

Office of the Clerk  
**SUPREME COURT**  
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**To:**

March 21, 2002

Hon. C. William Foust  
Dane County Circuit Court  
210 Martin Luther King, Jr. Blvd.  
Madison, WI 53709-0001

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[Decision No. 28920-I]  
[NOTE: This document was re-keyed by WERC.  
Original pagination has been retained.]

You are hereby notified that the Court has entered the following order:

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No. 99-0500 City of Madison v. WERC and IAFF Local 311 L.C.#98CV1397

The court having granted certification and accepted the appeal for consideration of all issues before the court of appeals;

The parties having filed briefs and orally argued the case but not having addressed the first certified question, namely: Is a firefighter promoted on a probationary basis but returned to his former rank for failing to successfully complete probation for an allegedly non-disciplinary reason entitled to the just cause protections of Wis. Stat. § 62.13(5)(em)?

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March 21, 2002

No. 99-0500 City of Madison v. WERC and IAFF Local 311 L.C.#98CV1397

The parties having filed briefs and argued only on the second certified issue, namely: If the firefighter who fails to successfully complete probation for an allegedly non-disciplinary reason is not entitled to the just cause protections of Wis. Stat. § 62.13(5)(e)(em), is the firefighter entitled to arbitrate the decision to terminate him from the probationary period;

The court having concluded that it needs to have briefs on and hear argument on the first certified issue and address that issue before addressing the second issue;

The court having granted certification to Case No. 01-1106, Kraus v. City of Waukesha Police and Fire Comm., which has adversarial counsel on the first issue set forth above namely : Is a police officer promoted on a probationary basis but returned to his or her former rank for failing to successfully complete probation for allegedly non-disciplinary reasons entitled to the "just cause" protections of Wis. Stat. § 62.13(5)(em)?

The Kraus case having also raised the following issue which is a precursor to the issues set forth in the City of Madison case, namely, Does a police chief and a police and fire commission have authority to promote police officers within a department on a probationary basis and, if so, pursuant to what authority?

IT IS ORDERED THAT the City of Madison case is held pending the filing of briefs and oral argument of Case No. 01-1106, Kraus v. City of Waukesha Police and Fire Comm.;

IT IS FURTHER ORDERED that within 30 days after the date of this order the petitioner-appellant, City of Madison, may file a brief in this court addressing only the first certified issue set forth above; that within 20 days thereafter the respondents, WERC and IAFF Local 311, may file a brief addressing only the first certified issue; and that if a brief is filed by the respondent, within ten days thereafter the appellant must file either a reply brief or a statement that no reply brief will be filed;

IT IS FURTHER ORDERED that the City of Madison case will be placed on the same calendar as the Kraus case and the parties shall be notified of this date and shall be notified whether further oral argument will be needed, and

IT IS FURTHER ORDERED that a copy of this order be sent to the interested persons in the Kraus case.

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*Cornelia G. Clark*  
*Clerk of Supreme Court*

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To:

March 21, 2002

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(Additional Parties on Page Three)

You are hereby notified that the Court has entered the following order:

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No. 01-1106      Kraus v. City of Waukesha L.C.#00CV1110

The court having considered the court of appeals' request pursuant to Wis. Stat. § (Rule) 809.61 that this court accept the certification of this appeal;

IT IS ORDERED the certification is granted and the appeal is accepted for consideration of all issues raised before the court of appeals. When this court grants direct review upon certification, it acquires jurisdiction of the case, Wis. Const. art. VII, § 3(3), that is, the entire appeal, which includes all issues, not merely the issues certified or the issue for which the court accepts the certification. State v. Stoehr, 134 Wis. 2d 66, 70, 396 N.W.2d 177 (1986); Wis. Stat. §§ 808.05(2) and (Rule) 809.61. Further, the court has jurisdiction over issues not certified

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because the court may review an issue directly on its own motion. Wis. Stat. § 808.05(3). The issues that have been identified for briefing and argument, including the following two issues:

Is a police officer promoted on a probationary basis but returned to his or her former rank for failing to successfully complete probation for allegedly non-disciplinary reasons entitled to the "just cause" protections of Wis. Stat. § 62.13(5)(em)?

Does a police chief and a police and fire commission have authority to promote police officers within a department on a probationary basis and, if so, pursuant to what authority? and

IT IS FURTHER ORDERED that within 30 days after the date of this order the appellant must file either a brief in this court or a statement that no brief will be filed; that within 20 days thereafter the respondent must file either a brief or a statement that no brief will be filed; and that if a brief is filed by the respondent, within 10 days thereafter the appellant must file either a reply brief or a statement that no reply brief will be filed; and

IT IS FURTHER ORDERED that in any brief filed in this court the parties shall not incorporate by reference any portion of their court of appeals' brief; instead, any material upon which there is reliance should be restated in the brief filed in this court; and

IT IS FURTHER ORDERED that in the event any party elects not to file a brief in this court, the briefs previously submitted by that party to the court of appeals shall stand as that party's brief in the Supreme Court; and

IT IS FURTHER ORDERED that within 30 days after the date of this order each party must provide the clerk of this court with 10 copies of the brief or briefs previously filed on behalf of that party in the court of appeals. In the event any party elects to have their court of appeals' brief serve as their brief in this court, they are instructed to provide the clerk of this court with 17 copies of their court of appeals' brief; and

IT IS FURTHER ORDERED that Case No. 99-0500, City of Madison v. WERC and IAFF Local 311 is held pending the filing of briefs and oral argument of this appeal; and

IT IS FURTHER ORDERED that the City of Madison case will be placed on the same calendar as this appeal; and

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Kraus v. City of Waukesha L.C.#00CV1110

IT IS FURTHER ORDERED that a copy of this order be sent to the interested persons in the City of Madison case; and

IT IS FURTHER ORDERED that the parties shall be notified of the date and time for oral argument in this appeal in due course.

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*Cornelia G. Clark*  
*Clerk of Supreme Court*

Additional Parties:

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