

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

-----  
GREEN BAY POLICE DEPARTMENT  
SUPERVISORY PERSONNEL  
BARGAINING UNIT,

Complainant,

vs.

CITY OF GREEN BAY, HOWARD L.  
ERICKSON and PAUL JADIN,

Respondents.  
-----

Case 176  
No. 41478 MP-2174  
Decision No. 25868-A

Appearances:

Mohr & Beinlich, S.C., Attorneys at Law, 415 South Washington Street,  
P.O. Box 1098, Green Bay, Wisconsin 54305, by Mr. Frederick J. Mohr,  
on behalf of Green Bay Police Department Supervisory Personnel  
Bargaining Unit.

Mr. Mark A. Warpinski, Assistant City Attorney, City of Green Bay, City  
Hall, 100 North Jefferson, Green Bay, Wisconsin 54301, on behalf of City  
of Green Bay, et al.

FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND ORDER GRANTING MOTION TO DISMISS

The Green Bay Police Department Supervisory Personnel Bargaining Unit, hereinafter the Complainant, having, on December 27, 1988, filed a complaint of prohibited practices with the Wisconsin Employment Relations Commission wherein it alleged that the City of Green Bay, et al., hereinafter the Respondents, had committed prohibited practices within the meaning of Secs. 111.70(3)(a)1, 3, 4 and 5, Stats., by not following existing promotion procedures and thereby violating a city ordinance and the parties' collective bargaining agreement, by interfering and coercing members of Complainant in the exercise of their rights under Sec. 111.70(2), Stats., by discriminating against members of Complainant in regard to terms and conditions of employment, and by refusing to bargain with Complainant; and Respondents having, on December 30, 1988, filed an answer to the instant complaint wherein Respondents denied having committed any prohibited practices and alleged as affirmative defenses that: (1) members of Complainant are supervisors within the meaning of Sec. 111.70(1)(o), Stats., and their rights under Chapter 111.70, Stats., are limited to certification as a supervisory bargaining unit and they are not accorded the same rights as non-supervisory employees, including the right to file a complaint of prohibited practices, (2) the parties have never incorporated the promotion procedure into their collective bargaining agreement, and (3) from 1980 to the present there have been 16 promotions where the qualified individuals promoted were less senior to other qualified individuals; and Respondents having, on January 4, 1989, filed a Motion to Dismiss the complaint on the basis that the Complainants are supervisory employees and, therefore, lack standing to file a prohibited practices complaint; and the parties having by February 10, 1989, filed briefs in support of their respective positions on Respondents' Motion to Dismiss; and the Examiner having considered the pleadings and the arguments of the parties, and being satisfied that the Motion to Dismiss should be granted, makes and issues the following Findings of Fact, Conclusions of Law and Order Granting Motion to Dismiss.

FINDINGS OF FACT

1. That on December 27, 1988 the Complainant filed with the Commission a complaint of prohibited practices, attached hereto and containing Exhibits A through C, wherein Complainant alleged, in part, that it "is an authorized association pursuant to Sec. 111.70 Wis. Stats. organized and existing for the purpose of representing the supervisory personnel employed by the Green Bay Police Department".

2. That on January 4, 1989 the Respondents filed a Motion to Dismiss the instant complaint contending that supervisory employees lack standing to file a prohibited practices complaint pursuant to Sec. 111.70, Stats.

#### CONCLUSIONS OF LAW

1. That the supervisory law enforcement personnel employed by the Respondent City of Green Bay are not "municipal employees" within the meaning of Sec. 111.70(1)(i), Stats., and, therefore, are not granted rights guaranteed to municipal employees under Sec. 111.70(2), Stats., or afforded the protection to exercise such rights pursuant to Sec. 111.70(3)(a), Stats.

2. That as the Complainant Green Bay Police Department Supervisory Personnel Bargaining Unit filed the instant complaint on behalf of supervisory law enforcement personnel employed by the Respondent City of Green Bay, alleging violations of Secs. 111.70(3)(a)1, 3, 4 and 5, Stats., by Respondents with regard to actions taken as to such supervisory law enforcement personnel, the complaint fails to allege facts upon which relief could be granted under Sec. 111.70(3)(a), Stats.

Upon the basis of the foregoing Findings of Fact and Conclusions of Law, the Examiner makes and issues the following

#### ORDER 1/

That the Respondents' Motion to Dismiss is hereby granted and the instant complaint is hereby dismissed in its entirety.

Dated at Madison, Wisconsin this 6th day of March, 1989.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By



David E. Shaw, Examiner

---

1/ 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 GREEN BAY  
(POLICE DEPARTMENT)

MEMORANDUM ACCOMPANYING FINDINGS OF  
FACT, CONCLUSIONS OF LAW AND ORDER  
GRANTING MOTION TO DISMISS

As noted in the prefatory paragraph, the Respondents filed a Motion to Dismiss the instant complaint on the basis that, as the bargaining unit Complainant represents consists of supervisory employes, Complainant does not have standing to bring a prohibited practices complaint under the Municipal Employment Relations Act (MERA).

POSITIONS OF THE PARTIES

RESPONDENTS

According to Respondents, a more accurate description of their pleadings is a motion for a judgement on the pleadings, which motion should be granted "if it is clear to the reviewing body that the Plaintiff could not recover under any condition". The reviewing body is limited to the allegations stated in the complaint. Having alleged that the individuals it represents are supervisory employes, Complainant requests relief pursuant to Secs. 111.70(3)(a)1, 3, 4 and 5, Stats. Thus, the question is whether such supervisory employes are entitled to the relief they have requested.

Respondents contend that the legislature defined "supervisor" in Sec. 111.70(1)(o), Stats., where supervisors are referred to as individuals who have certain authority over other employes. Having acknowledged in their complaint that they are supervisory employes, the Complainants must fall within the statutory definition of "supervisor". The statutes distinguish between "municipal employes" and individuals who are retained by a municipality as supervisors. The legislature defined "municipal employe" in Sec. 111.70(1)(i), Stats., as any individual "employed by a municipal employer other than an independent contractor, supervisor, . . .". Supervisors are excluded from the definition of "municipal employe".

Complainant has alleged violations of Secs. 111.70(3)(a)1, 3, 4 and 5, Stats. Section 111.70(3)(a)1, Stats., prohibits municipal employers from interfering with, restraining or coercing "municipal employes". The use of the phrase "municipal employe" must be read in conjunction with the statutory definition of "supervisor". Respondents contend that "It is axiomatic that in construing statutes it is necessary for the reviewing body to first endeavor to find that both statutory sections are compatible. It is also axiomatic in statutory construction that definitional sections of the statute are intended to be used in reviewing other subsections of the same statute". It is asserted that, applying those rules, it is clear that Sec. 111.70(3)(a)1, Stats., only applies to "municipal employes" as statutorily defined, and not to supervisors.

The above analysis also applies with respect to Secs. 111.70(3)(a)4 and 5, Stats. Both of those subsections specifically refer to "employes" and not to "supervisors". It is contended that "the express exclusion of supervisors in these two sections can only lead to the conclusion that the reference to employes is to municipal employes and not to supervisors". Respondents also note that Chapter 111.70 does not define employes in generic terms but contains specific definitions for individuals who are employes as opposed to those individuals who are supervisors, e.g., "craft employes", "municipal employes", and "professional employes".

Regarding Sec. 111.70(3)(a)3, Stats., Respondents note that that section prohibits a municipal employer from encouraging or discouraging membership in any labor organization. Respondents assert that there is no allegation in the complaint from which it could be concluded that the Respondents have attempted to encourage or discourage membership in any labor organization. Complainant already exists as a labor organization and there is no allegation that there are individuals who seek to join such an organization and are encouraged or discouraged from doing so by the Respondent City. Thus, there is no basis for the Complainant's allegation that the Respondents have violated their rights under

Sec. 111.70(3)(a)3, Stats. More importantly, Complainant's reliance on that provision must fail because "it is not compatible with the logical progression as set forth in Section 111.70, Wis. Stats." Chapter 111.70 is divided into various subchapters. Subchapter 1 is dedicated to employment peace and is applicable to these proceedings. That subchapter defines the term "employee" to include "any person, . . . working for another for hire in the state of Wisconsin in a non-executive or non-supervisory capacity, . . .". Subchapter 4 relates to municipal employment relations and distinguishes between "municipal employees" and "supervisors", both which are defined in that subchapter. Section 111.70(2), Stats., sets forth the rights of "municipal employees". Noticably absent is the rights of municipal supervisors. That omission is intentional. Chapter 111.70 is intended to deal with the relationship between the employer and municipal employees. Supervisors are allied in interest with the employer and are viewed as an immediate extension of the employer. By definition, supervisors have control over municipal employees.

The above theory is supported by the Wisconsin Administrative Code, writings interpreting Chapter 111.70 and appellate court cases. Regarding the Wisconsin Administrative Code, Respondents note that ERB 12 Wis. Adm. Code, sets forth the procedures for filing prohibited practice complaints. ERB 12.02, Wis. Adm. Code, states who may file a complaint and who it may be filed against. There is no reference to supervisors in that provision. The only reference to supervisory employees is in ERB 17, Wis. Adm. Code, dealing with elections to determine whether an association should be considered the bargaining representative for supervisory law enforcement personnel. The only rights that supervisory employees possess under Chapter 111.70 are found in Sec. 111.70(3)(d), Stats. ERB 17.01, Wis. Adm. Code, is pertinent as it concurs that certain individuals are excluded from the definition of "municipal employee". Section 111.70(3)(b), Stats., describes prohibited practices of municipal employees and does not include any reference to supervisors, however, Sec. 111.70(3)(b)5, Stats., makes it a prohibited practice for municipal employees to "coerce or intimidate an independent contractor, supervisor, . . ." Those distinctions in both the administrative code and the statutes clearly lead to the conclusion that it was not intended that supervisors be considered interested parties who may file a prohibited practice complaint against an employer. Also citing, Municipal Labor Relations in Wisconsin, edited by Charles C. Mulcahy (State Bar of Wisconsin, 1979).

With regard to appellate court cases, Respondents cite Crear v. LIRC, 114 Wis.2d 537 (Ct. App. 1983), where the Court of Appeals defined the term supervisor. While not dispositive, the case lends credence to the legislature's intent to distinguish between supervisors and municipal employees. Also, in Wells v. Waukesha Marine Bank, 135 Wis.2d 519 (Ct. App. 1986), the Court stated the following:

Section 111.70(3)(a) prohibits a municipal employer, individually or in concert with others, from interfering with, restraining or coercing municipal employees in the exercise of their Section 111.70(2) rights.

(At 529) The Court interprets Sec. 111.70(3)(a), Stats., as being related with Sec. 111.70(2), Stats., and the latter provision is "dedicated exclusively to the rights of municipal employees", and specifically excludes supervisors.

Respondents assert that, based upon the above, the Complainant lacks standing to file a prohibited practice complaint. Thus, the complaint should be dismissed.

#### COMPLAINANT

Complainant asserts that for years prior to 1976 and extending through the present the Complainant has had a written labor agreement between itself and the Respondent City, the most recent of which covers the contract years 1987-1988. In 1976 the Respondent City adopted a resolution that provided that promotions within the Respondent's Police Department would be based on seniority if the individuals to be promoted were qualified. It is asserted that in late 1988 the Police Chief recommended promotions out of the line of seniority within the supervisory ranks of the Department. Complainant, feeling that such promotions were in violation of the existing city ordinance and express terms and conditions of the parties then existing labor agreement, filed the instant complaint of prohibited practices. Complainant makes a number of arguments in response to the Respondents' Motion to Dismiss.

First, Complainant contends that Sec. 111.70(8), Stats., specifically provides that law enforcement supervisory personnel are not prohibited from organizing bargaining units for the purposes of negotiating with their municipal employers. ERB 17, Wis. Adm. Code, specifically provides for the manner in which elections in supervisory law enforcement units shall be conducted pursuant to Sec. 111.70(3)(d), Stats. The preamble in the labor agreement between the Complainant and the Respondent City provides:

This Agreement is made and entered into according to the provisions of Section 111.70(3)(d), Wis. Stats. . . .

Thus the Respondent City has recognized the validity of the existence of this unit. According to Complainant, the question then is whether under the terms and conditions of the existing agreement, as well as existing labor law, the Complainant has certain rights guaranteed under Sec. 111.70, Stats.

Complainant cites a number of provisions of the parties' labor agreement and alleges that the Respondent City specifically violated the terms and conditions of the agreement by unilaterally changing the promotion procedure from the past practice and in violation of existing city ordinance. As to whether the employees have the right to enforce their agreement under existing labor law, Complainant notes that Sec. 111.70(3)(a)5, Stats., provides that it is a prohibited practice for a municipal employer "to violate any collective bargaining agreement previously agreed upon by the parties with respect to wages, hours and conditions of employment . . ." The argument that a "municipal employee" does not include supervisory personnel in conjunction with the recognition of supervisory personnel contained in Sec. 111.70(8), Stats., is contradictory and would render any contractual agreement between the parties null and void. Section 111.70(8), Stats., specifically allows for the organization of supervisory law enforcement units for the purpose of negotiating with their employers. Under the Respondents' interpretation, if supervisory personnel lack standing, they would have no legal means of enforcing their rights under labor law. The legislature could not have intended to allow supervisory units to organize and nullify that right by cutting off their ability to enforce the contractual rights obtained through negotiations. Such an inequitable result could not have been intended.

Complainant contends that the most widely acknowledged rule of statutory construction has been stated by the Wisconsin Supreme Court as follows:

First, it is a basic rule of statutory construction that in construing statutes, effect is to be given, if possible, to each and every word, clause and sentence in a statute, and a construction that would result in any portion of a statute being superfluous should be avoided wherever possible. In addition, "the purpose of statutory construction is to ascertain the intent of the legislature" and give effect to that intent.

County of Columbia v. Bylewski, 94 Wis.2d 153 (1980), at 164. It is asserted that it is obvious that the legislature intended to treat protective service employees differently than general municipal employees. The creation of Chapter 111.77, shows such an intent. The legislature having withdrawn the right of law enforcement personnel to strike, replaced that right with certain contractual and negotiating preferences enjoyed only by protective service personnel. Obviously, having deprived law enforcement supervisory personnel the right to strike, the legislature replaced that right with other rights, including the right to organize, to negotiate contracts, and to rely on the labor law in order to enforce the terms of those contracts. Any other construction would make Sec. 111.70(8), Stats., meaningless.

The Complainant concludes that, on the basis of the above, the Motion to Dismiss should not be granted.

## DISCUSSION

The Respondents have moved to dismiss the instant complaint contending, in effect, that even if all the facts alleged in the complaint are assumed to be true, the Complainant, and the supervisory law enforcement personnel it

represents, are not entitled to relief under Sec. 111.70(3)(a), Stats. Complainant disputes Respondents' interpretation of Sec. 111.70.

The following has been stated as the standard to be applied in deciding a pre-hearing motion to dismiss a complaint:

Because of the drastic consequences of denying an evidentiary hearing, on a motion to dismiss the complaint must be liberally construed in favor of the complainant and the motion should be granted only if under no interpretation of the facts alleged would the complainant be entitled to relief. 2/

This case does not appear to raise an issue of first impression. The Commission previously concluded in City of Milwaukee 3/ as a matter of law:

That, although Section 111.70(3)(d) of the Municipal Employment Relations Act does not preclude law enforcement supervisors from organizing separate units of supervisors for purposes of negotiating with their municipal employers, no provision in the Municipal Employment Relations Act grants law enforcement supervisory personnel the protected rights of self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection, or the protected right to refrain from any and all such activities.

(At 3)

The Commission's rationale in reaching that conclusion was as follows:

Since Respondent admits that it refused to bargain collectively with Complainant generally within the meaning of Section 111.70(1)(d) of MERA, or specifically with regard to a fair-share agreement within the meaning of Section 111.70(1)(h) of MERA, the narrow issue is whether the Respondent has a duty to bargain collectively with Complainant whom it has recognized as the exclusive representative of certain of its supervisory personnel.

The rights set forth in Section 111.70(2) of MERA, grant:

". . . the right of self-organization, and the right to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection, and such employees shall have the right to refrain from any and all such activities . . ."

are rights which are granted to municipal employees. The term "municipal employee" is defined in Section 111.70(1)(b) as meaning:

". . . any individual employed by a municipal employer other than an independent contractor, supervisor, or confidential, managerial or executive employee."

---

2/ Unified School District No. 1 of Racine County, Wisconsin, Dec. No. 15915-B (Hoornstra with final authority for WERC, 12/77) at 3.

3/ Dec. No. 12742-A (WERC, 4/75).

There is no issue that the personnel employed by the Respondent, which are involved in this proceeding, are law enforcement supervisory personnel. Section 111.70(3)(d) states, in material part, as follows:

"Nothing in this subchapter shall preclude law enforcement or firefighting supervisors from organizing separate units of supervisors for purposes of negotiating with their municipal employers."

This section of MERA permits municipal employers, if they so desire, to negotiate with organizations representing supervisory law enforcement or firefighting personnel. There is no provision in MERA which requires that a municipal employer do so. Nor is there any provision in MERA which grants supervisory personnel the same rights afforded to "municipal employes" in the Act. Further, the prohibited practices set forth in MERA only apply to activities involving municipal employers and employes or their organizations, or to any person acting on behalf or in the interest of municipal employes or municipal employers, and not to law enforcement or fire fighter supervisory personnel or their organizations.

Since the Municipal Employer has no statutory duty to bargain collectively with the supervisory organization herein, its failure to enter into a fair-share agreement or to honor the dues check-off authorizations cannot be deemed to be prohibited practices.

(At 5)

Although the Commission's decision dealt only with a municipal employer's duty to bargain with the representative of supervisory law enforcement personnel under MERA, the Commission's rationale in concluding that no such duty existed appears equally applicable to any of the rights guaranteed under Sec. 111.70(2), Stats.

The wording of the definitions of "municipal employe" and "supervisor" contained in MERA is the same today as it was at the time of the Commission's decision in City of Milwaukee. The same is true as to Sec. 111.70(2), Stats., "Rights of Municipal Employes", and Secs. 111.70(3)(a)1, 3, 4 and 5, Stats., dealing with prohibited practices by a municipal employer.

The only relevant change in MERA subsequent to the decision in City of Milwaukee has been in that provision which allows law enforcement and fire fighting supervisors to organize for the purpose of negotiating with their employers. In 1975 that provision was Sec. 111.70(3)(d), Stats., which read as follows:

(d) Nothing in this subchapter shall preclude law enforcement or fire-fighting supervisors from organizing separate units of supervisors for purposes of negotiating with their municipal employers. The commission shall by rule establish procedures for certification of such units of supervisors and the levels of supervisors to be included. The commission may require that the representative in a supervisory unit shall be an organization that is a separate local entity from the representative of the employes but such requirement shall not prevent affiliation by a supervisory representative with the same parent state or national organization as the employe representative.

That provision was renumbered to Sec. 111.70(8), Stats., in 1977 and amended to provide:

(8) SUPERVISORY UNITS. This subchapter does not preclude law enforcement or fire fighting supervisors from organizing in separate units of supervisors for purposes of

negotiating with their municipal employers. The commission shall by rule establish procedures for certification of such units of supervisors and the levels of supervisors to be included in the units. The commission may require that the representative in a supervisory unit shall be an organization that is a separate local entity from the representative of the nonsupervisory municipal employees, but such requirement does not prevent affiliation by a supervisory representative with the same parent state or national organization as the nonsupervisory municipal employee representative. In cities of the 1st class, this section applies to law enforcement supervisors. For such purposes, the term "municipal employee" includes law enforcement supervisors in cities of the 1st class.

(Emphasis added)

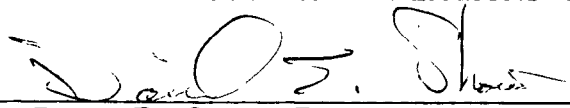
The only material change in the provision has been the addition of the emphasized language noted above, seemingly made in response to the Commission's decision in City of Milwaukee. While the addition of that wording, especially the last sentence, might arguably form the basis for a finding that law enforcement supervisors "in cities of the 1st class" are given the same rights and protections that "municipal employees" have under Secs. 111.70(2) and (3) of MERA, there is no allegation, and can be no allegation, that the law enforcement supervisors represented by Complainant in this case are employed by a city of the "1st class". Therefore, whatever the effect of the additional language, it does not apply to the supervisory law enforcement personnel on whose behalf the instant complaint was filed. It follows then that the Commission's conclusions in its decision in City of Milwaukee remain applicable as to the complaint of prohibited practices filed by Complainant in this case.

On the basis of the foregoing, the Examiner is satisfied that the instant complaint does not allege facts under which the Complainant, and/or the law enforcement supervisors it represents, would be entitled to relief under MERA. Accordingly, the Respondents' Motion to Dismiss has been granted.

Dated at Madison, Wisconsin this 6th day of March, 1989.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
David E. Shaw, Examiner



9/68

## BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

GREEN BAY POLICE DEPARTMENT SUPERVISORY  
PERSONNEL BARGAINING UNIT

Complainant,

v.

CITY OF GREEN BAY, HOWARD L. ERICKSON and  
PAUL JADIN

Respondents,

Green Bay, City of (Police Dept)

Green Bay, WI

Filed: 12/22/88

Reopened:

Case #: 176

No: 041478

MP-2174

## COMPLAINT

The Complainant above named complains that the Respondent has engaged in and is engaging in unfair labor practices contrary to the provisions of Chapter 111 of the Wisconsin Statutes, and in that respect alleges:

1. That the Green Bay Police Department Supervisory Personnel Bargaining Unit is an authorized association pursuant to sec. 111.70, Wis. Stats. organized and existing for the purpose of representing the supervisory personnel employed by the Green Bay Police Department. That its authorized representative is Frederick J. Mohr whose address is 415 South Washington Street, P. O. Box 1098, Green Bay, Wisconsin and whose telephone number is 414-437-5441.
2. That the respondent, the City of Green Bay, is a municipal corporation organized and existing by virtue of the laws of the State of Wisconsin and at all times material herein was the employer of all members of the complainant association. That said municipality has as its principal place of business the location of the Green Bay City Hall at 100 North Jefferson Street, Green Bay, Wisconsin and who has been represented in legal matters by Timothy Kelly, Attorney for the City of Green Bay whose telephone number is 414-436-3738.
3. That the respondent, Howard L. Erickson, is the appointed Chief of Police for the City of Green Bay and at all times material herein held such position. That the respondent's business address is 307 South Adams Street, Green Bay, Wisconsin and said respondent has a telephone number of 414-436-3800.
4. That the respondent, Paul Jadin, is employed by the City of Green Bay as Personnel Manager and has an address of 100 North Jefferson Street, Green Bay, Wisconsin and whose telephone number is 414-436-3781.
5. That the City of Green Bay has recognized the complainant and entered into a written agreement with complainant regarding the rights and duties and obligations of the respondent City and its relationship with members of the complainant. That a copy of said agreement is attached hereto and marked as Exhibit A.
6. That during the year of 1974 a dispute arose between the City of Green Bay and certain employees regarding promotional procedures utilized in the Police and Fire Departments of the City of Green Bay. That as a result of this dispute, a certain arbitration decision was rendered by the Wisconsin Employment Relations Commission, namely WERC Decision No. 12352-B and 12402-B.
7. That as a result of these decisions, the respondent, City of Green Bay, directed a certain Subcommittee of its Personnel Committee to develop and recommend, among other things, a procedure for promotions within the Police and Fire Departments of the City of Green Bay. That said Personnel Subcommittee issued a certain report on procedures on promotion and discipline which thereafter was adopted by the Common Council of the City of Green Bay February 16, 1976. That thereafter the City adopted an amendment to such procedure on April 15, 1980. That a copy of the relevant resolutions and reports are contained herein and marked as Exhibit B.

8. That at no time thereafter has the City of Green Bay revoked, suspended or repealed any of the provisions as set forth in Exhibit B.
9. That pursuant to said procedure, promotions with the Police Department that affect members of complainant are to be made on a basis of seniority providing, however, that such individuals are qualified for such promotion. Further, that in the event that promotions are not to be made by seniority, said Exhibit B requires that individuals in authority, such as the respondent, Howard L. Erickson, shall be required to set forth with specificity any lack of qualification disqualifying individuals of complainant for promotion.
10. That during the month of November, 1988, as a result of retirement in the Green Bay Police Department, certain promotions to the position of Captain became available. That on or about November 30, 1988, representatives of the complainant became aware that it was the intention of the respondent, Howard L. Erickson, to recommend Larry J. Gille and Walter L. Wickman for promotion to the position of Captain within the Green Bay Police Department. That such individuals had less seniority than other members of complainant although all members of complainant were qualified for such promotions.
11. That on December 1, 1988, the respondent, Howard L. Erickson, recommended to the members of the Police and Fire Commission that the promotions to the vacant positions of Captain in the Green Bay Police Department be made without regard to seniority all in violation of existing promotional procedures adopted by the City of Green Bay and in force at the time of the respondent's aforementioned recommendations. Further, that such recommendation by the respondent, Howard L. Erickson, violates the existing agreement between the complainant and the respondent, City of Green Bay.
12. That members of the complainant filed grievances regarding such promotions and thereafter met with the respondent, Paul Jadin and Howard L. Erickson, regarding the same. That as a result of said meeting, a letter was issued under date of December 7, 1988 by the respondent, Paul F. Jadin, a copy of which is attached hereto and marked as Exhibit C indicating that the City did not acknowledge a duty to bargain all in violation of sec. 111.70, Wis. Stats. Further, that the said respondent, Paul F. Jadin, has attempted to coerce and intimidate members of the complainant in their statutory exercise of rights under sec. 111.70, Wis. Stats. as all contained in the threats set forth in Exhibit C.
13. That the actions of the respondents, and each of them, are prohibitive practices pursuant to sec. 111.70(3)(a)(1), Wis. Stats. in that the actions of the respondents, and each of them, attempt to interfere with, restrain and coerce members of the complainant in their exercise of their rights as guaranteed under sec. 111.70(2), Wis. Stats.
14. That the actions of the respondents, and each of them, violates sec. 111.70(3)(a)(3), Wis. Stats. insofar as such actions are intended to discourage membership in complainant by discriminating in regard to the terms and conditions of employment of members of the complainant.
15. That the actions of the respondent, and each of them, is a violation of sec. 111.70(3)(a)(4), Wis. Stats. insofar as such actions are a refusal to bargain collectively with the authorized representative of the complainant as evidenced by Exhibit C attached hereto.
16. That the actions of the respondents, and each of them, violates sec. 111.70(3)(a)(5), Wis. Stats. insofar as such actions violate the existing bargaining agreement between the parties.

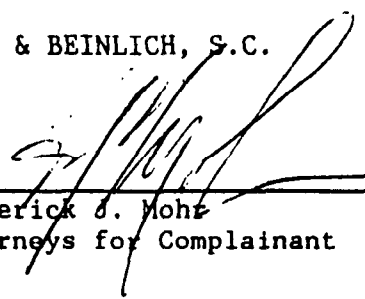
WHEREFORE, the complainant asks for relief as follows:

- A. For a finding that the respondents, and each of them, have violated sec. 111.70(3)(a)(1), Wis. Stats.; sec. 111.70(3)(a)(3), Wis. Stats.; sec. 111.70(3)(a)(4), Wis. Stats.; and sec. 111.70(3)(a)(5), Wis. Stats.;
- B. For an Order restraining the respondents, and each of them, from violating sec. 111.70(3)(a)(1), Wis. Stats.; sec. 111.70(3)(a)(3), Wis. Stats.; sec. 111.70(3)(a)(4), Wis. Stats.; and sec. 111.70(3)(a)(5), Wis. Stats.;

- C. For an Order requiring respondents, and each of them, to comply with the promotional procedure as set forth in Exhibit B requiring promotions to be made on the basis of seniority, if qualified;
- D. For an award of damages calculated at the differential rate of pay between the position of Captain and Lieutenant for all members of the complainant with more seniority with the Department than Walter Wickman;
- E. For such other and further relief as the Commission deems just and equitable.

Dated this 19th day of December, 1988.

MOHR & BEINLICH, S.C.

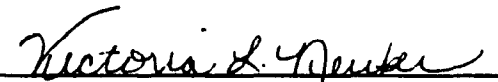
  
\_\_\_\_\_  
Frederick J. Mohr  
Attorneys for Complainant

STATE OF WISCONSIN)  
                          ) SS.  
COUNTY OF BROWN    )

Frederick J. Mohr, having been sworn on oath deposes and says that he is the attorney for the above-named complainant, and that he has read the above Complaint consisting of three (3) pages and is familiar with the facts alleged therein, which facts he knows to be true, except as to those matters alleged on information and belief, which matters he believes to be true.

  
\_\_\_\_\_  
Frederick J. Mohr

Subscribed and sworn to before me  
this 19th day of December, 1988.

  
\_\_\_\_\_  
Notary Public, State of Wisconsin  
My commission expires: 11-11-90.



1 CITY OF GREEN BAY - POLICE DEPARTMENT

2 1987-1988 SUPERVISORY PERSONNEL LABOR CONTRACT

3 THIS AGREEMENT is made and entered into according to  
4 the provisions of Section 111.70 (3) (d), Wis. Stats., by  
5 and between the City of Green Bay as municipal employer,  
6 (hereinafter called the "City"), and the Bargaining Unit of  
7 the Green Bay Police Department Supervisory Personnel,  
8 (hereinafter called the "Bargaining Unit").

9 ARTICLE I

10 RECOGNITION

11 The City agrees to recognize the Bargaining Unit as  
12 the bargaining agent for all fulltime supervisory personnel  
13 of the Green Bay Police Department having powers of arrest  
14 and employed by the City. Such supervisory personnel shall  
15 include those persons with the rank of Captain and  
16 Lieutenant in the matter of wages, hours and working  
17 conditions. Prior to any negotiations, the City shall be  
18 furnished with a list of the membership of the Bargaining  
19 Unit.

20 ARTICLE II

21 PURPOSE OF AGREEMENT

22 It is the intent and purpose of the parties hereto  
23 that this agreement shall promote and improve working  
24 conditions between the City and the Green Bay Police  
25 Department Supervisory Bargaining Unit and to set forth  
26 herein rates of pay, hours of work and other terms and

27 conditions of employment to be observed by the parties  
28 hereto. In keeping with the spirit and purpose of this  
29 agreement, the City agrees that there shall be no  
30 discrimination by the City against any employee covered by  
31 this agreement because of his/her membership or activities in  
32 the Bargaining Unit, nor will the City interfere with the  
33 right of such employees to become members of the Bargaining  
34 Unit. The City retains all rights, powers or authority  
35 that it had prior to this contract. Working conditions  
36 previously in effect shall not be reduced during the life  
37 of this agreement providing they do not conflict with this  
38 agreement. It is generally agreed and understood that  
39 members of the supervisory unit of the City of Green Bay  
40 Police Department have because of their position  
41 capacities extraordinary duties and responsibilities in  
42 their various departments and that at present these various  
43 responsibilities are equated in a salary differentiation  
44 between police officer with more than 3-1/2 years experience.  
45 It is the general understanding of the parties hereto that  
46 these responsibilities of the supervisory unit of the City  
47 of Green Bay Police Department will be expressed in an  
48 equitable formula.

49 Neither the Employer nor the Bargaining Unit shall  
50 discriminate in any manner whatsoever against any employee  
51 because of race, creed, color, national origin, sex, or  
52 handicap. The Employer and the Bargaining Unit agree to  
53 comply in all respects with the provision of the Age  
54 Discrimination in Employment Act of 1967.

55

### ARTICLE III

56

#### BARGAINING UNIT ACTIVITY

57

58

59

60

61

62

63

64

65

66

67

68

69

70

71

72

73

74

75

76

77

78

79

80

The Bargaining Unit agrees to conduct its business off the job as much as possible. The Bargaining Unit shall be allowed to hold its meetings at the City Hall Annex. This article shall not operate as to prevent a steward from the proper conduct of any grievance in accordance with the procedures outlined in this agreement, shall not work to prevent certain routine business such as the posting of Bargaining Unit notices and bulletins and like duties. The City agrees to make the necessary space available for the posting of Bargaining Unit notices and bulletins. Business agents or representatives of the Bargaining Unit having business with the officers or individual members of the Bargaining Unit may confer with such officer or members during the course of the working day for a reasonable time, provided that permission is first obtained from the commanding officer, or superior officer of that Bargaining Unit.

The employer hereby agrees not to deduct such reasonable time from the pay of such officer or member, and agrees also that time spent in the conduct of grievance and in bargaining shall not be deducted from the pay of delegated employee representative of the Bargaining Unit. The Bargaining Unit shall be limited to no more than three (3) members plus one (1) alternate.

81

#### ARTICLE IV

82

#### MAINTENANCE OF STANDARDS

83

84

85

86

87

88

89

90

91

#### ARTICLE V

92

#### GRIEVANCE PROCEDURE

93

94

95

96

97

98

99

100

101

102

103

104

105

106

107

The employer agrees that all conditions of employment in his/her individual operation relating to wages, hours of work, overtime differentials and general working conditions shall be maintained at not less than the highest standards in effect at the time of signing of this Agreement, and the conditions of employment shall be improved wherever specific provisions for improvement are made elsewhere in the Agreement.

Both the Bargaining Unit and the City recognize that grievances and complaints should be settled promptly at the earliest possible stage, and that the grievance process must be initiated within ten (10) days of the incident or within thirty (30) days of the officer learning of the incident. Any grievance not reported or filed within the time limits set forth above shall be invalid and void.

Any difference of opinion or misunderstanding which may arise between the City and the Bargaining Unit shall be handled in the following manner:

1. The aggrieved employee shall present the grievance in writing to the Chief of Police, either alone or accompanied by a Bargaining Unit representative.

2. If the grievance is not resolved to the satisfaction of all parties within three (3) days



108 (Saturday, Sunday and holidays excluded), either party may  
109 present said grievance in writing to the appropriate City  
110 Council Committee.

111 3. All other grievances relating to wages, hours and  
112 working conditions or any other matter under the  
113 jurisdiction of the Chief of Police shall be directed to  
114 the Chief of Police. The Chief of Police, in his/her  
115 discretion, may hold an informal meeting with all parties  
116 involved or refer the matter directly to the appropriate  
117 City Council Committee.

118 4. It is not the intention of the parties to  
119 circumvent or contravene any city ordinance or state law.  
120 If there is any conflict or ambiguity insofar as any  
121 phrase, sentence or paragraph of this contract is  
122 concerned, then the ordinance or state law shall apply.

123 5. Nothing herein shall limit any employee from  
124 his/her rights to a hearing pursuant to Wisconsin Statutes  
125 in case formal charges are filed against him/her.

## 126 ARTICLE VI

### 127 HOURS

128 1. The work schedule for non-shift employees is as  
129 outlined in the Memorandum of Agreement on the re-  
130 organization which is attached to the contract. The work  
131 day for non-shift employees will be eight and three  
132 quarters (8 3/4) hours per day.

133 2. Shift Employees. A normal work schedule shall  
134 consist of five (5) days with three (3) days off in a  
135 repeating cycle. The normal work day shall consist of  
136 eight (8) hours and forty-five (45) minutes.

137 ARTICLE VII

138 SHIFT ASSIGNMENTS

139 Assignments to shift positions may be appointed by the  
140 Chief of Police. However, assignments to shift positions  
141 have in the past been by seniority, and it is contemplated  
142 that this procedure will generally be followed. Although  
143 assignments to shift positions may be either appointed or  
144 by seniority as provided herein, consideration shall be  
145 given in such assignments to person possessing the  
146 qualifications for positions to be filled. It is  
147 contemplated that assignments to shift positions shall be  
148 made only when a vacancy exists in such a position. In the  
149 case of Lieutenants and Captains, seniority shall mean  
150 seniority in rank.

151 ARTICLE VIII

152 OVERTIME

153 Lieutenants and Captains called into service on  
154 their scheduled days off shall be paid overtime at their  
155 straight hourly rate for the actual hours worked.  
156 When Lieutenants and Captains work beyond their  
157 regular shift they shall be compensated at straight time.  
158 Lieutenants and Captains who are required to appear in  
159 court on a scheduled off day will be paid for the actual

160 time in court at straight time with a minimum of three (3)  
161 hours. Lieutenants and Captains will not receive extra  
162 compensation for attendance at administrative meetings,  
163 committee meetings, or other types of events that are  
164 normally considered part of their job duties.

165 Overtime for Lieutenants and Captains shall be  
166 authorized by the Chief of Police or a Deputy Chief.

167 Overtime/Compensatory Time: Compensatory time shall  
168 be limited to an accumulation of one hundred (100) hours  
169 [or the present accumulation of more than one hundred  
170 (100)] derived from holiday work or overtime.

171 Court Cancellation Procedure: The afternoon shift  
172 commander will be notified of any court cancellations. It  
173 then becomes the responsibility of the officer to call the  
174 shift commander after 5:00 P.M. on the day prior to the  
175 scheduled court date as to whether or not the court  
176 appearance has been cancelled.

177 The shift commander will record all such calls by date  
178 and time in a log book; that is, if an officer appears at  
179 court and the case has been cancelled, he/she will receive  
180 the pay for the court appearance only if he/she had called  
181 in after 5:00 P.M. the prior day and was not notified of the  
182 cancellation. If the officer had not called in the prior  
183 day, he/she will not receive the pay.

184 On these occasions when court appearances are cancelled after  
185 5:00 P.M., the shift commander will attempt to contact the officer  
186 with the cancellation if the officer had already called in. If  
187 the officer is contacted twelve (12) hours before the scheduled  
188 court appearance, the officer will not receive pay.

189 Overtime for Green Bay Packer Games.

190 1. A posting shall be placed on the bulletin board  
191 once each year during the months of June or July and all  
192 officers interested in working Packer games are requested  
193 to sign the posting. This posting shall contain the  
194 anticipated manpower needs for the games.

195 2. Officers who sign the above said posting shall be  
196 assigned to work each of the Packer games in the year in  
197 question on the basis of departmental seniority with  
198 captains, lieutenants and sergeants being first assigned as  
199 field directors based upon their departmental seniority.

200 3. In the event that there are not enough patrol  
201 captains, lieutenants or sergeants signing the posting  
202 provide a full complement of field directors, patrol  
203 captains and lieutenants who are scheduled to work the day  
204 of the game on the shifts not on duty during the game shall  
205 be assigned to work as field directors on the basis of  
206 inverse seniority. If there is insufficient patrol  
207 captains and lieutenants so scheduled to work on the day or  
208 shifts to fill the full complement of field directors, such  
209 positions shall be filled with sergeants scheduled to work

210 such shifts on the day of the game on the basis of inverse  
211 seniority. In the event the department deems fit, it may  
212 also assign a senior patrol officer to act as field director  
213 from among those patrol officers who have volunteered to  
214 work the game, and in such event said patrol officers shall  
215 be compensated at sergeant's rate of pay.

216 4. In the event there is an insufficient number of  
217 officers signing the posting to fill the remaining  
218 complement needed for the Packer games, officers shall be  
219 assigned by inverse seniority among those on their work  
220 days and then by inverse seniority on off days.

221 5. In the event that any officer who has signed the  
222 above said posting to work the Packer games later decides  
223 not to work any given game, such officer shall have the  
224 right to remove his/her name from the posting for any game  
225 by giving at least ten days advance notice of such removal  
226 before the game in question.

227 6. In the event an insufficient number of patrol  
228 officers sign the posting for any game so as to man the  
229 police room with two police officers, such manning shall be  
230 provided for by the assignment to the police room of  
231 police cadets.

232 7. Any lieutenant or captain assigned to work any  
233 Packer game shall be paid as if that officer were  
234 represented by the Green Bay Police Bargaining Unit  
235 (Non-Supervisory) in the rank of sergeant, and all of the  
236 provisions of their labor agreement for methods of

237 payment to sergeants working Packer games shall apply to  
238 such officers. The language of their labor agreement  
239 applies to such officers only in respect to the calculation  
240 of the pay to be paid such officers, and in no other  
241 respect shall their labor agreement apply to such officers  
242 nor shall said officers receive any other rights or  
243 responsibilities under said labor agreement, and  
244 specifically the Green Bay Police Bargaining Unit  
245 (Non-Supervisory) assumes absolutely no duties or  
246 responsibilities to represent any non-bargaining unit  
247 officers in any way.

248 ARTICLE IX

249 RETIREMENT

250 The City for the years 1987 and 1988 shall pay 100% of  
251 employee's contribution to the Wisconsin Retirement Fund  
252 (Protective Occupation) in each year of the agreement.

253 ARTICLE X

254 PAY PERIOD

255 All personnel shall be paid bi-weekly.

256 ARTICLE XI

257 SUPERVISORY POLICE PAY SCHEDULE - BI-WEEKLY RATES

258	<u>Rank</u>	<u>1/1/87</u>	<u>1/1/88</u>
259	Lieutenant	\$1,250	\$1,287
260	Captain	\$1,336	\$1,376

261

## ARTICLE XII

262

### NIGHT SHIFT PAY DIFFERENTIAL

263

All police personnel, regardless of rank, shall be

264

paid a night shift differential as follows:

265

4:00 PM to 12:00 Midnight Shift

\$45/month in addition  
to base pay

266

267

12:00 Midnight to 8:00 AM Shift

\$60/month in addition  
to base pay

268

269

Polygraph Examiner shall receive \$30.00 per month in

270

addition to pay.

271

## ARTICLE XIII

272

### CLOTHING ALLOWANCE

273

Each employee of the Police Department shall have an ac-

274

count to be known as "Clothing Allowance". They are allowed to

275

draw Four Hundred (\$400.00) Dollars per annum. In 1988 they

276

will be allowed to draw four hundred twenty (\$420.00) dollars

277

per annum. The initial clothing allowance for uniforms

278

shall be Two Hundred and Ninty-Five (\$295.00) Dollars for

279

a new employee. The Chief of the Police Department shall

280

have discretion as to types of clothing to be purchased

281

by employees of the Police Department.

282

## ARTICLE XIV

283

### DUTY INCURRED DISABILITY PAY

284

An employee injured in the line of duty shall receive

285

full pay when disabled, not to exceed one hundred eighty

286

(180) calendar days.

287

## ARTICLE XV

288

## VACATIONS

289

290

In This Year of EmploymentEmployee Will Receive This  
Number of Working Days Vacation

291

292

1  
(including probationary period)

8

293

2

13

294

6

16

295

7

18

296

9

19

298

11

21

299

13

24

300

15

25

301

17

26

302

18

27

303

19

28

304

20

30

305

306

307

308

The amount of vacation and the method of  
administering vacations shall be as set forth in the  
agreement between the City and the Bargaining Unit  
dated March 21, 1974.

309

## ARTICLE XVI

310

## VACATION PAY USED FOR SICKNESS

311

312

313

314

315

Absence on account of sickness, injury or disability  
in excess of that hereinafter authorized for such purposes  
may, at the request of the employee and within the  
discretion of the department head, be charged against  
vacation leave allowance.



316 ARTICLE XVII

317 SICK LEAVE

318 A) Police officers shall be granted sick leave with  
319 pay at the rate of one (1) working day for each full month  
320 of service. Sick leave shall accumulate, but not to exceed  
321 one hundred thirty five (135) working days. All sick leave  
322 shall be subject to administration by the Police Chief.

323 B) Sick leave may be used for illness in the  
324 immediate family of an employee. What constitutes the  
325 immediate family of an employee for the purpose of using  
326 sick leave for illness shall be according to the rules  
327 established by the Common Council as to what constitutes an  
328 immediate family for each of these two purposes.

329 In order to be granted sick leave with pay, an  
330 employee must:

331 1. Report promptly to the proper department officer  
332 the reason for his/her absence.

333 2. Keep the proper department officer informed of  
334 his condition.

335 3. Permit the City to make such medical examination  
336 or nursing visit as it deems desirable.

337 4. Submit a medical certificate for any absence of  
338 more than three (3) consecutive working days, if requested  
339 by the City.

340 C) Health Insurance Payment Program. At the time of  
341 retirement, the employee's sick leave to the maximum allow-

342       able accumulation, shall be placed in an escrow account for  
343       purposes of payment of employee's health insurance premiums.  
344       The employee may convert earned, unused vacation days to  
345       sick leave days during the employee's last three years of  
346       employment prior to retirement, the number of days not to  
347       exceed the dollar amount needed to pay health insurance  
348       premiums until age 65. All employees reaching normal  
349       retirement or disability prior to attaining such age shall  
350       be eligible to continue in the City's health insurance  
351       group plan until the age of sixty-five (65). Payment for  
352       sick leave upon retirement will be at an amount equal  
353       between the Fire and Police Departments. However, when an  
354       employee reaches the age of 65 and the employee's spouse is  
355       still under the age of 65, the account can still be used by  
356       the spouse to pay health insurance until such time that the  
357       spouse reaches age 65 or the total account is expended,  
358       whichever occurs first. If funds remain in the employee's  
359       escrow account at age 65, these funds may be used to  
360       purchase supplemental medicare insurance from the present  
361       health insurance carrier for the employee and spouse until  
362       the escrow account is depleted. The City shall pay  
363       all of the monthly premium payable, provided that the total  
364       amount expended for such insurance for each retired  
365       employee shall be limited to an amount equal to the  
366       percentage set forth below, of the value of any accumulated  
367       and unused sick pay standing to the credit of that employee  
368       as of that employee's date of retirement:

369 100% for employees retiring under disability retirement.

370 100% for employees retiring in their 55th year of age.

371 90% for employees retiring in their 56th year of age.

372 80% for employees retiring in their 57th year of age.

373 70% for employees retiring in their 58th year of age.

374 60% for employees retiring in their 59th year of age.

375 50% for employees retiring in their 60th year of age.

376 40% for employees retiring in their 61st year of age.

377 30% for employees retiring in their 62nd year of age.

378 25% for employees who retire after reaching age 63.

379 After the amount expended for any employee reaches the

380 limit for such employee, the monthly premiums shall

381 thereafter be paid by the employee.

382 1. Surviving spouses, until remarriage, will be  
383 eligible to apply the escrowed amount for health insurance  
384 premium payment purposes.

385 2. Dependent children, in accordance with regular  
386 City policy, will be eligible to apply the escrowed amount  
387 for health insurance premium payment purposes upon the  
388 death of the surviving spouse. Remarriage of the surviving  
389 spouse will terminate the eligibility of dependent children  
390 for this benefit.

391 3. ~~When the~~ death of a protective service employee occurs  
392 either before or after retirement, the estate shall receive  
393 the full amount of the accumulated sick leave in the employee's  
394 account to apply toward paying health insurance premiums

395           4.    This health insurance premium payment program for  
396    protective employees is mandatory for all covered  
397    employees upon retirement and supersedes all previous sick  
398    leave payment programs upon retirement sponsored by the  
399    City of Green Bay.

400           5.    If death of a covered protective service employee  
401    occurs before retirement, the existing 25% payment of  
402    accumulated sick leave will apply to the estate of the  
403    deceased employee for purposes of payment of health  
404    insurance premiums in accordance with the above policy.

405           6.    An employee who has retired or in case of his/her  
406    death, the spouse has the right to leave the amount credited  
407    to the escrow account for "Health Insurance Purposes" until  
408    the end of the calendar year he/she obtains the age 63. At tha  
409    time, they shall have to begin using th : escrow account for  
410    "Health Insurance Purposes".

411                               ARTICLE XVIII

412                               HEALTH AND DENTAL INSURANCE

413           Employees shall be covered by the City's policies for  
414    surgical, medical, hospital, outpatient diagnostic care,  
415    full payment of maternity benefits, increase in major  
416    medical coverage to \$25,000.00 maximum and other benefits  
417    as such are enjoyed under the City's policies for such  
418    insurance in force and effect during the year 1982.  
419    Individual rates shall be paid by the City.

420           The City shall pay 95% of the family portion of the basic  
421 health and dental insurance, beginning with the first enroll-  
422 ment period after the employee's starting date of employment.  
423 Employees choosing to enroll in the HMP plan shall pay all  
424 additional premium costs in excess of current costs paid by  
425 employer for basic health insurance plan.

426           Effective October 1, 1978, dental insurance will be an  
427 added fringe benefit for all eligible employees.

#### 428                           ARTICLE XIX

#### 429                           LIFE INSURANCE

430           All Police Officers shall receive the present life  
431 insurance program at no cost to the individual officer.

432           Employees shall have the option to purchase an  
433 additional \$20,000 of life insurance for themselves.  
434 Additionally, life insurance for spouse and dependent  
435 children shall be made available as an option in the amounts  
436 of \$5,000 for spouse and \$2,500 for each dependent.  
437 Employees shall pay all premium costs for the additional  
438 optional insurance through payroll deductions.

#### 439                           ARTICLE XX

#### 440                           JURY DUTY

441           An employee may be granted a leave of absence with pay  
442 if called for jury duty. Any compensation derived from  
443 such duty shall be turned over to the City.

ARTICLE XXI

FUNERAL LEAVE

Each employee shall be entitled to the following funeral leave:

(A) When there is a death in the immediate family of an employee, ("immediate family" being defined as that of employee's spouse, parent, child of employee, grandchildren, grandparents, step-parents, brother, sister, mother-in-law, or father-in-law) a maximum of three (3) working days will be granted with pay to such employee. Travel time to and from the funeral may be taken in addition to the three days referred to with the approval of the department head and may, at the employee's option, be counted as sick leave or vacation.

(B) When there is a death in the family of an employee, ("family" being defined as the spouse's grandparents, son-in-law, daughter-in-law, brother-in-law, sister-in-law, aunt, or uncle of the employee or spouse) a maximum of two (2) working days pay will be granted to such employee.

(C) All employees who act as pallbearers for any deceased person whose funeral takes place during regular working hours may also be granted time off, with pay, with the permission of his/her commanding officer.

466

## ARTICLE XXII

467

### LONGEVITY

468

All eligible police officers shall receive the

469

following in addition to their base pay:

470

\$10.00 per month at the start of 8th year      \$10/month total

471

\$10.00 per month at the start of 12th year      \$20/month total

472

\$10.00 per month at the start of 16th year      \$30/month total

473

## ARTICLE XXIII

474

### DEDUCTIONS

475

The City agrees to deduct from the paycheck of each

476

supervisory employee, by written authorization from said

477

employee, a sum to defray Bargaining Unit costs and remit

478

said amount to a designated Bargaining Unit officer at the

479

end of the fiscal year (December).

480

## ARTICLE XXIV

481

### HOLIDAYS

482

Holidays included in this agreement are:

483

New Year's Day      Thanksgiving Day      Labor Day

484

Independence Day      Memorial Day      Easter Sunday

485

Christmas Day      President's Day      Columbus Day

486

One (1) holiday to be designated jointly between the

487

Bargaining Unit and the Chief Administrative Officer of the

488

Police Department.

489

All shift personnel shall receive one day's pay at

490

straight time for each of the above-stated holidays, whether

491

or not the employee works the holiday in question, and all

492 shift personnel who are regularly scheduled to work on a  
493 holiday shall additionally receive eight (8) hours of pay  
494 or compensatory time subject to the maximum accumulation  
495 provision for each such holiday provided that officers who  
496 are regularly scheduled to work who call in sick for non-work  
497 related reasons shall not receive such eight hours time.  
498 Non-shift officers whose regular day off falls on any of the  
499 above holidays will receive another full day off or will receive  
500 eight (8) hours compensatory time subject to the maximum  
501 accumulation provision for each holiday involved. Non-shift  
502 employees who work a holiday shall receive additional time and one  
503 half pay and four (4) hours pay or compensatory time subject to  
504 the maximum accumulation provision for each holiday so worked.  
505 Shift employees who are called in to work a holiday that falls on  
506 their regular scheduled day off will be paid double time.

507 Holidays shall be worked by those persons on the respective  
508 shifts who would normally work on the holiday in question, and  
509 in the event there are more persons who would normally work said  
510 shift than positions to be worked on such holiday, then the  
511 persons to work on such holidays shall be selected on the basis  
512 of seniority among those qualified.

#### 513 ARTICLE XXV

#### 514 PERSONAL LEAVE DAYS

515 Regular full-time employees shall be eligible for three  
516 (3) personal leave days annually. Personal leave days must be  
517 used during the calendar year earned. They may not be



518 accumulated. The employee shall provide at least seven (7)  
519 days' notice for a day off, except that such notice can be  
520 waived by mutual agreement of the employer and the employee.  
521 The number of personal leave days earned shall be prorated for  
522 new full-time employees in their initial calendar year of  
523 employment and for employees in their final calendar year of  
524 employment with the City unless the employee terminates  
525 employment by eligibility and acceptance to the State  
526 Retirement System, disability, or death.

#### 527 ARTICLE XXVI

#### 528 OTHER FRINGE BENEFITS

529 It is provided that Captains and Lieutenants shall  
530 receive the same fringe benefits as those presently held by  
531 Sergeants, Inspectors and Police Officers, and that any increase  
532 in fringe benefits received by said Sergeants, Inspectors  
533 and Police Officers shall inure to the Captains and Lieutenants.

#### 534 ARTICLE XXVII

#### 535 DISCIPLINE

536 For disciplinary purposes, administrative or otherwise,  
537 the substantive rules and regulations for the conduct of members  
538 of the Police Department shall be as set forth in "City of Green  
539 Bay Police Department Rules and Regulations" (1961), and  
540 such may be amended from time to time by the City of Green Bay.  
541 In the event such rules and regulations conflict with the  
542 Ordinances of the City of Green Bay, laws of the State of  
543 Wisconsin or United States, or this agreement, said ordinances,  
544 laws or agreement shall prevail.

545           Suspension, dismissal and reduction in rank of  
546 employees from the Police Department shall be governed by  
547 the procedure set forth in Section 62.13 of the Wisconsin  
548 Statutes.

549                           ARTICLE XXVIII  
550                           LEAVE OF ABSENCE

551           The Chief of the Police Department, in consultation  
552 with the City Personnel Committee, may authorize special  
553 leaves of absence with or without pay for any period or  
554 periods not to exceed three (3) calendar months in any one  
555 (1) calendar year for the purpose of attending a college,  
556 university or recognized law enforcement seminar to train  
557 in subjects related to the work of department personnel or  
558 benefit to both the employees and the City.

559           The Chief of the Police Department may authorize an  
560 employee to be absent without pay for personal reasons for  
561 a period or periods not to exceed ten (10) working days in  
562 any calendar year.

563           The City Personnel Committee, upon recommendation of  
564 the Police Chief, may grant leaves of absence with or  
565 without pay in excess of the limitations above for the  
566 purpose of attending courses of training at a recognized  
567 college or university and for other purposes that are  
568 deemed beneficial to the City.

569

## ARTICLE XXIX

570

### MILITARY LEAVE

571

Personnel of the Police Department, who leave or have left  
the City service by request of the Federal Government, to enter  
active service of the Armed Forces of the United States, and  
return within four (4) years, shall be entitled to their  
departmental seniority and the rate of pay and position they  
would have been entitled to had their service with the Police  
not been interrupted by service in the Armed Forces.

578

## ARTICLE XXX

579

### EDUCATION CREDITS

580

The City shall reimburse a Lieutenant or Captain up to \$55.00  
per credit not to exceed the actual cost per credit upon success-  
ful completion of approved Police courses. Approved Police courses  
are defined as any courses required for a degree (associate,  
bachelor, or masters in Police Science/Criminal Justice) and  
previously approved by the Chief of Police.

586

In addition, the Chief shall retain the right to credit an  
employee who undertakes courses which would not qualify for this  
section if the Chief deems the course to be of sufficient benefit  
to the City. Credit approval must be obtained in advance of  
course attendance.

590

591

## ARTICLE XXXI

592

### WAGE-HOUR LEGISLATION

593

594

595

596

597

598

599

600

601

602

603

604

605

606

607

608

609

610

611

612

613

614

615

616

617

618

In the event Federal or State legislation is enacted concerning pay for overtime which would result in the City paying members of the Bargaining Unit overtime pay for the normal work week or day as set in this agreement, the work week and day as set shall be re-negotiable.

## ARTICLE XXXII

### AMENDMENT PROVISION

This agreement is subject to amendment, alteration, or addition only by a subsequent written agreement between and executed by the City and the Bargaining Unit where mutually agreeable. The waiver of any breach, term or condition of this agreement by either party shall not constitute a precedent in the future enforcement of all its terms and conditions.

## ARTICLE XXXIII

### SAVINGS CLAUSE

If any article or section of this agreement or any addenda thereto should be held invalid by operation of law or by any tribunal of competent jurisdiction, or if compliance with or enforcement of any article or section should be restrained by such tribunal, the remainder of this agreement and addenda shall not be affected hereby and the parties shall enter into immediate collective bargaining negotiations for the purpose of arriving at a mutually satisfactory replacement for such article or section.

619

#### ARTICLE XXXIV

620

#### NO OTHER AGREEMENT

621

622

623

624

The employer agrees not to enter into any other agreement, written or verbal, with the members of the Bargaining Unit individually or collectively, which in any way conflicts with the provisions of this agreement.

625

626

627

628

All amendments, deletions, or additions to the labor agreement which are mutually agreed to by both parties during this agreement shall be incorporated into the body of the next successor agreement.

629

#### ARTICLE XXXV

630

#### CHANGES IN THE TERMS OF THIS AGREEMENT

631

632

633

634

635

If either party desires to negotiate any changes in this agreement to become effective after the end of the term of this agreement or any extension thereof, they shall notify the other party in writing of their desire to enter into such negotiating prior to July 1.

636

#### ARTICLE XXXVI

637

#### TERM OF AGREEMENT

638

639

640

This contract shall be binding on both parties and effective from the 1st day of January, 1987, to and including the 31st day of December, 1988.

641

ARTICLE XXXVII

642

PROMOTIONS AND DISCIPLINE

643

The parties are currently negotiating the standards, qualifications and procedures for promotions and discipline within the Bargaining Unit and it is specifically agreed that such matter remains open and subject to continued negotiations between the parties.

644

645

646

647

648

IN WITNESS WHEREOF, the parties hereto have executed this agreement on the 3rd day of December, 1987.

649

650

651

652

Charles P. Kowalek  
Supervisory Representative

J. P. Kalloun  
Mayor, City of Green Bay

653

654

W. P. Long  
City Clerk

jv 0272A-06A  
11/5/87

**REPORT OF THE PERSONNEL COMMITTEE****February 16, 1976**

TO THE COMMON COUNCIL OF THE  
CITY OF GREEN BAY, WISCONSIN

LADIES & GENTLEMEN:

We, the undersigned members of the Personnel Committee wish to report and recommend as follows:

1. To hold up the request of the Police Chief to discuss Lieutenant promotions within the Police Department.
2. To hold up the request of the Police Chief for permission to send a member of his department to FBI Academy in Washington, D.C.
3. To hold up the request of the Police Chief to add two technicians to the photo and identification section, and that they be made "Technical Sergeants," pay commensurable with present sergeants in other divisions, and the present lieutenant of photo and identification would be re-named "Lieutenant-Technical Services" with the pay remaining the same.
4. A. To receive and place on file the communication from Mayor regarding promotion and discipline guidelines for Police and Fire Departments.  
~~B. To recommend adoption of the report on procedures regarding promotion and discipline guidelines for police and fire departments as submitted to Personnel Committee, and attached to this report.~~
5. To allow the Mayor, Personnel Chairman and one Planner to attend the Lens course. Expenses to be taken out of the alderman's travel account at a total estimated cost of \$225.
6. That the request of the City Clerk for a salary adjustment for his Deputy Clerk due to added responsibilities from \$962 to \$1012 per month, be held until negotiating time, 1976, for review.
7. To accept the resignation of Mrs. Loretta Schaefer, effective February 18, 1976, and grant permission to fill the vacancy as per labor agreement.
8. To approve the request of the Superintendent of Park for permission to attend an institute at Michigan State University in East Lansing from February 22, 1976 through February 29, 1976 at a total estimated cost of \$495.
9. To approve the list of seasonal personnel in the Park and Recreation Department.
10. To approve the request of the Mayor for the hiring of an Allouez resident as bus driver for the Transit Authority under the "other arrangements clause".
11. A. To approve the Mayor's request to engage in the AIESEC Program up to and not more than six months and not to exceed \$2,500.00.  
 B. To instruct the Labor Negotiator to contact the pertinent bargaining union with a memorandum of agreement.

12. To approve the request of the Chief of Police for permission to fill the vacancy created by the resignation of Patrolman Richard O'Connell.
13. To approve the request of the City Attorney for himself and the Assistant City Attorney to attend an advanced training seminar on real estate in Green Bay on February 26, 1976 at the Holiday Inn at a total estimated cost of \$40 each.
14. To receive and place on file the street department overtime distribution report dated December 31, 1975.
15. To approve the hiring of Kim Baum, Clerk-Typist I effective February 2, 1976 at a probationary rate of \$490 per month hired under an authorized CETA position in the City Clerk's office.
16. To approve the request from Building Maintenance Superintendent for permission to hire one part time substitute cleaning person due to a temporary reduction of work force.
17. To approve as follows:
  - A. As of January 1, the salary for Mary Larson and Carol Hart be increased to \$780 per month.
  - B. As of January 1, the salary for Shona Klarkowski and Pam Lenard be increased to \$736 per month and effective July 1, 1976 \$780 per month.
  - C. As of January 1 the salary for Anne Delwiche and Sue Koerner be the same as those appropriate grades in the municipal bargaining unit which are equivalent to what they now hold.
18. To approve the communication from General Manager of the Water Department regarding 1976 annual budget, and the request of General Manager and Commission President to attend the American Water Works Annual Conference in New Orleans from June 20, 1976 through June 25, 1976 at an estimated cost of \$635 each.
19. To approve the notice from City Treasurer that Mrs. Jacqueline Gillis, Cashier Clerk II has satisfactorily completed her probationary period effective February 1, 1976 for a job rate of \$808 per month.
20. To correct the minutes from January 22, 1976 as follows:

Negotiator recommends settlement of 1976 labor agreement between City of Green Bay and City of Green Bay Assessors represented by Teamster Local 75 by amending existing agreement as: Increase wages by \$57.50 per month.

---

---

---

PERSONEL COMMITTEE



**Special Green Bay Council Personnel Sub-Committee  
Report On Procedures For Promotion And Discipline  
Within The Fire And Police Departments. This  
Report Is Recommended For Adoption As Submitted**

Background of Establishment of Special Sub-Committee

Since the inception of bargaining rights for municipal employees with the passage of the Municipal Employment Law of 1959, modified in 1965, 1967, and 1971, some curiosity has existed as to the rights of employees within the emergency services under the law. The curiosity stems in a large part from the existence of Section 62.13 of the Statutes which gave specific authorization and direction of the Police and Fire Departments, including the establishment of a Civil Service Commission for those departments. This Commission, called the Police and Fire Commission was also authorized to pass on promotions in the sense that it accepted or rejected the Chief of the departments recommendations, and in regard to discipline in the sense that it fulfilled the traditional Civil Service Commission role of acting as a hearing board. The Commission also had other authority, including actions at the time of new hiring, which are not affected by the Municipal Employment Law, 111.70.

In the City of Green Bay, ironically, the issue did not appear to be of paramount importance. This undoubtedly stems from the fact that Green Bay has been a pioneer in municipal employer-employee relations, recognizing and bargaining with units for a long period pre-dating the inception of the bargaining law. In the Fire Department the city had long adopted the thesis that bargaining extended to issues of promotions and disciplines as evidence by agreements that pre-date the 1965 sections of the act. (It is to be noted at this time that the key dates for the labor law are 1965, when the meet

and confer aspects of bargaining as well as prohibited practices were meaningfully defined, as were other aspects, and 1971 when negotiations in good faith and compulsory arbitration for Police and Fire Departments were added.)

The act as it stands puts a great responsibility upon the parties to the bargaining, and it was apparent that the parties to the bargaining were the recognized (by either stipulation or certification) bargaining unit and the governing, fiscal body of the community.

However, as clear as it appeared, no actual directive had ever been issued, and although the decisions of the Wisconsin Employment Relations Commission indicated that the employer would have the same responsibility and therefore duty, with Police and Fire Departments as with other departments, it was believed that prudence demanded a direct answer. Therefore, the City of Green Bay found itself in a test case upon the

issue. The case came about through the most rapid vehicle possible, a prohibited practice filed with the city because it refused to bargain discipline and promotions within the Police Department. Actually this was not the precise position of the person bargaining nor the city who took the position that although it appeared that such bargaining was necessary it was still not absolutely ordered so by the agencies and courts. One department head agreed that it appeared that bargaining was necessary and indeed was the implied fact within that department. The other department head denied that 111.70 superseded 62.13, even though it had been passed at a much later date.

In such circumstances a directive is much better than a declarative ruling which can be treated as a casual opinion, and therefore subject to all the challenges and delays that opinions of a non-mandatory nature may be exposed to.

Such a position would do the city and the taxpayer no good, as where pay is involved, back pay may also be involved, to say nothing of the delicate balance of productivity.

Therefore the city entered the Prohibited Practice action making it clear that this was in the spirit of a test case rather than a bitterly contested adversary proceeding. This does not imply, nor should it be inferred, that the efforts of the city were less than dedicated, but in fact the city merely repeated arguments that had been piece by piece rejected among the various courts of the land since the inception of legalized bargaining in the National Act of 1935. As expected, the arguments in total were no better than the parts.

**The examiner, Melvin Schurke, ruled that promotions and discipline within municipal Police and Fire Departments are indeed a matter for bargaining, and indeed, are bargainable in effect in the same manner that bargaining is effective for any bargaining unit not an emergency service unit.** (Police and Fire units are often interchanged with the term emergency units in municipal discussions.)

Specifically in the decision issued January 5, 1975, including combined cases XL, No. 17421 M.P.-301, No. 12352-B, and Case XLII No. 17829 MP-313 Decision No. 12402 B., the examiner ruled at Conclusion of Law 4, "that the Bargaining Unit of the Green Bay Police Department has the right to bargain collectively, and the City of Green Bay has a mandatory duty to bargain collectively within the meaning of Sections 111.70 (1) (d) and 111.70 (2) of the Municipal Employment Relations Act with respect to the forms of discipline, other than exemption from arrest and prosecution imposed upon the employees in the aforesaid appropriate collective bargaining unit."

Further, the decision says in Conclusion of Law 9 "that the Bargaining Unit of the Green Bay Police Department has the right to bargain collectively and the City of Green Bay has a mandatory duty to bargain collectively within the meaning of Sections 111.70 (1) (d) and 111.70 (2) of the Municipal Employment Relations Act with respect to standards, qualifications, and procedures for promotions within the aforesaid appropriate collective bargaining unit."

Other portions of the decision absolved the city from any costs or payment of monies for any acts performed by the employer during the period of the complaint. Such contentions had been made by the bargaining unit in the filing of the complaint stemming, perhaps, from an excess of zeal, and asking beyond that which both parties sought from the Commission.

The Order of the Examiner, in essence, order that the City of Green Bay and its agent, Elmer A. Madson (the Chief of Police), cease and desist from refusing to bargain on standards, qualifications and procedures for promotions or taking any actions to make recommendations for promotions within the bargaining unit until such times as the City of Green Bay shall have fulfilled its duty to bargain collectively with the bargaining unit.

No order was forthcoming on the Conclusion of Law concerning discipline because the examiner dismissed any remedy as the complainants brief at the time of the post-hearing period had indicated that the city had complied with the bargaining unit's desire to negotiate such action.

This had occurred because the Arbitrator Negotiator had made an agreement of compliance while awaiting the Conclusion of Law for several reasons, among which were the fact that it seemed apparent to the parties that the issue

was bargainable; that disciplines improperly applied would result in the expenditure of taxpayer monies by repayment, and services would be irrevocably lost; that this was, at least to these parties, a test case, not an adversary proceeding, and that, therefore, prudence demanded a reduction of any potential financial risk. The opposite affect occurred on the promotion matter which did not develop account payable problems to the city, and could and were filled by a temporary agreed upon procedure, and did not cause any disruption of departmental operations or in this case, departmental morale and therefore productivity.

The issue of the existence of 62.13 of the statutes and the pillar of reaction to the "subsequent passage" argument given to 111.70 was deftly covered by the examiner in quoting a previous decision of the Commission; that involving the City of Sun Prairie, wherein the Commission concluded that "matters within the purview of a Police and Fire Commission established pursuant to Section 62.13 Wisconsin Statutes, are not necessarily excluded from the purview of collective bargaining under MERA. (MERA is the example of the dearly-loved bureaucratic devotion to anacyroms, meaning of course, Municipal Employment Relations Act.)

The examiner notes incidentally that "the city did not take a position in negotiations with the Complainant that the subject of promotions was not bargainable, and was merely one of doubt." This was indeed the official position of the city which found that it must find written directives beyond that of the W.E.R.C. decision of Sun Prairie to satisfy the department head, and yet preserve some morale and productivity, and above all trust, with the employee group, and at the same time

recognize that the parties whose larger duty it is to represent the city in all employee relations, with all that good employee relations implies, be not put into a position where cupidity and intransigence supersede judgment. Thus, the city went into the case with an effort to receive a clear, yet rapid decision, and also made the agreement on disciplines as well as working out the temporary procedure for promotions. It seemed the only sensible course if the interests of the citizen over that of the elements of the municipal operation were to remain paramount.

Thus delayed, as all these activities have been, it is gratifying to note that the work force as a bargaining unit has worked amicably with the city, that performance has not suffered great detriment, and that indeed in all the deliberations since the issuance of the decision in developing this report, and they have been many, the sub-committee had and has only the highest regard for the sincerity of the bargaining unit.

The sub-committee established by the order of the W.E.R.C. went immediately to work upon the receipt of the order. The Committee ratified the temporary promotion and discipline procedures of the Attorney and Negotiator, and commenced hearings with the affected departments, its Unions, experts in psychological testing, and many other pertinent fields.

Surprisingly enough, the sub-committee did not see the existence of Section 62.13 as an obstacle to the Order, and although the examiner had been rather cavalier in his simple statement that "there is clearly room for harmony between statutes," the sub-committee indeed finds that harmony.

Most important, the Committee also saw that the decision said that as the city must bargain, the city is responsible and has a duty, and this duty cannot be extensively delegated. In short, it is the city, through its elected representatives that must bear the onus for all its actions, whether or not it

receives the credit that should be the corollary in the duality so often assumed in the disregard of reality that marks democratic progress.

Early in the deliberations which consumed a year the sub-committee made recommendations for procedures on disciplines. That recommendation is to be attached to and made a part of this recommendation, so that this report will include both a recommendation on promotions and disciplines.

### Promotion

~~It is the judgment of the committee in an unanimous report~~  
~~that this shall be the procedure for promotion.~~ A memorandum accompanying the listing follows the outline herein.

~~The major criteria for promotion shall be made on the~~  
~~performance of the officer while a member of the~~  
~~respective department, based on how that performance~~  
~~is reported and recorded in that officer's file and on~~  
~~the length of time of satisfactory, or more or less than~~  
~~satisfactory performance within the department.~~

A. Officers shall be graded on a scale of Superior, Satisfactory, or Poor. If the rating is either of the extremes, supporting material must be filed with the rating. If an officer receives three consecutive ratings of poor, discussion and hearing before the appropriate committee will be mandatory, and unless a positive decision will be given by that committee termination of the employee will necessarily follow. (The committee mentioned will be described later in this outline.)

B. Performance rating of the officer shall be made by his superiors, who shall be responsible for such ratings, and improper ratings will reflect on the

officer making improper rating as a part of his own rating, as all officers within the department will be rated. The next immediate ranking officer within the Table of Organization shall not only review the officer immediately below him but in cases where the officer of lesser rank has ranked officers below him shall in turn review the lesser officers review of that officers subordinates and if necessary shall request further substantiation of this and all reviews of all rank below that officer so that each officer shall be able to personally substantiate all reviews within his command province. Provision for performance ratings shall be made in the form to be used in both departments for this purpose.

- C. A complete file will be made and kept for each officer. A copy of the approved file form is attached to this report.

Written and oral examinations can be retained by the separate department as an optional matter by either department, however, any rating from such examination shall only be graded passing or not passing.

**A. Minimum service for promotions shall be maintained.**  
**The first 1 and 1/2 years of service will be the in-step grade system now in effect. The first such year of the in-step grade shall be probationary, a period when employees are expected to be trained and observed closely and dismissed if they do not appear to have the qualifications and abilities desired.** At the end of 5 years service, employees shall be eligible for promotion to the second grade.



within the department. (Sergeant in the Police, Lieutenant in the Fire service) After 3 years at second grade, officers may be promoted to the third grade, (Lieutenant in Police, Captain in Fire) and a further 3 years service shall be required for promotion to each subsequent higher grade. This report skips the grade of Corporal in the Police service as it is no longer receiving promotions to, and the Engineer grade in the Fire service for purposes of comparability, and in no way should it be inferred that the traditional program of promotion in the Fire service will be changed, nor should it be inferred that the mere service of time enables the employee to be promoted to the position listed.

The time factor is directory, it is not supreme; the issuance of performance and seniority will maintain that mantle.

- B. Technical or specialized positions will be established on mutually agreed upon criteria with such agreement to come between the city and the bargaining unit, but in no case can any promotion to such a position be made prior to completion of 5 years of service.

VIII. Since opportunities to attend schools, specialized courses, etc., are enhancing to the ability to perform a job, it is therefore logical that it be agreed that all employees be given an equal opportunity to attend such schools. Where courses are available at the institutions of learning in the area, officers are encouraged to attend such courses, and where such courses are offered to members of the department because they are offered by organizations out-

~~of the city, such as the Northwestern University Safety School, the F. B. I. Academy, etc., such schools and openings shall be listed and all employees given an opportunity to attend with the most able and senior employees given the opportunity. In cases where the school does not give equal opportunity for employees to attend, that school should not be attended, for obvious reasons.~~ Issues of doubt will go to the special committee of the City Council for adjudication. In the cases of technical or specialized schools, as differentiated from general police schools or an encompassing nature such as traffic, and crime detection, which enable to be inclusive of a large segment of the department and therefore not technical or specialized for purposes of this section, the consideration implicit in page 12, II B. shall be applied.

#### Procedures

Within the criteria above, and mindful of current laws, city policy and this recommendation the procedure for promotion would be as follows:

When new openings are expected in the department, the Chief shall contact the Council by communication as is now expected. The request will then be sent to the Personnel Committee as it is for all departments. The committee shall act upon and forward its action to the Council for action. This will insure that the new position, promotion, etc., meets budget and policy criteria, and shall make no judgment on the individual involved.

The special committee of the Council to review promotions, adjudicate performance criteria questions, approve individual

school assignments etc. shall also be the Personnel Committee or established sub-committee thereof. However, its actions at this stage shall be sent to the Council merely for information and not action. This differentiation is vital and should be clearly understood so as not to be susceptible to clerical error.

The issue will then, if it involves a promotion, be sent to the Police and Fire Commission for action.

That action of the Police and Fire Commission shall then return to the Council for action.

If agreement does not occur at all steps, the action will not be valid.

In all cases and in all steps the employee shall have the right of appeal of any action.

Although it would be clerically difficult to remove all derogatory information over three years old from each record, it should not follow that an employee by subjected to denigration for actions over 3 years old and therefore, although they may be in

the record they should be moot as a promotionable consideration, and should, as a matter of fact, be removed as soon as possible after three years have elapsed. Anticipating certain arguments it is pointed out at this time that if the information is damaging it would have been a reason for action and hearing, and if continued would meld into the three year "poor rating" previously mentioned.

It is not the function of the committee to maintain the departmental records.

At each and every step aforesaid mentioned, and at all times convenient and in the spirit of co-operation desired by the Council, the records of the employee shall be available to the employee and he shall review them, be allowed to enter any comments, and also be requested to initial the record after his review.

Memorandum Accompanying Promotional Recommendations Beginning

It was determined by the sub-committee that ability as evidenced by performance, was coupled with experience, the major criteria for promotion. Seniority answers a portion of the experience question, but only a part; the difference is admittedly subtle but it was agreed that seniority in all cases may not be the best criteria. However, ability, of which experience and therefore seniority is a large part, was certainly a valid premise from which to provide the performance the taxpayer is entitled to expect. The keeping of uniform records seemed to be the best point to begin the study of ability as evidenced by performance through the years on the job. If seniority, that is to say years on the job with good performance, is not to be utilized, then someone in authority should be required to say that lack of qualifications exist. This obviously would have to be on the record, ergo, the permanent record.

Actually, in almost all cases it will be found that seniority is a satisfactory measure within a bargaining group, and in the Fire service it appears almost as a constant, but it must be noted that each person promoted must be adjudged qualified and able to do the work in the opinion of the Chief. This report is not expected to disrupt the long standing procedure in that department.

Grading by an arithmetical system, no matter how well conceived, was discarded as in all cases it was found that such a system created an aura of preciseness to an imprecise technique. Without entering any further debate as to existing practice the sub-committee feels that any procedure that puts numerical grades on performance of individuals is patently unfair,

and could be inferred to have been conceived to be so. The city, as represented by the sub-committee, has no desire to be subject to further charge of this nature.

Written examinations graded numerically are subject to error, not the least of which is the assignment of universals to particulars. Not all men are alike, including those who write the examinations and those who develop the examination. This truism of a free world alone should suffice to cast aside the attempt to put people into mathematically conceived pigeon holes. However, all men should have equal opportunity, and it is to this end that the sub-committee dedicated all its efforts.

It will also be noted that although the case was brought by the Police Service group representing patrolmen and sergeants, the sub-committee makes its recommendations for all personnel in the department. This is done because it is believed that an employer's fairness to an employee does not stop at the edge of the bargaining unit, but instead these limits are those of the total employee groups, no matter what the subtleties of the law may be, as it is the opinion of the sub-committee that overall employer-employee relations are most productive when all persons are subjected to as fair a treatment as may be objectively developed and utilized.

#### Accompanying Rationale

This discussion has reference also to Step 3 mentioned in this explanatory report. The review procedure is absolutely necessary and is fundamental to the whole issue. This is why, in fact, we are involved. It is really only extending to the Police and Fire Departments something that all other departments in the city must do as the unit is organized. First of all, promotions do not happen all that often, but now that we know

the criteria is bargainable and that the Council is responsible for that bargaining, it would seem to be the fool-hardy to try to change what the law demands we do. We have clearly backedpeddled on the issue for too long, ergo, the command that we conform from the State. Actually, all promotions in all departments supposedly came to Council for the past eight years. Additionally, in all other departments there is a grievance procedure, and in all cases the procedure includes a step for review of grievance appeal by the Council. (In practice this step is waived in two forms by the Council; one it goes to the Personnel Committee, two, it is then waived, then it goes to compulsory arbitration.) It was felt that compulsory arbitration was unnecessary with the groups concerned. If we do not adopt this section, we may very well end up with compulsory arbitration of contract clauses, because these groups are entitled to compulsory arbitration of bargaining. Each and every promotion in all other departments is subject to appeal, and to the Council, but what happens is that the departments follow the agreements and therefore the promotions are made and the Union does not appeal. It merely means that the Department Head is not, in the opinion of the Union not violating that agreement, it does not mean that there is no appeal possible.

It has nothing to do with administration of any department, any more than any Civil Service Board, promotions board in the military, or board of directors in a company is administering the operation. It is, however, a check on the proper administration of a function as the policy group has given that charge.

Add to the report in all pertinent areas, material received in confidence by former employers shall remain in confidence, if so requested and attested to by the former employer. The same situation will prevail to questioning from neighbors, associates, etc., however, if such information is derogatory and tends to jeopardize the employee's career, the employee shall not have waived the right to challenge his/her accuser, nor should this right be sublimated in any way by any agent of the city and any such attempt at sublimation shall be cause for expulsion of any such agent on the grounds of dishonesty.

Michael R. Monfils  
Mayor

Donald A. Vander Kelen  
Labor Negotiator

#### Disciplinary Procedures

1. That the city position is bargaining on disciplinary matters consisting of a four-step grievance procedure one of which steps shall include the Police and Fire Commission, but which the final step shall be the City Council acting on the recommendation of its designated committee.

1. Department head, acting <sup>ON</sup> ~~as~~ supervisory report of individual. *3 days*

2. Special Council committee *10-12-72*

3. Police and Fire Commission. *next regularly*

4. City Council acting on recommendation of designated committee.

Dated February 5, 1976.

Marion Ripp  
Marion Ripp

Richard Zolper  
Richard Zolper

Harold Pritchard  
Harold Pritchard

Donald A. Vander Kelen  
Donald A. Vander Kelen

Mark A. Wapinski  
Mark A. Wapinski

**RESOLUTION REGARDING PROMOTION OF MANAGERIAL /  
POLICE AND FIRE PERSONNEL**

Green Bay, Wisconsin  
**April 15, 1980**

BY THE COMMON COUNCIL OF THE CITY OF GREEN BAY:

WHEREAS, the Personnel Committee and Common Council for the City of Green Bay adopted criteria in 1976 for the promotion and discipline of police and fire personnel; and

WHEREAS, those criteria are constantly being reviewed and updated in an effort to increase efficiency and properly administrate said police and fire departments; and

WHEREAS, the Personnel Committee has recently reviewed those criteria dealing with the promotion of managerial personnel within said police and fire departments; NOW THEREFORE

BE IT RESOLVED that the Chief of Police for the City of Green Bay shall promote demonstratively qualified personnel within said department to the positions of Deputy Chief or Captain, provided that said personnel have completed a minimum of fifteen (15) years of service within the department; and

BE IT FURTHER RESOLVED that the Chief of the Fire Department for the City of Green Bay shall promote demonstratively qualified personnel within said department to the position of Deputy Chief, provided that said personnel have completed a minimum of fifteen (15) years of service within the department, and

**BE IT FURTHER RESOLVED that promotion to the positions of Deputy Chief and Captain within the Police Department and Deputy Chief within the Fire Department shall be subject to those review procedures as set forth in the 1976 report of the Personnel Sub-Committee on Promotion and Discipline as previously adopted by the Common Council for the City of Green Bay.**

Adopted \_\_\_\_\_

Approved \_\_\_\_\_

\_\_\_\_\_  
Mayor





# City of Green Bay

# COPY

PERSONNEL OFFICE

 WISCONSIN  
5 4 3 0 1

 ROOM 500  
(414) 436 3781

 PAUL F. JADIN  
PERSONNEL MANAGER

December 7, 1988

 Lieutenant Charles Konowalski  
Police Dept.  
City of Green Bay

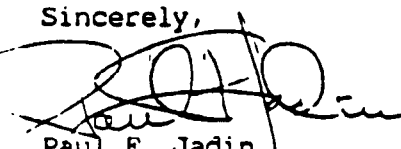
Dear Lt. Konowalski:

I am writing to reiterate the offer that the City made today in an effort to resolve the promotional grievances filed by your labor unit. Hopefully, this written position will allow you to put the issue to your members without encountering some confusion over what was said.

It is the City's position that, in spite of the fact that we have no obligation to negotiate, we will commit to bargaining collectively over promotions to Captain and Deputy Chief in order to achieve a fair and well-defined system. In exchange for this commitment we would expect that the grievances filed by Lieutenants Hawley, Williquette, Baenen and yourself as well as the one filed by Captain Hurley would be withdrawn. It would further be understood that the 1976 Subcommittee Report would be nullified.

Please let me know if you have any further questions about this position or if you plan on proceeding to the Personnel Committee.

Sincerely,

  
Paul F. Jadin  
Personnel Manager

PFJ:aw

 cc: Paul Quigley  
Tim Kelley  
Howard Erickson