

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MILWAUKEE POLICE ASSOCIATION,

Complainant,

vs.

CITY OF MILWAUKEE, a municipal  
corporation, and HAROLD A. BREIER,  
Chief of Police of the City of  
Milwaukee,

Respondents.

Case CLXXXVII  
No. 23970 MP-926  
Decision No. 16757-B

MILWAUKEE POLICE ASSOCIATION,

Complainant,

vs.

CITY OF MILWAUKEE, a municipal  
corporation, and HAROLD A. BREIER,  
Chief of Police of the City of  
Milwaukee,

Respondents.

Case CCXXV  
No. 28126 MP-1223  
Decision No. 18770-B

MILWAUKEE POLICE ASSOCIATION,

Complainant,

vs.

CITY OF MILWAUKEE, a municipal  
corporation, and HAROLD A. BREIER,  
Chief of Police of the City of  
Milwaukee,

Respondents.

Case CCIII  
No. 25386 MP-1056  
Decision No. 17496-B

MILWAUKEE POLICE ASSOCIATION,

Complainant,

vs.

CITY OF MILWAUKEE, a municipal  
corporation, and HAROLD A. BREIER,  
Chief of Police of the City of  
Milwaukee,

Respondents.

Case CCXXIV  
No. 28062 MP-1221  
Decision No. 18744-B

No. 16757-B  
No. 18770-B  
No. 17496-B  
No. 18744-B  
No. 18318-A

MILWAUKEE POLICE ASSOCIATION,

Complainant,

vs.

CITY OF MILWAUKEE, a municipal corporation, and HAROLD A. BREIER, Chief of Police of the City of Milwaukee,

Respondents.

Case CCXII  
No. 27130 MP-1173  
Decision No. 18318-A

Appearances:

Murray and Moake, S.C., by Mr. Kenneth J. Murray, appearing on behalf of Complainant.

James B. Brennan, City Attorney, by Mr. Grant F. Langley, Assistant City Attorney, appearing on behalf of Respondent.

ORDER PURSUANT TO STIPULATION

The above-named Complainant having filed complaints in the above-captioned cases with the Wisconsin Employment Relations Commission alleging that the above-named Respondents had committed prohibited practices within the meaning of Section 111.70(3)(a)1 of the Municipal Employment Relations Act (MERA) by subjecting employees to a disciplinary procedure which denies them the right to representation provided by Section 111.70(2) of MERA; and said Commission having appointed Sherwood Malamud 1/, a member of its staff to act as Examiner and to make and issue Findings of Fact, Conclusions of Law and Order as provided in Section 111.07(5) of the Wisconsin Employment Peace Act (WEPA); that Respondents moved to dismiss all of the complaints with the exception of the complaint in Case CCXXV, No. 28126, MP-1223, on various grounds on November 16, 1981; that after several postponements of hearing in the above cases and a postponement of a pre-hearing conference regarding all of the above cases, a pre-hearing conference was held on December 22, 1981, and again on August 19, 1982; that as a result of said pre-hearing conference, the parties have undertaken further investigation and discussion of the allegations in the complaints; that on September 16, 1983, the parties entered into a settlement stipulation a copy of which is attached hereto as Appendix A; that both Complainant and Respondent, by their respective counsel, have requested the Commission to issue a stipulated order in conformity with the settlement stipulation and to dismiss the complaints except as specifically provided in the stipulated order and to enter such a stipulated order without further hearings or proceedings in these matters; and the Commission being satisfied that, under the circumstances here present, an Order should be entered pursuant to said stipulation of the parties;

NOW, THEREFORE, it is

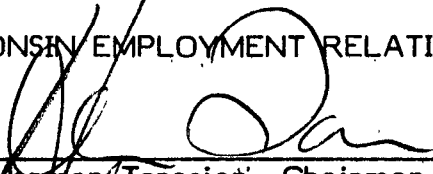
ORDERED 2/

1. That the orders appointing Sherwood Malamud as Examiner in the above captioned cases shall be, and hereby are set aside.
2. That all parties to the proceedings herein shall comply with the terms of the stipulated order set forth in paragraphs 1-12 of the attached Appendix A.
3. That, except as specifically provided in the attached stipulated order, the complaint proceedings noted above shall be, and hereby are, dismissed.
4. That Lionel L. Crowley is appointed to serve as Examiner regarding the remaining aspects of Case CCXXIV, No. 28062, MP-1221 with respect to Officer Thomas Spirewka and Case CCIII, No. 25386, MP-1056 with respect to Officer Beverly Ratliff as set forth in the stipulated order.

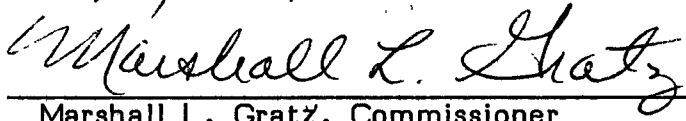
Given under our hands and seal at the City of  
Madison, Wisconsin this 12th day of October, 1983.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Herman Torosian, Chairman

  
Gary L. Covell, Commissioner

  
Marshall L. Gratz, Commissioner

(See Footnote 2 on Page 4)

- 2/ Pursuant to Sec. 227.11(2), Stats., the Commission hereby notifies the parties that a petition for rehearing may be filed with the Commission by following the procedures set forth in Sec. 227.12(1) and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.16(1)(a), Stats.

227.12 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025 (3)(e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

227.16 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.15 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefor personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.12, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.11. If a rehearing is requested under s. 227.12, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 182.70(6) and 182.71(5)(g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

Note: For purposes of the above-noted statutory time-limits, the date of Commission service of this decision is the date it is placed in the mail (in this case the date appearing immediately above the signatures); the date of filing of a rehearing petition is the date of actual receipt by the Commission; and the service date of a judicial review petition is the date of actual receipt by the Court and placement in the mail to the Commission.

APPENDIX A

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

-----  
MILWAUKEE POLICE ASSOCIATION,

Complainant,

vs.

Case CLXXXVII, No. 23970, MP-926  
Case CCXXIV, No. 28062 MP-1221  
Case CCXXV, No. 28126, MP-1223  
Case CCIII No. 25386, MP-1056  
Case CCXII, No. 27130, MP-1173

CITY OF MILWAUKEE, a municipal  
corporation and HAROLD A. BREIER,  
Chief of Police of the City of  
Milwaukee,

Respondents.

-----  
SETTLEMENT STIPULATION

-----  
NOW COMES the Milwaukee Police Association, by its attorneys, Murray & Moake, S.C., by Kenneth J. Murray, and the City of Milwaukee, and Harold A. Breier, by their attorneys, James B. Brennan, City Attorney, by Grant F. Langley, Assistant City Attorney, and in full settlement of the above-captioned matter, stipulates that the Wisconsin Employment Relations Commission may enter an order as follows:

1. The individual complaints of the following police officers identified in the above-captioned petitions are voluntarily withdrawn: Dale Brunner, Daniel Hernandez, Richard Presnal and Frank Kleiman.

2. The Findings of Fact, Conclusions of Law, Order and accompanying Memorandum of the Wisconsin Employment Relations Commission in City of Milwaukee (Police Department) (14873-B, 14875-B, 14899-B) 8/80, shall be applied to the remaining police officers identified as complainants in the above-captioned petitions as follows:

a. The complainants of the following police officers are dismissed pursuant to the Order in that these officers failed to request representation at any stage of the personnel investigation: Robert Kanack, David Sarya, John J. Drees, Steve Blake, Fred Leffler, Richard Gensler, Gerald Francis, Thomas Tuchel, Gary Patulski, and Linda Reaves.

b. Paragraph 17 of the Findings of Fact and Paragraph 8 of the Conclusions of Law shall be made applicable to the following police officers, all of whom requested representation at one or more stages of the personnel

3. The complaint of Beverly Ratliff, a probationary police officer who was dismissed from the Police Department on August 10, 1979 will be scheduled for hearing by the Commission for a determination as to whether the respondent City or the respondent Chief committed prohibited practices within the meaning of the Municipal Employment Relations Act by denying Police Officer Ratliff the right to union representation during the investigation which resulted in her dismissal from the Milwaukee Police Department. If it is determined that either or both of the respondents did commit prohibited practices, the Commission shall apply the remedy set forth in Paragraph 2(b) of its August 26, 1980 order to the complaint of Beverly Ratliff.

4. The following complaints which arose subsequent to the decision of the Commission on August 26, 1980 shall be resolved as follows:

a. Michael P. Flynn who was suspended for five days on June 2, 1981 shall have that suspension withdrawn with full back pay.

b. Wayne Jensen who was suspended for thirty days on January 22, 1981 shall have that suspension reduced to ten days with back pay.

c. Steven Hasenstab, a probationary officer who was dismissed on March 11, 1981 shall be reinstated to his former position effective August 29, 1983, which reinstatement shall be subject to the following terms and conditions:

(1) Steven Hasenstab shall, prior to reinstatement, submit to a thorough medical examination conducted by members of the Police Medical Panel to determine whether or not he meets the standards of health necessary to perform the duties of a police officer.

(2) Upon reinstatement, Steven Hasenstab's continued employment as a City of Milwaukee police officer shall be conditioned upon his successful completion of a probationary period of one year commencing with the date of reinstatement. Initial assignment shall be determined by the Chief of Police.

(3) Creditable service for purposes of determining pension benefits for Steven Hasenstab prior to his reinstatement shall be limited to his period of employment as a police officer between November 3, 1980 and March 11, 1981. For all other purposes, Steven Hasenstab shall be considered a new employee, with his appointment dated coinciding with the date of his reinstatement.

(4) Upon receipt of a release of all claims or potential claims relating to his discharge, the City agrees to pay Steven Hasenstab damages in the amount of \$11,122 as settlement for all claims of alleged deprivation of civil rights, personal embarrassment, mental and physical strain and injury to his personal reputation in the community, arising from the City's alleged actions, as more fully set forth in the complaint.

(5) If a resolution of the Common Council approving sub. (4) above or any other section of this agreement is necessary, the City Attorney shall prepare and submit such resolution to the Common Council together with his recommendations for approval.

d. Joseph Vukovich who was suspended for fifteen days on January 24, 1981 shall have that suspension reduced to five days with back pay.

e. David Clarke was suspended for five days on December 11, 1980. As the result of an arbitration award, that suspension was withdrawn and a disciplinary warning was placed in his personnel file. That disciplinary warning

g. Patrick Leffler was suspended for three days on November 30, 1980, which suspension was ultimately reversed by an arbitrator and confirmed by the Circuit Court of Milwaukee County. A statement shall be placed in Police Officer Leffler's personnel file indicating that during the investigation which resulted in the suspension on November 30, 1980 his right to union representation pursuant to the decision in August, 1980 of the WERC was violated.

5. A statement shall be placed in the personnel file of each of the officers identified in Paragraph 4 above indicating that during the investigation leading to the disciplines set forth, the right of each officer to union representation pursuant to the August, 1980 decision of the WERC was violated.

6. The City shall within forty-five days of entry of an order by the Wisconsin Employment Relations Commission, reimburse the Milwaukee Police Association in the sum of \$1,500 for expenses incurred with respect to the arbitrations identified in Paragraph 4e., f. and g. above.

7. The complaint of Police Officer Thomas Spirewka who was discharged from the Milwaukee Police Department on March 11, 1981 shall be set for hearing by the WERC. In the event it is determined by the WERC after hearing that Officer Spirewka's right to union representation was denied during the investigation which preceded his dismissal, the WERC shall determine what remedy is appropriate in light of that violation.

8. The Standard Operating Procedures Manual of the Milwaukee Police Department shall, within forty-five days after entry of an order by the Commission, be amended to provide the following: "If a police officer is under investigation and is subject to interrogation for any reason which could lead to disciplinary action, demotion or dismissal, such interrogation shall comply with the following requirements: (a) The police officer under investigation shall be informed of the nature of the investigation prior to any interrogation. (b) The officer shall be given a warning in substantially the following form: 'The refusal to respond during this interrogation, or any response which is untruthful, can result in your suspension or discharge from the Milwaukee Police Department.' (c) If there is any possibility that the matter being investigated could result in a criminal proceeding, a further warning shall be given in substantially the following form: 'This is an internal investigation. The answers you give and the fruits thereof, cannot be used against you in any criminal proceeding.' (d) If representation is requested by the officer, a decision must be made regarding whether the interrogation should cease because it is not necessary to complete the investigation, or whether the interrogation must continue to complete the investigation. If the interrogation is to be continued, the officer must be allowed a reasonable opportunity to obtain the presence of and to consult with a representative of the Milwaukee Police Association before and at various times during the interrogation. The law does not specify how long an officer has to obtain representation, but the length of time is somewhat dependent upon the circumstances, i.e., time of day, urgency of interrogation, and the officer's explanation as to why a representative is not available. If a representative of the officer is not readily available and if the supervisory officer determines that it is necessary to immediately continue the interrogation to complete the investigation, he shall consult with an Assistant City Attorney prior to the continuation of such an interrogation. (e) If the officer is compelled to prepare a matter of or to submit to an interrogation, he is entitled to a reasonable opportunity to consult with an association representative about the matter before preparing the "matter of" and before and at various times during the interrogation where the officer has reasonable cause to believe that a decision to discipline could result from or be based upon, in whole or in part, the "matter of" or interrogation. If any police officer being interrogated by a supervisory officer requests representation and that representation is denied, the supervisory officer shall prepare a 'matter of', indicating the circumstances which led up to the request for representation and the reason why representation was denied. The officer who is the subject of interrogation shall also be given the opportunity to submit such a 'matter of'."

9. The Chief of Police shall notify the Wisconsin Employment Relations Commission and the Milwaukee Police Association of the date when the amendment set forth in Paragraph 8 of this stipulation has been incorporated into the Standard Operating Procedures Manual.

10. The Chief of Police shall notify the Milwaukee Police Association of any amendment to that section of the Standard Operating Procedures Manual of the Milwaukee Police Department set forth in Paragraph 8 above within thirty days of such amendment.

11. This stipulation of the parties is applicable only to the complaints identified in the above-captioned petitions. Neither this stipulation nor a subsequent order to this stipulation entered by the Commission shall be used in any future proceeding before the Commission, nor in any other proceeding, unless agreed to in writing by the parties.

12. Employees of the bargaining unit represented by the Milwaukee Police Association shall be notified of this stipulation and subsequent order entered by the WERC by posting such stipulation and order where notices to such employees are usually posted. The stipulation and order shall remain posted for at least 30 days.

Dated: September 16, 1983

Kenneth J. Murray /s/

MURRAY & MOAKE, S.C.  
By: Kenneth J. Murrar  
Attorneys for Complainant

Dated: September 13, 1983

Grant F. Langley /s/

JAMES B. BRENNAN, City Attorneys  
By: GRANT F. LANGLEY  
Assistant City Attorney  
Attorneys for Respondents



CITY OF MILWAUKEE, Case CXXXVIII, Decision No. 16757-B

Case CCXXIV, Decision No. 18770-B

Case CCXXV, Decision No. 17496-B

Case CCIII, Decision No. 18744-B

Case CCXII, Decision No. 18318-A

MEMORANDUM ACCOMPANYING ORDER  
PURSUANT TO STIPULATION

Complainant filed complaints in the above-captioned cases on January 4, 1979; November 26, 1979; November 28, 1979; June 2, 1981; and May 22, 1982 wherein it alleged that Respondents had committed prohibited practices within the meaning of Section 111.70(3)(a)1 of MERA by subjecting certain employees to a disciplinary procedure which denied them the right to union representation as provided by Section 111.70(2) of MERA. Hearings on the merits of these allegations were postponed a number of times. After at least one postponement, a pre-hearing conference was held on December 22, 1981 and on August 19, 1982. At said conference the parties agreed to investigate the various allegations further and to explore settlement. On September 16, 1983, the parties entered into a settlement stipulation set forth herein as Appendix A.

Both parties, by their respective counsel, have requested that the Commission adopt the settlement stipulation as a stipulated order and, except as specifically provided in the stipulated order, dismiss the above-captioned complaints without further hearing or proceedings.

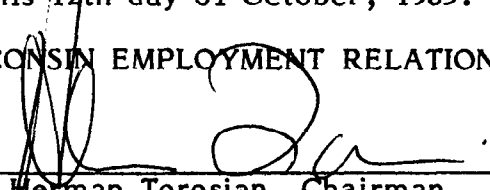
The document entitled Settlement Stipulation was filed with the Commission on October 5, 1983 (Appendix A) and is incorporated into the stipulated order.

In the Commission's view, execution of the appended stipulated order constitutes a mutual waiver of further hearing in the instant matter, except insofar as those issues specifically referred for hearing by the stipulated order. Under such circumstances, the Commission concludes that the attached Order is properly issued without the need for additional hearing.

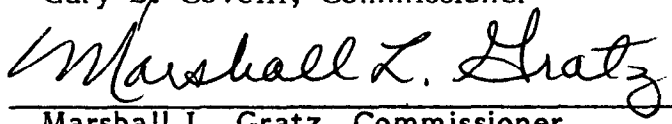
Dated at Madison, Wisconsin this 12th day of October, 1983.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Herman Torosian, Chairman

  
Gary L. Covelli, Commissioner

  
Marshall L. Gratz, Commissioner