

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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WAUKESHA DEPUTY SHERIFFS LABOR UNION, Complainant,

vs.

WAUKESHA COUNTY, CHAD NILES and NICK OLLINGER , Respondents.

Case ID: 488.0002  
Case Type: COMP\_MP

DECISION NO. 38742-A

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**Appearances:**

Christopher MacGillis and Kevin Todt, Attorneys, MacGillis Wiemer, LLC, 11040 W. Bluemound Road, Suite 100, Wauwatosa, Wisconsin, appearing on behalf of the Waukesha Deputy Sheriffs Labor Union.

Joel Aziere and Saveon Grenell, Attorneys, Buelow, Vetter, Buikema, Olson & Vliet, LLC, 20855 Watertown Road, Suite 200, Waukesha, Wisconsin, appearing on behalf of Waukesha County, Chad Niles and Nick Ollinger.

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

On February 3, 2020, the Waukesha Deputy Sheriffs Labor Union filed a complaint with the Wisconsin Employment Relations Commission alleging that Waukesha County, Chad Niles and Nick Ollinger had committed prohibited practices within the meaning of Wis. Stat. §§ 111.70 (3)(a)1. and (3)(b)1. and had also violated Wis. Stat. §164.02. The County, Niles and Ollinger filed an Answer and Affirmative Defenses on October 5, 2020. That same day, the Commission issued an Order Appointing me as Examiner and I issued a Notice of Hearing.

On October 13, 2020, a video hearing was held. A transcript of that hearing was prepared, and the parties filed written argument by March 23, 2021.

Having reviewed the record, I make and issue the following:

**FINDINGS OF FACT**

1. Waukesha County, herein the County, is a municipal employer.
2. Chad Niles, herein Niles, is a supervisor within the County's Sheriff Department.

3. Nick Ollinger, herein Ollinger, is a supervisor within the County's Sheriff Department.

4. The Waukesha Deputy Sheriffs Labor Union, herein the Union, is a labor organization that serves as the collective bargaining representative of certain public safety employees within the Sheriff Department. At all times material herein, Steven Miksch was one of those employees.

5. On December 5, 2019, Miksch was directed to meet with Niles and Ollinger. Niles and Ollinger each reviewed a work report with Miksch and each provided him with feedback. Ollinger then started a separate conversation with Miksch as to why it was that Ollinger's boss was asking Ollinger about why an employee Ollinger supervised (i.e., Miksch) was not doing his job. Ollinger then began to question Miksch about the steps he had taken to obtain evidence requested by the County District Attorney. Miksch then asked for a union representative to be present. Ollinger angrily told Miksch that he did not need a union representative and that he would not be receiving discipline.

6. Niles then attempted to lower the temperature of the conversation. Miksch again asked for a union representative. Niles offered his opinion that a union representative cannot do anything but be present and cannot talk or interject in the conversation. The discussion wound down.

7. Miksch's requests for a Union representative were denied.

8. Miksch was not disciplined.

Based on the above and forgoing Findings of Fact, I make and issue the following:

### **CONCLUSIONS OF LAW**

1. At all times material herein, Chad Niles and Nick Ollinger were acting in their official capacity as agents of Waukesha County.

2. Steven Miksch had a right under the Municipal Employment Relations Act to request a Union representative during the conversation initiated by Nick Ollinger regarding evidence requested by the County District Attorney.

3. Particularly because it was uncertain as to how the December 5, 2019 conversation between Steven Miksch, Nick Ollinger and Chad Niles might progress, assertions by Ollinger and Niles that Miksch would not be disciplined did not extinguish Miksch's right to have Union representation.

4. Waukesha County, by the actions of its agent Ollinger, committed a prohibited practice within the meaning of Wis. Stat. § 111.70(3)(a)1. by denying Miksch's requests for Union representation.

5. Waukesha County, by the action of its agent Ollinger, committed a prohibited practice within the meaning of Wis. Stats. § 111.70(3)(a)1. by reacting angrily to Miksch's request for Union representation.

6. Waukesha County, by the action of its agent Niles, committed a prohibited practice within the meaning of Wis. Stats. 111.70(3)(a) 1 by inaccurately advising Miksch of the limitations on the role of a Union representative.

7. The Wisconsin Employment Relations Commission does not have jurisdiction over alleged violations of Chapter 164 of the Wisconsin Statutes.

Based on the above and foregoing Findings of Fact and Conclusions of Law, I make and issue the following:

ORDER

1. The alleged violation of Chapter 164 of the Wisconsin Statutes is dismissed.

2. The alleged violation of Wis. Stat. § 111.70(3)(b)1. is dismissed.

3. Waukesha County, its officers and agents, shall cease and desist from interfering with the exercise of employee Sec. 111.70(2) rights and shall take the following affirmative action:

Distribute the Notice attached to this decision to all public safety employees of the Waukesha County Sheriff Department after it is signed by the designated persons.

4. Within 20 days of the date of this Order, advise the Commission and the Waukesha Deputy Sheriffs Labor Union of the actions taken to comply with this Order.

Issued at Madison, Wisconsin this 11<sup>th</sup> day of May, 2021.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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Peter Davis, Examiner

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

The Union contends that by the conduct of Ollinger and Niles on December 5, 2019, Waukesha County committed prohibited practices within the meaning of Wis. Stat. § 111.70(3)(a)1. The Union further contends that the County violated Miksch's rights under Chapter 164 of the Wisconsin Statutes.

The Commission has held that a municipal employer interferes with a municipal employee's rights under Wis. Stat. § 111.70(2)<sup>1</sup> when it compels a municipal employee to appear at an investigatory meeting, which the employee reasonably believes could result in discipline, without union representation where the employee has expressly requested such representation at the meeting.<sup>2</sup>

The County correctly argues that the right to request union representation is not triggered by the many day to day interactions between supervisors and employees-such as the report reviews Ollinger and Niles conducted with Miksch. However, Miksch provided un rebutted credible testimony that the subsequent conversation with Ollinger about evidence began with Ollinger asking Miksch why Ollinger's boss was asking him why one of Ollinger's employees (i.e., Miksch) was not getting the job done. With that type of opening comment followed by a series of questions, Miksch clearly had an objectively reasonable belief that the conversation could lead to discipline.<sup>3</sup> Thus, he had a statutory right to request Union representation and he did so. Ollinger denied Miksch's request and thereby violated the Wis. Stat. § 111.70(3)(a)1. prohibition against conduct that has a reasonable tendency to "interfere with, restrain or coerce" an employee from exercising his Sec. 111.70(2) statutory right to request Union representation.

Ollinger reacted angrily to Miksch's request for Union representation. That angry response clearly had the reasonable potential to make it less likely that Miksch would maintain his request for representation or make such a request in the future. As such, he violated Wis. Stat. § 111.70(3)(a)1. prohibition against conduct that has a reasonable tendency to "interfere with, restrain or coerce" an employee from exercising his Sec. 111.70 (2) statutory right to request Union representation.

When responding to Miksch's request for union representation, Niles inaccurately minimized the role that a Union representative could play in the discussion. The law allows a union representative to play a more active role than Niles advised Miksch-such as asking clarifying

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<sup>1</sup>"[T]o engage in lawful, concerted activities for the purpose of . . . mutual aid or protection."

<sup>2</sup> *City of Milwaukee*, Dec. No. 14873-B, 14875-B, 14899-B (WERC, 8/80); *Waukesha County*, Dec. No. 14662-A (Gratz, 1/78), aff'd by operation of law, Dec. No. 14662-B (WERC, 3/78).

<sup>3</sup>The Union correctly argues that the Union representative would be entitled to be present even if no discipline was ultimately imposed. The exercise of the statutory right in question is triggered by the reasonable belief that discipline may result-not whether discipline is or is not subsequently imposed.

questions or consulting with the employee.<sup>4</sup> By minimizing the representative's role, Niles made it less likely that Miksch would maintain his request for representation or make such a request in the future. As such, he violated Wis. Stat. § 111.70(3)(a)1. prohibition against conduct that has a reasonable tendency to "interfere with, restrain or coerce" an employee from exercising his Sec. 111.70(2) statutory right to request Union representation.

To remedy these prohibited practices, the County shall cease and desist from future violations and post a Notice advising employees that such future violation will not occur.

Turning to the alleged violation of employee rights established by Chapter 164 of the Wisconsin Statutes<sup>5</sup>, I raised the question of whether the Commission has jurisdiction over alleged violations of the rights created therein. The Union was unable to point to any portion of Chapter 164 or the Municipal Employment Relations Act that provides a persuasive basis for an assertion of jurisdiction and I also find no such basis. Therefore, this complaint allegation has been dismissed.<sup>6</sup>

Issued at Madison, Wisconsin this 11<sup>th</sup> day of May, 2021.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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Peter Davis, Examiner

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<sup>4</sup>*NLRB v. J. Weingarten, Inc.*, 420 U.S. 251 (1975).

<sup>5</sup>Wisconsin Stat. § 164.02(1) states:

If a law enforcement officer is under investigation and is subjected to interrogation for any reason which could lead to disciplinary action, demotion, dismissal or criminal charges, the interrogation shall comply with the following requirements:

**(a)** The law enforcement officer under investigation shall be informed of the nature of the investigation prior to any interrogation.

**(b)** At the request of any law enforcement officer under interrogation, he or she may be represented by a representative of his or her choice who, at the discretion of the officer, may be present at all times during the interrogation.

<sup>6</sup>The complaint also referenced an alleged violation of Wis. Stat. § 111.70(3)(b)1. as Niles' and Ollinger's conduct. That statutory provision focusing on "municipal employee" misconduct is generally understood to focus on alleged union misconduct and, in any event, cannot apply to the acts of a supervisor who is not "municipal employee." Had they been acting as something other than the County's agent, any allegation toward them personally would have focused on Wis. Stat. § 111.70(3)(c). Therefore, the alleged violation of Wis. Stat. § 111.70(3)(b)1. has been dismissed.

**NOTICE**

Pursuant to an Order of the Wisconsin Employment Relations Commission and in order to effectuate the policies of the Municipal Employment Relations Act, we hereby notify all public safety employees of the Waukesha County Sheriff Department that:

Waukesha County, its officers and agent, will not interfere with any employee's right to have a representative present during any compelled meeting with a County representative which the employee reasonably believes might lead to discipline.

**WAUKESHA COUNTY**

By: \_\_\_\_\_  
Chad Niles

Date \_\_\_\_\_

By: \_\_\_\_\_  
Nick Ollinger

Date \_\_\_\_\_

By: \_\_\_\_\_  
Waukesha County Executive

Date \_\_\_\_\_