. Bradbury, with copies to Ms. Peshut and to the UWM News, the student newspaper, demanding that the grievance hearing be open to the public. Bradbury replied on Monday, April 2, that grievance hearings were not open meetings, and the two exchanged e-mails on the subject, with Bradbury declining to notice the hearing as an open meeting, and Pichelmann expressing her view that the law required that the meeting be open to the public. Neither Ms. Bradbury nor anyone in her office noticed the meeting as an open meeting. Notwithstanding this, on April 3<sup>rd</sup>, either Peshut or Pichelmann had the Office of University Relations add Ms. Pichelmann's grievance hearing to the Open Meeting Report for the week of April 2-6. Neither of the other two grievance hearings scheduled for the morning of April 5<sup>th</sup> was listed on the Report.

17. On March 31<sup>st</sup>, a few minutes after Ms. Pichelmann sent her open meeting request to Ms. Bradbury, Ms. Peshut sent an e-mail to representatives of the Progressive Student Network and the Student Association, asking them to show solidarity between students and workers by attending Pichelmann's grievance hearing.

18. On April 5, 2001, Jana Weaver and Shannon Bradbury met for Step 2 grievance hearings. Ms. Pichelmann's was set as the third and last hearing, at 11:00 a.m. At about 10:45 a.m., Ms. Pichelmann, Ms. Peshut, and three students who responded to Peshut's e-mail

appeal for support gathered in the hallway outside the hearing room. A photographer from the student newspaper was also present. Peshut, and two of the students held up mask placards supplied by Pichelmann, displaying the face of Gloria Steinem, and had their pictures taken. The placards were a reference to a Steinem quote "The truth will set you free, but first it will piss you off" which Pichelmann had earlier been ordered to remove from her e-mail signature.

19. Shortly before 11:00 a.m., Jana Weaver approached Ms. Peshut and Ms. Pichelmann and asked if they would meet her prior to the hearing, so that she could familiarize herself with the grievance. She had not, to that point, received any information on the case. Peshut told her that it was not necessary for them to meet before the hearing, and that the two of them were ready to proceed with the hearing. She also handed Weaver a copy of the Open Meetings Report and told her that the meeting would be open to the public. Weaver replied that it would not be open to the public. She told the two that they appeared to be done, and went into the hearing room to gather her materials. Peshut, Pichelmann and the students also entered the hearing room. Weaver again asked if they would meet with her, and Peshut said "no." Weaver advised them to go back to work, since there would be no hearing.

20. Jana Weaver left the hearing room and went to Ms. Bradbury's office. She informed Bradbury that Ms. Peshut and Ms. Pichelmann were refusing to meet with her on the grievance, and that there were members of the public in the hearing room. She told Bradbury that she would not proceed with the grievance hearing under those circumstances, and asked Bradbury to accompany her back to the hearing room. Bradbury and Weaver returned to the hearing room, and stood near the doorway. Peshut and Bradbury discussed the open meetings issue, with Bradbury reiterating her position that grievance hearings were not open meetings. Peshut showed her that hearing was listed on the Open Meetings Report, and Bradbury stated that it must have been listed by mistake. Weaver again asked if they would meet with her, and they said told her they would not. She then advised them that there would be no hearing, gathered her materials and left. Bradbury also left, returning to her office.

21. Ms. Peshut and Ms. Pichelmann followed Ms. Bradbury to her office and asked her to proceed with the hearing. Bradbury declined, but did offer to reschedule the hearing.

22. Ms. Peshut was in pay status for all of the time during her normal work day devoted to representing Ms. Pichelmann, including the time spent at the Step 2 hearing. Pay status for representing employees is the right of designated Union officials, including stewards, under Sections 4/8/1, 4/8/2 and 4/8/4 of the grievance procedure provisions of the collective bargaining agreement (See Finding No. 5, supra).

23. In 1998, Peshut submitted a lengthy brief to the Commission in the case of STEVEN PRELLER V. UW HOSPITAL AND CLINICS AUTHORITY, DEC. NO. 28938-C (WERC, 5/24/99), hereinafter referred to as the Preller case. The brief discussed the concept of statutory grievances under Sec. 111.83, SELRA, and the distinctions between contractual and statutory grievance, although she did not use the term "statutory grievance."

24. In 1998, Peshut sent letters to several members of UWM's management team, including Shannon Bradbury, protesting her receipt of a reprimand. Bradbury returned the papers to Peshut, advising her that grievances had to be filed on an official grievance form. Peshut then resubmitted the grievance on the official forms. Peshut did not represent to Bradbury that her letters were a non-contractual grievance brought under Section 111.83, SELRA. Since that time, Bradbury has not changed her position on the need to use official grievance forms for the submission of a grievance for represented employees.

25. On April 18, 2001, Ms. Pichelmann filed a complaint of unfair labor practices, alleging that UWM had violated Sec. 111.84, by refusing Ms. Pichelmann's request for representation in the December 20<sup>th</sup> evaluation meeting, by engaging in a practice of delaying Step 2 grievance hearings, and by refusing to hear Pichelmann's Step 2 grievance. The complaint also asserted that WSEU had violated Sec. 111.83, by interfering with Ms. Pichelmann's right to present grievances through a representative of her own choosing, and Sec. 111.84, by coercing and intimidating Ms. Pichelmann in her effort to present her Step 2 grievance. A decision on that complaint was issued on October 19, 2001 (Dec. No. 30124-C (Nielsen)). The complaint was dismissed.

26. On April 23, 2001, Ms. Peshut filed a complaint of unfair labor practices, alleging that UWM had violated Sec. 111.84, by interfering with her right to engage in concerted activities by engaging in a practice of delaying Step 2 grievance hearings, and by refusing to hear Ms. Pichelmann's Step 2 grievance. The complaint also asserted that WSEU had violated Sec. 111.83, by interfering with Ms. Peshut's right to represent Pichelmann in her Step 2 hearing and by inducing the President of Local 82 to interfere with Peshut's right to represent Pichelmann. The complaint was dismissed by the Examiner for failing to state a claim. On review, the WERC reversed the Examiner and remanded the case for hearing.

27. Following the attempted Step 2 hearing and the filing of the instant complaint, Jana Weaver contacted Local 82 President Stan Yasaitis and expressed grave concerns about Ms. Peshut's conduct as a steward. She cited Peshut's conduct in the Pichelmann hearing, as well as the fact that Peshut had filed a number of unfair labor practice charges against her and against the WSEU. After this discussion, Yasaitis sent Peshut a letter dated April 12<sup>th</sup> stating his concerns:

Dear Jenny,

I discussed your actions at the April 5, 2001 2d step grievance hearing with Field Representative Jana Weaver. The following are some of my concerns:

1. failure to notify Local 82 or the WSEU of your actions, directions, activities.
2. failure to follow long-standing grievance handling procedure (copies to field rep.).

3. failure to represent. I have not seen that you addressed the obvious violation of Negotiation Note 37.
4. failure to consult other stewards and officers.

The purpose of our procedures is to ensure that the grievance hearing is resolved in favor of the worker you represent.

I strongly recommend that we meet to discuss these matters as soon as possible.

Peshut replied on April 21<sup>st</sup>, stating that he either knew or should have known that the accusations in his letter were false, and demanding a written apology. Yasaitis responded by e-mail on April 27<sup>th</sup> that he had not made any accusations, merely raised concerns, and advising Peshut that he would fully discuss the substance of the concerns with her at a meeting the two had arranged for May 3<sup>rd</sup>. Peshut replied by e-mail that same evening that she would not meet with him until she received a written retraction of his accusations. She declined to meet with Yasaitis on the 3<sup>rd</sup>, and he sent her an e-mail:

I am disappointed that you chose not to meet with me. So much for your desire that I “know or should have known” your side.

She replied the following day, reiterating her demand for a written retraction:

I will not meet with you until you retract in writing the accusations in your 4/12/01 letter to me. I wrote you that on 4/27/01. I have not and will not change my position.

28. The Executive Board of Local 82 was scheduled to meet on June 5<sup>th</sup>. Jana Weaver asked to address the Board on two subjects – the WSEU’s maintenance of membership drive, and her concerns over Peshut’s conduct as a steward. Peshut was advised that Weaver would attend the meeting, and composed a memorandum to the Executive Board members stating her defense of her actions, and her criticisms of Weaver, Council 24 and Yasaitis:

Recently I learned that Council 24 Field Representative, Jana Weaver, contacted the President of Local 82, Stan Yasaitis, and asked to attend the June 5, 2001 Executive Board meeting. Her reason: to get the Executive Board to remove me as a Local 82 steward.

I am sending this e-mail correspondence because I am unable to attend the Executive Board meeting. I will be attending my favorite niece’s graduation and unfortunately my current work load doesn’t allow me to be at both of these events. Although, Ms. Weaver is invited to the meeting to make charges against me, I, a rank and file union member in good standing, was never invited to defend myself. I offer the following in my absence.

1. Weaver and the Council 24 executive staff (Beil and Hacker) want to get the Local 82 Executive Board to remove me as a steward. They want me out because I have filed unfair labor practices complaints against them with the Wisconsin Employment Relations Commission. They also want me removed because I contacted the bargaining team for the current contract negotiations. I want us to keep the right to take our grievances to arbitration when we are fired. I mailed and e-mailed the team members a package of detailed information about how they can put language back in the contract to guarantee this right. The executive staff of Council 24 are against it.

Our Executive Board should not allow Council 24 to interfere with Local 82 matters.

2. There have been rumors and lies about me and I am going to put them to rest. Some of them relate to grievances I filed on behalf of Mary Pichelmann.

- I did not write the "Classified" newsletter.
- I did not write and/or distribute fliers about the June 5, 2001 Executive Board meeting.
- I do not plan to run for Local 82 President.
- There was no protest at the Pichelmann Step 2 grievance hearing. The picture published in the UWM Post was taken in the outer lobby of Engelmann Hall BEFORE the scheduled grievance hearing.
- Regarding claims about the Step 2 grievance and the right to an open meeting, Mary Pichelmann, the grievant, requested that her grievance hearing be open to the public. UWM listed it as an open meeting. See the UWM Open Meeting Report for the week of April 2-6, 2001.

Our Executive Board should not allow rumors and lies to influence Local 82 decisions.

3. Jana Weaver and Stan Yasaitis made false accusations against me. These false accusations come from grievances I filed on behalf of Mary Pichelmann.

- I NEVER refused to meet with Jana Weaver in an April 5, 2001 Step 2 grievance hearing. Weaver lied about this under oath at a May 22, 2001 hearing before the Wisconsin Employment Relations Commission.
- I NEVER refused to share a copy of the Step 2 grievance with Jana Weaver at the April 5, 2001 Step 2 grievance hearing. Weaver lied about this under oath at a May 22, 2001 hearing before the Wisconsin Employment Relations Commission.



Weaver made up these lies to rationalize why she walked out and left Engelmann Hall before the hearing began. Ms. Pichelmann and I only told Weaver that we were well prepared and that we didn't need to meet with her BEFORE the hearing. Had the grievance hearing taken place, we would have discussed and shared a copy of the grievance with her IN THE HEARING. The grievance hearing never occurred however, because Shannon Bradbury refused to convene it when Weaver left the building.

Our Executive Board should not allow rumors and lies to influence Local 82 decisions.

- I hand delivered (January 30, 2001) President Stan Yasaitis a copy of Pichelmann's Step 1 grievance (substantively the same as the Step 2 grievance) and we discussed it at length.
- I discussed Pichelmann's grievance with Treasurer Irene Herron-Steeger after an ASU organizing meeting.
- I discussed the April 5, 2001 Step 2 grievance hearing with Vice President Michael Maass for about one hour in my office the day of the hearing.
- It was President Yasaitis, not I, who failed to file a grievance citing Negotiating Note 37 with respect to Mary Pichelmann's situation.

Negotiating Note No. 37  
1999-2001 Agreement  
Notice of Suspensions With Pay

The Employer agrees that when a written note of suspension with pay, pending an Employer investigation, is sent to an employe, a copy of the notice will also be provided to the LOCAL UNION PRESIDENT (emphasis added) or his/her designee.

The contract language above refers to the responsibility of the President. I could not have known whether the President received a copy of a notice or not. If he knew the employer was in violation of Negotiating Note No. 37, he should have filed a grievance.

- I refuse to meet with Stan Yasaitis until he retracts the false statements he published about me. He NEVER asked me about any of the things of which he accused me until after he wrote them.

Our Executive Board should not allow self interests to interfere with Local 82 matters.

4. I pursue grievances vigorously and challenge the employer whenever and wherever possible. I make sure the contract is enforced to its fullest extent. That this may make Council 24 executive staff uncomfortable should reflect badly on them, not me.

Our Executive Board should not allow Council 24 OR UWM management to interfere with Local 82 matters.

A union should be about employees working together for mutual aid and protection, not for the benefit of the employer or staff representatives. When one of its stewards is threatened with removal, the entire membership should have a say in the decision. An injury to one is an injury to all.

...

29. At the June 5<sup>th</sup> meeting, Weaver addressed the Executive Board about her concerns over Peshut's performance, including failure to cooperate with her to present the Pichelmann grievance at Step 2, Peshut's refusal to meet with Yasaitis, an instance in which Peshut demanded to have an outside attorney represent her on a grievance, and the time and expense involved in defending several unfair labor practice Peshut had filed against the WSEU and Weaver. Local unions within Council 24 have authority to appoint and remove stewards, and WSEU itself has no authority over them. Weaver intended her presentation to induce the Executive Board to remove Peshut as a steward. No action was taken at that meeting.

30. After the June 5<sup>th</sup> meeting, several members of the Executive Board decided to seek Peshut's removal as a steward and put the issue on the agenda of the August 7<sup>th</sup> Executive Board meeting. Local 82 Vice President Michael Maass had a conversation with Peshut about the matter in the late June, and followed up on the conversation with a June 22<sup>nd</sup> e-mail:

Jenny, one thing I overlooked telling you in our conversation at Lisas was the fact that the membership WILL have a decided say in this matter of removing you as a steward. Let me explain...

If say, for example, motion is made and seconded to remove you, discussed, then voted on and, the vote lets say, turns out not to be in your favor it still, as well as any other action the board takes must be ran past the members the following week at the regular membership meeting. That is how it works in this union, simple as that.

Also one more thing...

I'm not saying for sure but please remember that it is possible that a vote to remove you may never happen! Not a guarantee but there is always that chance.

Sorry, one more thing...

I know you stated you want to come to August board meeting at 11:00 till 11:30. I don't know if your using lunch break to attend or not but just so you are aware that my guess is that this is not going to fit in half an hour. Just so you can plan ahead.

And as I also told you Council 24 would no doubt like us to hurry a vote one way or another but as you can see we are not about to rush through this without carefully looking at this whole matter!

We WILL not be told what to do by them! That I can assure you. thanks

mike

Peshut responded with an e-mail to the Executive Board, requesting to know what charges were being brought against her and under what authority:

Local 82 Executive Board

Please provide me with the citation of the rule(s), regulation(s), by-laws, constitutional language (Local 82, C24, and International), and/or other procedural grounds which allow the Executive Board/Council 24 staff to remove me as a steward. In addition, I ask that you provide me with the SPECIFIC charges on which you will base my removal. I ask that this information be provided to me at least 14 days prior (July 23) to the August 7, 2001 Executive Board meeting.

I only have the privilege to attend the August 7, 2001 Executive Board meeting from 11:00-11:30 a.m. If you need to invite me back to the September 4, 2001 Executive Board meeting, I will arrange for additional time away from work.

As always, thanks for your time.

When she was advised that there were no formal charges, she decided not to attend the Executive Board meeting. Yasaitis sent her an e-mail on July 12<sup>th</sup>, noting her decision not to come to the meeting and urging her to attend, as he felt the underlying issues were still in dispute:

Jenny, I'm pleased that you've finally recognized that there are no charges currently pending against you. It is too bad that it took you three months, particularly since I've repeatedly stated that point to you since April. As I understand it, now you say you see no need to attend an Executive Board meeting.

Nonetheless, the four concerns I raised in my April 12 memo to you remain to be addressed. They are reason enough for you to attend the August executive board meeting. Additionally, your "representation" of six UWM employees in legal actions against the University (April 18 email) needs to be addressed. Please provide the names of those employees. As a designated representative of Local 82, your actions (official or unofficial) place the Local in jeopardy of liability. Further, you stated in your April 18 email that "we" would produce and distribute a newsletter, and though you are now said to assert no participation with the "UWM Classified" newsletter, that newsletter's misleadingly incomplete writings raise additional concerns about Local 82 liability for your actions. Finally, the June 20 anonymous posting (now also documented as an email from you to members of Local 82) made an allegation of Local 82 collaboration with UWM management that must be addressed.

We will reimburse you for time spent at the board meeting, per our present Executive Board policy. You have received a large amount of correspondence, copies of our constitution, and have been through Steward Training, so there is no reason or excuse that you are unprepared to attend an Executive Board meeting. Should you choose not to attend, the board will act as it sees fit on the information that it has. All board actions are, as you surely know, reviewed by the Membership meeting the week after the board meetings.

These unresolved questions all remain. They need to be addressed by this organization, and will be. Your actions of the past three months have included emails, postings, an "underground" newsletter. All have blasted this Local - every officer, every steward, etc. This has gone far beyond personal animosity and has become a broad attack on Local 82. As such, it is an executive board matter of high urgency.

Further, more importantly, Local 82 holds ALL of its officers accountable for their actions. Local Union officers of the Executive Board are elected to address "All matters affecting the policies, aims and means of accomplishing the purposes of the local not specifically provided" in the Local Constitution. If a Union Steward is not accountable to the Executive Board, the body that appoints stewards, such a steward is accountable to no one. If you cannot see fit to attend our August 7, 2001 meeting, for at least a period of 1.5 hours between 9:00 a.m. and 11:30 a.m., then resign your position.

If you have any true concern for the future of Local 82 and the 700 workers it represents, don't stand outside and throw rocks. Come to the board meeting to discuss the above issues.

31. Weaver did not attend the August 7<sup>th</sup> Executive Board meeting, nor did Peshut. A motion was made to remove Peshut as a steward, and the motion lost on a 5 to 4 vote. Another motion was made, this one to suspend her as a steward for 60 days pending a meeting with the Executive Board and a mutually agreed upon mediator, with reimbursement for her time in the meeting. The motion was approved on a 7 to 2 vote, subject to approval by the membership at its meeting the following week.

32. At the August 14<sup>th</sup> membership meeting, the motion to suspend Peshut was voted down by the membership on a 34 to 16 vote, with one abstention. Local 82 President Stan Yasaitis later sent an e-mail to members of the Local, discussing the business conducted at the meeting. A portion of the e-mail discussed the vote on the motion involving Peshut:

. . .

8. Key action of the day was on an Executive Board motion to suspend Jennifer Peshut for 60 days pending a meeting with the executive board (with reimbursement for any lost time she might incur) (and with a Local 82 provided mediator if she so desired) to discuss the board's concerns with her actions as a steward over the past few months. Her continued refusal to meet with the board was the main issue for the suspension. Sadly, Peshut finally came to a meeting, immediately moved to "close debate" so that there has still been no discussion of our concerns. The twenty or so people she brought with her supported this motion to have no debate.

In the end, the motion to suspend Peshut failed by a vote of 34 to 16. While I commend her ability to turn out 2 percent of our members to support her, I must say that the vote places the Local in a variety of positions of jeopardy and liability. When an official designated union representative can act without accountability to the organization she represents, we are all at risk. I will most assuredly take steps to protect us to the degree that I am able to. In the meantime, I would caution you to verify ANYTHING Ms. Peshut might tell you or suggest to you. Since the Wisconsin State Employees Union has strongly stated they will hear no grievance she is involved in, I would caution you to likewise verify with other Local 82 representatives any actions Peshut suggests or pursues.

. . .

The reference in the last paragraph to WSEU having said they would not hear grievances Peshut was involved in was to a request by Weaver two years earlier that Peshut not be involved in a grievance that was heard after she had filed an unfair labor practice complaint naming Weaver as a Respondent. In fact, WSEU had not made any blanket statement that they would not hear grievances involving Peshut as a representative.

33. On August 27, 2001, Ms. Peshut's complaint was amended to add a claim that Jana Weaver had interfered with Ms. Peshut's rights and engaged in retaliation against her by seeking to have Local 82 remove her as a steward. The complaint as amended did not name any officer or member of Local 82, nor the Local itself, as a Respondent.

34. With respect to the facts set forth in Findings Nos. 1-24:

A. The meeting on December 20, 2000, between Professor Madsen and Ms. Pichelmann was for the purpose of conducting a performance evaluation related to Pichelmann's probationary period as a Program Assistant III. Ms. Pichelmann was advised of this purpose in advance of the meeting. By contract, performance evaluations are not disciplinary in nature. No investigation of Ms. Pichelmann's conduct was announced, contemplated or conducted during this meeting. No discipline was imposed on Ms. Pichelmann in the course of the meeting or afterward. Ms. Pichelmann did not have a reasonable expectation that the December 20<sup>th</sup> meeting was investigatory in nature, nor that it could result in discipline.

B. The requirement of a hearing within 21 days of filing a Step 2 grievance is established by the collective bargaining agreement between the State of Wisconsin and the WSEU. The procedural provisions of the contract may be waived by mutual consent of the contracting parties. Delays in conducting Step 2 grievance hearings at UWM result from the workload and schedule of the Union's Field Representative. Hearings are conducted as soon as possible, within the confines of the Field Representative's work schedule. WSEU and the State have mutually agreed to this scheduling practice. The scheduling of these hearings beyond 21 days after filing does not have a reasonable tendency to interfere with employee rights to engage in concerted activity.

C. The grievance procedure in the collective bargaining agreement requires that a representative of Council 24 be involved in the Step 2 hearing, if Council 24 so elects. Jana Weaver is the designated representative of Council 24 for Step 2 grievances at UWM. The Step 2 hearing on Ms. Pichelmann's grievance did not proceed on April 5, 2001, because Weaver refused to have the hearing go forward without first having an opportunity to meet with Peshut and Pichelmann and familiarize herself with the grievance, and also refused to participate in the hearing if it was held as an open meeting. Bradbury did not have the option, under the collective bargaining agreement, of proceeding with a Step 2 hearing without Weaver, unless Weaver consented. Weaver did not consent. Bradbury's refusal to proceed with the hearing in the absence of Weaver did not have a reasonable tendency to interfere with employee's exercise of protected rights.

D. As the designated representative of Council 24, Weaver has the right to condition her participation in a Step 2 hearing on the cooperation of the employee and the local steward in preparing her for the hearing. Weaver's refusal to proceed with the Step 2 hearing on Pichelmann's grievance unless the Grievant and steward met with her before the hearing did not have a reasonable tendency to interfere with the exercise of employee rights to engage in protected activity, nor did it coerce or restrain Pichelmann in the exercise of those rights.

E. The grievance filed by Ms. Pichelmann was, both on its face and in its manner of processing, a contract grievance brought through the WSEU and pursuant to the contractual grievance procedure. Neither Ms. Pichelmann nor Ms. Peshut at any time represented the grievance to be a grievance brought by a minority of employees, nor a grievance brought on behalf of an individual outside of the contractual grievance machinery. The processing of this grievance was governed by the terms of the collective bargaining agreement.

F. Shannon Bradbury's rejection of the 1998 letters submitted by Peshut to protest the reprimand she received did not mislead Peshut as to the distinction between statutory and contractual grievances and would not reasonably tend to interfere with Peshut's right to present non-contractual, statutory grievances, nor to coerce her in the exercise of that right.

35. With respect to the facts set forth in Findings 25-34:

A. Jana Weaver's duties as Field Representative include advising local union officials of any perceived problems with the performance of stewards.

B. Jana Weaver's stated belief that Ms. Peshut's unfair labor practice charges lacked merit, created friction within the Union, and wasted dues money, were a relatively minor part of her presentation to the Local 82 Executive Board.

C. Jana Weaver's stated belief that Ms. Peshut's unfair labor practice charges lacked merit, created friction within the Union, and wasted dues money, did not motivate the Local 82 Executive Board's discussion of removing or suspending Peshut as a steward, and did not motivate the August 7<sup>th</sup> vote to suspend her.

D. Jana Weaver's truthful recitation of her belief that Ms. Peshut's unfair labor practice charges lacked merit, created friction within the Union, and wasted dues money, did not have a reasonable tendency to intimidate or coerce Peshut, in the exercise of her protected right to file such charges, and did not intimidate or coerce Peshut.

On the basis of the above and foregoing Findings of Fact, the Examiner makes and issues the following

### **CONCLUSIONS OF LAW**

1. The Complainant, Jennifer Peshut, is an “employee” within the meaning of Sec. 111.81(7), SELRA and is a party in interest within the meaning of Sec. 111.07(2), Stats., and ERC 22.02(1), Wis. Administrative Code, for the purpose of filing the instant complaint of unfair labor practices.

2. The Respondents University of Wisconsin-Milwaukee, Nancy L. Zimphler, Shannon Bradbury and Mary Kay Madsen are agents of the State of Wisconsin, the “employer” within the meaning of Sec. 111.81(8), SELRA.

3. The Respondents Martin Beil and Jana Weaver are agents of the Respondent Wisconsin State Employees Union, Council 24, AFSCME, AFL-CIO, which is a “labor organization” within the meaning of Sec. 111.81(12), SELRA.

4. By the acts described in the above and foregoing Findings of Fact, the Respondent Employer and its agents did not interfere with the Complainant’s right to engage in protected concerted activity nor with the exercise of any other rights guaranteed by Sec. 111.83, and did not commit any unfair practice within the meaning of Sec. 111.84(1), SELRA.

5. By the acts described in the above and foregoing Findings of Fact, the Respondent Labor Organization and its agents did not interfere with the Complainant’s right to engage in protected concerted activity nor with the exercise of any other rights guaranteed by Sec. 111.83, and did not commit any unfair practice within the meaning of Sec. 111.84(2), SELRA.

On the basis of the above and foregoing Conclusions of Law, the Examiner makes and issues the following

### **ORDER**

That the instant complaint be, and the same hereby is, dismissed in its entirety.

Dated at Racine, Wisconsin, this 16<sup>th</sup> day of April, 2002.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Daniel Nielsen /s/

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Daniel Nielsen, Examiner



DEPARTMENT OF EMPLOYMENT RELATIONS (UW-MILWAUKEE)

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

**BACKGROUND**

This case is a companion to a complaint brought by Ms. Mary Pichelmann over the University's refusal to allow Ms. Jennifer Peshut to represent her during the evaluation meeting and over Weaver and Bradbury's refusal to proceed with the grievance meeting on April 5, 2001 (UW-MILWAUKEE, DEC. NO. 30124-C, (NIELSEN, 10/19/01). It plows much of the same ground, with but two notable differences. First, with respect to the distinction between statutory grievances and contractual grievances, Ms. Peshut asserts that she was coerced in her efforts to assert statutory grievances by Shannon Bradbury's rejection of a letter of complaint she submitted over a reprimand in 1998. In the alternative, she alleges that the rejection of the letter and Bradbury's insistence that she use the normal grievance form caused her confusion as to the distinction between the grievance procedure of the contract and the right to present grievances guaranteed under Sec. 111.83:

. . . Any individual employee, or any minority group of employees in any collective bargaining unit, may present grievances to the employer in person, or through representatives of their own choosing, and the employer shall confer with said employee or group of employees in relations thereto if the majority representative has been afforded the opportunity to be present at the conference. Any adjustment resulting from such a conference may not be inconsistent with the conditions of employment established by the majority representative and the employer.

The second difference between this case and the Pichelmann case is the allegation that, after the events addressed in Pichelmann, Weaver and WSEU attempted to interfere with Ms. Peshut's rights by seeking to have her removed as a steward.

**Background of the Pichelmann Case**

As to the first aspect of the complaint, the background was described in the Pichelmann decision:

The factual background of the complaint is set forth in the Findings of Fact, but is briefly restated here. The complaint arises from a meeting held in December of 2000 and the subsequent processing of a grievance over the events at that meeting. The Complainant was promoted from a half-time Program Assistant

I to a half-time Program Assistant III at UWM in 2000. While she was on probation in the promotional position, she filed several grievances against her Department Chair, Professor Mary Kay Madsen. She also filed a federal lawsuit against Madsen and the Dean of the School, alleging that they interfered with her First Amendment rights.

Probationary employees are subject to evaluation to determine whether they are satisfying the demands of the promotional position. If they fail probation, they are returned to their former positions and rates of pay. The Complainant's first evaluation was conducted in late November of 2000, after she had filed her grievances and lawsuit. It was not a positive evaluation. Thereafter Madsen's attitude towards her was distant and cool. On December 20<sup>th</sup>, Madsen asked to meet with her. She asked why, and Madsen said she wanted to conduct a performance evaluation. The Complainant requested Union representation and Madsen refused. When she persisted, Madsen threatened to have her removed from the premises. She called her steward, Jennifer Peshut, who advised her to proceed with the meeting. In the course of the meeting, Madsen reviewed her performance, advised her that it was not acceptable, and told her she would be returned to her former PA I position in the Graduate School after the first of the year. Madsen told her she should go home, and that she would remain in pay status until her new job started. The Complainant left, and returned to work at the Graduate School on January 3<sup>rd</sup>. She was paid for the time between the performance evaluation and the start of work in the Graduate School, although on returning to the PA I position, she did lose \$2 per hour in wages.

A grievance was initiated on the Complainant's behalf. Peshut, as the WSEU steward, processed the grievance through pre-filing and Step 1, but it was not resolved, and a Step 2 grievance was filed on February 16, 2001. The contract between the State and WSEU requires that hearings on Step 2 grievance be conducted with the employer representative, the employee, the employee's representative, and a representative of Council 24, if the Union so elects, within 21 days of the Step 2 filing: "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) and respond to the Step 2 grievance, unless the time limits are mutually waived."

Shannon Bradbury, the University's Labor Relations Coordinator, is the employer representative at Step 2. She does not schedule Step 2 hearings until she is contacted by the WSEU Field Representative, Jana Weaver. Weaver is responsible for 14 locals of WSEU, and owing to this workload, she does not schedule Step 2 hearings at UWM on a regular basis as she does at other, larger volume locals in her jurisdiction. As a result of the demands on her time, Weaver

is routinely unable to schedule Step 2 hearings at UWM within 21 days of filing, and Bradbury and she have engaged in a regular practice of scheduling the hearings when Weaver's schedule permits, irrespective of the 21-day limit.

On Saturday, March 11<sup>th</sup>, Peshut sent an e-mail to Bradbury demanding a hearing on Ms. Pichelmann's grievance. Bradbury wrote back on Monday, advising her to contact Weaver. Peshut responded that it was Bradbury's job to schedule and conduct hearings, not Weaver's, and that if a hearing was not scheduled by the end of the day, she would conclude that Bradbury was refusing to hear the grievance at Step 2. Bradbury forwarded the e-mails to Weaver, and the two of them arranged to conduct Step 2 hearings on three grievances, including Pichelmann's, on April 5<sup>th</sup>. Peshut and Pichelmann were advised of the schedule by e-mail on March 21<sup>st</sup>.

On March 31<sup>st</sup>, Pichelmann sent Bradbury an e-mail, seeking to have her grievance hearing held as an open meeting. Bradbury advised her that grievance hearings were not subject to the open meetings law, and are intended to be confidential. Pichelmann wrote back, disagreeing, and the two exchanged e-mails on the topic for several days. Meanwhile, Peshut contacted several student activists and asked them to attend the hearing in a show of solidarity between students and workers. The student newspaper was also contacted. Either Peshut, Pichelmann or someone acting on their behalf contacted the Office of University Relations and arranged to have the hearing be added to the list of open meetings for the week. 1/

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*1/ from Dec. No. 30124-C: Neither Pichelmann nor Peshut testified to this. This is an inference drawn from Bradbury's unrefuted testimony that she understood that one of the two had had this done, and from the fact that the listing reflected Pichelmann and Peshut's desires for the meeting, and was contrary to the opinion of Bradbury and Weaver.*

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The Step 2 hearing was held on April 5<sup>th</sup>. Bradbury and Weaver heard two other grievances first, and were finished by 10:45 or so. Bradbury went back to her office and Weaver waited in the hearing room. At about that same time, Pichelmann, Peshut, and three students gathered in the hallway a little way from the hearing room. They conducted a short demonstration, holding up placards and having their pictures taken by a photographer from the school newspaper. Weaver emerged from the hearing room and approached Peshut and Pichelmann, asking whether they were prepared to meet with her on the grievance. Peshut responded that they did not need to meet with her prior to the hearing, and that they were ready to present the grievance. Weaver persisted, and was again told that no

meeting was needed before the hearing. Peshut also advised her that the hearing would be an open meeting. Weaver told them there would be no hearing under those circumstances.

Weaver went to Bradbury's office and the two of them returned to the hearing room. Peshut told Bradbury that the hearing would be an open meeting and displayed a copy of the Open Meetings Report. Bradbury responded that the report was mistaken. Weaver again asked if Pichelmann was refusing to meet with her, and then advised Peshut and Pichelmann that the hearing was off. She left the premises and Bradbury returned to her office. Pichelmann and Peshut went to Bradbury's office, seeking to have her conduct the hearing in Weaver's absence. Bradbury refused.

(DEC. NO. 30124-C, at pages 23-25)

...

### **Background of the Efforts to Remove Peshut as a Steward**

After the Step 2 hearing on April 5<sup>th</sup>, Jana Weaver spoke with Local 82 President Stan Yasaitis about Ms. Peshut's conduct and expressed concerns about whether she was performing properly as a steward of Local 82. Yasaitis sent Peshut a letter asking her about four areas of concern. Peshut responded by demanding an apology. Although they set a meeting for May 3<sup>rd</sup> to discuss the matter, Peshut refused to attend until she received the written apology, and the meeting never took place.

Jana Weaver asked to address the Local 82 Executive Board at its June 5<sup>th</sup> meeting, and one of the topics she raised was her concern about Peshut. Weaver told the Executive Board members that she regarded Peshut's actions as problematic. Weaver specifically raised her belief that Peshut was not communicating with other officials of the Union about her activities; her concern that Peshut's unfair labor practice charges against the WSEU and her personally lacked merit, were causing friction and costing a good deal of money to defend; and Peshut's refusal to cooperate with Weaver in the presentation of the Pichelmann grievance. The Board took no action at that meeting, but did decide to consider removing Peshut at its August meeting.

In August, the Executive Board voted on a motion to remove Peshut as a steward, and the motion lost. Another motion, to suspend her for 60 days to allow for a meeting with her, the officers of the Local and a mediator, was adopted, subject to approval by the membership. A week later, the membership voted down the motion. Weaver did not attend the August Executive Board or membership meetings.

## **Background of the Claim that Bradbury Coerced Peshut into not Pursuing Statutory Grievances**

The background on the coercion claim is that Ms. Peshut sent letters to various UWM officials in 1998 challenging a reprimand she had received, and Shannon Bradbury sent them back to her and told her she had to use an official grievance form if she wanted to process a grievance. According to Ms. Peshut, this caused her to believe that she could not pursue statutory grievances under Sec. 111.83 and also caused her to be confused as to the distinction between statutory and contractual grievances. That allegation was dismissed at hearing for a total lack of evidence to support any coercion claim. The alleged coercion took place three years before the filing of the instant complaint and was outside of the statute of limitations. Further, there is no evidence of any attempt by Peshut to link the letters to her rights under Section 111.83, SELRA. Even if there were, it is difficult to understand exactly how Bradbury telling her to use a grievance form amounts to coercion.

Neither is it possible to credit Ms. Peshut's claim that Bradbury's rejection of her 1998 letter left her confused about the difference between statutory grievances under Sec. 111.83 and grievances brought under the contract, to the point that she believed that they were interchangeable. That is her reading of the law, but her testimony made it clear that she knows full well that it is not the Commission's reading of the law, and knew this at the time of the Pichelmann grievance. At about the same time that Bradbury was rejecting her letter of complaint, Ms. Peshut was filing an extensive written argument on the topic of statutory grievances in the PRELLER case. She also acknowledges being familiar with the Commission's 2000 declaratory ruling on the subject in UNIVERSITY OF WISCONSIN HOSPITAL AND CLINIC BOARD, DEC. NO. 29784-D. That decision was issued before the events in this case.

The claims concerning the rights to representation in the processing of the Pichelmann grievance and the delay in hearing grievances have been addressed and resolved in the Pichelmann decision. There is no point to revisiting them in this case. In the same vein, the coercion claim was resolved at the hearing, with a ruling that it was impossible on this record to find coercion or to conclude that Ms. Peshut was misled by Bradbury's rejection of her letters of complaint into believing that only one form of grievance existed under SELRA. Accordingly, the arguments of the parties below and the Discussion section will be limited to the remaining issue unique to this case – that is, whether Weaver and WSEU violated Peshut's SELRA rights when the question of removing Peshut as a steward was raised and discussed in the summer of 2001. As the University's brief does not address the remaining issue, it is not summarized below.

## **ARGUMENTS OF THE PARTIES**

### **The Complainant**

The Complainant argues that Weaver attempted to retaliate against her for her protected activity, to wit, the filing of unfair labor practice charges against Weaver and the WSEU. This is

obviously an attempt to coerce her and interfere with her exercise of rights protected under SELRA. Had management attempted to have her removed, it would plainly have been an unfair labor practice, and the same should hold true for Weaver.

### The Union

The Union takes the position that the Field Representative has every right, and indeed, the responsibility to raise concerns about the performance of a steward with the Local union's leadership. Weaver believed that Peshut was using her position as a steward to pursue her own agenda, without consulting with the leaders of the Local or with the Field Representative on cases. She also believed that defending the unfair labor practice cases brought by Peshut against WSEU and her was wasting dues money, and that the cases were unnecessary, since if Peshut felt her rights were being violated, she had adequate remedies available under the Union's internal procedures. The Union also observes that there is no evidence at all that the Executive Board's decision to suspend Peshut was driven by Weaver's comments. Indeed, the Union notes that Local Union Vice President Mike Maass, who seconded the motion to suspend Peshut, testified that Weaver's comments had no influence on his decision making. Finally, the Union points out that Weaver did not have any authority to suspend or remove Peshut as a steward, that it was Local 82's Executive Board that acted to suspend her, and that neither Local 82 nor its officers are named as Respondents in this complaint.

### DISCUSSION

SELRA guarantees employees the right to engage in protected concerted activity, and makes it an unfair labor practice for a union to coerce or intimidate an employee in the free exercise of those rights:

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

(a) To coerce or intimidate an employee in the enjoyment of the employee's legal rights, including those guaranteed under s. 111.82.

(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 behalf.

. . .

(3) It is an unfair labor practice for any person to do or cause to be done on behalf of or in the interests of employers or employees, or in connection with or to influence the outcome of any controversy as to employment relations, any act prohibited by subs. (1) and (2).

The Complainant asserts that Weaver interfered with her right to file unfair labor practice charges under SELRA, because she complained to the leadership of Local 82 about the charges filed against her and the WSEU and sought to have the Complainant removed as a steward.

The record establishes that Weaver had many concerns about Peshut as a steward, including the unfair labor practices she had filed against Weaver and WSEU, and that she conveyed those concerns to officers of Local 82 and to the Local 82 Executive Board. The record also shows that the issue of unfair labor practices was but one concern, and that it was not the principal concern that brought her to the Executive Board's June 5<sup>th</sup> meeting. Weaver's appearance at the meeting was a follow-up to her conversation with Local 82 President Yasaitis after the Pichelmann Step 2 hearing. That conversation took place before the instant complaint was filed, and approximately two years after the previous complaint was filed. The only fallout from the earlier complaint was Weaver's request to Yasaitis that he not have Peshut act as the grievance representative in a case they were taking to Step 2, because that hearing had not yet been held and she felt it was inappropriate to have two advocates working on the case, where one was suing the other. 1/ Yasaitis's memo to Peshut after the conversation with Weaver does not even mention the issue of unfair labor practices, nor do any of his e-mails or letters between June 5<sup>th</sup> and mid-August raise that as a basis on which the Executive Board would seek to remove or suspend her.

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*1/ Yasaitis referred to this request in his August 15<sup>th</sup> e-mail to the membership, and mischaracterized it as an official position of the WSEU that it would not process any grievance where Peshut was involved. Weaver testified credibly that this was not correct, and that the request was limited to the case that arose while Peshut's first unfair labor practice complaint was still awaiting hearing. I credit this testimony because it is borne out by later events. Had WSEU actually taken the position that it would not process grievances involving Peshut as a representative, Weaver would not have appeared at the Step 2 hearing for Mary Pichelmann.*

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The filing of unfair labor practices was just one of several issues raised by Weaver, and it was not the reason for her appearance before the Executive Board, nor a major part of her presentation. It was not discussed again after the June Executive Board meeting, and the actual effort to remove Ms. Peshut as a steward was pursued on other grounds. She was not ultimately removed or suspended. Thus, the issue in this case comes down to whether it is an unfair labor practice for Weaver to have included Ms. Peshut's filing of unfair labor practice complaint against the WSEU in the list of concerns she brought to the Executive Board – whether the simple raising of that issue would reasonably have the effect of intimidating or coercing Ms. Peshut in the exercise of her right to file such complaints. I conclude that it would not.

On a practical level, Weaver's complaint would not intimidate or coerce a reasonable person, since Weaver had no authority to act on the complaint aside from raising it. The Field Representative has no power to appoint or remove stewards. Any recommendation brought by the Field Representative must be acted on by the Executive Board, and that action must in turn be approved by a vote of the membership. Ms. Peshut's complaint here amounts to saying that she should be found to have been coerced or intimidated by the mere fact that she was criticized by Weaver. That is neither a reasonable interpretation of the facts, nor a plausible reading of the law.

The fact that one is engaged in protected activity does not mean that that person is free from criticism or even adverse reaction to that activity. In DEPARTMENT OF CORRECTIONS, DEC. NO. 29448-B (BURNS, 3/24/00), Examiner Burns considered myriad allegations of unfair labor practices flowing out of the efforts of the Wisconsin Association of Professional Corrections Officers (WAPCO) to decertify WSEU as the bargaining representative for security employees in the prison system. One of the complaints was that WSEU had expelled a WAPCO supporter from membership in AFSCME. Notwithstanding that supporting a competing labor organization is plainly protected concerted activity, and an express conclusion that agents of the WSEU were obviously hostile to her protected activity when they brought internal union charges against her, the Examiner concluded that no unfair labor practice occurred:

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.

DEC. NO. 29448-B, at page 113.

On review, the Commission left undisturbed this aspect of the Examiner's decision. DEPARTMENT OF CORRECTIONS, DEC. NO. 29448-C (WERC, 8/31/00).

The appointment and removal of stewards is a matter for the Local Union. The WSEU Field Representative has a duty to inform the leadership of the Local if he or she believes a steward is conducting herself inappropriately. Weaver's testimony on this point is unrefuted and credible on its face. Her statements to the Executive Board concerning Ms. Peshut's unfair labor practice charges – that they were without merit, and were creating friction and wasting dues money – are a legitimate expression of her opinion. If she believed this to be true, it would be incumbent on her to bring it to the Local's attention. SELRA does not imbue the Commission



with sweeping authority to regulate the internal political disputes of labor organizations, and the protections afforded to Peshut by SELRA do not extend to muzzling Weaver or stripping the Local of its right to police its stewards. Analogous to the WAPCO case, the legal obligation owed to Peshut by WSEU does not extend to giving her the unfettered right to do as she pleases as a steward.

Dated at Racine, Wisconsin, this 16<sup>th</sup> day of April, 2002.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Daniel Nielsen /s/

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Daniel Nielsen, Examiner