

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

 :
 LAW ENFORCEMENT EMPLOYEE :
 RELATIONS DIVISION OF THE :
 WISCONSIN PROFESSIONAL POLICE :
 ASSOCIATION (Subsequently :
 substituted for by THE LABOR :
 ASSOCIATION OF WISCONSIN, INC.) :
 for and on behalf of the ONALASKA :
 PROFESSIONAL POLICE ASSOCIATION, :
 and THOMAS LAWRENCE, :
 :
 Complainants, :
 :
 v. :
 :
 CITY OF ONALASKA, :
 :
 Respondent. :
 :

Case 13
 No. 34417 MP-1661
 Decision No. 23483-A

Appearances:

Mr. Dennis A. Pedersen, Business Agent, Labor Association of Wisconsin, Inc., Route 1, Box 288, Tomah, WI 54660, on behalf of Complainants Onalaska Professional Police Association and Thomas Lawrence.

Ms. Janet A. Jenkins, Attorney at Law, 115 Fifth Avenue South, Suite 507, P. O. Box 1146, La Crosse, WI 54602-1146, on behalf of Respondent City of Onalaska.

ORDER GRANTING MOTION
TO DISMISS COMPLAINT

The Law Enforcement Employee Relations Division of the Wisconsin Professional Police Association having on January 7, 1985 filed with the Wisconsin Employment Relations Commission a complaint of prohibited practices on behalf of the Onalaska Professional Police Association and an individual employe, Thomas Lawrence, wherein it alleged that the City of Onalaska had committed a prohibited practice within the meaning of Sec. 111.70(3)(a)5, Stats., by refusing to accept and process to arbitration the grievance of Complainant Thomas Lawrence relating to a two day suspension without pay he received pursuant to the findings and order of the Police and Fire Commission of the City of Onalaska; and the City of Onalaska having previous to the filing of the instant complaint filed an action for a declaratory judgement against the Wisconsin Professional Police Association and the Onalaska Professional Police Association and Lawrence in La Crosse County Circuit Court; 1/ and the parties having agreed to have the Commission hold the complaint in abeyance pending the outcome of the declaratory judgement action in Circuit Court; and the La Crosse County Circuit Court having on January 2, 1986 issued its decision in the City's action; and on January 21, 1986 rendered its declaratory judgement; and on March 3, 1986 the Labor Association of Wisconsin, Inc., 2/ on behalf of Complainant Lawrence and the Onalaska Professional Police Association, having notified the Commission in writing that it desires to have the Commission exercise its jurisdiction and appoint an examiner to hear and decide the complaint; and the Commission having appointed David E. Shaw, a member of its staff, to act as examiner and authorizing him to make and issue Findings of Fact, Conclusions of Law and Order in the matter; and the City of Onalaska having, on April 8, 1986, filed a Motion to Dismiss Complaint in the matter; and the parties having by May 12, 1986 submitted written arguments in support of their respective positions on said motion; and the Examiner having considered the arguments of the parties and being fully advised in the premises, and being satisfied that the declaratory judgement of the La Crosse County Circuit Court is res judicata as to these parties and this action, now makes and issues the following Order.

1/ Case No. 84-CV-847, Calendar No. P-1159.

2/ During the interim the Labor Association of Wisconsin, Inc., replaced the Wisconsin Professional Police Association as the certified exclusive bargaining representative of the bargaining unit involved.

ORDER


1. That the Respondent City of Onalaska's Motion to Dismiss Complaint is granted.

2. That the Complaint in the instant matter be, and the same hereby is, dismissed with prejudice. 3/

Dated at Madison, Wisconsin this 18th day of June, 1986.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By



David E. Shaw, Examiner

3/ Any party may file a petition for review with the Commission by following the procedures set forth in Sec. 111.07(5), Stats.

Section 111.07(5), Stats.

(5) The commission may authorize a commissioner or examiner to make findings and orders. Any party in interest who is dissatisfied with the findings or order of a commissioner or examiner may file a written petition with the commission as a body to review the findings or order. If no petition is filed within 20 days from the date that a copy of the findings or order of the commissioner or examiner was mailed to the last known address of the parties in interest, such findings or order shall be considered the findings or order of the commission as a body unless set aside, reversed or modified by such commissioner or examiner within such time. If the findings or order are set aside by the commissioner or examiner the status shall be the same as prior to the findings or order set aside. If the findings or order are reversed or modified by the commissioner or examiner the time for filing petition with the commission shall run from the time that notice of such reversal or modification is mailed to the last known address of the parties in interest. Within 45 days after the filing of such petition with the commission, the commission shall either affirm, reverse, set aside or modify such findings or order, in whole or in part, or direct the taking of additional testimony. Such action shall be based on a review of the evidence submitted. If the commission is satisfied that a party in interest has been prejudiced because of exceptional delay in the receipt of a copy of any findings or order it may extend the time another 20 days for filing a petition with the commission.

CITY OF ONALASKA

MEMORANDUM ACCOMPANYING ORDER
GRANTING MOTION TO DISMISS COMPLAINT

The gist of the instant complaint is that the Respondent City of Onalaska, hereinafter the Respondent, has committed a prohibited practice within the meaning of Sec. 111.70(3)(a) 5, Stats., by refusing to accept and process to arbitration the timely filed grievance of Complainant Lawrence, a police officer employed by Respondent, in violation of Article XI, Section 2(d) of the 1984 collective bargaining agreement between the Onalaska Professional Police Association and Respondent. Complainant Lawrence's grievance involved the order of the Respondent's Police and Fire Commission that he be suspended for two days without pay for misconduct. The Respondent, through its agents and officers, allegedly took the position that the order of the Police and Fire Commission was not grievable on the basis that the procedures set forth in Sec. 62.13(5), Stats., provide the exclusive means for appealing such an order. The Respondent City filed an action in La Crosse County Circuit Court seeking a declaratory judgement against the Complainants in this case to the effect that Sec. 62.13(5), Stats., provides the exclusive methods for seeking review of a police and fire commission's findings and order imposing discipline on a police officer, and issued pursuant to the procedures set forth in Sec. 62.13, Stats., and that such an order is not subject to the grievance procedure in a collective bargaining agreement. (Appendix A) The Complainants in this case filed an answer to the Respondent City's declaratory judgement complaint wherein it was asserted that the City of Onalaska and the Onalaska Professional Police Association were parties to a collective bargaining agreement containing a provision that employes shall only be suspended for proper cause and a grievance procedure to be followed by the parties to the agreement; that the procedures set forth in Sec. 62.13(5), Stats., do not preclude employes covered by the agreement from grieving the Police and Fire Commission's disciplinary determination under the agreement; and that the grievance procedure in the parties' agreement can be reconciled with the hearing and appeal procedure in Sec. 62.13, Stats. The Complainants requested that Respondent City be ordered to respond to the grievance and to proceed to arbitration pursuant to the terms of the parties' agreement. (Appendix B)

The Complainants subsequently filed the instant complaint of prohibited practice on January 7, 1985. (Appendix C) On March 25, 1985, the Commission's Staff Director sent the parties the following letter confirming that they had agreed to hold the complaint in abeyance pending the outcome of the court action:

This will confirm that both parties have now agreed that the Commission should refrain from scheduling hearing in the captioned matter pending the outcome of Case 84-CV-847 presently pending in Circuit Court. Should either side change its mind with respect to placing this case on the back burner, please so advise me.

On January 2, 1986 the Circuit Court issued its Memorandum Decision in the Respondent City's suit for a declaratory judgement and on January 21, 1986 the Court issued its declaratory judgement 4/ in the case that:

IT IS ORDERED & ADJUDGED that for the reasons set forth in the memorandum decision:

1) This court does have subject matter jurisdiction to grant declaratory relief in this matter;

2) The determination of the Onalaska Police & Fire Commission to suspend the Defendant, Thomas Lawrence, is not subject to the arbitration procedures set forth in the Labor Agreement in effect between the parties.

3) The Defendant, Thomas Lawrence's, right of appeal of the suspension imposed is governed by and limited to the appeal procedure as set forth in Sec. 62.13(5)(i), Stats.

4/ Appendix D.

The Labor Association of Wisconsin, Inc., on behalf of Complainant Lawrence, subsequently requested that the Commission proceed in the matter and appoint an examiner to hear the case. The Respondent then filed a Motion to Dismiss Complaint.

POSITIONS OF THE PARTIES

Respondent

The Respondent asserts that the decision and the declaratory judgement of the La Crosse County Circuit Court resolves the dispute between the parties, and since the parties and the issues in the declaratory judgement action and in this complaint proceeding are identical, the judgement of the Court is res judicata and further proceedings by the Commission are barred. Citing Leimert v. Mc Cann, 79 Wis.2d 289 (1977) and In re Radocay's Estate, 30 Wis.2d 671 (1966).

It is also contended that even assuming arguendo that the Commission may entertain this matter, it should still refrain from doing so. Respondent asserts that the issues involved are "issues of law" and that while in some instances courts and administrative agencies may have concurrent jurisdiction, the Wisconsin Supreme Court has held that:

. . . where issues of law are paramount, a decision to exercise the court's subject matter jurisdiction is proper. (Beal v. First Federal Savings & Loan Association of Madison, 90 Wis. 2d 171, 279 N.W. 2d 693 (1979))

The Circuit Court having determined that it not only had subject matter jurisdiction, but also that the issues involved were issues of law, and not of fact, the Circuit Court was the proper entity to resolve the issues. In that regard, the Respondent asserts that the question presented herein is "whether Sec. 62.13(5) takes precedence over the grievance provisions of the collective bargaining agreement, . . .", and that there is no factual dispute. Section 111.07, Stats., is cited as providing that parties may also pursue legal or equitable relief in courts of competent jurisdiction, and Respondent asserts that this is what it has done. If the Complainants disagreed with the Court's interpretation of the law, they should have appealed the Court's Declaratory Judgement, and, having failed to do so, the Complainants cannot seek to have the Commission overrule the Court.

Complainants

Complainants make several arguments in response to the Motion to Dismiss. First, Complainants contend that the doctrine of primary jurisdiction renders this matter appropriate for the Commission to hear, especially given that the Commission has previously decided related or similar issues. Citing City of DePere, 5/ Dodge County 6/ and Crawford County. 7/ According to Complainants, it is in the public's interest to have the Commission clarify its position on the issues in order to ensure consistent statewide application of MERA in this regard.

Next, Complainants assert that since the Commission was not party to the court action, the State's interests in the issues were not considered. Sec. 806.04(11), Stats., is cited as requiring that the State be made a party if the declaratory judgement would affect the construction or application of MERA. It is asserted that if the Commission does not hear the complaint, the result will be the inconsistent application of MERA throughout this State; a result that would be "harsh, unfair and contrary to legislative intent."

5/ Dec. No. 19703-A (1/83), rev'd. Dec. No. 19703-B (WERC, 12/83).

6/ Dec. No. 21574 (WERC, 4/84).

7/ Dec. No. 20116 (WERC, 12/82).

Lastly, Complainants contend that the Respondent is attempting to take unfair advantage of the parties' agreement. That agreement was only to delay processing of the complaint until disposition of the court action and was couched in those terms. There was no agreement to restrict the processing of the complaint, and the "interests of decency and fair play require that the WERC hear the complaint."

DISCUSSION

The issue raised by Respondent's Motion to Dismiss is whether the declaratory judgement of the Circuit Court is res judicata as to these parties and as to the issues raised in the instant complaint. The Wisconsin Supreme Court has held that for the doctrine of res judicata to apply as a bar to a subsequent action ". . . there must be both an identity between the parties or their privies . . . and an identity between the causes of action or the issues sued on . . ." Leimert, 79 Wis.2d at 294; Barbian v. Lindner Bros. Trucking Co., Inc., 106 Wis.2d 291, 296 (1982). The Wisconsin Court's decision in Barbian specifically addressed the effect to be given an earlier declaratory judgement under the doctrine of res judicata:

Generally, an earlier judgment is res judicata as to all matters which were or might have been litigated in that proceeding. Leimert, 79 Wis. 2d at 293-94. However, the Restatement of Judgments, sec. 77, comment b (1942), states that the general rule does not apply to declaratory judgments:

"b. Effect of declaratory judgment on subsequent controversies. The effect of a declaratory judgement in subsequent controversies between the parties depends upon the scope of the declaration of rights made by the judgment. As to matters not declared by the judgment, although a declaration might have been made as to them, the parties are not so precluded.

"Where a plaintiff seeks a declaratory judgment, he is not seeking to enforce a claim against the defendant. He is seeking rather a judicial declaration as to the existence and effect of a relation between him and the defendant. The effect of the judgment, therefore, unlike a judgment for the payment of money, is not to merge a cause of action in the judgment or to bar it. The effect of a declaratory judgment is rather to make res judicata the matters declared by the judgment, thus precluding the parties to the litigation from relitigating these matters." (Emphasis added) (By the Court).

Accord: Atchison v. City of Englewood, 180 Colo. 407, 506 P.2d 140, 143 (1973); In re Ditz' Estate, 255 Iowa 1272, 125 N.W.2d 814, 821 (1964); North Share Realty Corporation v. Gallaher, 99 So. 2d 255, 257 (Fla. App. 1957). See generally, 22 Am. Jr. 2d, Declaratory Judgments, sec. 102 (1965); Annot., 10 A.L.R.2d 782, 787 (1950). We agree with the rule, as set forth in the Restatement, that a declaratory judgment is only binding as to matters which were actually decided therein and is not binding to matters which "might have been litigated" in the proceeding. 106 Wis.2d at 296-97. (Emphasis added).

Under the rule adopted by the Wisconsin Supreme Court in Barbian, only if the instant complaint raises the same issues addressed and decided by the Circuit Court in the declaratory judgement involving these same parties, will the doctrine of res judicata bar the Complainants from proceeding with their complaint. A review of the Respondent's declaratory judgement complaint, the instant complaint, the Circuit Court's memorandum decision and its declaratory judgement in the Respondent's action establishes that the issues raised in the Respondent's action, and addressed and decided by the Circuit Court, are substantively identical to those issues raised in the instant complaint. On that basis, it is concluded that the declaratory judgement of Circuit Court is res judicata as to these parties and as to the issues raised in the instant complaint.

The Complainants have also raised the issues of primary jurisdiction and the effect of the Respondent's failure to have the State made a party in the declaratory judgement action as Complainants contend is required by

Sec. 806.04(11), Stats. It is noted that those same issues were raised by Complainants in the declaratory judgement action and decided by the Circuit Court against the Complainants. Hence, the doctrine of res judicata would seem to apply to those issues as well.

In regard to the parties' agreement to have the Commission hold the complaint proceedings in abeyance pending the disposition of the declaratory judgement action, while the letter from Yaeger refers to "placing this case on the back burner," its content does not sufficiently demonstrate a mutual intent to waive the effect of the declaratory judgement. Although the Complainants' position is understandable, the letter does not establish that the parties agreed to proceed with the complaint regardless of the outcome of the court action.

On the basis of the above and foregoing, it has been concluded that the decision and declaratory judgement of the La Crosse County Circuit Court is res judicata as to these parties and bars the Complainants from proceeding with their instant complaint.

Dated at Madison, Wisconsin this 18th day of June, 1986.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By



David E. Shaw, Examiner

State of Wisconsin CIRCUIT Court La CROSSE County

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JAN 10 1985

WISCONSIN DEPARTMENT OF REVENUE

CITY OF ONALASKA,
a municipal corporation

Plaintiff

VS.

THOMAS LAWRENCE,
ONALASKA PROFESSIONAL POLICE
ASSOCIATION, and
WISCONSIN PROFESSIONAL POLICE
ASSOCIATION, LAW ENFORCEMENT
EMPLOYEE RELATIONS DIVISION,

Defendants

SUMMONS

Case Number: 84-CV-847

La Crosse County Wis.
FILED

JAN 10 1985

CLERK OF COURTS

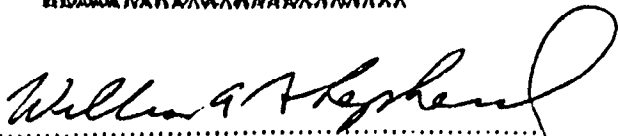
THE STATE OF WISCONSIN, to each person named above as a Defendant:

You are hereby notified that the Plaintiff named above has filed a lawsuit or other legal action against you. The Complaint, which is attached, states the nature and basis of the legal action.

Within (20) ~~45~~ days of receiving this Summons, you must respond with a written Answer, as that term is used in Chapter 802 of the Wisconsin Statutes, to the Complaint. The court may reject or disregard an Answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the Court, whose address is 400 North 4th Street, LaCrosse, Wisconsin 54601 and to William A. Shepherd, Assistant City Attorney, Plaintiff's attorney, whose address is listed below. You may have an attorney help or represent you.

If you do not provide a proper Answer within (20) ~~45~~ days, the court may grant judgment against you for the award of money or other legal action requested in the Complaint, and you may lose your right to object to anything that is or may be incorrect in the Complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

CITY OF ONALASKA
XXXXXXXXXXXXXXXXXXXX

by: 
William A. Shepherd, Assistant City Attorney
Attorneys for Plaintiff
Suite 500, Allen Building
P.O. Box 966
La Crosse, Wisconsin 54602-0966

STATE OF WISCONSIN

CIRCUIT COURT

LACROSSE COUNTY

CITY OF ONALASKA,
a municipal corporation,

Plaintiff,

vs.

THOMAS LAWRENCE,
ONALASKA PROFESSIONAL POLICE
ASSOCIATION, and
WISCONSIN PROFESSIONAL POLICE
ASSOCIATION, LAW ENFORCEMENT
EMPLOYEE RELATIONS DIVISION,

Defendants,

DECLARATORY JUDGMENT COMPLAINT

Case Number: 84-CV-847

THE PLAINTIFF, City of Onalaska, by its City Attorneys, by William A. Shepherd and for its Declaratory Judgment Complaint against the Defendant alleges as follows:

1. That the Plaintiff, City of Onalaska, is a municipal corporation organized and existing under and by virtue of the laws of the State of Wisconsin.

2. That the Defendant, Thomas Lawrence, is a duly appointed police officer of the City of Onalaska.

3. That the Defendant, Onalaska Professional Police Association, hereinafter referred to as OPPA, is the association for all regular full-time law enforcement employees with powers of arrest employed in the Police Department of the City of Onalaska, but excluding supervisory, managerial, confidential, and all other employees.

4. That the Defendant, Wisconsin Professional Police Association, Law Enforcement Employee Relations Division, hereinafter referred to as WPPA, is the representative of OPPA for purposes of collective bargaining and other employee relations matters.

LACROSSE COUNTY WIS.
FILED
OCT 2 1984
COURT CLERK

5. On July 26, 1984, John C. Dlouhy, Chief of Police of the City of Onalaska, filed charges against Defendant Thomas Lawrence with the City of Onalaska Police and Fire Commission.

6. That said charges alleged that Officer Lawrence neglected his duties with the City of Onalaska Police Department on July 13, 1984.

7. That the charges filed by Chief Dlouhy requested that the Police and Fire Commission set a date for hearing said charges not less than 10 days or more than 30 days following service of the charges pursuant to Section 62.13(5) Stats.

8. That on August 29, 1984, the Police and Fire Commission held a public hearing to consider the disposition of charges made by Chief Dlouhy against Defendant Lawrence.

9. That as the result of that hearing, the Police and Fire Commission made "Findings and Order" that Defendant Lawrence on July 13, 1984, neglected his duties with the City of Onalaska Police Department contrary to Onalaska Police Department Policy #OPD-002 (12).

10. That the Police and Fire Commission suspended Defendant Lawrence from the Onalaska Police Department without pay and compensation for a period of two days to be set at the discretion of Chief Dlouhy.

11. That a copy of said Findings and Order of the Police and Fire Commission is attached hereto as Exhibit A.

12. That Defendant Lawrence submitted a grievance dated September 11, 1984, to Chief Dlouhy on the basis that on August 29, 1984, the Police and Fire Commission suspended Officer Lawrence for two days without pay and that said suspension was without proper cause contrary to Article II of the Labor Agreement

between the City of Onalaska and OPPA.

13. That the City of Onalaska has refused to accept and process the grievance of Defendant Lawrence.

14. That an actual and serious controversy has arisen between the Plaintiff and the various Defendants as to whether or not Defendant Lawrence was entitled to grieve his two day suspension by the Police and Fire Commission through the grievance and arbitration procedures of the Labor Agreement, and whether Section 62.13(5) Stats. establishes the sole remedy for review of Police and Fire Commission decisions.

15. That the Police and Fire Commission is not the employer or an agent of the employer under Section 111.70 Stats.

16. That when the procedure of filing charges before the Police and Fire Commission in accordance with Section 62.13(5)(b) Stats. is utilized, recourse from an adverse decision of that board is limited to the judicial review procedure set forth in Section 62.11(5)(i) Stats.

17. That the grievance procedure established in a labor contract negotiated pursuant to Section 111.70 Stats. cannot be reconciled with the hearing and appeal procedure of Section 62.13 Stats. when the filing of charges procedure is used.

18. The Plaintiff believes and therefore avers that it and the named Defendants are all of the parties having or claiming any interest which might be affected by any declaratory ruling of the court under these proceedings.

WHEREFORE, the Plaintiff demands:

1. That a Declaratory Judgment issued as to the rights of the various parties resolving the controversy as set forth in paragraph 14 of this Complaint.

2. That declaratory relief be granted and determined as to whether or not the Police and Fire Commission is an independent decision making body, rather

than the employer or agent of the employer under Section 111.70 Stats.

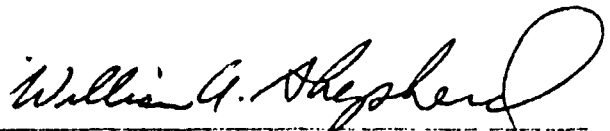
3. That the Defendants be ordered and directed that any complaint on the part of Defendant Lawrence with respect to the disciplinary proceedings before the Police and Fire Commission arose out of the provisions of Section 62.13 Stats. and therefore, the grievance procedure of the Labor Agreement is not applicable and the Plaintiff, as employer, was under no duty to respond and answer said grievance.

4. For such further relief as this court may deem just and equitable.

Dated this 2nd day of November, 1984.

CITY OF ONALASKA

BY:


William A. Shepherd
Assistant City Attorney
Attorney for Plaintiff

Suite 500 Allen Building
Post Office Box 966
LaCrosse, Wisconsin 54601
(608) 782-1469

STATE OF WISCONSIN CIRCUIT COURT LACROSSE COUNTY JAN 18 1985

WISCONSIN EMPLOYMENT
RELATIONS DIVISION

CITY OF ONALASKA,
a municipal corporation

Plaintiff

vs.

ANSWER

Case No. 84-CV-847

THOMAS LAWRENCE,
ONALASKA PROFESSIONAL POLICE
ASSOCIATION, and
WISCONSIN PROFESSIONAL POLICE
ASSOCIATION, LAW ENFORCEMENT
EMPLOYEE RELATIONS DIVISION,

Defendants

The defendants, Thomas Lawrence, Onalaska Professional Police Association, and Wisconsin Professional Police Association, Law Enforcement Employee Relations Division, by their attorneys, Vanden Heuvel Law Offices, for an answer to the plaintiff's complaint, allege and show to the court as follows:

1. Admit paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 (typed as paragraph 21 in plaintiff's complaint), 12, 13 and 14.
2. Deny paragraphs 15, 16 and 17.
3. Admit paragraph 18.

AFFIRMATIVE ALLEGATIONS

1. The plaintiff, City of Onalaska, and the

defendant, Onalaska Professional Police Association, have entered into a labor agreement which agreement sets forth the agreement of the parties that the represented employees of the City of Onalaska Police Department shall be suspended only for proper cause and also sets forth a grievance procedure to be followed by the parties to the agreement.

2. The existence of the statutory procedure under Section 62.13(5), Wis. Stats. for seeking a review of a Police and Fire Commission's disciplinary determination does not preclude the employees covered by the labor agreement from grieving that determination under the collective bargaining agreement of the parties.

3. The grievance procedure established in the labor contract negotiated by the parties can be reconciled with the hearing and appeal procedure of Section 62.13, Wis. Stats.

4. The City of Onalaska Police and Fire Commission is a "person" within the meaning of Section 111.70(1)(k) of the Wisconsin Statutes and was at all times material herein acting on behalf of the plaintiff, City of Onalaska, pursuant to the authority granted it by Section 62.13(5) of the Wisconsin Statutes.

WHEREFORE, the defendants demand:

1. Judgment dismissing the declaratory judgment complaint on its merits and awarding defendants reasonable costs and attorneys fees.

2. In the alternative, that declaratory relief be granted and determined:

A. That the City of Onalaska Police and Fire Commission is an agent of the employer under Section 111.70, Wis. Stats.

B. That the plaintiff be ordered and directed to respond to and answer said grievance and proceed to arbitration pursuant to the terms of the labor agreement between the parties.

3. For such further relief as this court may deem just and equitable.

Dated at Milwaukee, Wisconsin this ____ day of November, 1984.

VANDEN HEUVEL LAW OFFICES
Attorneys for Defendants
THOMAS LAWRENCE,
ONALASKA PROFESSIONAL POLICE
ASSOCIATION, and WISCONSIN
PROFESSIONAL POLICE
ASSOCIATION, LAW ENFORCEMENT
EMPLOYEE RELATIONS DIVISION

by:

Linda S. Vanden Heuvel

P.O. Address:
828 North Broadway
Suite 400
Milwaukee, Wisconsin 53202
(414) 278-8828

RECEIVED

JAN 7 1985

EXHIBIT C

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

LAW ENFORCEMENT EMPLOYEE
RELATIONS DIVISION OF THE
WISCONSIN PROFESSIONAL
POLICE ASSOCIATION for
and on behalf of the
ONALASKA PROFESSIONAL
POLICE ASSOCIATION, and
THOMAS LAWRENCE
Complainants,

Onalaska, City of

Onalaska, WI

Filed: 01/07/85

Reopened:

Case #: 13
No: 034417
MP-1661

v.

CITY OF ONALASKA
Respondent,

COMPLAINT

The Complainants above named complain that the Respondent has engaged in and is engaging in prohibited practices contrary to the provisions of Chapter 111 of the Wisconsin Statutes, and in that respect alleges:

1. That the Complainant, the Law Enforcement Employee Relations Division of the Wisconsin Professional Police Association (WPPA/LEER) for and on behalf of the Onalaska Professional Police Association, exclusive bargaining representative for the police patrol officers with the power of arrest of the City of Onalaska, is a labor organization organized and existing under the laws of the State of Wisconsin and the Municipal Employment Relations Act (MERA) whose administrator is Patrick J. Coraggio, with offices located at 9730 West Bluemound Road, Wauwatosa, Wisconsin 53226. That the business agent of WPPA/LEER is Dennis Pedersen whose address is Route 1, Box 288, Tomah, Wisconsin 54660.

2. That the Complainant, Thomas Lawrence, is a duly appointed police officer employed by the City of Onalaska and was at all times relevant hereto a municipal employee.

3. That the Respondent, City of Onalaska, is a municipal corporation, organized and existing under the laws of the State of Wisconsin with offices located at 415 Main Street, P.O. Box 339, Onalaska, Wisconsin 54650-0339, whose principal representative is upon information and belief Dennis Aspenson, chairman of the City of Onalaska Finance and Personnel Committee.

4. That the City of Onalaska Police and Fire Commission hereinafter "Commission" is a police and fire commission established pursuant to Wis. Stat. Section 62.13. That the Commission has consisted of a group of individuals who are city officers and at all times relevant hereto the Commission was acting on behalf of the City pursuant to its authority under Section 62.13(5) of the Wisconsin Statutes.

5. That at all times relevant hereto John C. Dlouhy has held the position of the Chief of Police of the City of Onalaska and has acted as an agent for and on behalf of the City. That at all times relevant hereto Dennis Aspenson has acted as the chairman of the Finance and Personnel Committee of the City and has acted as an agent for and on behalf of the City.

6. That the City of Onalaska and the Onalaska Professional Police Association are parties to a 1984 collective bargaining Agreement covering wages, hours, and conditions of employment of employees in the bargaining unit. That at all times relevant hereto the 1984 collective bargaining Agreement between the City of Onalaska and the Onalaska Professional Police Association was in full force and effect.

7. That the collective bargaining Agreement between the City of Onalaska and the Onalaska Professional Police Association contains a provision requiring "discharge or discipline for proper cause" and a detailed grievance procedure which provides for final and binding arbitration. Article II and Article XI of the 1984 collective bargaining Agreement are annexed hereto and made a part hereof as Exhibit "A" and "B" respectively.

8. That on July 26, 1984, Chief John Dlouhy filed one charge of misconduct with the Police and Fire Commission pursuant to Wis. Stat. Section 62.13(5) alleging that Complainant Thomas Lawrence conducted personal business while on duty. That on August 29, 1984, a hearing was held on such charge of misconduct. That subsequently the Police and Fire Commission ordered that Complainant Thomas Lawrence be suspended without pay for two (2) days. The Findings and Order of the Police and Fire Commission of the City of Onalaska, Case Number 84-1, is annexed hereto and made a part hereof as Exhibit "C".

9. That on September 11, 1984, the Complainant Thomas Lawrence filed a timely grievance pursuant to Article XI, Section 2(b) (Exhibit B) with Chief John C. Dlouhy. The grievance dated September 11, 1984 is attached hereto and made a part hereof as Exhibit "D".

10. That on September 18, 1984, the Chief presented to the Complainant Thomas Lawrence a written response denying the grievance pursuant to Article XI Section (b) (Exhibit B). The response to the grievance, dated September 18, 1984 is attached hereto and made a part hereof as Exhibit "E".

11. That on September 27, 1984, the Complainant WPPA/LEER timely submitted the grievance in writing to the Finance and Personnel Committee of the Respondent City of Onalaska, a September 27, 1984 letter from Dennis A. Pedersen of the WPPA/LEER to Dennis Aspenson, Chairman of the Finance and Personnel Committee is attached hereto and made a part hereof as Exhibit "F".

12. That the City, through its Chief of Police and its Finance and Personnel Committee has repeatedly refused to respond to said grievance in violation of Article XI Section 2(c). A letter dated October 18, 1984 from the Chairman of the Finance and Personnel Committee to the Complainant WPPA/LEER is annexed hereto and made a part hereof as Exhibit "G".

13. That the Complainant WPPA/LEER timely submitted to the Respondent a written letter of intent to submit the grievance to arbitration pursuant to Article XI Section 2(d). A letter dated October 20, 1984 from the Complainant WPPA/LEER to the Respondent is annexed hereto and made a part hereof as Exhibit "H". That the Complainant WPPA/LEER requested and received a panel of five (5) impartial arbitrators from the Wisconsin Employment Relations Commission. A letter from the Complainant WPPA/LEER dated October 20, 1984 to Chairman Herman Torosian of the Wisconsin Employment Relations Commission and a letter from Chairman Herman Torosian to the Complainant WPPA/LEER are annexed hereto and made a part hereof as Exhibit "I" and Exhibit "J" respectively.

14. That the Respondent has refused to accept and process

the grievance to arbitration in violation of Article XI Section 2(d). A letter dated October 26, 1984 from the Respondent to Chairman Herman Torosian is attached hereto and made a part hereof as Exhibit "K".

Wherefore, the Complainants hereby respectfully request the Commission:

(a) To find that the grievance submitted by the Complainants states a claim which on its face is governed by the 1984 collective bargaining Agreement.

(b) To find that the Respondent, by its refusal to respond to the grievance in accordance with the contractual grievance procedure, has committed a prohibited practice within the meaning of Section 111.70(3)(a)(5) of the Wisconsin Statutes.

(c) To order the Respondent to cease and desist from refusing to process the aforesaid grievance.

(d) To award Complainants attorney's fees and costs.

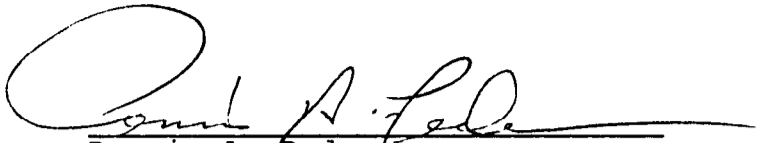
(e) To award such other and further relief as the Commission may deem just and equitable under the circumstances.

Dated at SPARTA, Wisconsin this 26 day of DECEMBER, 1984.


Dennis A. Pedersen

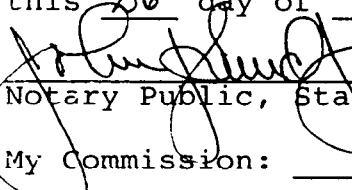
STATE OF WISCONSIN)
MILWAUKEE COUNTY)

Dennis A. Pedersen, being duly sworn, states that he is the Business Agent of the Law Enforcement Employee Relations Division of the Wisconsin Professional Police Association. That he has read the foregoing Complaint and knows the contents thereof. That the same are true to his own knowledge, except as to those matters therein stated to be alleged on information and belief, and he believes those matters to be true.


Dennis A. Pedersen

Subscribed and sworn to before me

this 26 day of DEC, 1984.


Notary Public, State of Wisconsin

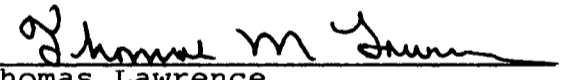
My Commission: 7/3/88

Dated at SPARTA, Wisconsin this 26 Day of DEC, 1984.


Thomas Lawrence

STATE OF WISCONSIN)
MILWAUKEE COUNTY)

Thomas Lawrence, being duly sworn, states that he is the Complainant. That he has read the foregoing Complaint and knows the contents thereof. That the same are true to his own knowledge, except as to those matters therein stated to be alleged on information and belief, and he believes those matters to be true.


Thomas Lawrence

Subscribed and sworn to before me

this 19th day of Dec, 1984.


Notary Public, State of Wisconsin

My Commission: 7/12/88

RECEIVED

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EXHIBIT D

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

STATE OF WISCONSIN

CIRCUIT COURT

LA CROSSE COUNTY

CITY OF ONALASKA,
A Municipal Corporation,
Plaintiff,

-vs-

THOMAS LAWRENCE, ONALASKA PROFESSIONAL
POLICE ASSOCIATION, and WISCONSIN
PROFESSIONAL POLICE ASSOCIATION, LAW
ENFORCEMENT EMPLOYEE RELATIONS DIVISION,
Defendants.

DECLARATORY JUDGMENT
Case No. 84-CV-847
Cal. No. P-1159

This action having come on for hearing before the Court and the issues having been fully presented through argument and brief, and a memorandum decision having been duly rendered on January 2, 1986,

IT IS ORDERED & ADJUDGED that for the reasons set forth in the memorandum decision:

1) This court does have subject matter jurisdiction to grant declaratory relief in this matter;

2) The determination of the Onalaska Police & Fire Commission to suspend the Defendant, Thomas Lawrence, is not subject to the arbitration procedures set forth in the Labor Agreement in effect between the parties.

3) The Defendant, Thomas Lawrence's, right of appeal of the suspension imposed is governed by and limited to the appeal procedure as set forth in Sec. 62.13(5)(i), Stats.

Dated this 21st day of January, 1986.

BY THE COURT:

" The original was signed by

JUDGE PETER G. PAPPAS

Peter G. Pappas

Circuit Court Judge

on the date indicated"