

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

RICHARD N. SANDOVAL, Complainant,

vs.

**CITY OF MILWAUKEE, BOARD OF FIRE AND POLICE COMMISSIONERS,
PHILIP ARREOLA, CHIEF OF POLICE, HOWARD LINDSTEDT,
CAPTAIN OF POLICE, ADAM WOJAK, LIEUTENANT OF POLICE, AND THE
MILWAUKEE POLICE ASSOCIATION**, Respondents.

Case 429
No. 54036
MP-3167

Decision No. 29485-A

Appearances:

Mr. William Marquis, Attorney at Law, 230 West Wells Street, Suite 224, Milwaukee, Wisconsin 53203, appeared on behalf of Complainant Sandoval.

Mr. Thomas Beamish, Assistant City Attorney, City of Milwaukee, 200 East Wells Street, Suite 800, Milwaukee, Wisconsin 53202, appeared on behalf of the City Respondents.

Ms. Laurie Eggert, Eggert & Edmonds, S.C., Attorneys at Law, 1840 North Farwell Avenue, Suite 303, Milwaukee, Wisconsin 53202, appeared on behalf of Respondent Association.

**FINDINGS OF FACT, CONCLUSION OF LAW
AND ORDER GRANTING CITY'S MOTION TO DISMISS**

Richard N. Sandoval filed a complaint with the Wisconsin Employment Relations Commission (WERC) on April 18, 1996, pro se, against the City of Milwaukee, Board of Fire and Police Commissioners, Philip Arreola, Chief of Police, Howard Lindstedt, Captain of Police, Adam Wojak, Lieutenant of Police, and the Milwaukee Police Association. The Complainant alleged that the City had failed to promote Sandoval to detective in 1993 and that

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the Association failed to fairly represent him in the matter. On May 20, 1996, the City filed a Motion to Dismiss it from the complaint along with supporting arguments, exhibits and an affidavit. Thereafter, the complaint was held in abeyance pending efforts to resolve the dispute. Those efforts were unsuccessful. On December 18, 1996, a prehearing conference was held in Milwaukee, Wisconsin. At that conference, Sandoval, now represented by counsel, requested that his complaint be held in abeyance while the Association sought to have the WERC reopen Case 408, No. 50490, MP-2855. In Case 408, the Milwaukee Police Association had filed a complaint with the WERC in February, 1994 against the City of Milwaukee and the Board of Fire and Police Commissioners. That complaint alleged in part that the Respondents had improperly denied Richard Sandoval's promotion to detective in 1993. Case 408 was administratively dismissed by the WERC in January, 1995. Following the prehearing conference, the Association asked the WERC to reopen Case 408 so that it could be litigated. The City opposed this request. On May 7, 1997, the WERC issued Dec. No. 28295-A which denied the Association's request to reopen Case 408. On May 15, 1997, the Examiner sent the parties a letter which provided in pertinent part:

The litigation of Sandoval II will proceed as follows. As noted in my letter dated January 31, 1997, I will rule on the City's pending Motion to Dismiss before a hearing on the merits is scheduled or held. In order for me to rule on said Motion however, I will need a stipulation from the parties concerning the factual assertions contained in the City's Motion to Dismiss. I request that you communicate with each other concerning whether such a stipulation is possible. If you cannot stipulate to same, I will convene a hearing for the limited purpose of taking evidence on the factual assertions contained in the City's Motion to Dismiss. This hearing, if held, would not address the merits of Sandoval II. A hearing on the merits of Sandoval II would subsequently occur if the City's Motion to Dismiss is denied.

Thereafter, the parties attempted without success to draft the stipulation referenced above. On January 14, 1998, the Examiner initiated a conference call to the parties concerning same. During the course of that call, the stipulation referenced above was conceptualized. Following this call, the Examiner drafted proposed stipulated facts and sent them to the parties on February 18, 1998. The City's attorney, Thomas Beamish, signed and returned them on March 25, 1998. The Association's attorney, Laurie Eggert, signed and returned them on March 26, 1998. On July 7, August 17 and September 21, 1998, the Examiner sent letters to Sandoval's attorney, William Marquis, inquiring whether he was going to sign the proposed stipulated facts. On October 22, 1998, the Examiner sent Marquis the following letter:

I have received no reply to my letters of July 7, August 17 and September 21, 1998 inquiring about the status of this matter. Given that lack of response, it is my assumption that you no longer wish to pursue this matter. I therefore intend to dismiss the complaint unless advised to the contrary by November 13, 1998.

Marquis signed and returned the stipulated facts on November 10, 1998. On November 13, 1998, the Commission formally appointed Raleigh Jones to make and issue Findings of Fact, Conclusions of Law and Order as provided in Sec. 111.07(5), Stats. Also on November 13, 1998, the Examiner sent the parties a letter which provided in pertinent part:

Finally, since all the parties to this case have now signed the Stipulated Facts, there is now a factual basis for me to rule on the City's pending Motion to Dismiss. I am therefore setting a timetable for Ms. Eggert and Mr. Marquis to respond to the City's Motion. Your response to the City's Motion is to be filed with me by January 15, 1999.

The timetable referenced above was subsequently extended one week. Marquis responded to the City's Motion to Dismiss on January 21, 1999 and Eggert responded to same on January 26, 1999. No evidentiary hearing has yet been conducted in this matter. Having considered the record developed to date and the arguments of the parties and being satisfied that the City's Motion to Dismiss should be granted, the Examiner hereby makes and issues the following Findings of Fact, Conclusion of Law and Order Granting City's Motion to Dismiss.

FINDINGS OF FACT

Findings of Fact 1-8 were stipulated to by the parties:

1. On November 22, 1993, Richard N. Sandoval filed the following complaint in Milwaukee County Circuit Court against the Board of Fire and Police Commissioners of the City of Milwaukee:

RICHARD N. SANDOVAL
Milwaukee, WI

Plaintiff,

vs.

Case No. 93CV016449

Case Code: Other Extraordinary Writ: 30707

BOARD OF FIRE & POLICE COMMISSIONERS
of the City of Milwaukee,
749 West State Street
Milwaukee, WI 53233

Defendant.

COMPLAINT

Plaintiff, RICHARD N. SANDOVAL, by the law firm of FUCHS & SNOW, S.C., by Attorney John F. Fuchs, claims against the defendant and alleges:

1. The plaintiff, RICHARD N. SANDOVAL, is an adult resident of the City and County of Milwaukee, State of Wisconsin. The plaintiff is and was employed as a City of Milwaukee Police Officer for nine years, such employment commencing in December of 1982.

2. The defendant, BOARD OF FIRE AND POLICE COMMISSIONERS, commonly known as the FIRE AND POLICE COMMISSION (FPC), is the policy making and reviewing authority of the City of Milwaukee Police Department, and maintains an office at 749 West State, in the City and County of Milwaukee, State of Wisconsin, and has promulgated various rules governing promotions of police officers. It exists by authority of and has all powers as conferred by Section 62.50 of the Wisconsin Statutes.

3. The plaintiff, RICHARD N. SANDOVAL, took the written tests and underwent the oral interview examination of the Milwaukee Police Department which written test and oral interview examination are prerequisites to promotion to the position and rank of Police Detective. Based upon his written test score and oral interview examination the plaintiff was placed No. 79 on the Detective Eligible List adopted by the Board of Fire and Police Commissioners on November 7, 1991.

4. The plaintiff, was eligible for promotion, in order when an opening became available for the 79th individual on the list which occurred on or before October 6, 1993.

5. On October 7, 1993, Chief of Police Philip Arreola objected to the promotion of the plaintiff to detective as set forth in his written letter to the defendant dated October 7, 1993, a copy of which is attached hereto and incorporated herein as Exhibit A.

6. In objecting to promotion the Chief cited Rule XVII, Section II of the Rules of the FPC of the City of Milwaukee, a copy of which Rule is attached hereto as Exhibit B.

7. On November 9, 1993, the defendant, FPC, upheld the objection of the Chief and denied promotion to the plaintiff, providing notice to the plaintiff under date of November 9, 1993, a copy of which notice is attached hereto and incorporated herein as Exhibit C.

8. The plaintiff commences this action for Certiorari Review in the form of an ordinary action pursuant to Section 781.01 of the Wisconsin Statutes.

9. The defendant asserts the action of the FPC is in error and subject to reversal or remand for the following reasons:

a. The action of the FPC was arbitrary, and without basis, and thus constituted a denial of due process in that the rules of the FPC contain no stated criteria to support the objection of the Chief and denial of promotion of the plaintiff.

b. The plaintiff satisfied all FPC rules and state statutes for promotion.

c. The action of the FPC was in violation of its own rules and in violation of all governing law governing promotion of the plaintiff based upon his numerical rank on the eligibility list in that the prior 78 persons had been promoted or otherwise withdrawn and the plaintiff was in fact next in line for promotion.

d. The plaintiff was denied due process, in that he was provided no factual basis or reason to sustain the objection of the Chief and denial of promotion by the defendant.

e. There exists no evidence or reason of record, established as a matter of fact or law, to support the action of the defendant in denying promotion.

f. The plaintiff was denied due process and any rights of representation in the promotional process by the defendant in that defendant denied the presence of his bargaining representative and any legal counsel throughout procedures resulting in the defendant acting upon the objection of the Chief and in denying his promotion.

g. The action of the defendant, FPC, upon information and belief, was based upon unfounded, unproven, unsubstantiated allegations as to which there was no finding of fact that any matter alleged occurred, nor did the FPC rely upon a matter as to which any discipline was ever imposed.

h. Upon information and belief, the defendant acted upon false allegations not supported by any established facts.

WHEREFORE, the plaintiff requests the following relief from the court:

Reversal, remand, and order requiring the defendant to promote the plaintiff in accord with his position on the Detective Eligibility List together with costs and disbursements and other such relief as deemed just and equitable by the Court.

Dated this 17 day of November, 1993.

FUCHS & SNOW, S.C.

By: John F. Fuchs /s/
John F. Fuchs
State Bar No.: 01016712

P.O. ADDRESS:
2300 North Mayfair Road
Suite 945
Wauwatosa, WI 53226-1501
(414) 257-1800

Three exhibits were attached to the complaint.

2. On May 9, 1994, the complaint referenced in No. 1 above was amended. The amended complaint is as follows:

RICHARD N. SANDOVAL
Milwaukee, WI

Plaintiff,

vs.

Case No. 93-CV-016-449
Case Code: 30106 – Intentional Tort

BOARD OF FIRE & POLICE COMMISSIONERS
of the City of Milwaukee, and
PHILIP ARREOLA, Chief of Police,

Defendants.

AMENDED COMPLAINT

1. The plaintiff, RICHARD N. SANDOVAL, is an adult resident of the City and County of Milwaukee, State of Wisconsin. The plaintiff is and was employed as a City of Milwaukee Police Officer for nine years, such employment commencing in December of 1982.

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2. The defendant, BOARD OF FIRE AND POLICE

COMMISSIONERS, commonly known as the FIRE AND POLICE COMMISSION (FPC), is the policy making and reviewing authority of the City of Milwaukee Police Department, and maintains an office at 749 West State, in the City and County of Milwaukee, State of Wisconsin, and has promulgated various rules governing promotions of police officers. It exists by authority of and has all powers as conferred by Section 62.50 of the Wisconsin Statutes.

3. The defendant, Philip Arreola, is an adult and at all times material to this action has held the office of the Chief of Police for the City of Milwaukee Police Department, and maintains his office at 749 West State Street, in the City and County of Milwaukee, State of Wisconsin.

4. The plaintiff, RICHARD N. SANDOVAL, took the written tests and underwent the oral interview examination of the Milwaukee Police Department which written and oral examination are prerequisites to promotion to the position and rank of Police Detective. Based upon his written test score and oral interview examination the plaintiff was placed No. 79 on the Detective Eligible List adopted by the Board of Fire and Police Commissions on November 7, 1991.

5. The plaintiff was eligible for promotion in order of such placement on the list when an opening became available for the 79th individual on the list, which occurred on or before October 6, 1993.

6. On October 7, 1993, Chief of Police Philip Arreola objected to the promotion of the plaintiff to detective as set forth in his written letter to the defendant October 7, 1993, a copy of which is attached hereto and incorporated herein as Exhibit D.

7. In objecting to promotion the Chief cited Rule XVII, Section II of the Rules of the FPC of the City of Milwaukee, a copy of which Rule is attached hereto as Exhibit E.

8. On November 9, 1993, the defendant, FPC, upheld the objection of the Chief and denied promotion to the plaintiff, providing notice to the plaintiff under date of November 9, 1993, a copy of which notice is attached hereto and incorporated herein as Exhibit F.

9. The plaintiff commences that portion of this action seeking Certiorari Review in the form of an ordinary action pursuant to Section 781.01 of the Wisconsin Statutes.

10. The defendant asserts the action of the FPC is in error and subject to reversal or remand for the following reasons:

a. The action of the FPC was arbitrary, and without basis, and thus constituted a denial of due process in that the rules of the FPC contain no stated criteria to support the objection of the Chief and denial of promotion to the plaintiff.

b. The plaintiff satisfied all FPC rules and state statutes for promotion.

c. The action of the FPC was in violation of its own rules and in violation of all governing law governing promotion of the plaintiff based upon his numerical rank on the eligibility list in that the prior 78 persons had been promoted or otherwise withdrawn and the plaintiff was in fact next in line for promotion.

d. The plaintiff was denied due process, in that he was provided no factual basis or reason to sustain the objection of the Chief and denial of promotion by the defendant.

e. There exists no evidence or reason of record, established as a matter of fact or law, to support the action of the defendant in denying promotion.

f. The plaintiff was denied due process and any rights of representation in the promotional process by the defendant, in that the defendant denied the presence of his bargaining representative and any legal counsel throughout procedures resulting in the defendant acting upon the objection of the Chief and in denying his promotion.

g. The action of the defendant, FPC, upon information and belief, was based upon unfounded, unproven, unsubstantiated allegations as to which there was no finding of fact that any matter alleged occurred, nor did the FPC rely upon a

matter as to which any discipline was ever imposed.

h. Upon information and belief the defendant acted upon false allegations not supported by any established facts.

**CLAIM AGAINST BOTH DEFENDANTS FOR VIOLATION OF CIVIL RIGHTS
and FOR INTENTIONAL DEPRIVATION OF DUE PROCESS**

11. The Chief's objection was retaliatory in nature, and a violation of plaintiff's civil and constitutional rights as guaranteed by the United States Constitution and by Title 42 U.S.C. ss. 1983, including but not limited to due process to be afforded his property interest in his employment.

12. The Chief's objection was based upon animosity which exists between the Chief and the plaintiff's father, retired MPD Detective Procopio Sandoval.

13. On November 9, 1993, the defendant, FPC, upheld the objection of the Chief and denied promotion to the plaintiff, providing notice to the plaintiff under date of November 9, 1993, a copy of which notice is attached hereto and incorporated herein as Exhibit C.

14. The plaintiff was intentionally denied due process, including any rights to representation, notice of charges by both defendants, the right to be heard, call witnesses, confrontation, procedural due process, throughout the procedures, all resulting in the FPC upholding the objection of the Chief and denying plaintiff's promotion.

15. The action of the defendant, PHILIP ARREOLA, upon information and belief, was based upon unfounded, unproven, unsubstantiated allegations as to which there was no finding of fact that some matters alleged occurred.

16. Upon information and belief the defendants acted in part upon false allegations not support by any established facts.

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17. The actions of the defendants herein constitute the intentional deprivation of due process, as such cause of action has been defined and recognized by the Court of Appeals for the First District in Old Tuckaway Associates Limited Partnership v. City of Greenfield, 180 Wis. 2d 254 509

N.W.2d 323 (Ct.App.1993).

18. The actions of the defendant constitute a denial of the plaintiffs rights as guaranteed under the United States Constitution and are actionable under Title 42 U.S.C. Section 1983.

19. As a direct result of the foregoing violation of his civil rights, the plaintiff has sustained a loss of wages and benefits, damage to his reputation and character and emotional distress.

WHEREFORE, the plaintiff requests the following relief from the court:

a. Reversal, remand, and order requiring the defendant to promote the plaintiff in accord with his position on the Detective Eligibility List.

b. Compensatory damages in an amount to be determined by the trier of fact.

c. Punitive damages in an amount to be determined by the trier of fact.

d. Costs and disbursements of this action, together with reasonable attorney's fees as allowed by 42 U.S.C. ss. 1983.

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Dated this 5 day of May, 1994.

FUCHS & SNOW, S.C.

By: John F. Fuchs /s/

John F. Fuchs
State Bar No.: 01016712

P.O. ADDRESS:
2300 North Mayfair Road
Suite 945
Wauwatosa, WI 53226-1501
(414) 257-1800

Two motions accompanied this amended complaint: a Motion to Amend Complaint and a Motion to Adjourn Briefing Schedule.

3. The complaint referenced in No. 1 above and the amended complaint referenced in No. 2 above were subsequently settled by the parties. Their Settlement Agreement is as follows:

SETTLEMENT AGREEMENT

NOW COME Richard N. Sandoval (hereinafter “Sandoval” or “Plaintiff”), the City of Milwaukee (hereinafter the “City”), and the Board of Fire and Police Commissioners of the City (hereinafter the “Board”)(said Board to include all former Board members serving at any time from the inception of Plaintiff’s employment with Milwaukee Police Department until the present, or their successors), and Philip Arreola, Chief of Police of the City of Milwaukee Police Department, and their respective successors, assigns, officers, agents and employes (hereinafter referred to collectively as “Employer” or “Related Parties”), directly by their respective counsel, who freely enter into a Settlement Agreement of all claims in any way related to the pending action in Sandoval v. Board of Fire and Police Commissioners for the City of Milwaukee and Philip Arreola, Case No. 93-CV-016449, filed in Milwaukee County Circuit Court, based on the terms set forth below:

1. The parties wish to effect a final settlement of all complaints, claims, charges, demands and liabilities, of any kind or nature, whether filed or unfiled, arising from the denial in

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1993 by employer of plaintiff’s promotion to the rank of detective in the Milwaukee Police Department, including but not limited to claims for damages, promotion, back pay or benefits, and physical or psychological suffering, arising out of the facts and circumstances which gave rise to all presently pending actions, and the parties further wish to avoid the expense, burden and

uncertainties of further litigation. These actions include Plaintiff's civil lawsuit in Sandoval v. Board of Fire and Police Commissioners for the City of Milwaukee and Philip Arreola, Case No. 93-CV-016449, filed in Milwaukee County Circuit Court.

2. This Agreement is in resolution of disputed claims and causes of action and does not constitute an admission of liability by the Released Parties for any claim or cause of action, whether filed or unfiled. The Released Parties deny any wrongdoing by any of them, their agents or employees.

3. Released Parties will, on or before May 1, 1996, in complete settlement of all claims filed or unfiled arising from the denial of Sandoval's promotion to the rank of detective in the Milwaukee Police Department in 1993, take action on Plaintiff's personnel records with the Milwaukee Police Department to include the following:

- (a) With regard to a citizen complaint by Levell C. Brown relating to an incident allegedly occurring on March 11, 1993, Plaintiff's personnel records shall include a statement that upon investigation, conflicting accounts were given by police and citizen witness present at the time of the alleged incident, and that under these circumstances, Mr. Brown's complaint cannot be conclusively established.
- (b) With regard to a citizen complaint by Ryan A. Thompson relating to an incident allegedly occurring on April 11, 1993, Plaintiff's personnel records shall include a statement that upon investigation, another officer has come forward to accept responsibility for the conduct complained of

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by Mr. Thompson, and that Plaintiff had no involvement in the conduct complained of by Mr. Thompson.

4. The Plaintiff and his attorney agree to execute the attached release

which is incorporated as Exhibit 1 meeting the approval of the Released Parties' counsel as to execution.

5. Based upon this settlement, the parties will advise all courts and any other forums in which these claims or actions are pending of a final settlement of all claims before them and Plaintiff and his attorney shall execute a stipulation and order for dismissal on the merits, with prejudice and without costs to either party in Case No. 90-CV-016449.

6. The attorney for the Released Parties represents that he is authorized to execute this Settlement Agreement on behalf of the Released Parties.

Dated and signed at Milwaukee, Wisconsin, by the undersigned parties and their counsel as follows:

IN THE PRESENCE OF:

Judith O'Connell /s/

Date: 3/27/96

Date: 3/27/96

Date: 4/11/96

Richard N. Sandoval /s/

RICHARD N. SANDOVAL
Plaintiff

John F. Fuchs /s/
JOHN F. FUCHS
Attorney for Plaintiff
State Bar No. 1016712

Ellen H. Tangen /s/
ELLEN H. TANGEN
Attorney for Released Parties
State Bar No. 01000118

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RELEASE OF CLAIM

KNOW ALL MEN BY THESE PRESENTS That the undersigned releasor, Richard N. Sandoval, does for himself, his heirs, executors and administrators forever release and discharge Philip Arreola, the Board of Fire and Police Commissioners of the City of Milwaukee, the City of Milwaukee, a

municipal corporation, and their respective successors, assigns, officers, agents and employes (hereinafter the "Released Parties"), of and from any and all claims, demands, actions or causes of action for damages or relief of any kind or nature whatsoever and all liability whatsoever in the premises, including claims for damages, promotion, back pay, benefits, and attorney's fees and costs, if any, in any way arising or growing out of the circumstances resulting in the denial of promotion of the undersigned to the rank of detective in the Milwaukee Police Department in 1993.

It has been represented by the undersigned that the injuries sustained and the suffering and damages resulting therefrom by the undersigned may be uncertain and indefinite, and in making this release it is understood and agreed that the undersigned relies on the undersigned's own belief and knowledge, as to the nature, extent and duration of the injuries and that the parties being released hereby have made no representations in this regard whatsoever which are being relied upon by the undersigned in making this release.

Claimant does hereby expressly stipulate and agree to indemnify, defend and hold harmless all Released Parties against any and all claims, demands, actions or liens, that are, have been in the past, or may in the future, be asserted against the Released Persons by a subrogee or assignee arising out of any claims for subrogation made by persons, party or entity claiming a right to subrogation against the Released Persons/Person for any payments made, or payments to be made, to or on behalf of Releasor for injuries or damage resulting from said denial of promotion.

The foregoing release has been read and understood by the undersigned before signing thereof.

The settlement and release made and effected hereby is a compromise settlement of the undersigned with the City of Milwaukee and neither this release nor the payments made pursuant thereto shall be construed as an admission of liability by said settling parties, the same being expressly denied.

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IN WITNESS WHEREOF I have hereunto set my hand and seal at Milwaukee, Wisconsin, this 27th day of March, 1996.

Richard N. Sandoval /s/
Richard N. Sandoval

STATE OF WISCONSIN)
MILWAUKEE COUNTY)

The foregoing instrument was executed before me this 27 day of March, 1996, by the above named releasor who duly acknowledged to me that he read the same, knew the contents and effect thereof, and affixed his signature thereto in my presence for the uses and purposes expressed in the foregoing release.

Mark A. Ron /s/
Notary Public, State of Wisconsin
My Commission Expires February 15, 1998

Approved as to form and execution
this 11th day of April, 1996.

Ellen H. Tangen /s/
Ellen H. Tangen
Assistant City Attorney

4. On February 7, 1994, the Milwaukee Police Association filed the following complaint with the Wisconsin Employment Relations Commission (WERC) against the City of Milwaukee, the Board of Fire and Police Commissioners and Police Chief Philip Arreola:

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MILWAUKEE POLICE ASSOCIATION,

Complainant,

VS.

COMPLAINT

THE CITY OF MILWAUKEE, a municipal Corporation, THE BOARD OF FIRE AND POLICE COMMISSIONERS and PHILIP ARREOLA, Chief of Police of the City of Milwaukee,

Respondents.

The Complainant above-named complains that the Respondents above-named have engaged in and are engaging in prohibited practices contrary to the provisions of Chapter 111.70 of the Wisconsin Statutes, and in that respect alleges:

1. Complainant Milwaukee Police Association (hereinafter MPA) is a labor organization with offices located at 1840 North Farwell Avenue, Suite 400, Milwaukee, Wisconsin, and has been certified as the exclusive collective bargaining representative of certain non-supervisory law enforcement employees of the Milwaukee Police Department, all of whom are municipal employees.

2. Respondent City of Milwaukee (hereinafter City), a municipal corporation with offices at 200 East Wells Street, is a municipal employer of Milwaukee police officers and is a signatory to the labor agreement between said City and the MPA covering non-supervisory employees represented by the MPA.

3. Respondent Board of Fire and Police Commissioners (hereinafter F&PC) is a Policy review board for the City, a department within Respondent City. Respondent City is a municipal employer in that the F&PC acts on behalf of Respondent City within the scope of the F&PC under Sec. 62.50, Stats., and authority granted to said Board by the terms of the collective bargaining agreement as a signatory, referred to in paragraph 2, above.

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4. Respondent Philip Arreola (hereinafter Arreola) is Chief of Police for the City of Milwaukee Police Department, a department within Respondent City. Respondent Arreola is a municipal employer in that he acts on behalf of Respondent City within the scope of his authority under Sec. 62.13, Stats., and authority granted to him by Respondents City, F&PC and by terms of the collective bargaining agreement referred to in paragraph 2 above.

5. Respondents F&PC and Arreola did or caused to be done the acts alleged herein below or on behalf of and/or in the interest of Respondent City and did so in connection with and/or to influence the outcome of a controversy as to employment relations and opportunity of a member of the MPA.

6. On or about July 11, 1991, the F&PC posted a promotional examination bulletin for the position of Detective within the Milwaukee Police Department. (Exhibit A, attached) Pursuant to F&PC Rule XIV titled, "Examinations-Promotional Positions (Non-Exempt)", specifically Section 1., the announcement bulletin as published, listed all the qualifications necessary to meet the needs and rank of Detective. (Exhibit B, attached) Between July 15, 1991 and August 9, 1991 Police Officer Richard N. Sandoval filed an application with the F&PC. The F&PC after determining Officer Sandoval met the posted requirements, permitted Officer Sandoval to participate in the examination process.

7. Pursuant to F&PC Rule XIV (Exhibit C) and XV titled, "Testing Procedure - Promotional Positions (Non-Exempt)" as adopted by the announcement bulletin Officer Sandoval participated in the Written Knowledge Test component on August 24, 1991. As a qualified candidate for the written examination the F&PC determined Officer Sandoval attained a qualifying score of 88.39 on the written examination component. As a successful candidate of the written examination, determined by the F&PC, Officer Sandoval participated in the Assessment Exercises component on October 4 and 5, 1991. As determined by the F&PC Officer Sandoval successfully completed the Assessment Exercises component, receiving a qualifying score of 86.64. Subsequent to successfully completing the Written Job Knowledge Test and Assessment Exercises components of the examination process Officer Sandoval's seniority was calculated based upon the formula in the announcement bulletin which resulted in a seniority score of 98.00. Police Officer Richard N. Sandoval's final aggregate score/ranking as determined by the F&PC was 87.86.

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8. Pursuant to F&PC Rule XVI titled, "Eligible Lists - Promotional Positions (Non-Exempt)", (Exhibit D, attached) the F&PC presented for adoption on November 7, 1991 at a Regular Open Meeting an eligibility list. On November 21, 1991 the F&PC at its Regular Open Meeting unanimously adopted a Detective Eligible list consisting of 196 names of Police Officers whom met all qualifications as determined by the F&PC through its Promotional Examination bulletin and actual examination process consisting of the three

announced testing components.

9. Police Officer Richard N. Sandoval's ranking on the approved and adopted eligibility list is Position #79. On November 21, 1991 the F&PC determined the Detective eligibility list shall expire on November 21, 1993.

10. Pursuant to F&PC Rule XVII titled, "Appointments – Promotional Positions (Non-Exempt)", (Exhibit E, attached) the F&PC commenced appointments from the adopted list on November 24, 1991. All subsequent appointments from said list were in strict sequential order until October 7, 1993. On said date Arreola sent correspondence to the F&PC objecting to the promotion of Police Officer Richard N. Sandoval (#79) and recommended the promotion of two police officers, #80 and #81 from the same eligibility list. The F&PC did promote #80 and #81 from said promotional list. Both respondents, Arreola and F&PC denied Officer Sandoval the promotion he was entitled to pursuant to all previously posted requirements.

11. On October 13, 1993 during a Regularly Scheduled Open Meeting of the F&PC, Arreola submitted his October 7, 1993 correspondence relating to the objection to Police Officer Richard N. Sandoval's promotion. By separate correspondence from Arreola to the F&PC and not made available to the exclusive bargaining agent nor Richard N. Sandoval, Arreola advised the F&PC his rationale for the objection to the promotion. The F&PC on this date laid consideration of this objection over until the F&PC met with Police Officer Richard N. Sandoval.

12. On October 13, 1993 President of the Milwaukee Police Association, Mr. Bradley DeBraska, acting at the request of Police Officer Richard N. Sandoval, pursuant to ss. 164 Wis. Stats. and MERA 111.70, requested he be present to represent said Police Officer at the disciplinary hearing scheduled for October 20, 1993. Chairman of the F&PC, Mr. Nicol M. Padway, advised Officer Sandoval and President DeBraska that the question of President DeBraska's representation at the hearing would be examined by

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legal counsel for the F&PC and said counsel would advise President DeBraska of his decision as to whether DeBraska would be permitted at the hearing.

13. On October 20, 1993 counsel for the F&PC, Mr. Thomas Beamish advised the MPA representative President DeBraska that representation for Officer Sandoval is denied. President DeBraska requested a copy of counsel's written opinion at which time he stated the opinion was oral or words

to this substantial effect.

WHEREFORE, Complainant requests that a hearing be set pursuant to Sec. 111.70, Stats., at as early a date as can be arranged so that issues raised herein may be determined and Complainant requests that an order be issued to Respondents as follows:

A. Cease and desist denying officials of the Milwaukee Police Association the right to represent members of certified bargaining unit, and,

B. Certify and implement the promotion of Police Officer Richard N. Sandoval retroactive to October 24, 1993.

Dated this 26th day of January, 1994 at Milwaukee, Wisconsin.

Bradley DeBraska /s/
BRADLEY DEBRASKA
1840 North Farwell Avenue, #400
Milwaukee, WI 53202
(414) 273-2515

Five exhibits were attached to the complaint.

5. On December 30, 1994, WERC Examiner Coleen A. Burns sent the following letter to the parties regarding the complaint referenced in No. 4, above:

Mr. Bradley DeBraska
Milwaukee Police Association
Local #21, IUPA, AFL-CIO
1840 North Farwell Avenue, Suite 400
Milwaukee, WI 53202

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Mr. Thomas Goeldner
Assistant City Attorney
City of Milwaukee
City Hall, Room 800
200 East Wells Street
Milwaukee, WI 53202

Re: City of Milwaukee (Police Department)
Case 408 No. 50490 MP-2855

Gentlemen:

On February 7, 1994, the Milwaukee Police Association filed a complaint involving Police Officer Richard N. Sandoval. To date, neither party has sought a hearing in this matter. Unless advised to the contrary by January 18, 1995, I will assume that the matter has been resolved and will dismiss the complaint.

Very truly yours,

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Coleen A. Burns
Examiner

6. On January 26, 1995, the WERC issued the following Order dismissing the complaint referenced in No. 4, above:

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MILWAUKEE POLICE ASSOCIATION,

Complainant,

Vs.

THE CITY OF MILWAUKEE, a municipal corporation,
THE BOARD OF FIRE AND POLICE
COMMISSIONERS and PHILLIP ARREOLA, Chief
of Police of the City of Milwaukee,

Respondents.

Case 408

No. 50490 MP-2855

Decision No. 28295

ORDER DISMISSING COMPLAINT

Milwaukee Police Association having, on February 7, 1994, filed a complaint with the Wisconsin Employment Relations Commission alleging that the City of Milwaukee, a municipal corporation, the Board of Fire and Police Commissioners and Philip Arreola, Chief of Police of the City of Milwaukee had committed prohibited practices within the meaning of Sec. 111.70 of the Municipal Employment Relations Act by denying officials of the Milwaukee Police Association the right to represent members and failing to promote Officer Sandoval; and the Commission's Examiner having, by a letter dated December 30, 1994, informed the parties that unless advised otherwise by January 18, 1995, the matter would be dismissed; and no response to said letter having been received as of this date, the Commission being satisfied that the complaint should be dismissed;

NOW, THEREFORE, it is

ORDERED

That the complaint filed in the instant matter be, and the same hereby, is, dismissed.

Given under our hands and seal at the City of Madison, Wisconsin, this
26th day of January, 1995.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By A. Henry Hempe /s/
A. Henry Hempe, Chairperson

Herman Torosian /s/
Herman Torosian, Commissioner

William K. Strycker /s/
William K. Strycker, Commissioner

7. On April 18, 1996, Richard N. Sandoval filed the following complaint with the
WERC:

Richard N. Sandoval,

Complainant,

VS.

City of Milwaukee, Board of Fire and Police Commissioners, Philip Arreola,
Chief of Police, Howard Lindstedt, Captain of Police, Adam Wojak, Lieutenant
of Police, and the Milwaukee Police Association,

Respondents.

The complainant above-named complains that the Respondents above-named
have engaged in and are engaging in prohibited practices contrary to Wisconsin
Statutes, which include but are not limited to Chapter 62.13, and Chapter 111.77
and alleges:

1. On November 21, 1991, the Board of Fire and Police Commissioners
adopted a Detective eligibility list and the above named complainant placed 79
(seventy-nine) on that list.

2. On October 7, 1993, Police Chief Arreola recommended the promotion of two police officers, numbers 80 and 81 on the list. Without any written or verbal reason, the Chief passed over the complainant.

3. On October 13, 1993, at a regularly scheduled meeting of the Fire and Police Commission, the Chief presented a letter stating his reasons for the objection of the complainant's promotion. The letter was not made available to the complainant or his bargaining agent, the Milwaukee Police Association. The complainant requested a hearing before the Fire and Police Commission, and requested that his bargaining agent be present. The hearing was granted but the representation was denied.

4. On October 20, 1993, a hearing was held with three board members of the Fire and Police Commission, Leonard Ziolkowski, Phoebe Weaver-Williams, and M. Nicol Padway. Also present was the Executive Director, Kenneth Munsun, and an Assistant City Attorney. The contents of the letter to the Board from the Chief, were still not made available to the complainant. The complainant was never given any written or verbal reasons for the denial of his promotion. The complainant could only assume that the objection was based upon a previous disciplinary action handed down 1 (one) year earlier. In addition, Commissioner Ziolkowski slept through a portion of the hearing.

5. The complainant received a short letter from the Fire and Police Commission informing him that they had voted to uphold the Chief's objection.

6. In the months that followed, through a separate legal action on behalf of the complainant, copies of letters explaining the reasons for the denial were finally obtained. The complainant learned that several incidents which were alleged to have occurred six months prior, were used to substantiate the objection. These were incidents that the complainant strongly denied at the time they were investigated. Further, the complainant was not advised at any time by his superior, Lt. Adam Wojak, that these matters could be used against him in anyway. Complainant was never given the specifics of the incidents so he was not prepared to prove his innocence. In addition, a fellow officer, when learning that the complainant was being accused of misconduct, stepped forward and advised Lt. Adam Wojak that he was responsible for one of the complaints being generated and that the above-named complainant, was not even present at the location that the misconduct was to have occurred. All of this was ignored by Lt. Adam Wojak. Complainant repeatedly requested, both verbally and in

writing, that the matters be reviewed and his innocence would be revealed. No action was taken.

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7. Complainant met with the Commanding Officer of the Third District, Captain Howard Lindstedt, and informed him that he, Captain Lindstedt had submitted to the Assistant Chief of Police, alleging misconduct, contained inaccurate information. Complainant further advised Lindstedt that he was able to prove his innocence in these matters, and he requested Lindstedt re-open the investigation. Lindstedt replied that he would need two weeks to do so. One month passed and the complainant again asked Lindstedt what the status was and was told it was still being reviewed. No action was taken.

8. Complainant made several requests in writing to the Fire and Police Commission to have the matter reviewed. Finally, the Commission requested that the matter be reviewed by the Internal Affairs Division. I have requested to see the results of that investigation, and also requested to meet with the Chief of Police concerning it, but have not received any response.

9. It is the complainant's belief based upon the documents provided with this complaint that the Chief of Police had intended to promote him to the position of Detective prior to learning of the alleged misconduct. At the direction of the Chief of Police, the complainant attended and completed a specialized training course for newly appointed and soon to be appointed Detectives. Complainant received a completion certificate signed by the Chief of Police in February, 1993.

10. The Milwaukee Police Association has failed to represent the complainant in this matter and after numerous attempts to contact members of the Association, his calls and letters are not answered. Complainant was led to believe by the Association, that a complaint was pending before the WERC. Complainant has recently learned that the complaint was allowed to be dismissed because of a failure on the part of the Association to respond to a request by the WERC.

11. Complainant believes that all options for a resolution to this matter have been exhausted and is requesting the WERC to order his promotion retroactive to October 24, 1993. Further, the complainant requests the Milwaukee Police Association be ordered to pay the complainant \$5,000.00 which is the total attorney fees paid by the complainant to produce the documents necessary to prove the complainant's innocence in the alleged misconduct which was used to deny the promotion.

Dated this 14th day of April, 1996 at Milwaukee, Wisconsin.

Richard N. Sandoval /s/
Richard N. Sandoval
3364 S. 71st Street
Milwaukee, WI 53219
414-5543-0252
E-mail: rsinc@execpc.com

Ten exhibits were attached to the complaint.

8. On May 20, 1996, the City filed a Motion to Dismiss the City respondents from the complaint referenced in No. 7, above.

9. The matter of the 1993 denial of Sandoval's promotion to the rank of detective was settled in 1996 when Sandoval and the City signed a Settlement Agreement and Release. That Settlement Agreement and Release resolved a lawsuit Sandoval had filed against the City challenging the 1993 denial of his promotion to detective. The Settlement Agreement and Release from that case applies to the complaint Sandoval subsequently filed with the WERC (i.e. the instant complaint) because the instant complaint deals with the same subject matter as was raised in the 1993 lawsuit (namely, the 1993 denial of Sandoval's promotion to the rank of detective).

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

CONCLUSION OF LAW

Since the 1996 Settlement Agreement and Release applies to the instant case, the Complainant is foreclosed from litigating the 1993 denial of his promotion to detective.

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

and issues the following

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ORDER

The City's Motion to Dismiss is hereby granted. The City of Milwaukee, the Board of Fire and Police Commissioners, Police Chief Philip Arreola, Captain Howard Lindstedt and Lieutenant Adam Wojak are hereby dismissed from the instant complaint.

Dated at Madison, Wisconsin this 18th day of February, 1999.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Raleigh Jones /s/

Raleigh Jones, Examiner

CITY OF MILWAUKEE (POLICE)

**MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSION OF LAW AND ORDER GRANTING
CITY'S MOTION TO DISMISS**

As noted in this decision's prefatory paragraph, the City filed a Motion to Dismiss all the City Respondents from the instant complaint. The basis for the City's motion is this: it avers that the Settlement Agreement and Release which Sandoval signed in March, 1996 applies to the instant complaint. The Association agrees. Sandoval disagrees.

POSITIONS OF THE PARTIES

Complainant Sandoval

The Complainant contends that the City's Motion to Dismiss should be denied. According to the Complainant, the 1996 Settlement Agreement and Release (which the City relies on as the basis for that motion) are of no consequence herein. The Complainant attacks the validity of the Settlement Agreement and Release on the following grounds. First, the Complainant avers that it was not his intent to settle "any pending labor matters" by signing the Settlement Agreement and Release. To support this premise, he quotes the first sentence of a June 4, 1996 letter which his then-attorney (John Fuchs) wrote to him. That sentence provides as follows: "When we settled, it was not the intent that we settle any pending labor matters." According to the Complainant, this letter establishes that there was no meeting of the minds with regard to the Settlement Agreement and Release. Second, the Complainant argues in the alternative that he was not told the ramifications of the Settlement Agreement and Release and was therefore misinformed as to what he signed. Third, the Complainant asserts he received nothing in consideration for signing the Settlement Agreement and Release. In his view, he got nothing that he was not already entitled to (as a result of signing those documents). The Complainant submits that since no consideration was given to him for signing them, the Settlement Agreement and Release are unenforceable and not binding. Fourth, the Complainant contends that even if he did receive consideration for signing the Settlement Agreement and Release, the City has not comported with their end of the bargain. According to the Complainant, the City has not complied with the Settlement Agreement. Finally, the Complainant argues that the 1996 Settlement Agreement and Release are void because they are "against public policy." In conclusion, the Complainant asks the Examiner to deny the City's Motion to Dismiss and give him a forum so that he can show that he did nothing to warrant being taken off the detective promotion list in 1993.

Respondent City, et al

The City contends that all the City Respondents should be dismissed from this complaint. The basis for this contention is as follows. For background purposes, the City notes that in 1993, Sandoval filed a civil lawsuit against the Milwaukee Board of Fire and Police Commissioners. This lawsuit arose from the Police Chief's 1993 denial of Sandoval's promotion to the rank of detective in the Milwaukee Police Department. Specifically, this lawsuit alleged that the denial of this promotion by the Police Chief was unlawful and that he (Sandoval) should be promoted to detective retroactive to October 24, 1993. The City notes that this lawsuit was settled in March, 1996 when the parties to that lawsuit (Sandoval and the City) signed a Settlement Agreement and Release. The City avers that the Settlement Agreement and Release from that case applies to the complaint Sandoval subsequently filed with the WERC (i.e. the instant case) because the instant complaint deals with the same subject matter (namely, the Police Chief's 1993 denial of Sandoval's promotion to the rank of detective). To support this premise, the City cites the language in the Settlement Agreement and Release. In particular, it cites the first sentence of the first paragraph of the Settlement Agreement, wherein it provides:

The parties wish to effect a final settlement of all complaints, claims, charges, demands and liabilities, of any kind or nature, whether filed or unfiled, arising from the denial in 1993 by employer of plaintiff's promotion to the rank of detective in the Milwaukee Police Department. . .

It also cites the first paragraph of the Release wherein it provides:

. . .that the undersigned releasor, Richard N. Sandoval, does for himself, his heirs, executors and administrators forever release and discharge Philip Arreola, the Board of Fire and Police Commissioners of the City of Milwaukee, the City of Milwaukee, a municipal corporation, and their respective successors, assigns, officers, agents and employes (hereinafter the "Released Parties"), of and from any and all claims, demands, actions or causes of action for damages or relief of any kind or nature whatsoever. . .in any way arising or growing out of the circumstances resulting in the denial of promotion of the undersigned to the rank of detective in the Milwaukee Police Department in 1993.

According to the City, this clear language released it from future actions relating to the 1993 denial of Sandoval's promotion to detective. The City therefore asks the Examiner to apply the 1996 Settlement Agreement and Release here and dismiss it, the Board of Fire and Police Commissioners, Police Chief Philip Arreola, Captain Howard Lindstedt and Lieutenant Adam Wojak from the instant complaint.

Respondent Association

The Association sees no basis to deny the City's Motion to Dismiss. It makes the following arguments to support this contention. The Association notes at the outset that the parties agreed to have the motion decided based on certain stipulated facts. It submits that the parties cannot go beyond those stipulated facts in responding to the City's motion. The Association avers that the Complainant does so in certain areas. First, the Association contends that the question of what Sandoval believed, and what he was told by his attorney in the civil case, are matters outside this record and are contested facts. Second, the Association asserts that the question of whether Sandoval got a good or bad deal in his Settlement Agreement is not a matter to be second-guessed on this record. Responding to the question of whether there was consideration for the Settlement Agreement and Release, the Association notes that it appears that the City agreed to perform certain tasks (see paragraph 3 of the settlement agreement) in exchange for Sandoval's agreement in other paragraphs of the document (notably paragraph 4). Third, in response to the Complainant's contention that the City has not followed through on its promise to perform these tasks, the Association submits that the stipulated facts do not contain any facts in support of or in opposition to that suggestion. The Association also maintains that if the City has failed to follow through on its commitment, the appropriate remedy for Sandoval would be an enforcement action, rather than a claim that the Settlement Agreement is void. Aside from the points just referenced about the contested facts, the Association also addresses the interpretation which should be given to the Settlement Agreement and Release. According to the Association, the language contained therein is global in scope, since it released "all. . . claims. . . of any kind or nature, whether filed or unfiled, arising from the denial in 1993 by employer of plaintiff's promotion to the rank of detective. . ." The Association avers that, absent ambiguity, there is no basis to go beyond the four corners of the Settlement Agreement. The Association argues that if there were ambiguity in the Settlement Agreement, there is no extrinsic evidence of intent in the stipulated facts.

DISCUSSION

The complaint alleges that the City failed to promote Sandoval to detective in 1993 and that the Association failed to fairly represent him in the matter. Although no specific statutory provisions are cited in the complaint, both of the allegations just identified could, if proved, be found to constitute prohibited practices within the meaning of the Municipal Employment Relations Act. Pursuant to Sec. 111.70(4)(a), Stats., Sec. 111.07, Stats., governs the procedures by which prohibited practice complaints are to be heard. Chapter 227 of the Wisconsin Statutes states the general framework for administrative agency proceedings. The City's Motion to Dismiss is governed by both of the Chapters just identified (namely, Chapters 111 and 227).

Sec. 227.01(3), Stats., defines a “Contested case” to mean “an agency proceeding in which the assertion by one party of any substantial interest is denied or controverted by another party and in which, after a hearing required by law, a substantial interest of a party is determined or adversely affected by a decision or order.”

The Commission is an “Agency” under Sec. 227.01(1), Stats., thus making this proceeding an “agency proceeding.” To be a contested case under Sec. 227.01(3), Stats., the proceeding must involve a controverted, substantial interest which will be determined after a hearing required by law. In this case, the Complainant seeks to be appointed to the position of detective retroactive to 1993 and reimbursed his attorneys’ fees. His interest in same is deemed “substantial” and is “controverted by another party” (namely, the Respondents). Given the foregoing, this is a contested case.

Dismissing a contested case prior to hearing is appropriate only in limited circumstances:

Dismissal prior to evidentiary hearing would be proper if based on lack of jurisdiction, lack of timeliness and in certain other cases. . .(I)t would be a rare case where circumstances would permit dismissal of the proceedings prior to the conclusion of a meaningful evidentiary hearing on other than jurisdictional grounds or failure of the complaint to state a cause of action.

68 OAG 31, 34 (1979).

Similarly, the Commission has set the following standard by which a pre-hearing motion to dismiss is to be measured:

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.

UNIFIED SCHOOL DISTRICT NO. 1 OF RACINE COUNTY, WISCONSIN, DEC. NO. 15915-B (Hoornstra with final authority for WERC, 12/77), at 3; RACINE UNIFIED SCHOOL DISTRICT, DEC. NO. 27982-B (WERC, 6/94).

In this case, the parties agreed to have the Motion to Dismiss decided based on certain stipulated facts. The stipulated facts are identified in detail in Findings of Fact 1 through 8. Foremost among them are the following. Finding of Fact 1 shows that in 1993, Sandoval filed a civil lawsuit against the Milwaukee Board of Fire and Police Commissioners. This lawsuit

arose from the Police Chief's 1993 denial of Sandoval's promotion to the rank of detective in the Milwaukee Police Department. This lawsuit alleged that the denial of this promotion by the Police Chief was unlawful and that he (Sandoval) should be promoted to detective retroactive to October 24, 1993. Finding of Fact 3 shows that this lawsuit was settled in March, 1996 when the parties to that lawsuit (Sandoval and the City) signed a Settlement Agreement and Release. Finding of Fact 7 shows that several weeks after Sandoval signed the Settlement Agreement and Release, he filed the instant complaint with the WERC. In part, that complaint alleges that the City unlawfully failed to promote Sandoval to detective in 1993. According to the City, the Settlement Agreement and Release which Sandoval signed in 1996 applies to the instant complaint. Sandoval disagrees. Given the foregoing, the question to be answered here is whether the 1996 Settlement Agreement and Release applies to the instant complaint.

In language interpretation cases such as this, the undersigned normally focuses attention first on the language itself and then, if necessary, on matters external to the language. In this case though, I have decided to structure the discussion so that this normal order is reversed. Thus, I will address the Complainant's arguments about the validity of the Settlement Agreement before I look at the language of the Settlement Agreement itself. My reason for doing so is this: if I were to first address the language contained in the Settlement Agreement and Release, and find it to unambiguously apply to the instant complaint, there would be no need to look at any matters external to the language. The problem with that approach here is that none of the Complainant's arguments deal with the language itself; instead, all involve matters that are external to the language. Were I to decide this motion then by looking solely at the language itself, I would not have addressed any of the Complainant's contentions. I have therefore decided to use this structural format to complete the record and address all the Complainant's contentions.

The Complainant attacks the validity of the Settlement Agreement and Release on the following grounds. First, the Complainant contends it was not his intent to settle any pending labor matters by signing the Settlement Agreement and Release. Similarly, he also contends he was not told the ramifications of the documents he signed in 1996. The question of what Sandoval believed he signed (his intent) and what his attorney told him about the documents he signed are matters that are outside the stipulated facts. As has previously been noted, the parties stipulated to certain facts for the purpose of deciding this motion. There is nothing in those facts about Sandoval's intent in signing the 1996 documents or what his attorney told him about same. That being so, this particular contention cannot be substantiated by the stipulated facts. Second, the Complainant asserts he got nothing from the Settlement Agreement that he was not already entitled to. The question of whether Sandoval got a good deal or a bad deal with his Settlement Agreement is likewise outside the stipulated facts. There is nothing in those facts which gives the undersigned a basis to second-guess the deal.

As a result, this particular contention cannot be substantiated by the stipulated facts either. Third, the Complainant contends he received nothing in consideration for signing the Settlement Agreement and Release. The record evidence shows otherwise. While the language of those documents has yet to be reviewed, suffice it to say here that Paragraph 3(a) and (b) of the Settlement Agreement show that the City agreed to perform certain tasks with regard to Sandoval's personnel records in exchange for Sandoval's agreement in Paragraphs 4 and 5 to execute a release and dismiss his lawsuit against the City. That agreement establishes consideration. Finally, the Complainant avers that the City has not followed through on its promise to perform the tasks identified in Paragraphs 3(a) and (b) of the Settlement Agreement. The question of whether the City has or has not followed through on its promise is also outside the stipulated facts. Thus, there is nothing in those facts which either supports or undercuts the Complainant's claim. That being so, this contention also cannot be substantiated by the stipulated facts. Assuming however for the sake of discussion that the Complainant's assertion (that the City has failed to follow through on its commitment) is correct, the appropriate recourse for Sandoval would be an enforcement action, not a claim before this Examiner that the Settlement Agreement is void and unenforceable. Given the foregoing, none of the Complainant's attacks on the validity of the Settlement Agreement have been substantiated.

Having so found, attention is turned to whether the 1996 Settlement Agreement and Release applies to the instant complaint. Based on the following rationale, I find that it does. The first sentence of the first paragraph of the Settlement Agreement provides in pertinent part: "The parties wish to effect a final settlement of all complaints, claims, . . . of any kind or nature, whether filed or unfiled, arising from the denial in 1993 by employer of plaintiff's promotion to the rank of detective in the Milwaukee Police Department. . . ." In my view, there is no ambiguity to this language or its interpretation. It specifies in plain terms that the matter of the 1993 denial of Sandoval's promotion to the rank of detective was settled. The instant complaint deals with the very same subject matter (namely, the 1993 denial of Sandoval's promotion to the rank of detective). That being the case, the Settlement Agreement applies here. Lest there be any question about it, the first paragraph of the Release is also directly on point. It provides, in pertinent part: ". . .the undersigned releasor, Richard N. Sandoval, does. . .release and discharge Philip Arreola, the Board of Fire and Police Commissioners of the City of Milwaukee, the City of Milwaukee. . .officers, agents and employees. . .from any and all claims. . .growing out of the. . .denial of promotion of the undersigned to the rank of detective in the Milwaukee Police Department in 1993." This clear language released all the City respondents herein "from any and all claims" relating to the 1993 denial of Sandoval's promotion to detective. Given the Settlement Agreement and Release language quoted above, the Complainant is foreclosed from litigating the 1993 denial of his promotion to detective.

Accordingly, the City, the Board of Fire and Police Commissioners, Police Chief Philip Arreola, Captain Lindstedt and Lieutenant Wojak are hereby dismissed from the instant complaint.

The claim against the Association still stands.

Dated at Madison, Wisconsin this 18th day of February, 1999.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Raleigh Jones /s/

Raleigh Jones, Examiner

