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STATE OF WISCONSIN : CIRCUIT COURT : WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

JAMES A. LEAVENS, LARRY G. GREENHILL,
AND RICHARD F. MAIER,

PETITIONERS,

-VS-

CASE NO. 639-074

THE WISCONSIN EMPLOYMENT RELATIONS Decision Nos. 19310-C
COMMISSION, THE CITY OF WAUWATOSA, 19311-C
AND DONALD BLOEDORN, 19312-C

RESPONDENTS/
DEFENDANTS.

MEMORANDUM DECISION

THIS IS AN APPEAL FROM A DECISION OF THE WISCONSIN
EMPLOYMENT RELATIONS COMMISSION (WERC). THE THREE PETITIONERS
WERE PROBATIONARY FIREFIGHTERS FOR THE CITY OF WAUWATOSA
(CITY). ALL THREE WERE DISCHARGED BY FIRE CHIEF BLOEDORN
DURING THEIR PROBATION. THE COLLECTIVE BARGAINING AGREEMENT
BETWEEN THE CITY AND ITS FIREFIGHTERS PROVIDED PROBATIONARY
FIREFIGHTERS "MAY BE LAID OFF, TRANSFERRED OR DISCHARGED FOR
CAUSE AT ANY TIME DURING SUCH PERIOD WITHOUT ANY RECOURSE TO
THE GRIEVANCE PROCEDURE."

THE PETITIONERS HEREIN BROUGHT THEIR CASE BEFORE
A HEARING EXAMINER. THE HEARING EXAMINER TOOK TESTIMONY FOR
TWO DAYS AND ULTIMATELY ISSUED AN EXTENSIVE TWELVE-PAGE
DECISION. THE EXAMINER FOUND:

1 1) HE HAD JURISDICTION TO HEAR THE MATTER;
2 2) THE TERM "CAUSE" IN THE PROVISION CITED ABOVE
3 PROHIBITED ARBITRARY OR CAPRICIOUS DISCHARGE OF PROBATIONARY
4 FIREFIGHTERS; AND

5 3) MESSRS. GREENHILL AND MAIER WERE DISCHARGED FOR
6 CAUSE; MR. LEAVENS WAS NOT. HE ORDERED REINSTATEMENT OF MR.
7 LEAVENS AND DISMISSED THE CLAIMS OF MESSRS. GREENHILL AND
8 MAIER.

9 ALL THREE CLAIMS WERE APPEALED TO THE WERC. THE
10 COMMISSION ISSUED AN EXTENSIVE ELEVEN-PAGE DECISION. THE
11 COMMISSION RELIED HEAVILY ON MILWAUKEE POLICE ASSN. V. MIL-
12 WAUKEE, 113 Wis. 2d 192 (Ct. App. 1983), IN DETERMINING THE
13 HEARING EXAMINER AND THE COMMISSION LACKED JURISDICTION TO
14 HEAR THE MATTERS. SINCE THAT DISPOSED OF THE CASE, THE WERC
15 DID NOT EVALUATE THE OTHER DETERMINATIONS BY THE HEARING
16 EXAMINER. THE WERC ORDERED ALL THREE PETITIONS DISMISSED.

17 ALL THREE PETITIONERS APPEALED TO THIS COURT FOR
18 RELIEF. AS OF APRIL 17, 1985, TWO OF THE PETITIONERS REMAINED
19 UNEMPLOYED. APPARENTLY MR. LEAVENS HAD BEEN REINSTATED WITH
20 THE FIRE DEPARTMENT AND WAS STILL WORKING THERE.

21 THE SOLE QUESTION BEFORE THE COURT IS WHETHER THE
22 WERC HAD JURISDICTION TO HEAR THESE MATTERS. IF IT DID, THE
23 COURT MUST REMAND THE CASE TO THE WERC TO REVIEW THE EXAMINER'S
24 DECISION REGARDING A VIOLATION OF THE COLLECTIVE BARGAINING
25 AGREEMENT. IF THE WERC DID NOT HAVE JURISDICTION, ITS DECISION

1 MUST BE AFFIRMED.

2 A MUNICIPAL FIRE CHIEF IS CLOTHED WITH THE AUTHORITY
3 AND RESPONSIBILITY FOR APPOINTING HIS SUBORDINATES. SEC.
4 62.13(4)(A). THAT PROVISION WAS INTERPRETED IN MILWAUKEE
5 POLICE ASSN., SUPRA. THAT DECISION RULED THAT A POLICE CHIEF
6 HAS DISCRETION IN HIRING POLICE OFFICERS; THAT THE PROBATION-
7 ARY PERIOD IS PART OF THE HIRING PROCESS AND STILL SUBJECT TO
8 THE CHIEF'S DISCRETION; THAT A DECISION TO TERMINATE A PRO-
9 BATIONARY EMPLOYEE IS NOT ARBITRABLE BUT SUBJECT ONLY TO THE
10 CHIEF'S DISCRETION. "WE BELIEVE THAT TO MAKE A PROBATIONARY
11 TERMINATION ARBITRABLE IS TO WHOLLY VITIATE THE SIGNIFICANCE
12 OF A PROBATIONARY TERM." Id., 196.

13 THIS ANALYSIS APPLIES EQUALLY TO FIRE DEPARTMENTS
14 AND POLICE DEPARTMENTS. THE DISCHARGE OF THE THREE PETITION-
15 ERS HEREIN WAS NOT SUBJECT TO MEDIATION AND THE HEARING EXAMI-
16 NER LACKED JURISDICTION TO HEAR THE MATTER. THE DECISION OF
17 THE WERC IS AFFIRMED.

18 THE ATTORNEY FOR THE WERC MAY PREPARE AN ORDER
19 CONSISTENT WITH THIS DECISION AND SUBMIT IT TO THE COURT FOR
20 SIGNATURE.

21 DATED AT MILWAUKEE, WIS., THIS 3 DAY OF
22 OCTOBER, 1985.

23 BY THE COURT:

24 
25 CIRCUIT JUDGE