STATE OF WISCONSIN : CIRCUIT COURT : MILWAUKEE COUNTY
BRANCH 5
CIVIL DIVISION

CITY OF GREENFIELD, a
Municipal Corporation,

Plaintiff,

vs.

LOCAL 1127 affiliated with District Council 48 of the American Federation of State, County and Municipal Employees, AFL-CIO,

and

WISCONSIN EMPLOYMENT RELATIONS BOARD,

Defendants.

CASE NO.
332-333

MEMORANDUM DECISION

Nature of the Action

This is an action for declaratory judgment, under section 269.56 Stats., declaring the rights and status of the parties herein under the provisions of section 111.70 Stats., declaring that the police personnel of the City of Greenfield cannot be and are not represented by Local 1127, a chartered labor union affiliated with District Council 48 of the American Federation of State, County and Municipal Employees, AFL-CIO, in bargaining for wage, hour and working conditions with the City of Greenfield and that the Wisconsin Employment Relations Board has no jurisdiction to hold any hearings or issue any orders on any petitions filed by said defendant, Local 1127.

The Answers

The answer of the defendant, Local 1127, specifically denies that section 111.70 Stats., prohibits city police officers from joining a union for the purposes of negotiating on their behalf with their employer (as alleged in paragraph 4 of the complaint), denies generally that the plaintiff city will suffer irreparable injury unless the defendant Local 1127 is restrained and enjoined from bargaining and negotiating for the police personnel of the city and the defendant Wisconsin Employment Relations Board is restrained and enjoined from holding any hearings or issuing any orders upon the petition of the defendant Local 1127 (as alleged in paragraph 7 of the complaint); demands judgment dismissing the complaint on its merits; and contains a counterclaim against plaintiff for declaratory judgment under section 269.56 Stats., as follows: (1) That the order of Police Chief Howard Wahlen, dated July 28, 1965, be declared null and void and of no effect whatsoever as inconsistent, and in conflict, with section 111.70 Stats., in excess of the authority of the Police Chief and contrary to Article 4, Section 1 of the Constitution of the State of Wisconsin, because it results from an unlawful delegation or assumption of legislative powers, and for the further alleged reason that it deprives the defendant of rights afforded by Article 1, Section 1 of the Constitution of the State of Wisconsin because of the arbitrary and discriminatory classification contained in such order. Defendant also prays for the injunctive remedy.

By its answer the defendant Wisconsin Employment Relations Board denies generally that section 111.70 Stats., prohibits city police officers from joining a union for the purposes of negotiating on their behalf with their employer (paragraph 4 of the complaint), alleges that the defendant board has appointed a fact-finder pursuant to section 111.70 (4) (e) to (j) Stats., to make findings of fact and recommendations for solution of the dispute between the plaintiff and the defendant Local 1127, and prays judgment declaring the validity of said action by the board. (In connection with this answer the defendant Wisconsin Employment Relations Board states (see p. 1 brief): "The board joins in the prayer for a declaration, but seeks one validating the application of fact-finding procedure to a dispute between policemen and the employing city.")

The Stipulation of the Parties

The case was submitted for decision on the following facts stipulated in writing (Wisconsin Employment Relations Board did not sign the approval to the stipulation):

(1) The membership of Local 1127 includes a majority of the personnel of the Police Department of the City of Greenfield, excluding the chief;

(2) After a majority of the police personnel of the Police Department of the City of Greenfield, excluding the chief, had authorized Local 1127 to represent them by signing Application for Membership blanks, Local 1127, by a letter dated June 7th, 1965, addressed to the Finance Committee of the City of Greenfield, advised said committee that all of the personnel of the Police Department, excluding the chief, had joined Local 1127 and requested a hearing by the Finance Committee;

(3) That the Finance Committee denied the request and refuses to meet with Local 1127;

(4) That Local 1127, by a petition dated July 9th, 1965, filed a petition with the Wisconsin Employment Relations Board for fact finding under section 111.70 Stats.;

(5) That based upon said petition, the Wisconsin Employment Relations Board held a hearing on August 6th, 1965, at 10 o'clock in the forenoon, in the Greenfield City Hall before the Honorable Zel S. Rice II, Commissioner of the Wisconsin Employment Relations Board, presiding;

(6) That the Wisconsin Employment Relations Board issued Findings of Fact and Conclusions of Law and a Certification of Results of Investigation and Order Appointing Fact Finder in Case III No. 10359 FF, Decision No. 7252, dated August 13th, 1965;

(7) That the City of Greenfield agrees with the accuracy of the statement but disputes its relevancy in this proceeding;

(8) That the Fact Finding hearing was held on September 23, 27 and 28 and October 1, 1965, before Thomas P. Whelan, the Fact Finder appointed by the Wisconsin Employment Relations Board; that although no findings have been made as yet, Local 1127 intends to submit these findings to the court as Joint Exhibit F; that the City of Greenfield will oppose the submission on the grounds that the Findings have no relevancy in these proceedings;

(9) That Howard Wahlen, the Chief of Police of the City of Greenfield, issued an order on or about Wednesday, July 28, 1965, which reads as follows: ("Effective 8:30 a.m. Wednesday, July 28, 1965 it is a n official order that") "No member of the Greenfield Police Department be in any way affiliated by reason of membership or otherwise with a national union affiliated with a National Labor Organization;" that the implementation of said order was restrained.

(10) That District Council 48 is affiliated with the American Federation of State, County and Municipal Employees, AFL-CIO; that

both District Council 48 and the International, of which it is a part, admit into membership persons who are not police officers in Milwaukee County and said International admits persons who are not employed by Milwaukee County or its constituent municipalities;

(11) That the Chief of Police of the City of Greenfield may discipline police personnel who breach any valid order that he has promulgated;

(12) That there has been no decrease in the efficiency and effectiveness of the police department of the City of Greenfield during the year 1965.

That the following exhibits are attached to and made part of the stipulation:

(a) Joint Exhibit "A", Charter of Local 1127;

(b) Joint Exhibit "B", Application for Membership Blank;

(c) Joint Exhibit "C", Local 1127's letter to the Finance Committee of the City of Greenfield;

(d) Joint Exhibit "D", Petition for Fact Finding in Municipal Employment;

(e) Joint Exhibit "E", Findings of Fact, Conclusions of Law, Certification of Results of Investigation and Order Appointing Fact Finder and Memorandum accompanying same;

(f) Joint Exhibit "F", Fact Finding Report (not presently available);

(g) Joint Exhibit "G", International Constitution of the American Federation of State, County and Municipal Employees, AFL-CIO;

(h) Joint Exhibit "H", Constitution of Milwaukee, Wisconsin District Council No. 48, American Federation of State, County and Municipal Employees AFL-CIO.

A Supplemental Stipulation was dictated in the record, viz.: That a chief, two sergeants, eleven patrolmen and two clerk-trainees make up the police department of the City of Greenfield; that the precise unit involved in this proceeding is limited to the two sergeants and eleven patrolmen and any other patrolmen that would subsequently be hired and any other sergeants subsequently hired.

The Issues

Plaintiff states the issue as: "What is the effect of section 111.70 Wisconsin Statutes?"

The defendant Local 1127 states it more pointedly: "Whether or not Section 111.70 (f) (j) confers upon the police personnel the right to designate a labor organization as their representative?"

The defendant WERB poses it as: "Does sec. 111.70 (4) (j), Stats., authorize fact-finding procedures with respect to a labor dispute between city policemen and the plaintiff?"

In effect they state the same central issue.

The City states that there are two other important questions, viz.:

"What is the Common Law with respect to unionization of police officers."

"What is the effect of Chief Wahlen's directive prohibiting membership in a national union by the police officers."

These questions it is stated are closely "interwoven."

Local 1127 states an additional legal issue: Whether or not Police Chief Whalen's order of July 28th, 1965, conflicts with section 111.70 (4) (j) Stats.? The determination of its first issue, it is said, will be dispositive of this second issue.

Statutory Provisions

The following statutes have been referred to in part as pertinent to this proceeding.

"Section 111.70 Municipal employment. (1) Definitions. When used in this section.

"(a) 'Municipal employer' means any city, county, village, town, metropolitan sewerage district, school district or any other political subdivision of the state.

"(b) 'Municipal employe' means any employee of a municipal employer except city and village policemen, sheriff's deputies, and county traffic officers.

"(c) 'Board' means the Wisconsin employment relations board.

"(2) Rights of Municipal Employes. Municipal employes shall have the right of self-organization, to affiliate with labor organizations of their own choosing and the right to be represented by labor organizations of their choice in conferences and negotiations with their municipal employers or their representatives on questions of wages, hours and conditions of employment, and such employes shall have the right to refrain from any and all such activities.

"(3) Prohibited Practices. (a) Municipal employers, their officers and agents are prohibited from:

"1. Interfering with, restraining or coercing any municipal employe in the exercise of the rights provides in sub. (2).

"2. Encouraging or discouraging membership in any labor organization, employe agency, committee, association or representation plan by discrimination in regard to hiring, tenure or other terms or conditions of employment.

"(b) * * * * * * * * * * *.

"1. * * * * * * * * * * *.

"2. * * * * * * * * * * *.

"(4) Powers of the Board. The board shall be governed by the following provisions relating to bargaining in municipal employment:

"(a) * * * * * * * * * * *.

"(b) * * * * * * * * * * *.

"(d) * * * * * * * * * * *.

"(e) Fact-finding. Fact-finding may be initiated

"(g) Same. The fact finder may establish dates and place of hearings which shall be where feasible in the jurisdiction of the municipality involved, and shall conduct said hearings pursuant to rules established by the board. Upon request, the board shall issue subpoenas for hearings conducted by the fact finder. The fact finder may administer oaths. Upon completion of the hearings, the fact finder shall make written findings of fact and recommendations for solution of the dispute and shall cause the same to be served on the municipal employer and the union.

"(h) * * * * * * * * * *.

"2. Fact finding cases. Only labor unions which have been certified as representative of the employes in the collective bargaining unit or which the employer has recognized as the representative of said employes shall be proper parties in initiating fact finding proceedings. Cost of fact finding proceedings shall be divided equally between said labor organization and the employer.

"(i) * * * * * * * * * *.

"(j) Personnel relations in law enforcement. In any case in which a majority of the members of a police or sheriff or county traffic officer department shall petition the governing body for changes or improvements in the wages, hours or working conditions and designates a representative which may be one of the petitioners or otherwise, the procedures in pars. (3) to (g) shall apply. Such representative may be required by the board to post a cash bond in an amount determined by the board to guarantee payment of one-half of the costs of fact finding.

"(k) * * * * * * * * * *.

"(l) * * * * * * * * * *.

"(m) * * * * * * * * * *.

"Section 111.02 Definitions. When used in this subchapter:

"(1) The term 'person' includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees or receivers.

"(2) * * * * * * * * * *.

"(3) * * * * * * * * * *.

"(4) The term 'representative' includes any person chosen by an employe to represent him.

"(5) * * * * * * * * * *.

"(6) * * * * * * * * * *.

"(7) * * * * * * * * * *.

"(8) * * * * * * * * * *.

"(9) * * * * * * * * * *.

"(10) * * * * * * * * * * *.

"(11) * * * * * * * * * * *.

"(12) * * * * * * * * * * *.

"(14) * * * * * * * * * * *.

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The City maintains that city policemen, while entitled to the fact-finding procedures and recommendations provided by section 111.70 Stats., are not given the right to be represented by a labor union or to become members of such union by that or any other statute.

In logical progression then, the City argues, in the absence of statutory provision we must look to the common law for such prohibition on the police officers of the city either to join a labor organization or be represented by a labor organization. Wis. Const. Art. XIV, sec. 13. The determination of those questions, the city concludes, will determine the validity of Chief Wahlen's directive of July 28th, 1965.

In Fraternal Order of Police v. Harris (Mich. 1943) 10 N.W. 2d 310, the Board of Police and Fire Commissioners of the City of Lansing adopted a resolution requiring that membership of a fraternal order of city policemen be confined to members of the department below the rank sergeant and that the order refrain from taking into membership associate or honorary members. The objectives of the order were altruistic, had nothing to do with the advancement of the economic interests of the members beyond a statement to work for the establishment of pension funds "for the various cities of these States and Nation." The validity of the resolution was upheld. The court held that the resolution was within the scope of authority granted the board by city charter giving the board control of the police department and making it responsible for the preservation of the public peace; that a person who becomes a member of a city police department subjects himself to the reasonable rules and regulations of the board and that the resolution did not deprive the fraternal order nor the members of the police department of any constitutional rights.

The defendant, a police officer of the City of Chicago, contended in Crane v. Geary (Ill. 1939), 18 N. E. (2d) 719, 722, that he had been unlawfully discharged from that position by the Chicago Civil Service Commission. The record indicates that the officer, after informing the owner of a parked automobile that he had no rear license plate, detained and lectured the owner and his wife on matters of political controversy. In the proceeding for his discharge the officer insisted he had the right to speak and act as he pleased without restraint by his superiors. In upholding the order discharging the officer, the court quoted with approval from O'Regan v. City of Chicago (Chicago Legal News, Vol. 37, p. 150, Dec. 24, 1904), where it was said:

> "A police force is peculiar, sui generis, you may say, in its formation and in its relation to the city government. It is practically an organized force resembling in many respects a military force, organized under the laws of the United States and equally as important as to the functions it is required to perform.
>
> "* * * * It is a department which requires that the members of it shall surrender their individual

opinion and power to act, and submit to that of the controlling head just as much as the common soldier must surrender his own opinion and power of action to that of his commanding officer. And there is the same necessity of discipline, or regulation existing in the police department that exists in regard to the military department. Strict discipline must be enforced in a manner that is effective and without the supervision or regulation of any other department of the state, and, particularly, without any attempt on the part of the judicial department (which is a branch of the government entirely distinct and separate from the executive department), to regulate it in any way, and particularly, to regulate its discipline."

Coming now definitely to the cases involving the affiliation of police personnel with labor organizations, the city refers the court to Perez v. Board of Police Com'rs of City of Los Angeles (1947) 178 P. 2d 537; King v. Priest (Mo. 1947), 206 S. W. 547; City of Jackson v. McLeod (Miss. 1946) 24 So. 2d 319; and Local No. 201 etc. v. City of Muskegon (Mich. 1963) 120 N. W. (2d) 197.

In the Perez Case the Police Commission of the City of Los Angeles, California, adopted a resolution reported in pertinent part as follows:

"'Be it resolved by the Police Commission of the City of Los Angeles, California, that:

"'1. No police officers of the Los Angeles Police Department shall hereafter be or become a member of any Police Officer's organization in any manner identified with any trade association, federation or labor union which admits to membership persons who are not members of the Los Angeles Police Department, or whose membership is not exclusively made up of employees of the City of Los Angeles. Any Police Officer now a member of such union shall have thirty (30) days from this date within which to disassociate himself from such organization.

"'2. No association of police officers of the City of Los Angeles shall be affiliated with any trade association or labor union which admits to membership persons who are not employees of the City of Los Angeles.

"'3. Except as above stated nothing herein shall be deemed to reflect upon labor organizations generally nor shall this rule prevent or preclude members of the Police Department from associating themselves together with or within an organization of employees of the City of Los Angeles or to apply to the Chief of Police, the Police Commission, the City Council or the Mayor, or any other governmental agency of the City of Los Angeles, in person or through representatives of their choice, for redress of grievances.'"

In the preamble to this resolution the Commission recited that police officers are something more than mere employes, that they are in fact officers of the city and as such should remain free of all obligations to any union, group or association that might impair their complete freedom and independence in matters of law enforcement where controversies exist between employers and employees or between or among labor organizations; and that any provision in the constitution, by-laws, rules or regulations of a labor organization providing that the first duty of a police officer shall be to the city, or that no police officer shall go on strike against the city, would be wholly ineffective to confer protection to the city against either amendment to or violation of such provision. The resolution was held to be reasonable and valid.

In King v. Priest a rule of the Board of Police Commissioners of the City of St. Louis prohibiting members of the police force from becoming members of a union was held to be a valid rule as to members of the police department who had joined, or were seeking to join, a labor union affiliated with the American Federation of Labor. A similar rule of the Civil Service Commission of the City of Jackson was upheld in the McLeod Case. And in Local No. 201, etc. v. City of Muskegon the Chief Police's regulation prohibiting city police officers from being members of an organization identified with any federation or labor union admitting nonmembers of the police department to membership, on penalty of dismissal, was held not unreasonable or arbitrary nor violative of the police officers' constitutional rights.

In this connection the City refers to Milwaukee County, Wisconsin Deputy Sheriff's Local 1197 et al., plaintiffs, v. County of Milwaukee, Milwaukee County Civil Service Commission et al., defendants, Circuit Court Case No. 249-018. There the plaintiff, Milwaukee County, Wisconsin Deputy Sheriff's Local 1197, was a voluntary, unincorporated association of employees in the Milwaukee County Sheriff's Department, organized "to aid its members to become more skillful and efficient, to improve their wages and conditions of labor and protect their undivided rights in the prosecution of their occupation" affiliated with the American Federation of State, County and Municipal Employees, a labor organization affiliated with the American Federation of Labor, a national labor union. The Milwaukee County Civil Service Commission adopted a rule (1954) which provided in substance that no deputy sheriff shall be or become a member of any organization in any manner identified with any national labor union which admits to membership persons who are not members of the Milwaukee County Sheriff's Department or whose membership is not exclusively made up of employees of Milwaukee County and its constituent municipalities and that any deputy sheriff who is a member of any such national labor union shall within 20 days disassociate himself from such organization.

The plaintiffs brought the action, as a class action, for declaratory judgment declaring the rule of the Civil Service Commission null and void. The court held that the enforcement of the rule would not violate the constitutional rights of the plaintiffs, that it was not invalid nor void and denied relief. The court (Judge Drechsler) there said: "Municipal employees may associate themselves together in groups consisting of persons having substantially the same local interests for themselves and their community, for the purpose of presenting to the governing board or their governing authority their desires or views on wages, hours and other terms and conditions of employment. That right is subject to reasonable rules forbidding membership in organizations deemed inimical to the public service. Among such organizations are those whose membership consists of employees who do not come from the same locality and so their interests, individually or as members of a given community may not be the same; and while those of a given locality might desire to conduct themselves in a certain way, because of the voting power of those from other localities, they might not be permitted so to do, or those from other localities might enter the field.

"Thus we find in the facts in the instant case that the

and could in a time of peril or of prompt decision."

See also cases annotated in 31 A.L.R.(2d) 1143.

The parties are in disagreement as to whether the law of the cases constitutes the "common law with respect to unionization of police officers"; the defendants state that they raised issues, not of common law, but of constitutional law. The latter contention appears to be precise. But however we may classify the law of the cases, the fact is that they are quite uniform in holding that the right of public employees, and specifically of municipal law enforcement officers, to organize and associate themselves together, is subject to all reasonable rules and regulations of the governing authority of the group. And in the absence of any statutory provision precluding the application to this case of the principles announced and applied in the City's "common law" cases, the order of July 28, 1965, made by Police Chief Wahlen, as the supervisory officer of the police department, would doubtless be a valid and enforceable order.

But there is a statutory provision and counsel and the courts are confronted with the question of its effect. Does section 111.70 (4) (j) Stats., confer on city policemen the right to designate a labor organization as their representative? This is basically a question of statutory construction.

Section 111.70 (2) grants to municipal employes the right of self-organization, to affiliate with labor organizations of their own choosing and to be represented by labor organizations of their own choice.

City and village policemen, sheriff's deputies and county traffic officers are excepted from the definition of "Municipal employe" by subsection (1) (b) of section 111.70.

These provisions of the law were created by Chapter 509, Laws of 1959, (Assembly Bill 309) "An Act to create subchapter IV of chapter 111 of the statutes, relating to the rights of employes of local units of government to form and join labor organizations." (Published October 2, 1959.)

Prior thereto there was no provision in the statutes of this state permitting municipal employes to organize, affiliate with or be represented by labor organizations.

Then by Chapter 663, Laws of 1961 (Assembly Bill No. 336) subsection (1) (c) and subsection (4) were added to section 111.70. (Published February 7, 1962.) This in a broad sweep provided the fact finding procedures in the law.

Subsection 4 (j) thereof provides:

> "Personnel relations in law enforcement. In any case in which a majority of the members of a police or sheriff or county traffic officer department shall petition the governing body for changes or improvements in the wages, hours or working conditions and designates a representative which may be one of the petitioners or otherwise, the procedure in pars. (e) to (g) shall apply. Such representative may be required by the board to post a cash bond in an amount determined by the board to guarantee payment of one-half of the costs of fact finding."

Changes in the text of subsection (4) (f) (g) and (k), not here pertinent, were made by Chapter 87, Laws of 1963 (Senate Bill No. 226, published June 8, 1963).

Real uncertainty of meaning must be found in a statute before resorting to rules of judicial construction. Beck v. Hamann,

263 Wis. 131, 56 N.W. (2d) 837; Mitchell v. City of Horicon, 264 Wis. 350, 59 N.W. (2d) 469; Estate of Riebs, 8 Wis. (2d) 110, 98 N.W. (2d) 453. And in case of doubt as to the meaning of a statute the primary rule of construction is to ascertain the legislative intention. Koepp v. National Enameling & Stamping Co., 151 Wis. 302, 139 N.W. 179; Mahan v. Herreid, 211 Wis. 79, 247 N.W. 468; State ex rel. City of Madison v. Industrial Commission, 207 Wis. 652, 242 N.W. 321; Lewis Realty Inc. v. Wisconsin Real Estate Brokers' Board, 6 Wis. (2d) 99, 94 N.W. (2d) 238.

Plaintiff City notes that Substitute Amendment 1A to Assembly Bill 309 was rejected. The proposed amendment contained (among other provisions) a subsection (5) which provided that nothing contained in the sub-chapter shall be construed to affect the "right to form and join labor unions or occupational associations on the part of employes not include(d) [sic] in the definition of municipal employes in subsection (1) (b)."

That is hardly helpful here. It is clear that the law enacted in 1959 excluded policemen from the definition of municipal employes and denied to them the right of self organization, to affiliate with labor organizations and the right to be represented by labor organizations.

This proceeding concerns subsection (4) of section 111.70 enacted in 1962, specifically including sub-paragraph (j) thereof.

The City notes the Governor's veto of Bill No. 462 S, adopted by the 1951 Legislature. That bill apparently would have permitted policemen to affiliate with labor organizations whose membership included non-public employes. But the veto of the 1951 bill can hardly throw any light on the legislative intent of the law enacted in 1961.

The City maintains that if subsection (4) (j) of section 111.70 be construed to mean that policemen may designate a labor organization to represent them, or that policemen may join labor organizations "in contra distinction to a labor organization merely being their designated representative to bargain in their behalf," then policemen are granted rights denied them under subsection (1) (b) and (2) of the law.

Chapter 663, Laws of 1961 (Bill No. 336 A), while not an amendment to section 111.70 Stats., as originally enacted, provided the fact finding procedures and implemented the statute substantially if it did not change it. Special provision is made for policemen in subsection (4) (j) of the statute. Cities are not subject, with respect to policemen, to the statutory provisions under which the WERB might make an enforceable order to prevent prohibited practices; the fact finding procedures do not bind either party.

Under subsection (4) (j) policemen are entitled to the fact finding procedures provided in section 111.70. In connection with a petition to the governing body for changes or improvements in wages, hours or working conditions they may designate a representative which may be one of the petitioners "or otherwise." Urging a rule of construction that "if two sections of the statutes seem in conflict or are in conflict and a reasonable interpretation of one would resolve the conflict," plaintiff would determine this case by construing the words "or otherwise" as meaning that policemen may be represented in fact finding procedures by an attorney or other agent, but not by a labor organization. This of course would require the court to make a particular designation under general language, to put a limitation on broad and general language, inherent in which there is always the probability of judicial legislation rather than interpretation.

The word "otherwise" means "in other respects", "in a different manner or way or ways." Maxwell v. State (Ala.), 43 So. (2d) 323; In re Common School Dist. No. 57 (Minn.), 74 N.W. (2d) 419.

It is a general rule of statutory construction that words used in the statute shall be given their usual and commonly understood meaning, Greenbaum v. Department of Taxation, 1 Wis. (2d) 234, 83 N.W. (2d) 682, State ex rel. Green v. Clark, 235 Wis. 628, 294 N.W. 25, unless it is plain from the statute that a different meaning is intended, State Bank of Drummond v. Nuesse, 13 Wis. (2d) 74, 108 N.W. (2d) 283, Milwaukee v. Public Service Commission, 259 Wis. 30, 47 N.W. (2d) 298.

It is also a familiar rule of construction that the legislative intent is to be determined from a general view and construction of the whole statute. Fuller v. Sprecker, 265 Wis. 601, 62 N.W. (2d) 713; State ex rel. City Const. Co. v. Kotecki, 156 Wis. 278, 146 N.W. 528. Construction must be made as of the time of the application of the statute and while Chapter 663, Laws of 1961 (Bill No. 336 A) was not an amendment to the statute as originally enacted, in a not unreasonable sense, it was amendatory in effect.

It is also a rule of construction that if there is an irreconcilable conflict, the amendatory act will control, as being the latest expression of the legislature. Schwenker v. Bekkedahl, 204 Wis. 546, 236 N.W. 581. The same rule is applicable to a revised statute. 82 C.J.S., Statutes, Sec. 385.

As noted before Chapter 663, Laws of 1961 (Bill No. 336 A) added subsection (4) to the statute originally enacted in 1959. It provided an extensive and detailed fact-finding procedure. It would seem to the court that subsection (4) (j) must be construed in light of the fact-finding procedure, the changed circumstances from the statute as originally adopted.

Commencing with this premise it is noted that whenever a majority of the members of a police department designates a representative the fact-finding procedures apply. That the majority may designate a representative implies that they have a right to organize and designate a representative. In accordance with the principle of in pari materia when the legislature used the word "representative" it intended to use the word in the sense and meaning applicable to employment relations as defined in chapter 111 of the statutes. State ex rel. Plowman v. Lear, 176 Wis. 406, 186 N.W. 1014; McLoughlin v. Malnar, 237 Wis. 492, 297 N.W. 370; 82 C.J.S. Statutes, sec. 366.

Thus the statute provides that policemen may designate a representative. In the same context with the word "representative," the statute continues "which (representative) may be one of the petitioners or otherwise." In context with the word "representative," and under the doctrine of the "last antecedent" the words "or otherwise" are relative to "representative" as the next preceding or last antecedent word. Service Investment Co. v. Dorst, 232 Wis. 574, 288 N.W. 169; 82 C.J.S., Statutes, sec. 366. The grammatical construction of section 111.70 (4) (j) is consistent with the application of this rule of construction.

The court concludes that the words "or otherwise" refer to the antecedent word "representative" and include all other entities within the statutory definition of "representative" (section 111.02 (1) and (4)) other than "one of the petitioners." The words are not limited to "other individual", "attorney", or "(individual) agent". See Milwaukee Co. Dist. Council 48 v. Wis. E. R. Bd., 23 Wis. (2d) 303, 306, 127 N.W. (2d) 59; La Crosse Teleph. Corp. v. Wis. E. Rel. Bd., 336 U.S. 18, 69 S.Ct. 379, 93 L. ed. 463.

In effect the City's conclusion rests upon the contention that an ambiguity in section 111.70 (4) (j) results from the provisions of section 111.70 (1) (b) and (2). The contention rests upon the assumption that by these sections of the statute the legislature denied to policemen all of the rights granted to

municipal employees by section 111.70 (2). It is submitted that this is an unwarranted assumption; certainly the legislature did not, indeed could not, divest itself of the power to grant to police personnel the rights which it granted under subsection (4) (j) of section 111.70 at the subsequent session. Considered as a whole, particularly in the chronological order of its enactment, the law appears to be clear on its face and the construction given to subsection (4) (j) thereof does not create an absurd result. Where a statute is ambiguous and susceptible on its face of two constructions, resort may be had to prior acts to solve, but not to create, an ambiguity. But "'where the act is clear upon its face, and when standing alone it is fairly susceptible of but one construction, that construction must be given to it.'" Commercial Credit Corp. v. Schneider, 265 Wis. 264, 268, 61 N.W. (2d) 499.

The City maintains that police personnel are dealt with differently than other municipal employes. The reference is, of course, to subsections (1) (b) and (2) of the statute, which are urged as the basis for the City's construction of subsection (4) (j) of the statute. As hereinbefore stated, subsection (4) (j), in the court's opinion, is susceptible of one construction independently of and without resort to subsections (1) (b) and (2) of the statute.

The WERB urges that the legislature in enacting subsection (4) (j) could hardly have used broader language to express an intent to give policemen an unlimited choice of representatives. To construe the words "or otherwise" as words of limitation to prohibit policemen from choosing a labor organization as their representative would be, WERB maintains, a distortion of the plain language of the statute. The rationale behind the language of the statute "a representative which may be one of the petitioners or otherwise", the board asserts, is to insure the right of the majority to select one of their number as representative in the proceeding if they desire to adopt such procedure, which is the unusual procedure in labor negotiations; the statute provides that policemen may choose any representative they desire, even one of themselves, but if they do not desire to follow such procedure they may select representatives as are commonly used for labor negotiations. This view of the statute accords with that of the co-defendant and with the decision of the court.

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The City, through its officers and agents, may not validly issue an order which is in conflict or inconsistent with the state law.

An order forbidding the majority of the members of the police department to designate a labor organization as a representative under section 111.70 (4) (j) Stats., is in conflict and inconsistent with the law. The majority of the members of the police department of the City designated Local 1127 to represent them by signing membership applications and joining the labor organization. (See stipulated facts.)

In the court's opinion the order of the police chief is inconsistent and in conflict with section 111.70 (4) (j) of the statutes and not valid.

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The case is novel from the standpoint of the statute. The statute, it appears, represents a departure of the policy of those cases relied upon by the plaintiff City. The City reasons that since the statute in no way directly limits the statutory

supervisory powers of its Chief of Police to make reasonable orders, rules and regulations for the efficient operation of the department, the law of those cases applies. However, the statute does designate rights in the police personnel which do now result in a limitation of the Chief's supervisory authority; he may not take away, interfere with or curtail those rights, since he may make no order which will conflict with or be inconsistent with the rights of the police personnel under the statute in question. In the court's opinion the statute is a limitation on his authority.

As before noted, the cases relied upon by the City did not involve any statutory authority for representation by law enforcing personnel. Hence they are not considered parallel cases and not decisive of the issues in this case.

Where, as here, the legislative purpose is clearly manifest and the law within constitutional limitations, the court may not be concerned with the wisdom of that policy in its interpretation of the law. The public policy of the state is for the legislature to declare, not for the courts. State v. McNitt, 244 Wis. 1, 11 N.W. (2d) 671; Holland v. Cedar Grove, 230 Wis. 177, 282 N.W. 448; Maier v. Racine Co., 1 Wis. (2d) 384, 387, 84 N.W. (2d) 76. The WERB, while noting the limited effect of fact finding procedure, finds strong justification for a legislative policy which is designed to enable citizens and taxpayers to know the facts and circumstances underlying differences respecting wages, hours or working conditions between persons employed by government and their employer.

All cases cited and some not cited have been examined and considered. No claim is made that the statute, in its present form is a legislative model. The court has arrived at its conclusion on the basis of well established rules of law applicable to statutory construction.

Accordingly, in the opinion of the court, the defendant are entitled to judgment dismissing the plaintiff's complaint and for a declaratory judgment upon their counterclaims, including the injunctive relief prayed for.

Findings of fact and conclusions of law in conformity with the foregoing will be presented.

Respectfully submitted,

Elmer W. Roller
Circuit Judge

Dated: June 14, 1966.