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STATE OF WISCONSIN  
CIRCUIT COURT BRANCH 5  
EAU CLAIRE COUNTY

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EAU CLAIRE COUNTY,

Plaintiff,

-vs-

GENERAL TEAMSTERS UNION  
LOCAL NO. 662,

and

WISCONSIN EMPLOYMENT  
RELATIONS COMMISSION,

Defendants.

**DECISION AND ORDER**

Case No. 97CV407

[Decision No. 29131-B]

[NOTE: This document was re-keyed by WERC. Original pagination has been retained.]

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The above-entitled action having been commenced on July 16, 1997 for declaratory and injunctive relief; and the Plaintiff having appeared by Keith R. Zehms, Corporation Counsel, Defendant General Teamsters Union Local No. 662 by Attorney Naomi E. Soldon and Attorney Kristine Aubin, Wisconsin Employment Relations Commission having appeared by John D. Niemisto, Assistant Attorney General; and the Plaintiff having moved for a temporary injunction; and the parties having briefed the issue of temporary injunction as well as primary jurisdiction; and the court, the Honorable Paul J. Lenz having issued a preliminary oral ruling on November 3, 1997 and a final oral ruling on December 19, 1997 which is attached and incorporated herein as Exhibit "A"; and the court, having considered arguments of the parties determined that the Plaintiff has satisfied the conditions for the issuance of a temporary injunction and that under the doctrine of primary jurisdiction the court should retain jurisdiction of this case.

NOW, THEREFORE, IT IS HEREBY ORDERED that this court shall retain jurisdiction of this case.

IT IS FURTHER ORDERED that the Defendant Wisconsin Employment Relations Commission is temporarily enjoined from holding any proceedings on the prohibited practices complaint Case 192 No. 54897 MP-3269 pending before it filed by Defendant General Teamsters Union Local No. 662 regarding the Eau Claire County Sheriff's Department and Deputy John R. Rizzo.

Dated at Eau Claire, Wisconsin the 8 day of January, 1998.

BY THE COURT:

Paul J. Lenz /s/

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HONORABLE PAUL J. LENZ  
CIRCUIT COURT JUDGE

STATE OF WISCONSIN  
CIRCUIT COURT Branch 5  
EAU CLAIRE COUNTY

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EAU CLAIRE COUNTY,

Plaintiff,  
vs.

GENERAL TEAMSTERS UNION LOCAL  
NO. 662, and WISCONSIN EMPLOYMENT  
RELATIONS COMMISSION,

Defendants.

CASE NO. 97 CV 407  
ORAL RULING

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HONORABLE PAUL J. LENZ

CIRCUIT COURT JUDGE, PRESIDING

Friday, December 19, 1997

Eau Claire County Courthouse, Eau Claire, Wisconsin

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APPEARANCES

KEITH R. ZEHMS, Corporation Counsel, Eau Claire County Courthouse, 721 Oxford  
Avenue, Eau Claire, Wisconsin 54703, appearing for the Plaintiff.

Reported by Connie G. Nedland, RMR

1 THE COURT: From Naomi Soldon or Kristine  
2 Aubin, this letter is to con - - confirms the  
3 rescheduling of the oral decision to December 19<sup>th</sup> at  
4 9:30, and there's no one has called at this point so  
5 I'm just going to give it.

6 This is the second hearing with regard to  
7 this. The first time the court had quested with  
8 regard to the - - not only the probability of success  
9 but the harm since there is a legal procedure for  
10 reviewing the decision of an arbitrator with the  
11 Wisconsin Employment Relations Commission.

12 However, I find that the harm is inherent  
13 in the situation; that if the ultimate ruling of the  
14 court is is that the statutory procedure is the  
15 exclusive procedure for grievances of sheriff's  
16 deputies, then the county will have been harmed by  
17 going through a procedure which would be costly and  
18 meaningless.

19 Further, it is my understanding that we  
20 will have guidance on this issue in a relatively short  
21 period of time from the state supreme court.

22 MR. ZEHMS: Can I make a comment? Just for  
23 the court's information, that Milas case was decided  
24 within the last two weeks. They decided the case on  
25 equitable estoppel grounds.

1 THE COURT: Oh.

2 MR. ZEHMS: And did not actually reach the

3 merits of the argument that is being presented here.

4 THE COURT: Okay. Well, I take that back.

5 Apparently, we're not going to get any guidance here.

6 It was easy 'cause I was just going to punt here at

7 the end here, but I won't be able to do that.

8 But nevertheless, my understanding also is

9 is that there's a question as to whether or not the

10 temporary injunction really is necessary and that the

11 WERC has ordered a stay in their proceedings pending a

12 decision here, but I think that also recognized that

13 it would be wasteful to all parties concerned to go

14 through that procedure if it is determined that the

15 statutory procedure is the exclusive procedure.

16 I also look at the question of the

17 reasonable probability of success aspect. I find that

18 there is a reasonable probability of success. This

19 could be reasonably found to be substantially similar

20 to the situation of a police and fire commission and a

21 city police officer.

22 It could be found also in examination of

23 the statutory language and intent of the statute that

24 that is not the case. However, but since there is a

25 reasonable probability of success, together with the

1 harm that is inherent to go through a procedure when  
2 the purpose of the suit is to declare which procedure  
3 should be sought, then the county would be harmed by  
4 not staying the procedure.

5 Therefore, pending a decision of the court,  
6 the procedure outlined by the collective bargaining  
7 agreement is stayed pending a decision of the court,  
8 and the parties should get together with regard to a  
9 briefing schedule on the merits.

10 There certainly can be a time set for oral  
11 argument and whatever, but I would suspect that this  
12 should be able to be done in a relatively short period  
13 of time since you basically briefed much of the issue  
14 already.

15 MR. ZEHMS: And I think, Your Honor, at the  
16 same time we would look at if - - I think we should be  
17 able to agree on a fact stipulation to go with that.

18 I don't think that the facts really are in  
19 dispute in this case, but I would talk with the  
20 counsel for the Teamsters to make sure that the facts  
21 are agreed, and if there for any reason would be any  
22 disputed facts, they would be brought to the attention  
23 of the court.

24 THE COURT: Okay. Thank you. We're  
25 adjourned.

1 MR. ZEHMS: From a procedural standpoint as  
2 far as the decision goes, should I get a transcript  
3 and send to the parties?  
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STATE OF WISCONSIN     )  
  )SS.  
COUNTY OF EAU CLAIRE)

I, Connie G. Nedland, Official Court  
Reporter in and for the State of Wisconsin, do hereby  
certify that the foregoing transcript is a true,  
correct and complete transcript of the proceedings in  
the foregoing matter to the best of my knowledge.

Dated this   2<sup>nd</sup>   day of January, 1998.

Connie G. Nedland /s/

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CONNIE G. NEDLAND, RMR  
Official Court Reporter