

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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**MILWAUKEE DEPUTY SHERIFFS' ASSOCIATION**, Complainant,

vs.

**MILWAUKEE COUNTY (SHERIFF'S DEPARTMENT)**, Respondent.

Case 746  
No. 70114  
MP-4612

**Decision No. 33187-A**

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**Appearances:**

**Attorney Graham Wiemer**, MacGillis Wiemer, LLC, 2360 N. 134<sup>th</sup> Street, Suite 200, Wauwatosa, Wisconsin, 53226, appearing on behalf of the Milwaukee Deputy Sheriffs' Association.

**Attorney Roy L. Williams**, Office of Milwaukee County Corporation Counsel, 901 North 9<sup>th</sup> Street, Milwaukee, Wisconsin, 53233, appearing on behalf of Milwaukee County.

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

On August 23, 2010, the Milwaukee Deputy Sheriffs' Association (hereafter "Association") filed a complaint with the Wisconsin Employment Relations Commission, asserting that Milwaukee County (hereafter "County") had committed prohibited practices in violation of Sections 111.70(3)(a)1, 111.70(3)(a)2, and 111.70(3)(a)3 of the Wisconsin Municipal Employment Relations Act. On March 16, 2011, the Association amended its complaint, maintaining its claim that the above-cited statutory provisions had been violated. The Commission appointed Danielle L. Carne to act as Examiner, to make and issue findings of fact and conclusions of law and to issue appropriate orders. On April 12, 2011, the County answered the complaint, denying any alleged violation. A hearing on the matters at issue was held in Milwaukee, Wisconsin, on April 13, 2011. Thereafter, the Association and County each filed initial post-hearing briefs. The Association subsequently filed a post-hearing reply brief, the County declined the opportunity to do so, and the record was closed on August 15, 2011.

No. 33187-A

On the basis of the record evidence and the arguments of the parties, the Examiner makes and issues the following

**FINDINGS OF FACT**

1. The Association is a labor organization that is certified as the exclusive collective bargaining representative for all law enforcement employees of the Milwaukee County Sheriffs' Department ("Department") holding the rank of Deputy Sheriff and Deputy Sheriff Sergeant, all of whom are municipal employees.

2. The County is the municipal employer of the law enforcement employees represented by the Association.

3. The most recent collective bargaining agreement ("Agreement") between the Association and the County expired in 2008. At all relevant times, negotiations for a successor collective bargaining agreement have been ongoing.

4. Since 2002, David A. Clarke, Jr. has been the elected Sheriff of Milwaukee County.

5. Since 1992, Sandra Santoro has been employed by the Department in the rank of deputy sheriff and has been assigned to the Patrol Division.

6. Santoro has been involved in Association activities for approximately ten years. Since 2006, Santoro has been a member of the Association's executive board. She assumed the role of Association secretary in the spring of 2010, and before that served as a trustee. Santoro also writes and edits for the Association newsletter.

7. The Department's Patrol Division is housed in a satellite facility in Wauwatosa, Wisconsin, known as the "substation". Among other things, the substation has work space for Patrol Division officers, it is where Patrol Division roll call is taken every morning, and it is the location where Patrol Division squad cars are parked when they are not in use.

8. In the summer of 2010, Santoro had been assigned for about three or four years to the patrol unit of the Patrol Division, and for about one year she had been the primary operator in the Department of a vehicle known as the "enhancement squad". Most squad cars in the Department are Impalas. The enhancement squad is a diesel truck that is loaded with special equipment to assist stranded motorists, such as fuel, water, air tanks, a signboard, high-powered lights, and hydraulic jacks.

9. The enhancement vehicle assignment is a desirable one in the Department because it has a first shift, no-weekend schedule.

10. On July 28, 2010, Santoro was working her regular 6:00 a.m. to 2:00 p.m. shift. That morning she went to roll call and attended to some of her regular duties. In the late morning there was a break in activity, and Santoro decided to wash the enhancement vehicle. The weather had been rainy and the bright yellow truck was very dirty. The enhancement truck is too large to fit into the car wash stalls at the substation, so the high pressure washer also located at the substation has to be used. The keys for the high pressure washer are stored inside the substation, along with the keys for the other Department squads.

11. After Santoro washed the enhancement vehicle, she needed to return the keys for the high pressure washer to the substation. She also noticed that there were keys from other squads that had been washed that needed to be returned to the substation and was going to do so. Santoro pulled the enhancement vehicle around to the front of the substation and ran inside with the keys. While she did so, she left the keys to the enhancement vehicle in the ignition and allowed the vehicle to continue to run.

12. During the minute or two that Santoro was inside, Sheriff Clarke arrived at the substation.

13. Deputy Inspector Aisha Barkow, a commanding officer in the Department, also was in the substation parking lot, and she saw both Santoro pull up and run inside the substation and the Sheriff arrive. Barkow had some documents to give to the Sheriff, so she approached him where he was standing on the sidewalk in front of the substation. They were located not far from the enhancement vehicle. Clarke asked Barkow if she knew who was operating the enhancement vehicle. Barkow told him Santoro was driving the vehicle.

14. In the minute or two that Santoro was in the substation, Captain Sylvia Rodriguez, another commanding officer in the Department, also arrived. Rodriguez was meeting the Sheriff to travel with him to an out-of-town meeting. She approached the Sheriff and Barkow where they were standing near the enhancement vehicle.

15. When Santoro emerged from the substation, the Sheriff asked her, "is this your truck?" Santoro indicated that it was. Sheriff Clarke then proceeded to have a conversation with Santoro in which he repeatedly asked her why the truck had been left running. Santoro stated to the Sheriff, "that's what we do, we always leave them running when we run inside the substation". Santoro told the Sheriff that she had just run inside to drop off some keys. Santoro could tell the Sheriff wasn't happy the truck had been left running, so she stepped off the sidewalk where the conversation had begun, stepped up onto the running board of the vehicle, and reached inside the driver's side and turned the truck off. Santoro then continued the conversation with the Sheriff from where she stood on the truck's running board. Sheriff Clarke said to Santoro, "you wouldn't be doing this if it was your money". Sheriff Clarke also repeated that statement several times during the conversation. Santoro eventually stated, "I don't know what you want from me. I'm not deliberately trying to waste taxpayer dollars". She also stated, "It is my money - I'm a taxpayer, too". The Sheriff became very upset when

Santoro made that statement and stated to her, "I don't want to hear that from you". At some point during the conversation, Sheriff Clarke stepped off of the curb where he had been standing and approached Santoro. With Santoro on the running board, the driver's side door was positioned at that point between Santoro and the Sheriff. Santoro stated to the Sheriff, "I'm sorry if I offended you". The Sheriff asked Santoro, "What are you doing anyway?" She explained to him that she had just finished washing the enhancement vehicle, had dropped the keys off at the substation, and intended to dry the truck. The Sheriff responded, "It's been raining out, and you're washing the truck?" Santoro responded it was filthy and that she takes pride in what she drives. She also stated to Sheriff Clarke, "I want to dry it off now, if that's ok". The Sheriff responded, "Can't you just drive that thing around and let it air dry?" Santoro responded, "Well, yeah, I can". She asked the Sheriff, "Are we done, so I can go back to work?" The Sheriff again stated, "You wouldn't be doing that if it was your money". The Sheriff stood back and Santoro said, "yes, sir", and got into the truck and left the substation.

16. Rodriguez witnessed this entire conversation. Barkow witnessed most of it – at some point during the conversation she had to go over to her car momentarily to retrieve her purse. Neither Rodriguez nor Barkow intervened at any point in the conversation, and Santoro never asked them to intervene.

17. Roy Felber is employed by the Department in the rank of deputy sheriff. Felber also is the president of the Association's executive board. While the interaction between Sheriff Clarke and Santoro was underway, Felber exited the substation and was in the vicinity of the conversation. Felber noticed the conversation, turned around for a moment to watch the interaction, then got into his vehicle and left. Felber did not intervene in the conversation, and Santoro never asked him to intervene.

18. The subjects of the Association, Santoro's role in the Association, and unions in general never came up during the conversation.

19. The interaction between Sheriff Clarke and Santoro lasted for three or four minutes.

20. After the conversation was over and Santoro had left, Barkow looked at Rodriguez and, referring to Santoro's conduct during the discussion, said to Rodriguez, "wow, I can't believe that just happened". Neither Rodriguez nor Barkow ever discussed with Sheriff Clarke the exchange with Santoro.

21. On July 29, before morning roll call, Santoro was approached by Sergeant Mascari, a Patrol Division sergeant. Mascari took Santoro into an office and asked her, "what the hell happened yesterday?" Santoro told Mascari about the incident in the substation parking lot. Mascari told Santoro that she had been directed to take Santoro off the enhancement truck and to assign her to regular patrol deputy duty effective immediately.

22. Captain Meverden, who at all relevant times oversaw the Patrol Division, also contacted Santoro about her interaction with Sheriff Clarke. Meverden heard Santoro had been upset by the incident, and he felt that he had a duty as a commanding officer in the Patrol Division to ensure that Santoro was in the right frame of mind to be able to do her job. Meverden and Santoro discussed what had occurred and the fact that Santoro had never had any performance issues in the year that she had been operating the enhancement vehicle. Despite this conversation, Meverden never had any intention or the ability, within the chain of command, to put Santoro back into the enhancement vehicle assignment.

23. When Barkow returned to her office, she decided to assess, from a disciplinary standpoint, the interaction she had witnessed between Sheriff Clarke and Santoro. Barkow reviewed the Department's insubordination policy and decided that Santoro's behavior during her interaction with Sheriff Clarke met the definition of insubordination. Barkow referred Santoro to the Department's Internal Affairs Division for discipline. Neither the Sheriff nor any other member of the command staff suggested to Barkow that she needed to seek to have Santoro disciplined for the incident.

24. Shortly after the interaction between Sheriff Clarke and Santoro, Barkow also spoke with Meverden, directing him to remind officers to turn off unattended vehicles in front of the substation. On August 2, 2010, Meverden included such a reminder in the daily roll call.

25. In the early 1990s the Police Services Bureau, of which the Patrol Division is a part, issued Standard Operating Procedure 31.291(A), which relates to squad vehicles. It reads as follows:

Officers are required to inspect their squads before their tour of duty. All equipment in the trunk should be checked. Lights, siren, tires should be in good condition. No squad vehicles will be left unattended while engine is running or with the keys in the ignition. All vehicles while parked will be secured and locked.

At all relevant times, this operating procedure was in place.

26. Despite the existence of Standard Operating Procedure 31.291(A), it was not uncommon for Department officers to leave their vehicles running in front of the substation. Santoro had observed that practice for years, had not been told personally that she should not leave a vehicle running, and did not believe it was against Department rules to do so.

27. Patrol officers have deemed it practical and necessary to leave their squads running even when they are not in the vehicles. The equipment on squad cars such as laptop computers and cameras do not stop running when the squad engines are turned off and, therefore, can easily drain a squad's battery. The same is true with emergency lights on a squad that need to keep running for a long period of time when an officer is at a scene.

Deputies in the Department have in the past left their vehicles running, but unattended, to address this issue.

28. No officer ever has been disciplined for leaving a running squad unattended while the officer went into the substation.

29. Mark Strothenke has been employed by the Department in the rank of deputy sheriff since 1998. Strothenke is not a member of the Association's executive board and he never has been active with the Association. The Association represented Strothenke in one grievance in 2009.

30. On one occasion prior to the interaction between Sheriff Clarke and Santoro, Strothenke was standing in the substation parking lot, near his squad vehicle, talking to a citizen who had pulled into the parking lot to report an accident. The engine of Strothenke's squad was running during this conversation. Sheriff Clarke, who happened to be walking through the substation parking lot, turned off the engine of Strothenke's squad and approached Strothenke. Sheriff Clarke stated to Strothenke that the citizens of Milwaukee County would not appreciate an idling squad car with gas prices being as high as they were at that time. Strothenke stated "yes, sir", the Sheriff handed him the keys, and that was the end of the incident. Strothenke never was investigated or disciplined in relation to the event.

31. On one occasion in April of 2011, Sheriff Clarke walked past multiple running, unattended squads in the substation parking lot. Clarke did not remove the keys from those vehicles, seek out their drivers, or take any other action.

32. In February of 2007, the Association was having a fund raiser for a County deputy who had been injured in the line of duty. Santoro wanted to deliver a personal invitation and tickets to the event to the Sheriff. Felber disagreed with Santoro, telling her he thought it was a bad idea, that the Sheriff did not like them (union people), and that he (Felber) would not go with her. Eventually, Felber relented. When they arrived at the Sheriff's offices, the door was closed, but Santoro and Felber could see through a window that Sheriff Clarke was in Inspector Carr's office. At that point, the Sheriff walked into his own office, and Carr opened the door. Carr accepted tickets from Felber and Santoro and said he planned to attend the event. Carr then asked them to wait a minute so he could get the Sheriff, and he went into the Sheriff's office. Felber then overheard Sheriff Clarke say to Carr, "Get rid of them - I don't want to deal with them". Carr came out and said the Sheriff was busy. Felber said to Santoro, "I know what just happened, I told you, let's get out of here".

33. In February of 2008, Santoro was called to respond to an incident on the Good Hope off-ramp in Milwaukee County. It was a snowy day, and a vehicle had spun into the ditch. When Santoro pulled onto the scene, she observed that the Sheriff already was there. Somehow the keys had been locked into the car in the ditch, and the Sheriff was trying to jimmy its door open. There also was a Good Samaritan on the scene who was trying to offer assistance. He had a tow rope attached to the car, and he and the Sheriff were intent on pulling

the car out of the ditch. Santoro drew the conclusion that the car was too buried in snow to be pulled out, and suggested to the Sheriff that they needed to call a tow truck. The Sheriff responded by asking Santoro if she had a shovel in her vehicle, which she retrieved and gave to the Sheriff. At that point, Santoro had obtained an identification card for the driver and indicated to the Sheriff that she would go back to her squad to run it. While Santoro was doing that, the effort by the Sheriff and the Good Samaritan to pull the car out of the ditch failed, because the tow rope broke. At the same time, Santoro was discovering that the driver's license had been suspended. Santoro reported this to the Sheriff and encouraged him to leave the scene. By that point, Santoro had developed a strong suspicion, based on the driver's unkempt appearance, his bloodshot eyes, and the strong odor of alcohol on his breath, that he was intoxicated. While the Sheriff was still on the scene, another County squad arrived as back-up. At that point, the car had been opened, and the back-up officer pulled an open container of beer out of the vehicle and put it on top of the car. Then the Sheriff left the scene. Later, Santoro discussed the incident with her supervisor and with Internal Affairs. She was concerned because did not want to include in the arrest report the information regarding the Sheriff's effort to jimmy the door open and pull the car out of the ditch while there was an open container inside and the driver was drunk. Santoro later notified the Sheriff that she had arrested the driver in that incident for driving under the influence and that she simply intended to identify the Sheriff in the report as the first responding officer at the scene. Eight months later, Santoro received notification that an Internal Affairs case had been opened relating to her handling of the situation. The case alleged that Santoro had failed to properly inventory the beer can as evidence. The case concluded one year after the incident with an Employee Activity Document ("EAD") being placed in Santoro's personnel file, noting that Santoro had been counseled regarding the need to formally document all uncollected evidence at a crime scene. Santoro disagreed with the assertion that she had improperly handled the evidence, believing that there had been no requirement to collect such evidence in that particular case. The Association tried to challenge the EAD, but was told by County administration representatives and the County corporation counsel that it was only an "internal" document and could not be appealed. As an alternative, the Association related the story of the incident to the media, and three articles were written that appeared in the Milwaukee Journal Sentinel. In at least one such article, a quoted statement by Felber suggested that Santoro had been disciplined because of her union affiliation.

34. Since Santoro's interaction with Sheriff Clarke of July 28, 2010, she has been placed on administrative duty. She has been stripped of her badge, her gun, and her power of arrest.

35. Santoro also was suspended for thirty working days as a result of the incident of July 28, 2010.

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

**CONCLUSIONS OF LAW**

1. The County is a municipal employer within the meaning of Section 111.70(1)(j), Wis. Stats.
2. The Association is a labor organization within the meaning of Section 111.70(1)(h), Wis. Stats.
3. Through the conduct described in the Findings of Fact contained herein, the County has not interfered with, restrained, or coerced Santoro in the exercise of her Section 111.70(2), Wis. Stats., rights in violation of Section 111.70(3)(a)1, Wis. Stats.
4. Through the conduct described in the Findings of Fact contained herein, the County has not dominated or interfered with the administration of the Association in violation of Section 111.70(3)(a)2, Wis. Stats.
5. Through the conduct described in the Findings of Fact contained herein, the County has not discriminated against Santoro in violation of Sections 111.70(3)(a)3, Wis. Stats.
6. The positions adopted by the County in this matter were not frivolous or taken in bad faith.

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

**ORDER**

It is hereby ORDERED that the complaint is dismissed in its entirety. The Association's request for an order that the County pay the Association's attorney fees and other costs in this matter is denied.

Dated at Madison, Wisconsin, this 14<sup>th</sup> day of October, 2011.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Danielle L. Carne /s/

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Danielle L. Carne, Examiner



**MILWAUKEE COUNTY**

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

The Association's contention here is that the County's conduct, including Sheriff Clarke's interaction with Santoro on July 28, 2010, the re-assignment of Santoro to a regular squad and ultimately to administrative duty, and the imposition of a thirty-day suspension against Santoro, constituted a violation of the Municipal Employment Relations Act. Specifically, the Association argues that the County's conduct against Santoro has interfered with her right to engage in concerted activity in violation of Section 111.70(3)(a)1, Wis. Stats., that the County's conduct has interfered with the administration of the Association in violation of Section 111.70(3)(a)2, Wis. Stats., and that the County has discriminated against Santoro because of her union activities in violation of Section 111.70(3)(a)3, Wis. Stats.

The Association bears the burden to prove its claims by clear and satisfactory preponderance of the evidence. Section 111.70(4)(a), Wis. Stats.; LAYTON SCHOOL OF ART AND DESIGN V. WERC, 82 WIS. 2D 324 (1978).

**Section 111.70(3)(a)3, Wis. Stats.**

Sec. 111.70(3)(a)3, Stats., makes it a prohibited practice for a municipal employer "[t]o encourage or discourage a membership in any labor organization by discrimination in regard to hiring, tenure, or other terms or conditions of employment. . ." Proof of a violation of Sec. 111.70(3)(a)3, Stats., requires that four elements be established: (a) that the employee has engaged in lawful concerted activity (or was believed to have so engaged); (b) that the employer was aware of (or believed it was aware of) such activity at the time of the adverse action; (c) that the employer bore animus toward the activity; and (d) that the employer's adverse action against the employee was motivated *at least in part* by that animus, even if other legitimate factors contributed to the employer's adverse action. WISCONSIN RAPIDS SCHOOL DISTRICT, DEC. NO. 30965-B (WERC, 1/09); MUSKEGO-NORWAY SCHOOL DISTRICT V. WERC, 35 WIS. 2D 540 (1967); EMPLOYMENT RELATIONS DEP'T V. WERC, 122 WIS. 2D 132 (1985).

It is easy enough to conclude here that, during the course of her employment with the Department, Santoro engaged in lawful concerted activity and that the County was aware of that activity. Santoro has been actively involved with the Association for a decade and has served in the visible role of executive board member since 2006. There also have been other, specific events that have brought attention to Santoro's involvement with the Association, including her ongoing involvement with the Association newsletter, her effort in 2007 to personally invite Sheriff Clarke to an Association fundraiser, and the publication of Milwaukee Journal Sentinel articles regarding the 2008 incident involving Sheriff Clarke and the intoxicated driver, at least one of which specifically asserted that Santoro was disciplined for her role in that event because of her union affiliation.

The Association's case fails, however, under the latter half of the discrimination test. It is not necessary to spend time speculating about whether the Sheriff does or does not harbor animus toward Santoro's union activity, because I have concluded that the Association has not met its burden under the fourth prong of the test to show that there is a nexus between any alleged hostility and the actions that have been taken against Santoro.

As with most cases alleging discrimination, there is no direct evidence that the County was motivated by animus toward Santoro's union activity. Without such evidence, one is left with the need to draw an inference of motivation from the record. With regard to the July of 2010 incident at the substation, such an inference cannot be based on the direct involvement of any union-related matters. When Santoro encountered Sheriff Clarke at the substation, she was not engaged in concerted activity. Further, the subject of the Association and her union activities never came up in the conversation between Santoro and Sheriff Clarke.

The Association would argue, nevertheless, that it is fair to infer that Sheriff Clarke was motivated by hostility toward Santoro's union activities, because there is no other fair explanation for the actions taken against Santoro. The record, however, suggests that there are multiple factors, not related to Santoro's union activities, which appear to fully explain what occurred. It is apparent, for example, that the Sheriff really did not like to see cars left running. The thing that caught the Sheriff's attention in the substation parking lot that morning was not Santoro, but rather her idling vehicle. When the Sheriff first reacted to the fact that the engine had been left running, he did not know who was driving the truck and had to ask Barkow for that information.

Consistent with the Sheriff's attitude, a Department operating procedure directs deputies not to leave their squads running unattended. Although Felber testified at hearing that the rule is not longer in effect in the Department, his testimony goes against the weight of the evidence on the record suggesting otherwise. While it is apparent that patrol deputies routinely leave their squads running, most likely in an effort to address the car battery issue, Meverden testified that the rule prohibiting such conduct has remained in place. In fact, a couple days after Santoro encountered Sheriff Clarke at the substation, Barkow directed Meverden to remind deputies at roll call of the expectation that they were not to leave unattended squads running. Further, sometime prior to Santoro's incident, Sheriff Clarke reacted negatively when he observed Strothenke's squad running. Indeed, the evidence regarding that incident suggests that the Sheriff's views on the issue of idling cars has been somewhat consistent: the sentiment the Sheriff expressed to Santoro regarding wasting fuel and taxpayer money was one he also had expressed to Strothenke.

The Association argues that the Strothenke incident, in addition to the more recent incident where the Sheriff passed idling squads at the substation parking lot and did nothing, supports its claims in this case. In the Association's view, the Sheriff's reaction to idling cars in the past has ranged from non-existent to mild, suggesting that his extreme reaction to Santoro must be related to her union activities. The conclusion of a hostile motivation, however, does not automatically flow from evidence that the Sheriff has not acted consistently

with regard to the idling vehicle issue. This is particularly true when his inconsistent reactions apparently have not been linked to any particular knowledge of the identity and, therefore, level of union activism of the deputies operating the unattended vehicles. Putting aside the Strothenke incident, as discussed the Sheriff did not know who was driving the enhancement vehicle when he first developed a concern that it had been left running, and he presumably also did not know who was driving the other idling squads when he recently walked past them and had no reaction at all. These facts suggest that, for whatever reason, the Sheriff is bothered by idling vehicles on some occasions and is not bothered at all on others and, further, that the union affiliation of the drivers is not a consideration.

The Association would argue, however, that even if hostility toward union activities did not motivate the Sheriff to notice Santoro's vehicle in the first place, it did motivate him to treat her as severely as he did once he realized that it was Santoro who was driving the enhancement truck. The record indicates that no deputy has ever faced discipline in the past for having left a squad car running and unattended in the substation parking lot. After her encounter with the Sheriff, Santoro was berated in the parking lot, removed from the enhancement vehicle, and then placed on administrative and given a thirty-day suspension. No doubt these are extreme consequences. It is difficult, however, to infer that these consequences must have been motivated to some degree by the Sheriff's attitude toward Santoro's union affiliation when the fall-out from the interaction can also be explained by the way Santoro responded to the Sheriff.

When Strothenke was handed his keys and chided by the Sheriff for having left his squad running, Strothenke responded, "yes, sir", and the conversation ended. It is apparent that Santoro's reaction to Sheriff Clarke was much less deferential and, in fact, rather disrespectful. This conclusion takes account of the contradiction on the record as to whether Santoro was sarcastic during her conversation with the Sheriff. Felber testified that she was not sarcastic during the part of the conversation he heard. Felber, however, was not directly involved in the conversation and, in fact, witnessed only a part of it from a distance. Rodriguez and Barkow, who directly witnessed the conversation, both testified that Santoro was surprisingly disrespectful toward the Sheriff. After Santoro pulled away in her truck, Barkow looked at Rodriguez and stated to her, "wow, I can't believe that just happened", and the conversation prompted Barkow, on her own initiative, to seek to have Santoro disciplined. The Association has not argued or shown that Barkow was motivated to do so by animus toward Santoro's union activities.

Santoro stated, under direct examination, that she did not feel she had been sarcastic. Yet when asked again, under cross examination, whether she had been sarcastic, Santoro asked the County's attorney to "define what you mean by sarcastic"; and when she was asked whether she had interrupted the Sheriff, she asked the County's attorney to give her an "example" of interrupting. The apparent hair-splitting in these responses suggests some recognition on Santoro's part that her interaction with the Sheriff was not as respectful as it could have or should have been. Moreover, Santoro acknowledged at hearing having made the point to the Sheriff that the money being wasted on fuel was her money, because she is a

taxpayer too. She also testified that she asked the Sheriff, “Are we done so I can go back to work?” These statements do convey some degree of disrespect, and they most likely would elicit a very negative response from one’s superior. This is particularly true when one’s superior is the sheriff. For that reason, even though the disciplinary action taken against Santoro following this event was harsh – maybe it was even vindictive – I am not compelled to conclude that the Sheriff was motivated by anything beyond sheer hostility toward the actual exchange with Santoro.

The Association argues that Santoro’s reaction to the Sheriff was a product of fear on her part, not any inclination to be insubordinate. There are a couple points to be made here. First, the exact, subjective motivation behind Santoro’s reaction does not save her conduct from having been interpreted as insubordination warranting discipline. Second, although there is no doubt that the Sheriff was aggressive in his comments to Santoro – he repeated some statements several times and apparently hammered away at the subject in a way that surprised Santoro – the threatening nature of the exchange should not be over-portrayed. Both Rodriguez and Barkow testified that Santoro did not appear to be fearful. Felber testified that Santoro and the Sheriff were using the same tone and that he heard no verbal threats coming from the Sheriff. Although Felber stated that he saw the Sheriff “raise his hand” as he stepped down from the sidewalk and approached Santoro, he acknowledged that the Sheriff may have simply been gesturing and he explained at hearing that he concluded that the conversation “wasn’t going anywhere” and got into his car and left.

The Association also frames interactions Santoro had with the Sheriff in 2007 and 2008 as a kind of “foreshadowing” of the animus the Association claims the Sheriff manifested in his 2010 interaction with Santoro. It argues that those events establish a pattern of harassment, and together the evidence of the events supports the Association’s claim that Sheriff Clarke has treated Santoro differently because of her Association activities. These events however, whether considered individually or together, fall short of proving that point.

As with the 2010 substation event, the 2008 incident with the intoxicated driver did not directly involve any concerted activity on Santoro’s part. Nor was there any allusion made to her role in the Association in that situation. Santoro’s union affiliation only came up in the newspaper article, *after* the Internal Affairs investigation was carried out and the EAD was placed in Santoro’s file. Further, as with the 2010 incident, it can be reasonably concluded that the Sheriff was motivated to act as he did by non-union-related considerations. The Association acknowledged in its arguments in this case that at the accident scene in 2008 Sheriff Clarke failed to notice an open beer can and several empties in the vehicle he was trying to both unlock and tow out of the ditch. He also apparently failed to notice the tell-tale signs of intoxication Santoro identified in the driver and wrote about in her police report. The Sheriff’s oversights seem relatively major for a police officer, and it is more than fair to conclude that any inappropriate reaction to Santoro in relation to that situation could have been motivated by the Sheriff’s embarrassment and nothing more. Though such a reaction may not have been appropriate, it does not support the Association’s claim that there has been a violation of Section 111.70(3)(a)3, Wis. Stats.

The 2007 event is unique in that it did directly involve Santoro's role in the Association. When Santoro and Felber visited Sheriff Clarke's office to offer him tickets to the fundraiser, they did so as representatives of the Association. The problem with finding that this situation supports the Association's claim in this case is that the evidence is so scant. Based on the fact that Felber and Santoro went to the Sheriff's office on a union-related matter and the fact that they overheard the Sheriff tell Carr to "get rid of them", the Association asserts that it is clear that Association members are not welcome in the Sheriff's office. Given the record before me, however, that conclusion is being drawn in a vacuum. There is no evidence regarding what the Sheriff was doing when Felber and Santoro showed up in his office, and there is no evidence showing that the Sheriff reacts differently toward deputies who visit his office and who are not active in the Association. Without something more substantial, this event is not a reasonable basis for inferring that the Sheriff has acted as he has toward Santoro because of hostility toward her union activity.

Section 111.70(3)(a)1, Wis. Stats.

Section 111.70(3)(a)1, Wis. Stats., makes it a prohibited practice for a municipal employer "[t]o interfere with, restrain or coerce municipal employees in the exercise of their rights guaranteed in sub. (2)". The rights identified under Section 111.70(2), Wis. Stats., include, among others, "the right of self-organization, and the right to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection ...." Violations of Section 111.70(3)(a)1, Wis. Stats., occur when employer conduct would have a reasonable tendency to interfere with, restrain or coerce employees in the exercise of their Section 111.70(2) rights. RACINE EDUCATION ASSOCIATION, DEC. NO. 29074-C (WERC, 7/98); WERC v. EVANSVILLE, 69 WIS. 2D 140 (1975). This standard is objective. EDGERTON FIRE PROTECTION DISTRICT, DEC. NO. 30686-B (WERC, 2/05). In other words, a violation may be found where the employer did not intend to interfere and an employee did not feel coerced or was not, in fact, deterred from exercising Sec. 111.70(2) rights, and a finding of anti-union animus or motivation is not necessary. RACINE EDUCATION ASSOCIATION, *supra*; JEFFERSON COUNTY, DEC. NO. 26845-B (WERC, 7/92), *aff'd* 187 WIS. 2D 647 (CT. APP. 1994); BEAVER DAM UNIFIED SCHOOL DISTRICT, DEC. NO. 20283-B (WERC, 5/84); CITY OF BROOKFIELD, DEC. NO. 20691-A (WERC, 2/84); JUNEAU COUNTY, DEC. NO. 12593-B (WERC, 1/77).

The conclusion with regard to the Association's claim under Section 111.70(3)(a)1, Wis. Stats., is closely related to the conclusion regarding its claim under Section 111.70(3)(a)3, Wis. Stats. In the same sense that the Association has failed to meet its burden to show that the County was motivated by hostility to take action against Santoro, it also has failed to show that the County's conduct would have a reasonable tendency to interfere with an employee's exercise of the rights guaranteed under Section 111.70(2), Wis. Stats. Under the circumstances present here that already have been discussed, I disagree that it would be reasonable for an employee to draw such a connection.

Section 111.70(3)(a)2, Wis. Stats.

Section 111.70(3)(a)2 makes it a prohibited practice for a municipal employer “[t]o initiate, create, dominate or interfere with the formation or administration of any labor organization or contribute financial support to it . . .” The section assumes interference of a magnitude that threatens the independence of a labor organization as the representative of employee interests. COLUMBIA COUNTY, DEC. NO. 22683-B (WERC, 1/87). Examples of interference within the proscription of Section 111.70(3)(a)2, Wis. Stats., would be negotiating with one of the rival unions during the pendency of an election petition, DANE COUNTY, DEC. NO. 5915-B (WERC, 10/73), selecting the individuals to serve on a committee dealing with working conditions, or having a supervisor serve in a significant union position, PROFESSIONAL POLICEMEN’S PROTECTIVE ASSOCIATION OF MILWAUKEE, DEC. NO. 12448-A (WERC, 10/74).

Here, although the Association pled a violation of Section 111.70(3)(a)2, Wis. Stats., it has presented no argument establishing that the County has interfered with administration of the Association. Moreover, there is no evidence on the record suggesting conduct of a magnitude that would support a claim under Section 111.70(3)(a)2, Wis. Stats.

Dated at Madison, Wisconsin, this 14<sup>th</sup> day of October, 2011.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Danielle L. Carne /s/

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Danielle L. Carne, Examiner