

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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**FRANCIS C. TOPEL**, Complainant,

vs.

**MILWAUKEE COUNTY DEPARTMENT OF PUBLIC WORKS,  
HIGHWAY DIVISION and AFSCME, COUNCIL 48  
AFL-CIO, LOCAL 882**, Respondents.

Case 514  
No. 60566  
MP-3777

**Decision No. 30351-B**

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Appearances:

Alan C. Olson & Associates, S.C., Attorneys at Law, by **Ms. Faye D. Boom**, 2880 South Moorland Road, New Berlin, Wisconsin 53151-3744, on behalf of Complainant Francis C. Topel.

**Mr. Timothy R. Schoewe**, Deputy Corporation Counsel, Milwaukee County, 901 North Ninth Street, Room 303, Courthouse, Milwaukee, Wisconsin 53233, on behalf of Respondent Milwaukee County.

**AMENDED ORDER DENYING IN PART  
AND GRANTING IN PART MOTION TO DISMISS**

On November 7, 2002, the undersigned issued his Order Denying In Part and Granting In Part Motion to Dismiss wherein he made and issued Conclusion of Law 2 referencing “paragraph 7, subparagraphs J and K of the third amended complaint” which were then dismissed under the Order and discussed at footnote 3. Conclusion of Law 2, the Order and footnote 3 should have referenced paragraph 6, subparagraphs J and K of the third amended complaint as that portion of the complaint being dismissed.

No. 30351-B

Pursuant to Sec. 111.07(5), Stats., and ERC 12.08 Wis. Adm. Code, based on the mistake in the Original Order referenced above, the Examiner hereby modifies his November 7, 2002 Order in this matter as follows:

Conclusion of Law 2 is modified to read:

2. The third amended complaint filed by Topel on October 1, 2002, clarifies the original complaint filed by Topel on November 19, 2001, and alleges facts which, if proved, are not barred by Sec. 111.07(14), Stats., and which provide a basis for finding violations and granting relief under Sec. 111.70(3)(b)1, Stats., and Sec. 111.70(3)(a)5, Stats., except as to paragraph 6, subparagraphs J and K of the third amended complaint.

The Order is modified to read:

### **ORDER**

The motion to dismiss is denied except as to the allegations in paragraph 6, subparagraphs J and K of the third amended complaint.

Footnote 3 of the Discussion is modified to read:

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*3/ That is with the exception of paragraph 6, subparagraphs J and K of the third amended complaint. While those subparagraphs might possibly be read to allege violations of the contract by the County, Complainant does not allege that he exhausted the contractual grievance procedure in those regards or that the Union failed to fairly represent him in those regards. Thus, those allegations do not meet the requirements set forth in MAHNKE, supra, and they have been dismissed.*

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Dated at Madison, Wisconsin, this 7th day of November, 2002.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

David E. Shaw /s/

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David E. Shaw, Examiner

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