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STATE OF WISCONSIN

CIRCUIT COURT

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION
LACROSSE COUNTY

LA CROSSE NONSUPERVISORY
POLICEMAN'S ASSOCIATION and
OFFICER THOMAS PRETASKY,
Petitioners,

vs.

THE WISCONSIN EMPLOYMENT
RELATIONS COMMISSION and
CITY OF LACROSSE, a municipal
corporation and RAY G. LICHTIE,
Chief of Police of the City of
La Crosse, and LA CROSSE POLICE
AND FIRE COMMISSION, La Crosse,
Wisconsin,

Respondents.

DECISION

FILE # 82 CV 510

Decision No. 17076-B
17084-C

The appeal in the above entitled matter came on for oral arguments on September 13, 1982. The petitioners appearing by their attorney, James G. Birnbaum, the respondents appearing by their attorney, Patrick J. Houlihan.

The City of La Crosse filed a complaint with the Commission on May 30, 1979, Case No. 24657 MP-987. The La Crosse Nonsupervisory Policeman's Association filed a complaint with the Commission on June 4, 1979, Case No. XL-24690 MP-990. These cases were consolidated for purposes of a hearing held on July 9, 1979 before an examiner for the commission. The consolidation was pursuant to a stipulation of the parties. The hearing examiner rendered one decision on July 9, 1981, and that decision was dispositive of both cases.

The argument is now made that once these cases are consolidated they are joined forever and may not be put asunder. While the better practice would have been to render separate decisions in each case, nevertheless the rendering of a single composite decision does not forever weld the two into one. There is a clear distinction made between the consolidation of two or

more actions into one action and the mere joining of separate cases for trial only. Actions may be consolidated into one action only when they might have been initially joined. An order consolidating two actions merges them into one new action. The original actions are terminated. First Trust Co. v. Holden 168 Wis 1. There should be but one judgment when actions have been consolidated. When actions are joined for purposes of trial, then separate judgments are to be rendered in each action. In the instant matter these cases were merely joined for the purpose of the hearing. They were separate and distinct prior to the joinder, and remain separate and distinct thereafter. This remains true, notwithstanding the fact that the attorney for the La Crosse Policeman's Association inadvertently used the joined case titles in the Petition for Review filed with the Commission on July 27, 1981. This error in title continues throughout the Commission's file.

The City of La Crosse has not timely served or filed a petition for review in the Circuit Court in the matter entitled City of La Crosse v. La Crosse Professional Police Association Nonsupervisory Bargaining Unit and Officer Thomas Pretasky. They can not now seek review of that decision by collateral impeachment of the decision rendered in the case of La Crosse Nonsupervisory Policeman's Association et al vs. City of La crosse et al.

A petition for review by the Circuit Court must be filed within 30 days from the date the Commission's decision is rendered. The Wisconsin Statutes, Section 990.001 (4) excludes the day the decision is rendered and includes the last day. In this matter the last day fell on Sunday, May 2nd. When the last

day falls on a Sunday then the next secular day becomes the last day. The Policeman's Association's petition for review was timely filed with the Circuit Court.

The remaining issue is whether the conversation was a protected activity. If the conversation was protected, then the City and its co-respondents have committed a 111.70(3) violation. If the conversation is not protected, then there is no violation. The examiner and the Wisconsin Employment Relations Commission have both failed to make a finding in this regard.

This matter is remanded to the Wisconsin Employment Relations Commission for further proceedings in accordance with this decision.

Dated this 14th day of October, 1982.

BY THE COURT:

A handwritten signature in dark ink, appearing to read "Walter S. Block", written over a horizontal line.

Walter S. Block, Circuit Judge.