

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

---

In the Matter of the Petition of

**DE PERE POLICE BENEVOLENT ASSOCIATION**

Requesting a Declaratory Ruling Pursuant to  
Section 111.70(4)(b), Wis. Stats., Involving a Dispute  
Between Said Petitioner and

**CITY OF DE PERE**

Case 65  
No. 58476  
DR(M)-606

**Decision No. 29890**

---

Appearances:

**Attorney Judith Schmidt-Lehman**, City Attorney, 335 South Broadway, De Pere, Wisconsin 54115-2593, appearing on behalf of the City of De Pere.

Parins Law Firm, S.C., by **Attorney Thomas J. Parins**, 125 South Jefferson Street, #102, P.O. Box 1626, Green Bay, Wisconsin 54305-1626, appearing on behalf of the De Pere Police Benevolent Association.

**ORDER DENYING MOTION TO DISMISS**

On January 24, 2000, the De Pere Police Benevolent Association filed a petition with the Wisconsin Employment Relations Commission pursuant to Sec. 111.70(4)(b), Stats., seeking a declaratory ruling regarding the City of De Pere's duty to bargain with the Association. The petition was signed by the Association's attorney and the Association mailed a copy of the petition to the City at the time it filed with the Commission.

On February 8, 2000, the City filed a motion to dismiss the petition as failing to comply with the requirements of ERC 18.02(2) because "Such petition was not made under oath or acknowledgement and was not sent by registered or certified mail to Respondent; . . ."

No. 29890

On February 11, 2000, in response to the motion to dismiss, the Association refiled the petition for declaratory ruling with a cover letter indicating that the petition had been sent to the City by certified mail. The petition was again signed by the Association's attorney but now before a notary public.

On March 14, 2000, the City advised the Commission that it was renewing the motion to dismiss because the petition was not a "sworn petition" and indeed could not become one because the Association attorney was not present for or a participant in the bargaining at issue.

On April 4, 2000, the Association filed written argument in opposition to the motion. That same day, the Association also filed a supplement to the petition indicating that the Association attorney was not asserting that he had actual knowledge of all matters in the petition and that the factual context in the petition is recited on information and belief based on communications to him from the Association.

Having considered the record and being fully advised in the premises, the Commission makes and issues the following

**ORDER**

The motion to dismiss is denied.

Given under our hands and seal at the City of Madison, Wisconsin this 9th day of May, 2000.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

\_\_\_\_\_  
James R. Meier, Chairperson

A. Henry Hempe /s/

\_\_\_\_\_  
A. Henry Hempe, Commissioner

Paul A. Hahn /s/

\_\_\_\_\_  
Paul A. Hahn, Commissioner

City of De Pere

**MEMORANDUM ACCOMPANYING ORDER DENYING MOTION TO DISMISS**

The issue of this case is whether the notarized acknowledgement accompanying the Association's February 11, 2000 petition for declaratory ruling complies with ERC 18.02(2).

ERC 18.02(2) provides in pertinent part:

The original of the petition shall be signed and sworn to before any person authorized to administer oaths or acknowledgements.

In CITY OF BROOKFIELD, DEC. NO. 19944 (WERC, 9/82) we found the following notarized acknowledgement attached to a petition for declaratory ruling “. . . to be in compliance with the spirit, if not the letter, of the rule.”

Personally appeared before me this 10<sup>th</sup> day of June, 1982, the above named Tom E. Hayes, to me known to be the person who executed the foregoing instrument and acknowledged the same.

The acknowledgement in the instant case is virtually identical in form to that in CITY OF BROOKFIELD, stating:

Personally came before me this 9<sup>th</sup> day of February, 2000, the above named Thomas J. Parins to me known to be the person who executed the foregoing instrument and acknowledge(sic) the same.

We continue to believe that the form of this acknowledgement is in compliance with the spirit, if not the letter, of the rule. We do not agree with the City's assertion that the rule requires a petition signer to have been present for or an actual participant in the bargaining at issue. Nor do we believe that the petition signer need assert that he or she has actual, personally experienced knowledge of all matters set forth in the petition. Factual content based on knowledge, information and belief, duly verified as in the instant matter is sufficient.

We take further guidance from Sec. 802.05(1)(a), Stats., that provides, in relevant part:

. . . The signature of an attorney or party constitutes a certificate that the attorney or party has read the pleading, motion or other paper; that to the best of the attorney's or party's knowledge, information and belief, formed after reasonable inquiry, the pleading, motion or other paper is well-grounded in fact

and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law; and that the pleading, motion or other paper is not used for any improper purpose, such as to harass or cause unnecessary delay or needless increase in the cost of litigation. . . .

An identical view as to verified petition signatures we find to be consistent with past Commission precedent and compliant with the provisions of ERC 18.02(2).

Dated at Madison, Wisconsin this 9th day of May, 2000.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

---

James R. Meier, Chairperson

A. Henry Hempe /s/

---

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

---

Paul A. Hahn, Commissioner