

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

RICHARD P. SELERSKI, Complainant,

vs.

**WISCONSIN PROFESSIONAL POLICE ASSOCIATION/
LAW ENFORCEMENT EMPLOYEE RELATIONS DIVISION**, Respondent.

Case 32
No. 59877
MP-2883

Decision No. 28075-A

Appearances:

Mr. Michael Bohren, Attorney at Law, 10150 West National Avenue, Suite 120, P.O. Box 27771, Milwaukee, Wisconsin 53227-0771, appearing on behalf of the Complainant.

Cullen, Weston, Pines & Bach, Attorneys at Law, by **Mr. Gordon McQuillen**, 20 North Carroll Street, Madison, Wisconsin 53703, appearing on behalf of the Respondent.

**FINDINGS OF FACT,
CONCLUSION OF LAW AND ORDER**

Richard P. Selerski filed a complaint with the Wisconsin Employment Relations Commission on April 14, 1994, *pro se*, which alleged that the West Milwaukee Professional Police Association had committed prohibited practices by failing to represent him in a disciplinary matter with his employer, the Village of West Milwaukee. Thereafter, hearing on the complaint was held in abeyance pending efforts to settle the dispute. On June 20, 1994, the Commission appointed Raleigh Jones, a member of its staff, to act as Examiner in this matter and to make and issue Findings of Fact, Conclusions of Law and Order, as provided in Sec. 111.70(5), Stats. On September 27, 1994, the Wisconsin Professional Police Association, Law Enforcement Employee Relations Division (hereinafter WPPA/LEER) filed an answer to the complaint, which included a motion to dismiss. In the answer, WPPA/LEER asserted that it was the collective bargaining representative in question, not the West Milwaukee Professional Police Association. On October 4, 1994, the Complainant changed the identity of the

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Respondent from West Milwaukee Professional Police Association to WPPA/LEER. Hearing on the complaint was thereafter scheduled and postponed two times. On December 19, 1994, Complainant filed a motion to disqualify the law firm of Cullen, Weston, Pines and Bach from representing WPPA/LEER in this case. A hearing on the complaint was scheduled for December 19, 1994, but no hearing was held that day because the parties instead engaged in settlement discussions. Those discussions were ultimately unsuccessful. A hearing was held in Milwaukee, Wisconsin on July 9, 1996. At the start of the hearing, the Examiner denied the Complainant's motion to disqualify counsel and deferred ruling on the Respondent's motion to dismiss to his written decision in the case. The parties then presented their evidence. A second day of hearing was held on December 17, 1996. The Complainant filed their initial brief September 19, 1997. The Respondent filed their brief on February 16, 1998. The Complainant filed their reply brief on March 31, 1998. The Examiner, having considered the evidence and arguments of the parties, and being fully advised in the premises, makes and files the following Findings of Fact, Conclusion of Law and Order.

FINDINGS OF FACT

1. Respondent Wisconsin Professional Police Association/Law Enforcement Employee Relations Division (WPPA/LEER), hereinafter referred to as the Association, is a labor organization with its offices located at 7 North Pinckney Street, Suite 220, Madison, Wisconsin 53703. The Association is the certified collective bargaining representative of all regular full-time law enforcement employees with the power of arrest employed in the Police Department of the Village of West Milwaukee in the following classifications: sergeant, corporal, detective and patrol officer.

2. The local affiliate of WPPA/LEER in the Village of West Milwaukee is the West Milwaukee Professional Police Association. In 1993, the president of the West Milwaukee Professional Police Association was Ned Kellerman.

3. The Village of West Milwaukee, hereinafter referred to as the Village or Employer, is a municipal employer with its offices located at 4755 West Beloit Road, West Milwaukee, Wisconsin 53214. Among its many governmental functions, the Village operates a police department.

4. WPPA/LEER and the Village of West Milwaukee were parties to a 1993-1994 collective bargaining agreement. That agreement included the following provisions which are relevant to this matter:

ARTICLE IX - LEAVES

...

9.04 - Full-time employees who are injured while on duty and are receiving Worker's Compensation payments for temporary-total or temporary-partial disability, may elect to take necessary injury leave not exceeding the first 180 calendar days from the first date off work from the initial injury or illness without dissipation of accumulated sick and/or injury leave. During such leave, the Village will pay the employee the difference between his regular net pay and his Worker's Compensation payments. After the expiration of the 180 day period, the employee may request that the Village continue to pay him the difference between his regular net pay and his Worker's Compensation payments, but such payments will be taken from the employee's unexpended sick and/or injury leave on a pro-rated basis.

...

ARTICLE X - GRIEVANCE PROCEDURE

10.02 - Only matters involving the interpretation, application or enforcement of the terms of this Agreement shall constitute a grievance under the provisions set forth in this Article. Disciplinary matters shall be handled exclusively in the manner set forth in the provisions of Section 62.13(5), Wisconsin Statutes. . .

5. The last line of Article 10.02 referenced above mandates that challenges to disciplinary action in the West Milwaukee Police Department are not handled as part of the collective bargaining agreement; instead, such challenges are handled exclusively pursuant to Sec. 62.13, Stats. Employees who challenge disciplinary action under Sec. 62.13, Stats., must first appeal same to the Employer's Police and Fire Commission (PFC).

6. Complainant Richard P. Selerski, hereinafter referred to as Selerski, used to work for the West Milwaukee Police Department. He began his employment with the Department in 1968 as a patrol officer. In 1984, he was promoted to Sergeant where he was the first shift sergeant. His last day on the job was June 2, 1993. He has not worked for the Village since then.

7. By his own admission, Selerski has long suffered from emotional problems. He also has a history of having anxiety and panic attacks.

8. The record indicates that for many years, Selerski was harassed relentlessly by his co-workers. Some examples of the harassment he was subjected to are as follows: items on his desk were tampered with, his phone and calendar were tampered with, and he was the subject of numerous obscene cartoons which mocked him. These cartoons were placed on and in his desk, taped to his locker and taped to the wall. This harassment greatly upset him. On a half-dozen occasions, Selerski wrote memos to his superiors in the department wherein he documented the harassment he was receiving from his co-workers and complained about same. Two of these memos were written in 1986, one was written in 1991, and three were written in 1992.

9. One of Selerski's co-workers was Ned Kellerman. In 1993, Kellerman was a detective on the second shift. Selerski and Kellerman did not have a good personal relationship; in fact, there were bad feelings and animosity between them. The record establishes that Kellerman was responsible for much of the harassment which Selerski received at work. Kellerman's harassment of Selerski was boorish and offensive.

10. Selerski was injured in the line of duty several times between 1988 and 1992. These injuries were serious enough for him to receive worker's compensation. In June, 1992, Selerski was poked in the eye by a branch from a bush. He was on leave for this particular injury until August, 1992 when he returned to work. While he was on injury leave, the City paid him his full salary pursuant to Article 9.04 of the collective bargaining agreement. During that same time period, the Village's insurance carrier also sent him a number of worker's compensation checks. Selerski was supposed to return all the worker's compensation checks to the Village.

11. On June 1, 1993, Selerski was on light duty due to a work related injury unrelated to the injury referenced in Finding of Fact 10. At the end of the shift, Lt. James Kinzel gave Selerski the following letter informing him that he was the subject of an internal (police department) investigation concerning the conversion of worker's compensation checks to his own use. This letter ordered Selerski to appear the next day (June 2, 1993) to answer questions regarding same. The letter provides as follows:

June 1, 1993

Officer Richard P. Selerski
c/o Village of West Milwaukee
4755 West Beloit Road
West Milwaukee, Wisconsin 53214

RE: "Order In" of Officer Richard P. Selerski

Dear Officer Selerski:

This communication is intended to inform you that you are currently the subject of an internal investigation of the Village of West Milwaukee Police Department relating to an alleged conversion of Workers Compensation checks to your own personal use.

You are hereby Ordered In to the Village of West Milwaukee Police Station on the 2nd day of June, 1993 at 10:30 a.m., and you are further ordered to report to Lieutenant James A. Kinzel. You will be required at that time to answer questions specifically relating to your alleged conversion of Workers Compensation checks to your own personal use to which you are not entitled.

If you fail to respond to this Order In, you will be subjecting yourself to additional rule violations charges. You are further informed that if you refuse to respond during the interrogation, or respond untruthfully, you may further subject yourself to suspension or discharge from the Village of West Milwaukee Police Department.

I have also determined that there is a possibility that this matter under investigation could result in a criminal proceeding. You will therefore, at the time of the interrogation, be given the following warning:

"Officer Richard P. Selerski, this is an internal investigation, the fruits of which will not be used in any subsequent criminal investigation; however, you are ordered pursuant to departmental rules and regulations, to respond truthfully and accurately to all questions that will follow. Do you understand this warning?"

You are allowed at the Order In to be represented by a representative of your choice who may attend the interrogation but can only advise you and shall not participate actively, nor propound any questions to the interrogator, not disrupt the interrogation proceeding in any way.

Sincerely,

Lieutenant James A. Kinzel /s/

Lieutenant James A. Kinzel
Internal Affairs Investigator

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12. That evening, Selerski called Robert Pechanach, a business agent for the Wisconsin Professional Police Association. Pechanach is the business agent who administers the Association's collective bargaining agreement with the Village of West Milwaukee. Selerski asked Pechanach if he would come to the meeting the next day, and Pechanach replied that he would. Insofar as the record shows, this was the extent of their conversation.

13. The next day, June 2, 1993, Selerski reported to the police station per the order referenced in Finding of Fact 11. When he did so, he could see Pechanach in the Chief's office talking with Chief Oldenburg. Selerski could not hear what they were talking about, but he observed that they were laughing about something. Pechanach then came out of the room and joined Selerski. Selerski never told Pechanach that he (Selerski) was upset or bothered by the fact that Pechanach had been joking with Oldenburg.

14. Kinzel then escorted Selerski and Pechanach to a conference room in the police building. Upon entering the room, Kinzel gave Selerski a list of written questions and directed him to answer them in writing. Pechanach did not review the questions with Selerski before Selerski began writing his answers. As Selerski wrote his answers, Pechanach looked over his shoulder and took 13 pages of notes about the questions and what Selerski was writing as his answers to same. Pechanach never advised Selerski how to answer a question. Pechanach was a silent observer during the 45 minutes it took Selerski to write out his answers. After Selerski finished answering the questions, he and Pechanach left the room. When they did so, Pechanach told Selerski "we'll have to wait and see what happens next."

15. Later that same day, Selerski had a nervous breakdown at work. He was taken home by another officer. He was not hospitalized, but was put on medication for depression and stress by his physician, Dr. John Bond.

16. The next day, June 3, 1993, Lt. Kinzel called Selerski at home and informed him that he was being placed on sick leave by the Village.

17. On June 11, 1993, Selerski's physician, Dr. Bond, provided a medical statement to the Village which said that Selerski was ill and unable to return to work.

18. On June 14, 1993, Chief Oldenburg sent the following letter to Selerski:

Officer Richard P. Selerski

c/o Village of West Milwaukee
4755 West Beloit Road
West Milwaukee, Wisconsin 53214

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Dear Officer Selerski:

I have reviewed the internal affairs investigation of this department in reference to the alleged conversion by you of workers compensation checks to your own personal use.

I have not yet made a decision on what discipline, if any, your conduct deserves.

Prior to making that decision, I wish to hear your side of the story. Therefore, I have scheduled a meeting, to be held in the office of the Chief of Police, on Tuesday, June 15, 1993 at 1:30 p.m.

Subsequent to our meeting, I will decide this matter and inform you of my decision.

Sincerely,

Eugene R. Oldenburg /s/
EUGENE R. OLDENBURG
Chief of Police

19. The meeting referenced above between Oldenburg and Selerski occurred as scheduled June 15, 1993. During this meeting, Oldenburg orally questioned Selerski about the worker's compensation checks which Selerski had allegedly converted to his own use. Although Selerski testified he attended this meeting with Oldenburg by himself, the record indicates that WPPA Business Representative Pechanach also attended this meeting. Pechanach took six pages of notes during the meeting detailing Oldenburg's questions and Selerski's responses to same. Pechanach essentially was an observer during this 40-minute meeting.

20. On June 16, 1993, Selerski went to the Police Station. In checking on the contents of his locker, he discovered that his service revolver was missing. Selerski surmised that

Oldenburg had ordered its removal, so he asked Oldenburg if it (i.e. the revolver) could be returned to him. Selerski told Oldenburg that he wanted it back so that he could clean it at home. Oldenburg told Selerski he would not give him the revolver because of his (Selerski's) mental state.

21. On June 21, 1993, Chief Oldenburg issued the following letter:

Officer Richard P. Selerski
c/o Village of West Milwaukee
4755 West Beloit Road
West Milwaukee, Wisconsin 53214

Dear Officer Selerski:

You are hereby notified, that after careful review of the internal investigation, and after my interview with you on June 15, 1993, I have found that you violated the following departmental rules:

Section 5.02, Unprofessional Conduct
Section 5.22, Misappropriation

The above rule violations relate to your cashing, on or about August 21, 1992, Check Number 33087753, which was issued by the Wausau Insurance Companies, in the amount of \$450.00, for a wage adjustment while you were on workers compensation. You failed to notify either police management or employees of the Village of West Milwaukee Clerk's Department, of the receipt of income from this check. You were therefore overpaid \$450.00, which you retained without the consent or knowledge of the Village of West Milwaukee or any of its authorized representatives.

Section 5.02, Unprofessional Conduct
Section 5.22, Misappropriation

The above rule violations relate to your cashing, on or about September 13, 1992, Check Number 33949173, which was issued by Wausau Insurance Companies, in the amount of \$450.00, for a wage adjustment while you were on workers compensation. You failed to notify either police management or employees of the Village of West Milwaukee Clerk's Department, of the receipt of income from this check. You were therefore overpaid \$450.00, which you retained without the consent or knowledge of the Village of West Milwaukee or any of its authorized representatives.

Based upon the above noted rule violations, I am hereby ordering the following disciplinary actions:

(1) Twenty day suspension without pay.

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(2) Demotion to the rank of patrol officer.

(3) Permanent reassignment to the Midnight to 8:00 a.m. shift.

(4) Restitution to the Village of West Milwaukee in the amount of \$900.00.

The order takes effect on the 9th day of August, 1993.

By Order Of:

Eugene R. Oldenburg /s/
EUGENE R. OLDENBURG
Chief of Police

I, Richard P. Selerski, acknowledge receipt of this order.

Signature _____ Dated _____

22. On June 28, 1993, Oldenburg sent two separate letters to Selerski. One letter was as follows:

Sergeant Richard P. Selerski
c/o Village of West Milwaukee
4755 West Beloit Road
West Milwaukee, Wisconsin 53214

Dear Sergeant Selerski:

During the recent internal investigation, you made certain statements and exhibited certain behaviors which has caused me some concern as to your fitness for duty.

I am in receipt of a medical excuse dated June 11, 1993 which indicates you

are unable to report for duty for at least two weeks. I subsequently learned that your illness is purported to be stress related. I am also aware you have been prescribed certain medications for your illness which may substantially effect your abilities to function as a police officer. My concerns are for both you and the general public.

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Therefore, I am ordering you to submit to a psychological fitness for duty examination, pursuant to Section 5.45 of the West Milwaukee Police Department's Rules of Conduct. The purpose of the evaluation will be to (1), determine if you are able to perform the essential functions of a police officer, with or without reasonable accommodation, and (2), determine if you present a "direct threat" to yourself or others in performing your duties as a police officer.

I have scheduled an evaluation for you with Dr. Christopher O'Vide, on July 6, 1993, at 8:30 a.m. This evaluation will be conducted at St. Michael's Hospital, Family Care Center, 2400 West Villard Avenue, Milwaukee, Wisconsin, 53209.

Your failure to appear at this or any other scheduled times, which directly relate to this fitness for duty evaluation, may result in disciplinary action against you.

Sincerely,

Eugene R. Oldenburg /s/
EUGENE R. OLDENBURG
Chief of Police

cc: Dr. O'Vide

The other letter was as follows:

Sergeant Richard P. Selerski
c/o Village of West Milwaukee
4755 West Beloit Road
West Milwaukee, Wisconsin 53214

Dear Sergeant Selerski:

I am in receipt of a medical excuse from a Dr. John T. Bond of Southeastern

Wisconsin Medical and Social Services, Inc., dated June 11, 1993, which indicated you were "ill" and unable to return to work. The excuse indicated you would be re-evaluated in two weeks as to your ability to return to work. I have subsequently learned you are seeing the doctor for "job stress and emotional problems". I am also aware you have been prescribed several medications which may effect your abilities to function as a police officer.

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By this letter, I am directing you to submit to me, a written report from Dr. Bond as to the diagnosis, treatment and prognosis of your illness as it relates to your ability to (1) perform the essential functions of a police officer, and (2), if you pose a "direct threat" to yourself or others in performing your duties as a police officer.

As part of the report of Dr. Bond, I would like his opinion as to the impact of the prescribed medications on your ability to perform the essential functions of a police officer. These functions include, but are not limited to the following tasks:

- Operate a motor vehicle under both routine and emergency conditions
- Use the appropriate level of force in hazardous situations, up on and including the use of deadly force.
- The safe handling and use of firearms.
- The ability to handle without assistance, the police communications center, which involves radio communications, emergency and administrative telephone calls, the police teletype network and in-person citizen complaints and requests for service.
- Ability to effectively resolve high stress, emotionally charged incidents. Examples include domestic disputes, tavern disturbances and child abuse situations.
- Ability to quickly assess critical incidents and make reasonable and justifiable decisions.

I am including copies of the job descriptions for both the sergeant and patrol officer positions to assist Dr. Bond in evaluating your duties with this department.

If Dr. Bond is unable to submit a complete report this week, at the minimum I expect from you an update on your duty status to be received at the police department, no later than Friday, July 2, 1993.

Failure to comply with this request may result in the denial of the use of sick time.

Sincerely,

Eugene R. Oldenburg /s/
EUGENE R. OLDENBURG
Chief of Police

23. Selerski subsequently submitted to the "psychological fitness for duty exam" ordered by Chief Oldenburg. The doctor who performed that exam, Dr. Christopher O'Vide, subsequently submitted his findings to Chief Oldenburg.

24. On August 8, 1993, Selerski was notified that he was to attend a meeting the next day with Chief Oldenburg. The stated purpose of this meeting was for Oldenburg to personally inform Selerski what action he (Oldenburg) had decided to take. Upon being notified of the meeting, Selerski asked co-workers Ned Kellerman and Robert Bennett if they would attend this meeting. Both declined, stating that WPPA Business Representative Pechanach should attend the meeting instead.

25. The meeting referenced above occurred as scheduled August 9, 1993. Five people attended this meeting: Selerski, Pechanach, Oldenburg, Kinzel and Village Attorney Greg Gunta. Pechanach took detailed notes of what transpired during the meeting. In the meeting, Oldenburg informed Selerski of the discipline referenced in his June 21, 1993 letter, and indicated it would take effect upon his return to work from medical leave. Oldenburg also informed Selerski that he had the right to appeal this discipline to the Village's PFC pursuant to Sec. 62.13, Stats. Oldenburg indicated however that if Selerski did appeal the discipline to the PFC, Oldenburg would request Selerski's termination from the department in lieu of the discipline referenced in his June 21, 1993 letter. After the meeting ended, Pechanach told Selerski to call Attorney Richard Thal. Thal's law firm represents the WPPA.

26. Either that same day or the next, Selerski called Attorney Thal. In their 15-minute phone call, Selerski told Thal the underlying facts, what charges he faced, what had transpired thus far, and what discipline he faced. Selerski also told Thal that he thought that the Chief's proposed discipline was too severe. After Thal heard the foregoing, he strongly recommended that Selerski accept the Chief's proposed discipline (i.e. suspension, demotion and assignment to the third shift) and not appeal it to the PFC because if he did appeal, the Chief had indicated he would seek Selerski's termination instead. Thal reasoned that if Selerski accepted the Chief's proposed

discipline he would still have a job, whereas that would not be the case if he appealed to the PFC. After contemplating Thal's recommendation for several

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days, Selerski called Thal back and told him that he wanted to appeal the Chief's proposed discipline to the PFC. Thal told Selerski that if he wanted to appeal, he was on his own because Thal's law firm would not represent him on the appeal.

27. On August 11, 1993, Selerski sent the following letter to Kellerman:

Mr. Ned Kellerman
President West Milwaukee Policeman's Association
4755 West Beloit Road
West Milwaukee, Wisc. 53150

Dear Ned Kellerman:

As a member of the West Milwaukee Policeman's Association and in good standing I am requesting the following.

1: That the membership give me a show of support in regards to the pending disciplinary action taken by the Chief of Police against myself, a member of the aforementioned association.

2: I am requesting financial support, in the form of a loan to be paid back with interest, so that I may obtain legal counsel of my own choice to represent me in the action being taken by the Chief of Police.

Sincerely yours,

Richard P. Selerski /s/

28. Kellerman responded to Selerski with the following letter:

Richard P. Selerski
W132 S6954 Fennimore Lane
Muskego, WI 53150

Dear Richard:

The West Milwaukee Professional Policeman's Association is not familiar with the circumstances of your pending disciplinary action by the West Milwaukee Chief of Police. The Association members would need all the facts regarding your case. For this to happen you would have to come before the

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entire membership and give your side of the incident. The membership would then be allowed to ask any questions that may arise. Be advised the Association would also seek Police Chief Oldenburg written report that was filed with the Police and Fire Commission. The report would then be read. I feel that the association is giving you full support through our union representative Bob Pechanach and the WPPA legal council.

I, as President of the W.M.P.P.A., do not see the need to use Association funds for your legal defense. The Association dues are paid every month to the Wisconsin Professional Policeman's Association. These dues guarantee the members legal council, as part of the collective bargaining agreement. Our dues cover any defense for disciplinary actions that may occur as part of our work. Therefore, we feel there is no need for financial support, from the Association, for your legal defense. The dues you have paid over the years entitle you to full legal representation. Please take advantage of the WPPAs legal council.

If the disciplinary action becomes criminal and criminal charges are filed, then you are outside the scope of the collective bargaining agreement. In lieu of such an event, the West Milwaukee Professional Policeman's Association is not obligated to provide financial support for your legal defense.

Sincerely,

Ned W. Kellerman /s/
President W.M.P.P.A.

The date of this letter is unknown.

29. In a letter to the Village dated August 12, 1993, Selerski's physician, Dr. Bond, indicated that Selerski was unable to decide whether to accept the Chief's proposed discipline.

30. On August 16, 1993, Thal sent the following letter to Greg Gunta, the Village's

attorney:

Mr. Gregg J. Gunta
Decker & Gunta, S.C.
219 N. Milwaukee, 2nd Floor N
Milwaukee, WI 53202

Re: Richard T. Selerski

Dear Mr. Gunta:

This letter summarizes today's conversation regarding Officer Selerski. In a letter dated August 9, 1993 Chief Oldenburg notified the Police and Fire Commission that Officer Selerski would be given until Friday, August 13 to elect acceptance of disciplinary penalties which include a 20 day suspension and a demotion. In a letter dated August 12, Dr. John T. Bond, the physician treating Officer Selerski, stated that Officer Selerski is now unable to make a decision concerning acceptance of the proposed disciplinary penalties. Given this situation, you have extended the deadline for acceptance to 5:00 p.m. on Monday, August 23, 1993.

Thank you for your cooperation in this matter.

Very truly yours,

CULLEN, WESTON, PINES & BACH

Richard Thal /s/
Richard Thal

RT: slk
cc: Steven J. Urso
Richard Selerski

31. On August 19, 1993, Thal sent the following letter to Selerski:

Mr. Richard Selerski
West 132nd South 69
54 Fennimore Lane
Muskego, WI 53150

Dear Richard:

As you know, the Village has agreed to give you until Monday to decide whether or not you want to accept the discipline which has been proposed by the Chief or

appeal it to the Police and Fire Commission. I have informed Attorney Gregg Gunta that you would probably not make your decision until Monday. As I will be tied up Monday afternoon, please give me a call Monday morning.

Very truly yours,

CULLEN, WESTON, PINES & BACH

Richard Thal /s/
Richard Thal

RT: slk
cc: S. James Kluss

32. Sometime in mid-August, 1993, Selerski had a conference call with Thal and WPPA Executive Assistant Steve Urso. In this phone call, Thal again urged Selerski to not appeal the Chief's proposed discipline to the PFC because if he did, the Chief had indicated he would instead seek Selerski's termination.

33. Several days later, Selerski met with Urso at the WPPA office in Wauwatosa. In this meeting, Urso and Selerski discussed Selerski's potential duty disability claim and Urso gave Selerski guidance on processing his application for state duty disability retirement benefits. During this meeting, Urso told Selerski that WPPA/LEER does not provide legal representation to members who file duty disability claims, so he would have to obtain his own lawyer for same. Following this meeting, Urso talked with Selerski several times about doctor appointments.

34. On August 24, 1993, Chief Oldenburg filed formal disciplinary charges against Selerski with the Village's PFC. The disciplinary charges which were brought against Selerski by the Chief were made pursuant to Sec. 62.13, Stats. As noted in Finding of Fact 5, disciplinary action in the West Milwaukee Police Department is not handled as part of the collective bargaining agreement, but rather is handled exclusively pursuant to Sec. 62.13, Stats.

35. On September 2, 1993, Kellerman sent the following letter to Selerski:

Richard P. Selerski
W132 S6954 Fennimore Lane
Muskego, WI 53150

Richard:

The membership has unanimously voted to suspend the West Milwaukee Professional Policeman's Association by-laws, Article 2 Section 3. Enclosed is a check for \$471.50. This is for 23 years of service at \$20.50 per year.

The money is not considered a loan and does not need to be paid back. The amount will be deducted from the retirement account. The balance in the account is not at zero. If you have any further questions please call me. Good luck in your upcoming meetings with the Fire and Police Commission.

Sincerely,

Ned W. Kellerman /s/
President W.M.P.P.A.

36. Selerski was on paid leave status for over a year following his nervous breakdown. In July, 1994, Selerski exhausted all of his paid leave including sick leave. He then made the following request for an indefinite leave of absence:

July 19, 1994

Chief Eugene Oldenburg
4755 West Beloit Road
West Milwaukee, WI 53214

Re: Sergeant Richard P. Selerski

Dear Chief Oldenburg:

I have been informed that I will be removed from the payroll effective July 19, 1994, as I will be out of sick leave at that time. In view of the Village's position that I am not suspended but, rather, am on sick leave, I hereby request an indefinite leave of absence due to continued mental illness reasons. I would ask that this leave of absence continue until my disciplinary matter is resolved or my doctor allows me to return to work, whichever occurs first.

Thank you for your attention to this matter.

Sincerely,

Richard P. Selerski /s/
Richard P. Selerski

37. The City did not grant Selerski's request for an indefinite leave of absence. On August 17, 1994, Village Administrator Thomas Tollaksen sent Selerski the following letter:

Mr. Richard P. Selerski
W132 S6954 Fennimore Lane
Muskego, WI 53150

RE: Health Insurance Coverage through
the Village of West Milwaukee

Dear Mr. Selerski:

Due to the expiration of sick-time, your insurance coverage through the Village of West Milwaukee is now required to be paid by you. If you wish to continue your insurance, please contact the undersigned to arrange payment. If you wish a delineation of your rights to continue coverage with the Village of West Milwaukee by payment, please contact our Insurance Consultant, Richard Ninnemann, Vice President, Employee Benefit Group, 2323 N. Mayfair Road, Suite 600, P.O. Box 26997, Milwaukee, WI 53226-0997. . . . Telephone Number: 475-1344.

Very Truly Yours,

Thomas W. Tollaksen /s/
Thomas W. Tollaksen
Village Administrator/Attorney

38. Selerski's employment with the Village ended because of his medical condition. Selerski's physician, Dr. Bond, has never certified Selerski as being fit to return to duty. In July, 1994, Selerski filed an application for duty disability retirement benefits pursuant to Sec. 40.65, Stats. As part of that application process, Selerski swore he was incapable of returning to work as a police officer due to duty-related medical reasons.

39. Also in July, 1994, a Milwaukee law firm retained by Selerski filed an appeal with the Village's PFC challenging the disciplinary charges against Selerski. WPPA/LEER was not notified of this appeal. After this appeal was filed, Chief Oldenburg dropped the disciplinary charges against Selerski. Since the disciplinary charges were dropped, no hearing was ever scheduled or held before the Village's PFC concerning the disciplinary charges against Selerski. Additionally, since the disciplinary charges against Selerski were dropped, Selerski never served a 20-day suspension, was never demoted from sergeant to patrol officer with a corresponding cut in pay, and was never reassigned to work the third shift. Selerski reimbursed the Village \$900 however for two worker's compensation checks.

40. Selerski subsequently filed several employment-related lawsuits against the Village: one was a claim alleging a violation of the Americans With Disabilities Act (ADA), one was a claim for duty disability benefits, and one was over his "discharge". Selerski was represented by attorneys in all those cases. None of these attorneys were supplied by WPPA/LEER, and none of their fees were paid by WPPA/LEER. Selerski testified that as of the time of the hearing herein, he had spent \$17,000 in legal fees on these lawsuits.

41. The record indicates that in 1995, Chief Oldenburg filed disciplinary charges against Sergeant Robert Bennett. The essential facts in that matter were that Bennett showed a pornographic videotape at work. The videotape in question had been seized pursuant to a police investigation. The Chief filed disciplinary charges against Bennett for the incident, and sought to demote him from sergeant to patrol officer. Bennett appealed the disciplinary charges to the Village's PFC. While the charges were appealed, Bennett was on paid suspension. In Bennett's case, WPPA/LEER supplied an attorney, Gordon McQuillen, to represent Bennett before the PFC. The disciplinary charges against Bennett were dismissed by the PFC following a hearing.

42. WPPA/LEER and its agents and representatives' handling of Selerski's disciplinary matter with his employer was not arbitrary, discriminatory or done in bad faith, and the Association at all times material herein fairly represented him. Even if WPPA/LEER was obligated to represent Selerski before the PFC, no hearing was ever held because the disciplinary charges against him were dropped.

Based on the foregoing Findings of Fact, the Examiner makes and issues the following

CONCLUSION OF LAW

Respondent WPPA/LEER and its agents and representatives met their obligation to fairly represent Complainant herein; and therefore, said Respondent did not commit prohibited practices within the meaning of Sec. 111.70(3)(b)1, Stats.

Based on the foregoing Findings of Fact and Conclusion of Law, the Examiner makes and issues the following

ORDER

The complaint of prohibited practices is dismissed.

Dated at Madison, Wisconsin, this 23rd day of April, 1998.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Raleigh Jones /s/
Raleigh Jones, Examiner

VILLAGE OF WEST MILWAUKEE
(POLICE DEPARTMENT)

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSION OF LAW AND ORDER

In the complaint initiating this proceeding, the Complainant alleged that the West Milwaukee Professional Police Association committed prohibited practices by failing to represent him in disciplinary proceedings commenced by the Chief of Police for the Village of West Milwaukee. The Complainant later changed the identity of the Respondent from West Milwaukee Professional Police Association to WPPA/LEER. The Respondent denied it had committed any prohibited practices by its actions toward Selerski.

POSITIONS OF THE PARTIES

Complainant

The Complainant's position is that the Association "dropped the ball" and failed to provide him with adequate representation in the disciplinary proceedings which were commenced by the Village's Police Chief. It makes the following arguments to support this premise.

Selerski argues at the outset that the Association was obligated to provide him with legal representation. It cites the following to support this premise. First, he contends that "common sense" dictates that the Association has to provide legal representation for its members. The Complainant argues that was especially the case here given his nervous breakdown, what he characterizes as his complicated "legal setting", and the "complexity and seriousness of the charges brought against" him. Second, with regard to Commission case law, Selerski cites the case of CITY OF APPLETON 1/ for the proposition that "effective legal counsel at the investigation stage is an important union member right."

Next, Selerski avers that since the Association did not provide him with legal representation as it should have, the Association is responsible for his losing his job. According to Selerski, what happened was that "the Village was able to work the unique factors and circumstances to obtain what appeared to be a voluntary or constructive quit" which in turn "allowed the Village to drop the disciplinary proceeding." The Complainant builds the following "equation" to show how this worked: "complainant's nervous breakdown leads to sick leave, the Village on the chief's recommendation refuses to extend sick leave or hire complainant for another function, complainant is constructively terminated by the Village; case closed." In Selerski's view, this outcome would have been different if he had the benefit of legal representation. He asserts that competent legal counsel "would have recognized the inherent difficulty in continuing sick leave including the risk to

the disability pension, and the ultimate risk of losing a forum to clear the record and maintain employment." He further asserts that

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competent legal counsel would have developed a strategy to keep him as an employe of the Village Police Department, would have maintained the viability of his request to be reinstated during the disciplinary process, and would have protected his source of income. He further asserts that competent legal counsel would have scheduled and completed a hearing. He also asserts that competent legal counsel would have prevented "the problems with the sick leave and pension."

Third, Selerski believes it established that a dual standard exists for providing legal representation to union members. To support this premise, it notes that Sgt. Bennett was provided with legal representation for his Sec. 62.13 hearing while Selerski was not. According to Selerski, the charges against Bennett were less serious than the charges against Selerski because no theft was alleged in Bennett's case. In Selerski's view, the Association failed to offer any response or justification for not representing him like it did Bennett. Selerski therefore submits that the Union is guilty of unfair and unequal representation.

Next, Selerski characterizes the union and legal assistance he did receive from WPPA/LEER as being of little or no value and also as arbitrary, discriminatory and in bad faith. With regard to Business Agent Pechanach's involvement, Selerski calls him a "relatively silent non-participatory member" at the meetings which were held with management. According to Selerski, he was entitled to active participation and vigorous representation by his union representative, and he implies Pechanach failed to provide same. With regard to Attorney Thal's involvement, Selerski faults Thal's (legal) advice that he (Selerski) should accept the Chief's proposed discipline without challenging it. According to Selerski, this advice shows that "Thal had a predisposition to accept the Chief's propos[ed]" discipline. Selerski also faults Thal for a "lackadaisical approach." To support this charge, Selerski notes that Thal "chose to conduct most of his business in short telephone conversations." Given the foregoing, Selerski believes he did not receive quality and effective union representation and legal representation.

Finally, the Complainant charges that the Union acted "in concert with the Chief." According to Selerski, the Union and the Village had a joint goal: to get rid of him. To support this premise, it claims that Selerski was on the "outs" with his peers (particularly Kellerman) who may have wanted him fired. The Complainant asserts that when that ultimately happened, the Union left him "free in the wind by himself." The Complainant also avers that WPPA cannot separate itself from Kellerman's hostility and misconduct toward Selerski because Selerski was the president of its local affiliate.

Selerski seeks the following remedies from the Commission for the Association's alleged misconduct: 1) a monetary damage award; 2) "compensation for the loss of a career"; 3) reimbursement of attorney's fees for this case and his other employment-related cases; 4) an order

directing the union to post a notice "which guarantees all employes the rights which were so clearly neglected in Complainant's case"; and 5) "regular inservice sessions schooling the union members on what rights are available to them in internal disciplinary proceedings."

Respondent

It is the Respondent Association's position that its conduct herein did not constitute a prohibited practice.

The Association initially submits that the complaint which Selerski filed *pro se* was defective on its face. The Association notes that when it filed its answer to the complaint, it raised several defenses, one of which was that the complaint never identified which law had been violated. The Association asserts that given this notice, Selerski was obligated to amend his complaint to conform minimally with the statutes. The Association avers that never happened. It believes the complaint should be dismissed on that basis alone.

Next, the Association notes that the complainant in a prohibited practice complaint alleging a violation of the union's duty of fair representation has the burden of proving each element of his complaint. The Association contends that Selerski failed to prove that the Association engaged in such a prohibited practice. It makes the following arguments to support this contention.

First, the Association responds to Selerski's argument that it (i.e. the Association) was obligated to provide him with legal representation in his disciplinary action. The Association notes at the outset that the disciplinary action which was brought against Selerski was brought pursuant to Sec. 62.13(5), Stats. The Association avers that pursuant to the collective bargaining agreement, Sec. 62.13 is the exclusive means for handling employe disciplinary matters in the Village of West Milwaukee. It is unclear to the Association exactly "in what forum and in what manner" it should have provided Selerski with legal representation. The Association submits that Selerski does not point to any provision in statutory or case law which establishes that any union is liable to provide "legal representation" to its members. Additionally, the Association avers that it is unaware of any such requirement. The Association acknowledges that some unions provide legal representation in some cases, but it submits there is no law which compels them to do so. The Association therefore contends it did not have an obligation to represent Selerski during a disciplinary matter brought pursuant to Sec. 62.13, Stats. According to the Association, the fact that Selerski had suffered a "nervous breakdown", and that the charges against him were "complex and serious", and that Selerski's "legal setting was complicated" does not somehow change this result and obligate the Association to provide him with legal representation.

Next, the Association argues that even if it did have an obligation to represent Selerski in a Section 62.13 disciplinary hearing, it emphasizes that the disciplinary charges against Selerski were never brought to a hearing because they were dropped. The Association argues that since no Section 62.13 hearing was ever held, it never had the opportunity to represent Selerski in such a hearing. In the Association's view, this critical fact distinguishes Selerski's

situation from that of Sgt. Bennett (where the Association did provide legal representation in a 62.13 hearing). The Association emphasizes that Selerski's case did not proceed to a hearing, while Bennett's did.

Next, the Association responds to Selerski's argument that had it represented him at the disciplinary hearing, that representation "would have prevented the problems with the sick leave and pension." The Association avers that it has no knowledge of any problems with Selerski's "pension". With regard to Selerski's use of sick leave, the Association makes the following argument. It asserts that Selerski's medical conditions (which were not caused by the Association) led his health care providers to conclude that he was incapable of continuing to perform the duties of a police officer. Thus, the Association's emphasizes that it was Selerski's medical providers who directed that he not work, and it was Selerski himself who applied for duty disability benefits and swore in his application for same that he was not fit to perform the duties of a police officer. The Association submits that since Selerski could not perform the essential duties of his job, and used up all his sick leave, there was nothing that the Association could do to help him except to try and facilitate the processing of his Sec. 40.65 duty disability application, which it did do. The Association characterizes Selerski's situation as "nothing more than a garden variety medically related inability to perform one's job. It happens all the time." The Association avers that if Selerski wanted an accommodation pursuant to the Americans With Disabilities Act (ADA) so as to be allowed to continue his employment, then that is the route he should have taken. The Association emphasizes that if he had though, it was not obligated to provide him with legal representation for an ADA claim.

The Association submits that three of its agents (namely Pechanach, Urso and Thal) provided a variety of services to Selerski. To support this premise, it cites the following: that Pechanach was with Selerski for three meetings with police administrators; that Urso went to Milwaukee and assisted Selerski with his application for Sec. 40.65 benefits, and that Attorney Thal spoke with Selerski via telephone and corresponded with him via letters.

With regard to Kellerman's conduct toward Selerski, the Association makes the following arguments. First, it contends there is no evidence in the record that the local association is a labor organization within the meaning of MERA so as to be liable. Second, it asserts that Kellerman never acted as an agent of WPPA/LEER (the exclusive bargaining representative). Third, it avers Kellerman never acted in any official capacity *vis-a-vis* WPPA/LEER.

Finally, the Association responds to Selerski's contention that it acted in collusion with the Chief to cause Selerski's loss of employment with the Village. According to the Association, no record evidence whatsoever supports this defamatory, absurd and outrageous claim of complicity between the Association and the Chief. It asks that the Complainant's innuendo and

misrepresentations of evidence not be substituted for the lack of evidence.

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In conclusion then, the Association contends it did not violate its duty of fair representation to Selerski or wrong him in any compensable way. It also asserts that the remedies which Selerski seeks (i.e. "a monetary damage award, reimbursement for legal expenses" for collateral cases and "compensation for loss of a career") are outside the scope of those remedies granted in Commission prohibited practice cases. It therefore requests that the complaint be dismissed.

DISCUSSION **The Legal Framework**

Although the Complainant never cited any specific statutory language with respect to its complaint against the Respondent Association, it is nonetheless clear that what is contemplated here is an alleged violation of Sec. 111.70(3)(b)1, Stats. That section makes it a prohibited practice for a union to violate its duty of fair representation to an employe which it represents. Thus, at issue here is whether the Association violated its duty to fairly represent Complainant.

The legal standard for evaluating a union's conduct toward an employe which it represents for purposes of collective bargaining is well-settled. The duty of fair representation obligates a union to represent the interests of its members without hostility or discrimination, to exercise its discretion with good faith and honesty, and to eschew arbitrary conduct. 2/ The union's duty to fairly represent its members is breached only when the union's actions are arbitrary, discriminatory, or taken in bad faith. 3/ The union is allowed a wide range of reasonableness, subject always to complete good faith and honesty of purpose in the exercise of its discretion. 4/ As long as the union exercises its discretion in good faith, it is granted broad discretion in the performance of its representative duties. 5/ Finally, as in other types of cases under Sec. 111.70, Stats., the Complainant has the burden of establishing a violation by a clear and satisfactory preponderance of the evidence; absent such proof, the Commission has refused to draw an inference of perfunctory or bad faith handling of a grievance. 6/

Application of the Legal Framework **to the Facts**

Applying the above-noted principles here yields the following results.

The Complainant's initial focus at the hearing concerned the conduct of Ned Kellerman. The record establishes that Kellerman was responsible for much of the harassment which Selerski received at work. Kellerman's conduct toward Selerski at work was outrageous, boorish and

indefensible. It should not have occurred. That said, the legal question in this case is not whether Kellerman engaged in objectionable conduct toward Selerski. Instead, the legal question here is whether Kellerman's objectionable conduct can be attributed to Respondent WPPA/LEER. I find it cannot for the following reasons. First, when Kellerman engaged in

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the inappropriate and offensive behavior toward Selerski that is documented in the record, he was not acting in his capacity as president of the West Milwaukee Professional Police Association. This was because his conduct had nothing to do with his union position. Second, Kellerman was never an officer, agent or representative of WPPA/LEER; he was instead an officer, agent and representative of the West Milwaukee Professional Police Association. This distinction is important because the West Milwaukee Professional Police Association is not the certified bargaining agent; rather, WPPA/LEER is. This is why Complainant changed the identity of the Respondent in this case from the West Milwaukee Professional Police Association (the originally-named Respondent) to WPPA/LEER (the currently-named Respondent). Since WPPA/LEER is the certified bargaining agent for all regular full-time law enforcement employees with the power of arrest employed in the police department of the Village of West Milwaukee, it is technically WPPA/LEER that owes those bargaining unit members (including Selerski) the duty of fair representation.

The conduct of WPPA/LEER's agents and representatives (i.e. Pechanach, Urso and Thal) will now be reviewed. Attention is focused first on Business Agent Pechanach's conduct. The record indicates that Pechanach attended all three of the meetings which management ultimately had with Selerski concerning the missing worker's compensation checks. With regard to the first meeting held June 2, 1993, Selerski notes that before the meeting started, he saw Pechanach in the Chief's office with the Chief laughing about something. The Complainant avers that this laughing establishes that Pechanach was not being an effective advocate. I disagree. In my view, all it establishes is that a light moment occurred prior to the start of the meeting. Nothing more. In and of itself, Pechanach's laughing does not constitute evidence of wrongdoing on Pechanach's part. The Complainant has jumped to a conclusion (i.e. that laughing means an advocate cannot be effective) without ever establishing any premise to support that conclusion.

The Complainant also criticizes Pechanach for not being a more active participant at this meeting. The record indicates that Pechanach was essentially an observer during the meeting who did not say anything. In my view, Pechanach's silence during the meeting is attributable to the following. First, the meeting was an investigatory interview to determine the facts. It was Selerski alone who knew the facts at that point. Second, the format which the Employer chose to use at this meeting was to submit written questions to Selerski which he had to answer. Obviously, given this format, very little speaking was done by anyone. Third, the "Order-In" letter referenced in Finding of Fact 11 specified that Selerski's (association) representative could attend the interrogation, but

"shall not participate actively, nor propound any questions to the interrogator, nor disrupt the interrogation proceeding in any way." Under these circumstances, Pechanach was precluded from doing more than he did (i.e. take notes).

The Complainant also complains that Pechanach failed to inform him that he was entitled to union representation at the meeting with the Chief which was held June 15, 1993. This contention is premised on Selerski's assertion that he attended that meeting by himself. The problem with this assertion is that it is just plain wrong. Selerski was not there by himself; Pechanach was also there. Pechanach's extensive notes from that meeting conclusively establish that he was present during the meeting.

Attention is now turned to Urso's conduct. Urso's involvement in this matter was as follows. Urso had several phone calls with Selerski and once met with him at the WPPA's Wauwatosa office. In this meeting, they discussed Selerski's potential duty disability claim and Urso gave Selerski guidance on processing his application for duty disability retirement benefits. The foregoing establishes that Urso's involvement in this matter was mainly limited to dealing with Selerski's potential duty disability claim. A duty disability claim involves a statutory right, not a right under the collective bargaining agreement. Legally, a union only has to deal with those rights which arise under the labor agreement. Here, though, Urso went beyond what the law required and tried to assist Selerski with a matter not addressed in the labor agreement, namely duty disability benefits. This means that Urso provided Selerski with more representation than what the duty of fair representation requires. He should be lauded for doing so.

Finally, attention is turned to Attorney Thal's conduct. The record shows that Thal talked with Selerski several times by phone. In these calls, Thal recommended a course of action, namely that Selerski accept the Chief's proposed discipline and not contest it before the PFC. Thal also wrote a letter to Selerski wherein he informed him that the Village had agreed to give him additional time to decide whether to accept the Chief's proposed discipline or to contest it before the PFC. Selerski ultimately rejected Thal's recommendation. From these facts, Selerski charges that Thal had a "lackadaisical approach" and "had a predisposition to accept the Chief's propos[ed]" discipline. Both charges have no basis of support in the record and are therefore found to be meritless.

Overall, the Examiner finds nothing improper about the conduct of Pechanach, Urso and Thal toward Selerski. Additionally, there is no evidence that any of them had bias or animosity against Selerski, or disregarded the merits of his employment problems.

Having so found, the focus now turns to the Complainant's argument that the Association denied him fair representation by not supplying him with legal counsel for his 62.13 hearing. This charge is obviously based on the premise that a union has a legal duty to supply bargaining unit members with legal counsel. However, insofar as the Examiner can determine, this claim of a "right" to legal representation has been plucked from thin air. First, there is nothing in the applicable labor agreement which specifies that the Association has to provide legal representation

to bargaining unit members. Second, the Complainant does not cite any statutory

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authority which specifies that a union has to provide legal representation to bargaining unit members, and the Examiner has not found any either. Third, with regard to Commission caselaw, the Complainant cites the case of CITY OF APPLETON 7/ for the proposition that "effective legal counsel at the investigation stage is an important union member right." However, that case does not stand for the proposition just quoted. In fact, that case has nothing to do with legal representation. The following shows this. In CITY OF APPLETON, the City refused to let an employe have union representation during an investigatory meeting which could lead to employe discipline, and later refused to allow a union representative to offer input at another such investigatory meeting. The Examiner found that the City's conduct violated Section 111.70(3)(a)1, Stats. He found there was no justification for the City's refusal to allow a union representative to be present at an investigatory meeting and also no justification for the City's refusal to allow union representatives to actively participate in such meetings. It is clear from the foregoing that CITY OF APPLETON dealt solely with the right to have union representation; legal representation was not even an issue in the case. What the Complainant does here, though, is extend the right of union representation to also apply to legal representation. The problem with this is that CITY OF APPLETON does not say that, and the Examiner has not found any other Commission caselaw which does either. The foregoing establishes that neither the applicable labor agreement, nor statutory authority, nor Commission caselaw obligates a union to provide legal counsel to bargaining unit members. What the Complainant did here was simply assert that the Association had to provide him with legal counsel without ever establishing any basis to support this conclusion. This means that the Association was not obligated to provide Selerski with legal counsel for a 62.13 hearing. Consequently, the Association's failure to provide legal counsel to Selerski for a 62.13 hearing was not a violation of its duty of fair representation.

Selerski notes that although the Association would not supply him with legal representation for his appeal to the PFC, the Association did supply legal counsel to Sergeant Bennett for his case. According to Selerski, this establishes unequal and disparate treatment. There is no question that WPPA/LEER supplied a lawyer to Bennett for a 62.13 hearing but would not do so for Selerski. However, in the Examiner's opinion, this fact proves nothing. As was just noted, the Association has no legal duty to supply legal counsel to bargaining unit members. The fact that it did so in one instance does not mean that it has obligated itself to always supply legal counsel to bargaining unit members. It still has the discretion to make this call itself. Moreover, it can be inferred from the record why the Association provided Bennett with legal counsel for a 62.13 hearing but not Selerski; namely, the factual circumstances are not the same. The following shows this. In Bennett's case, the Association decided to appeal the discipline to the PFC after it concluded the Chief's proposed discipline was unwarranted under the circumstances. In Selerski's case though, the Association's conclusion about the Chief's proposed discipline was different. In Selerski's case,

Attorney Thal recommended that Selerski not appeal the Chief's proposed discipline to the PFC. This recommendation was based on the fact that the Chief had told Selerski that if he did appeal (the Chief's proposed discipline),

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the Chief would instead seek Selerski's termination. Thal reasoned that if Selerski accepted the Chief's proposed discipline, he would still have a job, whereas that would not be the case if he appealed to the PFC. The record evidence does not establish that Thal's recommendation to Selerski was erroneous. To the contrary, it was a sound recommendation that was within the mainstream of conventional labor relations advice. It is therefore held that the fact that the Association provided Bennett with legal counsel for a 62.13 hearing but would not do so for Selerski does not constitute a violation of the Association's duty of fair representation.

Finally, attention is turned to Selerski's charge that the Association conspired with the Village to get rid of him. As Selerski sees it, the Association is responsible for his losing his job. The problem with this charge is that there is no evidence to support it. Instead, the record evidence establishes that Selerski's employment ended because of his medical condition. The following shows this. Selerski was on sick leave for over a year following his June, 1993 nervous breakdown. By July, 1994, he had used up all of his paid leave time. When this happened, Selerski continued to maintain that he was unable to return to work because of "continued mental illness reasons". He asked for an indefinite leave of absence which was not granted by the Employer. That same month (July, 1994), he filed an application for state duty disability retirement benefits. When he did so, he swore he was incapable of returning to work as a police officer due to duty-related disability reasons. When the instant hearing concluded two and a half years later (i.e. in December, 1996), Selerski's medical status had not changed, and his physician still had not certified him as being fit to return to duty. While Selerski blames the Association for his plight (i.e. his depression), Selerski's medical problems were not caused by the Association.

Based on the foregoing, it is held that the Association's conduct toward Selerski was not arbitrary, perfunctory or in bad faith, and the Association therefore did not violate its duty of fair representation to Selerski. Accordingly, no violation of Sec. 111.70(3)(b)1, Stats. has been found. Since the Association has not been shown to have engaged in any prohibited practices, the complaint has been dismissed.

Dated at Madison, Wisconsin, this 23rd day of April, 1998.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Raleigh Jones /s/
Raleigh Jones, Examiner

ENDNOTES

- 1/ MICHAEL SIPEN & IAFF LOCAL 257 v. RICHARD DAVIS, CHIEF, CITY OF APPLETON FIRE DEPARTMENT AND CITY OF APPLETON, DEC. NO. 27135-A (Greco, 7/92), aff'd by operation of law, Dec. No. 27135-B (WERC, 7/92).
- 2/ VACA v. SIPES, 386 U.S. 171, 64 LRRM 2369 (1967); MAHNKE v. WERC, 66 Wis.2d 524 (1974).
- 3/ VACA v. SIPES, supra, COLEMAN v. OUTBOARD MARINE CORP., 92 Wis.2d 565 (1979).
- 4/ FORD MOTOR CO. v. HOFFMAN, 345 U.S. 330, 31 LRRM 2548 (1953).
- 5/ WEST ALLIS - WEST MILWAUKEE SCHOOL DISTRICT, DEC. NO. 20922-D (Schiavoni, 10/84) aff'd by operation of law, Dec. No. 20922-E (WERC, 10/84); BLOOMER JT. SCHOOL DISTRICT, DEC. NO. 16228-A (Rothstein, 8/80), aff'd by operation of law, Dec. No. 16228-B (WERC, 8/80).
- 6/ WEST ALLIS - WEST MILWAUKEE SCHOOL DISTRICT, supra.
- 7/ CITY OF APPLETON, supra.

