

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

PROFESSIONAL POLICEMEN'S PROTECTIVE
ASSOCIATION OF MILWAUKEE, a/k/a
MILWAUKEE POLICE ASSOCIATION,

Complainant,

vs.

CITY OF MILWAUKEE, a Municipal
Corporation, and HAROLD A. BREIER,
Chief of Police, City of Milwaukee,

Respondents.

Case CLXV
No. 20747 MP-654
Decision No. 14873-C

Case CLXVI
No. 20751 MP-655
Decision No. 14875-C

Case CLXVII
No. 20786 MP-660
Decision No. 14899-C

ORDER DENYING PETITION FOR REHEARING

The Wisconsin Employment Relations Commission having, on August 26, 1980, issued its Findings of Fact, Conclusions of Law and Order in the above-entitled proceedings; and thereafter the above-named Complainant having on September 16, 1980, filed a petition for rehearing, pursuant to Section 227.12, Wisconsin Statutes, wherein it alleged that the Commission's decision contained certain errors of law; and the above-named Respondents having on October 1, 1980, filed a written reply to said petition pursuant to Section 227.12(4), Wisconsin Statutes, wherein Respondents objected to said petition; and the Commission having reviewed the petition and reply and being fully advised in the premises and being satisfied that said petition be denied;

NOW, THEREFORE, it is

ORDERED

That the petition for rehearing in the above-entitled proceedings filed by the Professional Policemen's Protective Association of Milwaukee, a/k/a Milwaukee Police Association, be, and the same hereby is, denied.

Given under our hands and seal at the City of Madison, Wisconsin, this 3rd day of October, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney
Morris Slavney, Chairman

Herman Torosian
Herman Torosian, Commissioner

Gary L. Covelli
Gary L. Covelli, Commissioner

Nos. 14873-C
14875-C
14899-C

MEMORANDUM ACCOMPANYING
ORDER DENYING PETITION FOR REHEARING

On August 26, 1980 the Commission issued its decision in the three cases involved herein, wherein it concluded, among other things, that the City of Milwaukee and its Chief of Police interfered with, restrained, and coerced certain police officers in the employ of the Milwaukee Police Department, in violation of Sec. 111.70(3)(a)1 of the Municipal Employment Relations Act (MERA), in the following manner:

- a. Denying a number of officers the right to have a representative present as requested by such officers at their appearances before Police Department Board of Inquiry proceeding.
- b. Denying certain officers the right to have their representatives serve as their spokespersons, after having made such a request, at their appearances before such a Board of Inquiry proceeding.
- c. Denying one officer the right to have a representative present and to represent said officer at the latter's appearance at said Board of Inquiry proceeding, and
- d. Denying an additional officer the right to have a representative present and the right to have said representative act as the spokesperson for said officer at the latter's Board of Inquiry proceeding.

There were a total of 38 police officers who were found to have been denied their rights in violation of MERA. As part of its Order remedying the prohibited practices found to have been committed, the Commission ordered that only four of the officers 1/ be afforded the opportunity to have new Board of Inquiry type of proceeding before a fact finder, selected by the parties from a panel furnished by the Commission, which fact finder, after hearing, would make recommendations to the Chief of Police with respect to the penalties, if any, to be imposed by the Chief. Our rationale with respect to such remedy, and the denial of same to the other officers involved, was as follows:

A number of officers who were denied their MERA representation rights appealed their penalties either to the Board of Fire and Police Commissioners or proceeded to arbitration. Since there was no evidence to the contrary, we assume that said officers were not denied representation in those proceedings. On the other hand, other officers, who could have proceeded to either forum, depending on their penalty, chose not to do so for reasons not established in the record. To require that any officer in any of said two groups be granted a new BOI type proceeding, at least with respect to those officers who had their penalties reviewed by the Board of Fire and Police Commissioners or by an arbitrator, would, in effect, negate the latter proceedings, and, therefore, we are not requiring that said officers be granted new BOI type proceedings. Other officers accepted their penalties by not 'appealing' same to either tribunal and are deemed to have waived their remedial rights in said regard.

1/ Judson Coleman, Thomas Rhodes, Thomas Dudzik and Howard Root.

There were six officers, who were in their probationary status, involved in this proceeding, namely, Leonel Lopez, Bonnie Bauer, Thomas Dudzik, Judson Coleman, Howard Root and Thomas Rhodes. Probationary employees have no right to appeal the discipline [sic] imposed upon them by the Chief to the Board of Fire and Police Commissioners. The Respondents have contested the right of probationary employees, at least in the case of Dudzik, to utilize the grievance and arbitration procedure set forth in the collective bargaining agreement with respect to imposed discipline or dismissal.

Lopez did not request any representation at his BOI proceeding leading to his dismissal. He was not, therefore, denied MERA rights. Bauer, Dudzik, Coleman, Root and Rhodes, all requested such representation at their BOI proceedings, which requests had been denied, and in said regard the Respondents have been found to have violated their MERA rights. Bauer, who had been suspended for six days, resigned from the Department within the week following her BOI appearance. Dudzik, Coleman, Root and Rhodes were all dismissed following their BOI appearances. Dudzik attempted to have such action, as it pertained to him, processed through the contractual grievance and arbitration procedure. The issue as to whether he has a right to do so, at least at the time of the hearing herein, was pending in arbitration. Grievances were not filed on behalf of the remaining probationary employees. Absent any evidence to the contrary, we assume that the Respondents would, as they did with Dudzik, contest their right to do so.

Since Bauer resigned voluntarily, we see no reason to require that she be granted a new investigatory proceeding. The penalties imposed by the Chief on the remaining four individuals have not been reviewed and determined on their merits in any 'appeal' type forum, where said individuals would have the right to be represented by the Association. Therefore, we deem it appropriate to require that said individuals have the opportunity, if they so desire, to be represented by the Association in a new proceeding. To avoid any appearance of 'unfairness' or of built in 'bias' or 'prejudice,' rather than ordering a new BOI proceeding conducted by members of the Department, we have required that an impartial fact finder should conduct the proceeding, where the individuals involved may be represented by the Association or its attorney, and where the facts relevant to the incident leading to the dismissal involved can be established, in order that the fact finder can issue his recommendation, as to the penalty to be imposed, for the Chief's consideration.

In its petition for rehearing the Complainant claims that the Commission's decision contained material errors of law in the following three respects:

- a. In ruling that officers who had an opportunity to appeal their penalties either to the Board of Fire and Police Commissioners, or to arbitration, are

not entitled to a new Board of Inquiry type proceeding.

- b. In refusing to order a new investigatory proceeding for officer Bonnie Bauer on the grounds that she voluntarily resigned some time after the prohibited practice, and
- c. In denying relief to those officers who failed to make a formal request for representation and those who asked for representation, but did not specify that they wanted the representative to be allowed to participate.

In support of its first claim the Complainant contends, inter alia that an employe who elected not to proceed to a hearing before the Board of Fire and Police Commissioners or arbitrator only waived their right to such a hearing and did not thereby waive their right to representation in any compelled interview conducted before the discipline was imposed. The Complainant acknowledges that we found that a violation occurred notwithstanding the officers' failure to pursue the matter, but apparently believes that our failure to afford these officers a further hearing, as part of the affirmative relief ordered, indicates that we somehow treated their conduct as a waiver of the violation of their right of representation.

The Commission devoted considerable deliberation to the question of the appropriate remedy in light of the proven facts in this case. The Commission considered the question of the appropriate remedy to be separate from the question of whether there was a violation. As the Respondents note in its reply to the petition, there was no claim made, or evidence presented, in this record that would support a finding that the officers' individual decisions to appeal or not appeal the discipline imposed, or that the decision of the Board of Fire and Police Commissioners or arbitrator was based on information obtained from the employes in BOI interviews conducted in violation of their statutory rights.

The Complainant's claim that we erred with regard to the one officer who resigned (Bauer) is likewise without merit, since it is essentially based on the same waiver argument discussed above.

Finally the claim that we erred with regard to our failure to order relief for those officers who failed to make a formal request for representation and those who did make such a request but failed

to specify that they desired more active participation, is also without merit. With regard to the former group, a correct application of the law requires a finding that no violation occurred, and therefore no specific relief need be considered for those officers. With regard to the latter individuals, this claim only goes to the question of whether one rather than two violations occurred. The decision as to what specific relief said individuals were entitled to was based on other considerations as set out in our decision and in this memorandum.

Dated at Madison, Wisconsin, this 3rd day of October, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By *Morris Slavney*
Morris Slavney, Chairman

Herman Torosian
Herman Torosian, Commissioner

Gary L. Covelli
Gary L. Covelli, Commissioner