

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

THOMAS C. VANNESS, Complainant,

vs.

KEWAUNEE COUNTY, Respondent.

Case 64
No. 63593
MP-4047

Decision No. 31030-B

THOMAS C. VANNESS, Complainant,

vs.

TEAMSTERS' LOCAL UNION NO. 75, Respondent.

Case 1
No. 63595
MP-4048

Decision No. 31031-B

Appearances:

Thomas C. Vanness, 919 Center Street, Kewaunee, Wisconsin 54216, appearing on his own behalf.

Lindner & Marsack, S.C., by **Attorney Thomas W. Mackenzie**, 411 East Wisconsin Avenue, Suite 1800, Milwaukee, Wisconsin 53202, appearing on behalf of Kewaunee County.

Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., by **Attorney Scott D. Soldon**, 1555 North RiverCenter Drive, Suite 202, Milwaukee, Wisconsin 53212-2993, appearing on behalf of Teamsters' Local Union No. 75.

Dec. No. 31030-B
Dec. No. 31031-B

**FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND ORDER**

On April 20, 2004, Thomas C. Vanness, hereafter the Complainant, filed complaints with the Wisconsin Employment Relations Commission against Kewaunee County, hereafter the County, and Teamsters' Local Union No. 75, hereafter Local 75. The complaint against the County alleged that the County had committed prohibited practices, contrary to Sec. 111.70(3)(a), Wisconsin Statutes, with respect to its conduct in undertaking an investigation of the Complainant in 2003, which ultimately led to his resignation from employment with the Kewaunee County Sheriff's Department. The complaint against the Union alleged that the Union had failed in its duty of fair representation to him by its conduct and representations to him during the investigation leading up to his resignation. On August 17, 2004, the Commission consolidated the complaints for purposes of hearing. On October 4, 2004, the Commission appointed John R. Emery, a member of its staff, as Examiner to issue Findings of Fact, Conclusions of Law and Order, as provided in Sec. 111.07 and 111.70(4)(a), Wis. Stats. On December 27, 2004, the County filed an Answer to the Complaint. On December 31, 2004, the Union filed an Answer to the Complaint. On April 5, 2005, a hearing was conducted in Kewaunee, Wisconsin. The proceedings were transcribed and the transcript was filed on April 25, 2005. The Complainant filed his initial brief on June 6, 2005. The County and Union filed their initial briefs on June 2, 2005 and June 15, 2005, respectively. On July 5, 2005, the County filed a reply brief. The Complainant and Union declined to file reply briefs and the record was thereupon closed.

The Examiner, having considered the evidence, the applicable law and the arguments of the parties and being advised in the premises, hereby makes and issues the following

FINDINGS OF FACT

1. Thomas C. Vanness, the Complainant herein, is a resident of the State of Wisconsin, residing at 919 Center Street, Kewaunee, Wisconsin.
2. The Respondent, Kewaunee County, is a municipal employer and maintains its offices at 613 Dodge Street, Kewaunee, Wisconsin.
3. The Respondent, Teamsters' Local Union No. 75, is a labor organization and maintains its offices at 1546 Main Street, Green Bay, Wisconsin.
4. At all times pertinent hereto, Local 75 was the exclusive representative of a bargaining unit of employees within the Kewaunee County Sheriff's Department, consisting of "...all regular deputized full-time and permanent part-time employees in the County Sheriff's Department, but excluding the Sheriff, supervisors, confidential and managerial employees." the Complainant was a member of said bargaining unit.

5. Prior to May 20, 2003, the Complainant was employed as an Investigator by the Kewaunee County Sheriff's Department and was a member of the bargaining unit represented by Local 75.

6. In 2000, the Complainant helped organize Local 75's successful election campaign to displace another union as the exclusive bargaining unit representative and thereafter served on the Union's bargaining team and as a Union Steward.

7. In 2002, the Complainant was supported by Local 75 in a campaign for the office of Sheriff of Kewaunee County against the incumbent, John Cmeyla.

8. On April 16, 2003, the Complainant attended a meeting of the Brown County Correctional Officers to assist Local 75 in a successful effort to retain its status as exclusive representative of that bargaining unit.

9. In March and April of 2003, the management of the Kewaunee County Sheriff's Department conducted an investigation into a series of department rules violations allegedly committed by the Complainant.

10. As part of the Department's investigation the Complainant was required to attend an investigative hearing regarding the alleged violations, which was conducted on April 21, 2003 and April 25, 2003 and the proceedings of which were recorded and later transcribed. The April 21 session was attended by Chief Deputy David Cornelius, Lt. Joe Treml, Lt. Chris Gulbrand, County Administrator Ed Dorner, the Complainant and Union Representative Dan McGowan. The April 25 session was attended by Chief Deputy Cornelius, Lt. Gulbrand, the Complainant and Union Representatives McGowan and Mike Thoms. At the sessions, the Complainant was interrogated by the Chief Deputy with respect to a series of incidents involving allegations of violations of Department rules and regulations, including, among other things, insubordination, improper reporting and mishandling of evidence.

11. On April 21, 2003, the Complainant was placed on paid administrative leave, pending completion of the investigation, during which time he was excluded from entering Sheriff's Department offices and was required to surrender Sheriff's Department property in his possession.

12. Upon completion of the investigation, the Complainant was summoned to appear at a meeting on May 16, 2003. The meeting was attended by Sheriff Cmeyla, Chief Deputy Cornelius, Corporation Counsel Elma Anderson, the Complainant and Union Representative Thoms. At the meeting, the Sheriff issued the Complainant three separate letters of reprimand and fourteen separate notices of termination for alleged violations of numerous Department rules and regulations all dated April 30, 2003. The Sheriff and Corporation Counsel advised the Complainant of the statutory process for termination and of his right to a hearing before the grievance committee regarding the charges against him and the recommendation for

termination. The Sheriff also advised the Complainant that pending termination he would forthwith be placed on administrative leave without pay.

13. During the May 16 meeting, the Complainant took a caucus with Union Representative Thoms to discuss the County's position and his alternatives. At some point during the caucus, the Complainant and Thoms were joined by the Complainant's wife. Thoms discussed with the Complainant and Mrs. Vanness the pros and cons of the options available, including fighting a likely discharge through the grievance process and the Complainant voluntarily resigning his position on terms to be negotiated with the County. Thoms told the Complainant that Local 75 would support him in fighting a termination, but also advised him of the risks involved. Thoms also indicated that a severance agreement might be a preferable option if it could be negotiated on advantageous terms and discussed with the Complainant and Mrs. Vanness the possibility of other available employment in law enforcement elsewhere. At the end of the caucus the Complainant decided to voluntarily resign from his employment, at which point he and Thoms returned to the meeting and so advised the County's representatives. The parties agreed to adjourn the meeting at that point and return on May 20 to finalize the terms of the severance agreement.

14. On May 20, the parties reconvened the meeting. The meeting was attended by Sheriff Cmeyla, Chief Deputy Cornelius, Corporation Counsel Anderson, County Administrator Ed Dorner, the Complainant and Union Representative Thoms. The Complainant had prepared a letter of resignation, as follows:

Thomas Clarence Vanness
919 Center Street
Kewaunee, WI 54216

May 20, 2003

Gerald Novickis
County Board Chairman
Kewaunee County

Dear Chairman Novickis,

This letter will confirm my resignation from the Kewaunee County Sheriff's Department. My last day of work will be May 30, 2003. Please feel free to contact me in the future about any questions you may have about my work experience in Kewaunee County.

My experience with Kewaunee County has been very eye-opening. I appreciate the opportunity of being able to see first hand what honesty and integrity in the Kewaunee County Sheriff's Department is really like.

Thomas C. Vanness /s/
Thomas C. Vanness

Thoms advised the Complainant to withhold the resignation letter and instead to negotiate the terms of separation, which the Complainant agreed to do.

15. At the meeting, Anderson produced a draft of a proposed severance agreement for the Complainant's perusal, as follows:

SEVERANCE AGREEMENT

It is agreed by and between Thomas C. Vanness, Local 75, Drivers, Warehouse & Dairy Employees, John Cmeyla, Kewaunee County Sheriff, and Kewaunee County by Kewaunee County Administrator Edward Dorner that:

Thomas C. Vanness has voluntarily terminated his employment with Kewaunee County and the Kewaunee County Sheriff's Department, effective May 31, 2003.

Kewaunee County and the Kewaunee County Sheriff's Department will not pursue any employment actions concerning Thomas C. Vanness.

No party to this agreement will make or will permit anyone associated with that party to make any public statement concerning the end of Thomas C. Vanness' employment with Kewaunee County and the Kewaunee County Sheriff's Department.

Thomas C. Vanness will not seek employment in any law enforcement capacity in Kewaunee County, or any municipality in Kewaunee County.

Should Thomas C. Vanness require a reference from Kewaunee County and/or the Kewaunee County Sheriff's Department for any future employment, such reference will be limited to the fact of Thomas C. Vanness; employment, the dates of employment and that the employment was terminated by mutual agreement.

Thomas C. Vanness will conduct himself in a professional manner with respect to any on going investigations or criminal prosecutions of cases which Thomas

C. Vanness was involved with at any time during his employment with Kewaunee County and the Kewaunee County Sheriff's Department.

16. The parties negotiated modifications to the severance agreement as proposed by the Complainant and Thoms, resulting in an agreement that was approved and signed by all parties at the end of the meeting, as follows:

EDWARD J. DORNER
KEWAUNEE COUNTY ADMINISTRATOR

SEVERANCE AGREEMENT

It is agreed by and between Thomas C. Vanness, Local 75, Drivers, Warehouse & Dairy Employees, John Cmeyla, Kewaunee County Sheriff, and Kewaunee County by Kewaunee County Administrator Edward Dorner that:

Thomas C. Vanness has voluntarily terminated his employment with Kewaunee County and the Kewaunee County Sheriff's Department, effective May 20, 2003, with salary and benefits payable through May 31, 2003.

Kewaunee County and the Kewaunee County Sheriff's Department will not pursue any employment actions or criminal actions concerning Thomas C. Vanness as of the date of this agreement.

No party to this agreement will make or will permit anyone associated with that party to make any public statement concerning the end of Thomas C. Vanness' employment with Kewaunee County and the Kewaunee County Sheriff's Department.

No party to this agreement will make or will permit anyone associated with that party to make any public or private statements concerning the involvement of any members of the Kewaunee County Sheriffs Department in the end of Thomas C. Vanness' employment with Kewaunee County and the Kewaunee County Sheriff's Department.

Thomas C. Vanness will not seek employment in any law enforcement capacity in Kewaunee County.

Should Thomas C. Vanness require a reference from Kewaunee County and/or the Kewaunee County Sheriff's Department for any future employment, such reference will be limited to the fact of Thomas C. Vanness; employment, the dates of employment and that the employment was terminated by mutual agreement.

Thomas C. Vanness will conduct himself in a professional manner with respect to any on going investigations or criminal prosecutions of cases which Thomas C. Vanness was involved with at any time during his employment with Kewaunee County and the Kewaunee County Sheriff's Department.

Dated: May 20, 2003

Thomas C. Vanness /s/
Thomas C. Vanness

John M. Cmeyla /s/
John M. Cmeyla
Kewaunee County Sheriff

Mike Thoms /s/
Mike Thoms
Business Agent
Local 75

Edward Dorner /s/
Edward Dorner
County Administrator

17. In the meeting, the Complainant raised the issue of whether his agreement not to seek future employment with the County precluded him from running for Sheriff in the future. The County took the position that the Complainant was agreeing not to run for elective office. Thoms asserted that the agreement not to seek employment did not preclude the Complainant from running for elective office. The parties did not ultimately reach agreement on the issue at the May 20 meeting, although Anderson conceded that the Complainant did have a constitutional right to run for election which the County could not impair.

18. On May 23, 2003, the Complainant delivered a letter of application to the Brown County Human Resources Department, seeking employment as a Corrections Officer, as follows:

Thomas C. Vanness
919 Center Street, Kewaunee, WI 54216
(920) 388-2036/(920) 255-1251

May 23, 2003

Ms. Kathy Koehler
Human Resources Director
Brown County
305 East Walnut Street
Green Bay, WI 54301

Dear Ms. Kathy Koehler:

An opening in the Brown County Correctional Division fits my qualifications and experience perfectly, and I am writing to express my interest and enthusiasm for this position. As a twenty-three year veteran of law enforcement, my career achievements have included being certified in both the jail and patrol as field training officer and being named Kewaunee County's Evidence Technician.

In addition to my desire to join your team, you will find I am a dedicated and driven professional whose recent accomplishments include:

***Investigator for the Kewaunee County Sheriff's Dept,** being responsible for the handling of all investigative cases which include theft, assaults, homicides, etc.

***Huber Law Officer,** leading to the restructuring of fees and how they are collected and the implementation of new rules to govern where and how the Huber prisoner(s) are working.

***Guest Speaker for the Kewaunee County Sheriff's Department,** being able to speak in front of small and large crowds on a variety of topics concerning law enforcement and the community.

Your new jail facility is truly on the cutting edge of technology and you offer a standard to which other jails can be modeled. I am excited about this technology and would be able to translate this excitement into a clear benefit for the Brown County Sheriff's Department Correctional Staff.

Respectfully yours,

Thomas C. Vanness /s/
Thomas C. Vanness

Enclosure: Resume

19. Upon receipt of the Complainant's letter, Brown County Human Resources Assistant Kathy Tilot responded later the same day, as follows:

THOMAS VANNESS
919 CENTER STREET
KEWAUNEE, WI 54216

Dear Mr. Vanness:

We have received your resume indicating your interest in the **Correctional Officer** position with Brown County.

The City/County Human Resources Department conducts a yearly recruitment for the position of Correctional Officer. The recruitment process starts in approximately January of each year and is used to establish an annual eligibility list for the year. **We only accept applications at the time the recruitment is open.**

I will put your name on our mailing list for application materials and will mail you the necessary information when the next recruitment opens.

Thank you for your inquiry.

CITY/COUNTY HUMAN RESOURCES DEPARTMENT

Kay Tilot /s/
Kay Tilot
HR Assistant

20. As of the time of hearing, the Complainant had not obtained further employment in law enforcement and had been working since June 16, 2003 at St. Vincent's Hospital in Green Bay.

21. Subsequent to receiving Tilot's letter, the Complainant contacted Local 75, seeking the Union's assistance in having the severance agreement set aside. In response to the Complainant's request, Union Representatives McGowan and Thoms responded on June 20, 2003, as follows:

June 20, 2003

Mr. Thomas Vanness
919 Center Street
Kewaunee, WI 54216

CERTIFIED MAIL #7002 0460 0002 9330 0783

Dear Mr. Vanness:

This letter is in response to your request that the Union assist you in setting aside the severance agreement you voluntarily signed terminating your employment with the Kewaunee County Sheriff's Department. After receiving your request, we carefully considered the facts of the case and consulted with counsel and we have concluded that under both Wisconsin Employment Relations Commission and arbitration precedents, there is no possibility of reversing the agreement you signed or securing your reinstatement to the Sheriff's Department. Therefore, although we remain willing to assist you in obtaining other employment, we will not pursue your request to rescind your severance agreement or seek your return to the Kewaunee County Sheriff's Department.

As you will recall, before you resigned, we told you that the Union would fight your discipline and discharge if you chose to pursue that course. You informed us that you did not wish to pursue the matter through the grievance procedure and instead, voluntarily resigned from your position. An attempt to now reverse that voluntary decision through arbitration would be unsuccessful. Numerous arbitrators, who have considered similar cases where an employee needs to rescind a voluntary resignation, have been denied reinstatement. See KROGER CO., 115 LA 1478 (Murphy, 2001); MANCHESTER PLASTICS, 110 LA 169 (Knott, 1997); SOUTHERN CALIFORNIA EDISON CO., 86 LA 888 (Weiss, 1985). The SOUTHERN CALIFORNIA EDISON case is very similar to yours. In that case, an employee was involved in a traffic accident and knew that as a result he would be disciplined. The employee chose to quit instead of facing discipline; however, he later filed a grievance seeking to rescind his resignation and gain reinstatement. The arbitrator held that the employee quit voluntarily and therefore was not entitled to reinstatement.

In addition, many of the numerous arbitration cases on point held that once an employee voluntarily resigns from his position, he cannot retract the resignation unless the Employer agrees to accept the retraction. Since the County agreed to accept your resignation, instead of pursuing formal discipline and termination based upon the serious errors they discovered in your work, we are confident that the County will not simply agree to return you to work and void the severance agreement all parties knowingly and willingly signed. The Wisconsin Employment Relations Commission has similarly ruled that employees who voluntarily resign their employment are not entitled to reinstatement, should they have a change of hear. See SOMERSET SCHOOL DIST., Case No. 26742-B; WATSON V. CENTRAL HIGH SCHOOL DISTRICT OF WESTOSHA, Case No. 26971-B. Based on these cases, we do not believe that a grievance pursued to arbitration or a proceeding before the Wisconsin Employment Relations Commission to rescind your resignation will succeed.

After lengthy discussions with both Mr. Thoms and your wife, you voluntarily agreed to sign the agreement, severing your employment with the Sheriff's Department. You had five (5) days between the time we initially discussed the severance agreement and the time we met to sign the agreement to further consider your decision and you voluntarily signed the agreement on May 20, 2003.

As a professional law enforcement officer with significant experience reading and reviewing legal documents, you clearly understood the ramifications of our decision to resign and your signing of the severance agreement. Based upon your experience and understanding the time you had to consider the agreement; and the arbitration and WERC cases we have cited above, we do not believe there is any merit to your request to rescind your resignation.

As such, we will not pursue your request any further. However, as we have told you previously, we will be happy to assist you in your search for future employment in any way we can. Please contact us, if you may be of assistance in your job search.

Yours truly,

Teamsters Local Union 75
Law Enforcement Division

Danny L. McGowan /s/
Danny L. McGowan
Recording Secretary

Mike Thoms /s/
Mike Thoms
Business Agent/jt

cc: Fred Gegare, Secretary Treasurer
Tony Cornelius, President

The Complainant did not respond to the letter and had no direct contact with Local 75 thereafter.

22. On June 6, 2003, County Administrator Dorner wrote to Union Representative McGowan on the issue of the Complainant's right to run for office in the future, as follows:

EDWARD J. DORNER
KEWAUNEE COUNTY ADMINISTRATOR

June 6, 2003

Mr. Dan McGowan
Teamsters Local 75
1546 Main Street
Green Bay, WI 54301

RE: Tom Vanness Severance Agreement

Dear McGowan:

The Severance Agreement signed by Mr. Vanness and the County on May 20, 2003 provides that Mr. Vanness will not seek employment in any law enforcement capacity with Kewaunee County. It was modified following discussion to remove a reference to municipalities within the County, protecting Mr. Vanness' right to seek employment with the Luxemburg Police Department, Kewaunee Police Department or Algoma Police Department.

Discussion then followed about whether the provision precluded Mr. Vanness from running for the office of Sheriff in the future. This discussion did not result in any further modifications to the written agreement. Sheriff Cmeyla stated it as his position that by signing the agreement Mr. Vanness was agreeing not to run for office. Mr. Thoms stated that he believed that Mr. Vanness could not be precluded from standing for election to a constitutional office. There was a general discussion of what remedy, if any was available for a violation of this term of the agreement.

Finally, it was agreed that since the issue could not present itself before 2006 at the earliest, we could leave that matter as it stood.

Sincerely,

Edward J. Dorner /s/
Edward J. Dorner
Kewaunee County Administrator

23. On June 26, 2003, McGowan responded to Dorner, as follows:

June 26, 2003

Ed Dorner, Administrator
Kewaunee County
613 Dodge Street
Kewaunee, WI 54216

Dear Ed:

I am in receipt of your letter dated June 6, 2003 pertaining to the severance agreement signed by Tom Vanness and the County.

I am also in receipt of the tape concerning the minutes of the meeting held on May 20, 2003.

We have listened to the tape and its contents differ from the statement you made in the June 6, 2003 correspondence. Based on Mike Thoms' recollection of the meeting and the statements made by Mike Thoms and Elma Anderson on the tape, Tom Vanness clearly has the right to run for the office of Sheriff or any other elected position in the future, if he desires to do so.

Yours truly,

Teamsters Local Union 75
Law Enforcement Division

Danny L. McGowan /s/
Danny L. McGowan
Recording Secretary/jt

cc: Mike Thoms

24. Local 75 did not violate its duty of fair representation to Thomas Vanness.

Based upon the foregoing Findings of Fact, the Examiner herewith makes and issues the following

CONCLUSIONS OF LAW

1. For the purposes of this proceeding, the Complainant constitutes a municipal employee as defined in Sec. 111.70(1)(i), Wis. Stats.

2. For the purposes of this proceeding, Respondent, Kewaunee County, constitutes a municipal employer as defined in Sec. 111.70(1)(j), Wis. Stats.

3. For the purposes of this proceeding Respondent, Teamsters Local Union No. 75, constitutes a labor organization as defined in Sec. 111.70(1)(h), Wis. Stats.

4. Respondent, Teamsters Local Union No. 75, did not violate its duty to fairly represent the Complainant herein with respect to its representation of him regarding his separation from employment with Kewaunee County and, thus, did not commit prohibited practices within the meaning of Sec. 111.70(3), Wis. Stats.

5. Because Respondent, Teamsters Local Union No. 75, did not violate its duty to fairly represent the Complainant, the Commission cannot exercise jurisdiction to determine whether Respondent, Kewaunee County violated a collective bargaining agreement or interfered with the Complainant's rights and thereby committed prohibited practices within the meaning of Sec. 111.70(3)(a), Stats.

6. The Commission lacks jurisdiction over those allegations of the Complaint citing violations of law other than Sub. ch. IV of Ch. 111, Wis. Stats.

Based upon the foregoing Findings of Fact and Conclusions of Law, the Examiner herewith makes and issues the following

ORDER

The Complaint is dismissed.

Dated at Fond du Lac, Wisconsin this 24th day of August, 2005.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

John R. Emery /s/

John R. Emery, Examiner

KEWAUNEE COUNTY/TEAMSTERS' LOCAL UNION NO. 75

**MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER**

BACKGROUND

The Complaint arises out of the circumstances surrounding the Complainant's separation from employment with the Kewaunee County Sheriff's Department in the Spring of 2003. In April, the Department conducted an investigation into certain alleged performance irregularities and rules violations by the Complainant, most of which concerned alleged improper reporting and mishandling of evidence. On April 21, 2003 and April 25, 2003, the Complainant was interviewed by Department personnel regarding the alleged infractions. During those meetings he had Union representation. Subsequently, on May 16, 2003, the Department convened another meeting at which the Complainant was formally notified that the Sheriff was recommending his termination and that the matter would be referred to the Law Enforcement Committee of the County Board of Supervisors for termination proceedings. The Complainant was also told that effective immediately he would be suspended without pay.

During the May 16 meeting, the Complainant and Union Representative Michael Thoms had a caucus, which later included the Complainant's wife. During the caucus, Thoms and the Complainant discussed the implications of termination, the possibility of fighting termination through the grievance procedure, the likelihood of success and the option of voluntarily resigning pursuant to a negotiated separation agreement. The Complainant asserts that at this time Thoms told him he had arranged for a job for the Complainant with the Brown County Sheriff's Department as a Correctional Officer, commencing three weeks after the Complainant resigned with Kewaunee County and that Thoms repeated the offer in front of the Complainant's wife. After the caucus, the Complainant agreed to voluntarily resign from the Department. The parties met again on May 20 to negotiate the terms of the resignation, with the result that the parties entered into and signed a negotiated separation agreement at the end of the meeting. In the course of the meeting the Sheriff took the position that the Complainant's resignation precluded him from running for Sheriff in the future, with which the Complainant and Thoms disagreed. There was a subsequent exchange of letters between the County Administrator and the Union expressing their respective opposing views on this point, but the matter remained unresolved.

On May 23, 2003, the Complainant delivered a letter of application to the Brown County Human Resources Department for the position of Correctional Officer. He was informed in writing on the same date that the County recruitment process for Correctional Officers occurs in January and that he would be notified when applications were next being taken. Sometime in June 2003, the Complainant contacted the Union and indicated that he wanted to rescind the separation agreement. The Union responded in writing on June 20 and declined to assist the Complainant in trying to overturn the resignation based on its opinion that

the agreement was legally enforceable and a challenge would not succeed. On June 16, 2003 the Complainant obtained employment at St. Vincent's Hospital in Green Bay, where he continued to be employed at the time of the hearing.

The Complainant subsequently filed an age discrimination claim against the County with the Equal Rights Division of the Wisconsin Department of Workforce Development, which was dismissed. Thereafter, he filed these actions on April 20, 2004, alleging that the County violated his statutory rights by suspending him without pay and attempting to prevent him from running for elective office, and alleging that the Union failed in its duty of fair representation by offering him a non-existent job to induce him to agree to resign his position.

POSITIONS OF THE PARTIES

The Complainant

The Complainant asserts that the County violated Sec. 59.26(9)(a), Wis. Stats. in that on May 16, 2003, Sheriff Cmeyla informed him that he was to be suspended without pay pending termination, effective immediately. At the meeting, the Corporation Counsel and Union Representative who were present raised no concerns about a statutory violation. Nevertheless, at the hearing, Corporation Counsel Elma Anderson conceded that a suspension without pay was inconsistent with Chapter 59, but that she missed it at the meeting. Her excuses for not realizing the mistake at the time are not credible. Whether intentional or as a result of an error, there is no excuse for the County violating the statute in this way. This statement led directly to the caucus resulting in the Complainant's voluntary resignation. Had he not been told he was suspended without pay, the Complainant would have contested the discharge because he would have remained in pay status until the discharge proceedings were concluded.

The County also violated Chapter 164 by asserting that the Complainant's resignation precluded him from running for Sheriff in the future. In the transcript of the May 20 meeting, Anderson asserts that running for office was covered by the statement "...will not seek any law enforcement, employment to any law enforcement capacity in Kewaunee County," in the separation agreement. She later took the position that there would not be an election for another three years, so the matter didn't need to be resolved immediately. The June 6, 2003 letter from County Administrator Ed Dorner to the Teamsters also reflects the Sheriff's understanding that by signing the separation agreement the Complainant was agreeing not to run for office in the future. This position violated Sec. 164.015, Wis. Stats. which states that an employee cannot "...be denied the right to engage in political activity.

The Union failed in its duty to fairly represent the Complainant in various ways. First, Union Representative Dan McGowan initially advised the Complainant not to challenge any of the County's charges at the investigatory meetings, even though the Teamsters had been informed that some of the documents supporting the charges were false. Neither McGowan

nor Union Representative Mike Thoms ever raised these issues with the County. Also, Thoms did not challenge the Sheriff's statement that the Complainant would be suspended without pay even though Thoms testified that he was aware of the pertinent statute and had encountered it in the past. Further, Thoms explicitly offered the Complainant a job in the Brown County jail if he resigned, both privately and with his wife present. Thoms' promise of a job, along with the Sheriff's unlawful statement that the suspension was without pay, induced the Complainant to resign. Had the two statements not been made, the Complainant would have contested the County's charges.

The County

The County asserts that the Complainant failed to establish a breach of the Union's duty of fair representation. The Complainant bears a significant burden to show that the Union's action was arbitrary, discriminatory, or in bad faith. To meet this standard, the Union's conduct must be so unreasonable as to be irrational. (citations omitted)

Here, no grievance was ever filed and the Complainant voluntarily agreed to terminate his employment. He claims his agreement was based on a promise of a job with another employer made by Union Representative Mike Thoms. Even if true, such a scenario does not affect the County because there is no evidence that the County participated in any such scheme, or was even aware of such. The County has no control over the Union and should not be penalized for it, even if the allegations are true. As the record shows, however, the Complainant's assertions are not credible. The evidence shows that the Complainant was facing seventeen separate charges of dereliction of duty, which he largely did not deny and in some instances admitted. If proved, the alleged violations would have merited termination. Under the circumstances, Thoms' advice to consider a voluntary separation was well-founded. With Thoms' assistance, the Complainant negotiated an agreement that provided him with significant advantages, but now seeks to overturn it based on absurd charges against Thoms.

It is incredible that an experienced County employee would believe a Union agent had authority to offer employment from another employer. The Complainant's wife even testified as to her doubts about the offer. Nevertheless, neither of them apparently asked a single question about it, but accepted Thoms' offer at face value. Thoms denied making such an offer and the Complainant could not suggest any possible motive for doing so. The Complainant had a good relationship with the Union, served as a Union officer, had Union support when he ran for Sheriff in 2002 and helped the Union defeat an attempted raid in Brown County in early 2003. There is no reasonable explanation as to why Thoms would deceive the Complainant under such circumstances, or what he would have to gain by it. Mrs. Vanness testified in support of her husband, but her interest and inconsistent testimony on other points makes the value of her testimony questionable.

The Complainant's conduct is also inconsistent with his claim. He applied to Brown County three days after his resignation and was told the County was not hiring and would not

be recruiting for seven months. Nevertheless, he did not approach the Union for another two weeks and then allegedly only had a single conversation with Thoms, the substance of which Thoms denied. The Complainant never filed any internal complaint against the Union for misrepresentation and never raised the issue with Union again until he filed the complaint shortly before the statute of limitations was due to expire.

The Union fully complied with its obligations to the Complainant. It represented him competently during the investigation and in the negotiation of his separation agreement. The Union indicated its willingness to support him if he chose to fight termination, but he voluntarily opted to resign after having had four days to reflect on his alternatives. He freely chose his course and should not now be permitted to escape the consequences of his decision.

As to the Complainant's claims against the County, the WERC is limited in its jurisdiction to only those matters confirmed upon it by statute. The complaint does not clearly state what statutory violations the County is alleged to have committed, the County assumes he is claiming a violation of either Sec. 111.70(3)(a)1 or 111.70(3)(a)3. Sec. 111.70(3)(a)1 makes it a prohibited practice for an employer to interfere with employees' exercise of their rights guaranteed under Sec. 111.70(2). Sec. 111.70(3)(a)3 forbids encouraging or discouraging membership in a labor organization by discrimination with regard to hiring, tenure, or other terms or conditions of employment.

The Complainant has alleged violations by the County of Sec. 59.26(8)(b), Wis. Stats. as well as Chapter 164, neither of which falls within the jurisdiction of the WERC. He has also not explained how either violation, even if proven, would constitute an independent violation of Secs. 111.70(3)(a)1 or 3, or would interfere with any rights protected under Sec. 111.70(2). Further, although pro se litigants do receive certain latitude, it is not for an examiner to search for a valid legal theory upon which to find a violation where the Complainant has not presented one.

The County concedes that the Sheriff erroneously informed the Complainant that he would be suspended without pay, contrary to Sec. 59.26(8)(b), but due to the Complainant's resignation that suspension never occurred and therefore there was no violation. The County also took the position that the Complainant's resignation precluded him from running for Sheriff in the future. While the County concedes that it cannot deny him such a right, it is not clear whether he may or may not waive such right by agreement. The issue remains open to dispute between the parties. In neither case, however, was the County's action connected to, or a violation of, any of the Complainant's rights under Sec. 111.70. For all the stated reasons, the complaint should be dismissed.

The Union

The Union asserts that its actions in representing the Complainant were not arbitrary, discriminatory, or done in bad faith. Such a claim must be proven by clear and convincing

evidence. (citations omitted) No such evidence has been offered here. The Union's conduct was not arbitrary. The Complainant was facing discharge due to allegations of numerous rule and policy violations, some of which he admitted. Arbitrators have upheld discharges on similar grounds. Under the circumstances, therefore, Union Representative Mike Thoms reasonably advised him to consider resignation. With Thoms' assistance, the Complainant negotiated a severance agreement with several favorable features, including severance pay, a clean work record, avoidance of prosecution and the ability to seek employment in law enforcement elsewhere in the County. This action was not arbitrary and the examiner should not substitute his judgment for that of the Union even if he would have acted differently.

The Union did not act discriminatorily. The evidence shows that the Complainant had a good relationship with the Union. He assisted the Union in its successful election campaign in Kewaunee County and served as a Union officer. The Union supported his campaign for Sheriff in 2002 and even at the hearing the Complainant testified to having good feelings toward the Union. It is inconceivable that the Union would seek to harm the Complainant and there is no evidence of discrimination or ill will toward the Complainant by the Union.

The Union did not act in bad faith. The sole allegation of bad faith rests on the Complainant's assertion that Thoms promised him a job in Brown County, which caused him to agree to resign. The Complainant's testimony, however, is unreliable. Thoms denied making such an offer and it was established at the hearing that Thoms had no authority to make such an offer, which the Complainant conceded. It is unreasonable to believe therefore, that the Complainant would rely on such an offer without question. Further, after the supposed job failed to materialize, the Complainant did not make a claim against the Union, but instead sought its assistance in setting aside the resignation. It is unreasonable to believe that if the Complainant believed the Union had misled him he would seek its further assistance. The Complainant did not file his complaint until the statute of limitations had nearly run, nearly a year after the supposed misrepresentation. Finally, Mrs. Vanness' testimony in support of her husband is not reliable. Her testimony on other points concerning the negotiations was inaccurate, leaving her memory as to the discussions with Thoms open to question.

It is also notable that the Complainant's claim is unsupported by other evidence. No documentation supports the existence of another job offer. The Complainant claimed that other employees knew of the offer, but none were called to testify. In short, the Complainant's claim is uncorroborated and incredible.

The Complainant was also required by Union rules to proceed with an internal grievance against the Union on his claim before seeking outside relief, which he did not do. Courts have held that exhaustion of internal union remedies is mandatory before an external claim may be pursued. (citations omitted) By not pursuing those remedies, or even making the case that such pursuit would be futile, the Complainant forfeited his ability to pursue a duty of fair representation claim.

By failing to prove his duty of fair representation claim and also failing to establish any contractual violation by the County, the Complainant has failed to meet his burden of proof. Under the circumstances, the complaint must be dismissed.

The County in Reply

The County asserts that the Complainant bases his argument on contentions not supported by the record. There are numerous references in Complainant's brief to impressions, observations, extraneous facts and other matters that were not raised at the hearing. In effect, the Complainant is offering additional testimony that is not under oath or subject to cross examination. All such references should be disregarded. The Complainant is seeking to undo a voluntarily agreed to separation agreement and has concocted a story to accomplish it. The story is fictitious and should be discounted.

The case rests on the credibility of the Complainant's claim that the Union representative falsely promised him employment elsewhere to get him to resign. If that claim is not established, there is no basis for undoing the severance agreement he voluntarily agreed to with the County. He has failed to satisfactorily establish that claim. Furthermore, the statutory claims against the County do not fall within the WERC's jurisdiction, therefore, the complaint should be dismissed.

DISCUSSION

Duty of Fair Representation

In this case, the Complainant has asserted that the Union violated its duty of fair representation to him with respect to the role it played in the investigation and negotiations that led up to the Complainant's resignation on May 20, 2003. Specifically, he asserts that Union Representatives Dan McGowan and Michael Thoms improperly represented him in the investigation meetings conducted by the Sheriff's Department on April 21, 2003 and April 25, 2003 by not challenging the allegations made against him and advising him not to do so. He further asserts that, on May 16, 2003, Thoms induced him to resign his position by guaranteeing him a job within three weeks in the jail division of the Brown County Sheriff's Department when, in fact, Thoms had no authority to make such an offer.

The duty of fair representation is derived from the Union's position as the exclusive bargaining representative for all employees covered by the collective bargaining agreement, pursuant to Article 1 thereof. In *VACA v. SIPES*, 87 S.Ct. 903, 64 LRRM 2369 (1967), the U. S. Supreme Court established standards for determining compliance with the duty of fair representation, which were subsequently adopted by the Wisconsin Supreme Court in *MAHNKE v. WERC*, 66 Wis.2d 524 (1974). In *VACA*, the Court stated:

A breach of the statutory duty of fair representation occurs only when a union's conduct toward a member of the collective bargaining unit is arbitrary, discriminatory, or in bad faith.

Id. At 2376

Subsequent rulings by various courts have interpreted the VACA standard to establish a significant burden for a complainant to prove failure of the duty of fair representation. Thus, a violation of the duty of fair representation cannot be based on mere negligence. *PETERS V. BURLINGTON NORTHERN R.R.*, 931 F. 2d 534, (9TH CIR., 1991). Rather, "...a union's actions are arbitrary only if, in light of the factual and legal landscape at the time of the union's actions, the union's behavior is so far outside a 'wide range of reasonableness'...as to be irrational." *AIR LINE PILOTS V. O'NEILL*, 499 U.S. 65, 136 LRRM 2721 (1991). In order to prevail, therefore, the Complainant must establish, by a clear and satisfactory preponderance of the evidence, that the Union's conduct violated its duty of fair representation to him which is, as defined in VACA:

a statutory obligation to serve the interests of all members without hostility or discrimination toward any, to exercise its discretion with complete good faith and honesty, and to avoid arbitrary conduct.

Id. at 910

The complaint against the Union with respect to its representation of the Complainant during the investigation is, in essence, a charge of negligence. The Complainant asserts that the Union representatives did not properly represent him in the investigation conducted by the County. He maintains that he was told to not challenge the County's allegations during the investigative meetings, and that they did not do so, even though they were aware that some of the allegations were false.

The record reveals that prior to the investigative meetings with Chief Deputy Cornelius on April 21 and April 25, the Complainant met with Dan McGowan, who also attended the meetings. McGowan told the Complainant that he should listen to what the Department representatives had to say, but that he should not get upset and not argue with them. (Tr. 29, 63 & 65) The transcripts of the meetings reveal that Chief Deputy Cornelius advised the Complainant of his rights under the investigation procedure and questioned him with regard to seventeen different instances of possible rule or policy violations by the Complainant in the performance of his duties. McGowan participated in the meetings, consulted with the Complainant about his situation, arranged to receive copies of the taped interviews and arranged with Cornelius to obtain a copy of any recommendation for disciplinary action as a result of the investigation. (Jt. Ex. #5 & #7) The Complainant testified that between the meetings he advised McGowan that he would promise that there would be no more violations if the County would drop the investigation, but Cornelius testified that he received no such offer

from McGowan. (Tr. 33, 164) Ultimately, however, the Complainant testified that he had no problem with McGowan, beyond what he described as “lapses in judgment” due to possible unfamiliarity with police procedures. (Tr. 110)

The parties reconvened on May 16, 2003, with the County represented by the Sheriff, the Chief Deputy and the Corporation Counsel and the Complainant appearing by himself and with Union Representative Thoms, McGowan being unavailable. At that meeting, the County presented the Complainant with seventeen separate notices of policy and/or rule violations and informed him of its intent to terminate his employment. The Sheriff and Corporation Counsel advised the Complainant that a recommendation for termination would be made to the Law Enforcement Committee, which would not meet until the following month, and that he would forthwith be placed on unpaid suspension, at which point Thoms asked for a caucus. (Jt. Ex. #10)

The Complainant testified that during the caucus Thoms advised him that if he wanted to fight termination the Union would support him, but Thoms also advised him of the risks of arbitration, of which the Complainant was also aware. (Tr. 73-75) The Complainant further testified that Thoms told him that, unbeknownst to the Complainant, he had made inquiries on the Complainant’s behalf and had secured a job for him in the Jail Division of the Brown County Sheriff’s Department, and that if he resigned voluntarily he could start his new job in three weeks. (Tr. 35) Mrs. Vanness testified that Thoms also repeated the offer in front of her when she joined them later. (Tr. 117, 122) On the basis of this representation, the Complainant agreed to resign and authorized Thoms to negotiate a severance agreement with the County. Four days later, on May 20, the parties met again to finalize the terms of the separation. Through that process Thoms assisted the Complainant in successfully obtaining additional benefits, an agreement from the County to exempt the Complainant from prosecution and the right for him to seek law enforcement employment elsewhere within the boundaries of the County. (Jt. Ex. #30 & #31)

On May 23, 2003, after the severance agreement was finalized, the Complainant applied to the Brown County Human Resources Department and was immediately informed that there were no job vacancies and that the County’s next hiring cycle would not commence until January 2004. (Union Ex. #3 & #4) Thereafter, the Complainant apparently reconsidered his decision to resign and contacted the Union again to seek its assistance in getting the severance agreement rescinded. The Complainant also testified that, apparently during this conversation, he asked about the position he had been promised and Thoms told him he overheard a phone conversation between Union Secretary-Treasurer Fred Gegare and Brown County Sheriff Dennis Kocken, wherein Kocken expressed his frustration that he was unable to hire the Complainant immediately under County employment procedures. McGowan and Thoms wrote the Complainant on June 20, 2003 to advise that the Union declined to assist him in attempting to rescind the resignation, based on its legal opinion that such an attempt would fail. (Union Ex. #5) McGowan also wrote to Kewaunee County Administrator Ed Dorner on June 26, 2003 to reassert the Union’s position that the severance agreement did not preclude

the Complainant from running for elective office in the future, which was in response to a letter from Dorner to the contrary on June 6. (Jt. Ex. #32 & #33)

As noted above, under PETERS, a finding that the Union failed in its duty of fair representation requires more than the establishment of mere negligence, which is a failure to meet the standard of due care expected of an ordinary person under similar circumstances. It appears that during the investigation McGowan and Thoms were present to advise the Complainant, asked pertinent questions, made sure the Complainant's rights were protected and were prepared to defend the Complainant via the contractual grievance procedure had the matter proceeded to termination. Notwithstanding McGowan's ostensible failure to convey the Complainant's request to the Chief Deputy, to my mind this does not on its face constitute behavior so far beyond the bounds of reasonable behavior as to constitute a breach of the duty of fair representation. There is no evidence that the Union representatives' conduct at this stage of the process was arbitrary, discriminatory or in bad faith. Thus, the lapses of judgment asserted by the Complainant would not rise to the level required to prove a breach of the duty of fair representation, even were they established..

The more serious allegations deal with the claims concerning the actions of Thoms in the severance process, specifically his alleged representations regarding employment with Brown County. These claims, if established, would constitute intentional misrepresentation in order to induce the Complainant to resign his position, which would be tantamount to bad faith on the part of the Union. For the reasons set forth below, however, I find that the Complainant has failed to carry his burden on this point and, therefore, the complaint must be dismissed.

In the first instance, I note that the only witnesses to the conversation were the Complainant, his wife and Thoms. Thoms' version of the conversation between the parties differs markedly from that of Complainant, which immediately raises an issue of credibility to be resolved one way or the other. Thus, I am required to review extrinsic evidence that tends to confirm or undercut the allegations of the complaint. In the Complainant's favor is the fact that he testified as to the substance of the offer made in some detail - that Thoms had obtained an offer of employment to the Complainant from the Brown County Sheriff's Department in the Correctional Division and that upon the Complainant's resignation he could start work in Brown County within three weeks. Further he testified, and his wife confirmed, that the offer was made a second time after she joined them in the caucus on May 16. The Complainant's letter of application to Brown County on May 23 confirms that he apparently believed at that time that there was a position available in the Correctional Division. Further, it was only after he received the rejection letter from Brown County that he sought to undo his resignation from Kewaunee County, which suggests that his decision to resign was, at least in part, influenced by an expectation that he would be able to obtain employment with Brown County.

There is, however, also substantial evidence which calls the Complainant's claims into doubt. First, the Complainant's story is uncorroborated by anyone other than his wife, which

is a problem given that he bears the burden of proof. Further, the Complainant claimed that the offer was known to at least five other people – Chief Deputy Cornelius, fellow employees Lou Richer and Larry Ostamaier and the Complainant’s parents. (Tr. pp. 39, 103-104) At the hearing, Cornelius denied awareness of a job offer and the other witnesses were not called to testify. (Tr. pp. 167-169)

One must also concede that there is a quality of suspension of disbelief in the Complainant’s behavior during the process. In the first instance, the Complainant is assured by a Union representative, without any written or other confirmation, that the representative has authority to offer employment with another County. The Complainant and his wife both testified to their incredulity upon hearing the offer, yet neither asked for corroboration at the time. (Tr. pp. 35, 37, 116) Further, at the hearing the Complainant agreed that in the normal run of things he would not expect a Union to be in a position to influence another employer to offer employment. (Tr. p. 93) Nevertheless, based solely on Thoms’ unsupported assertion, the Complainant agreed to resign his position on May 16. The parties met again on May 20 to finalize the terms of the resignation, giving the Complainant three intervening days to corroborate the existence of a job offer, either by asking Thoms to supply some additional proof or by contacting Brown County himself. Yet, according to the record, the Complainant did nothing and proceeded on May 20 still relying solely on the statement by Thoms on May 16. Under the circumstances, one would expect a little more diligence on the Complainant’s part to assure himself of the ground he was on.

There is also inconsistency between the Complainant and his wife. The Complainant testified that Thoms made the job offer to him during the caucus on May 16 and that he then called his wife, who came to the Courthouse where Thoms then repeated the offer in front of her. (Tr. pp. 34-35, 37) The Complainant’s wife testified that Thoms showed her the proposed severance agreement and told her that if the Complainant signed it he would be hired by Brown County “right away.” (Tr. pp. 121-122) The record indicates, however, that the subject of resignation only first came up at the end of the May 16 meeting, after the caucus was over. (Tr. pp. 75-77) The first draft of the proposed severance agreement was not produced until after the May 16 meeting, and was not presented to the Complainant until the May 20 meeting, which the Complainant’s wife did not attend. (Jt. Ex. #28, #30, #31, Tr. pp. 78, 177) Thus, it would not have been possible for Thoms to have shown the proposed severance agreement to her on May 16. Her confusion on this significant point undercuts the reliability of her recall as to the other aspects of the meeting.

Also troublesome is the Complainant’s reaction when, on May 23, he discovered that there was, in fact, no pending job with Brown County. He testified that when he received the May 23 letter from Kay Tilot in the Brown County Human Resources Department (Union Ex. #4) he realized he would not be getting the job he felt he had been promised. (Tr. pp. 104, 108) He asked Thoms about this on June 9 and was told that the Sheriff had wanted to hire him, but was unable to do so, at which point he then apparently requested that the Union help him rescind his resignation. (Tr. pp. 38, 108) He never apparently wrote to the Union to

document Thoms' offer or complain about the non-existent Brown County job, nor did he grieve Thoms' behavior internally, even after receiving the June 20 letter from McGowan and Thoms refusing to assist him in overturning his resignation. (Tr. pp. 95, 105, 203-204) There is, in fact, no written reference to the supposed job offer by Thoms other than the complaint herein. Under the circumstances, one would expect him to have confronted the Union about such an obvious misrepresentation rather than seeking the Union's further assistance in an attempt to get his job back.

Finally, I am troubled about a significant absence in the record of any apparent motive for Thoms' action. It is not necessary for the Complainant to establish motive in order to prove his case, but the alleged actions of Thoms related here are inexplicable, which makes motivation an issue when trying to assess credibility. The record establishes that the Complainant had a positive relationship with the Union. He had campaigned for the Union at the time it was elected to be exclusive bargaining representative and had served as a steward in the bargaining unit. The Union supported him in his campaign for Sheriff in 2002. As recently as April 2003 he had assisted the Union in an election challenge in Brown County. There is, therefore, nothing in the relationship between the Complainant and the Union that would suggest a reason why Thoms would deliberately mislead the Complainant to his detriment. In fact, the record reflects that in all other respects Thoms represented the Complainant well. He told the Complainant that the Union would support him if he wanted to fight termination, but also apprised him of the risks of that course. After the Complainant decided to resign, Thoms was able to negotiate additional benefits and protections for the Complainant into the severance agreement. These actions would not seem to be consistent with an attempt to mislead the Complainant into resigning by offering him a non-existent job.

On the other hand, for Thoms to do such a thing would have held significant risks. By guaranteeing the Complainant a non-existent job within three weeks, he would have known that within a very short time the Complainant would have learned the truth. It would be certain that the Complainant would contact Brown County about the job immediately after completing the severance agreement with Kewaunee County, at which point the truth would come out. Had the Complainant contacted Brown County before the meeting on May 20, the truth would have been revealed even before the Complainant's resignation was finalized, at which point both the Union and Thoms would have been exposed and stripped of any credibility with the Complainant, the County, the bargaining unit and any other unit served by Local 75 which became aware of the situation. In short, there is nothing in the record to explain why Thoms and/or the Union would take such a risk with little to be gained.

Thoms did testify that he did discuss other possible job opportunities with the Complainant and his wife on May 16, including at the new jail facility in Brown County. (Tr. pp. 191-194) It may be that Thoms encouraged the Complainant to apply and indicated that he would be an attractive candidate, although the record does not provide such detail, and the Complainant read more into it than he should have. Nevertheless, taking into account the various difficulties created by the Complainant's version of events, I am not satisfied that the

Complainant has met his burden by a clear and convincing preponderance of the evidence that there was an affirmative representation that he was assured a job with Brown County. As such, I cannot say on this record that the Complainant has established his claim against the Union.

I would also note that, as pointed out above and in the Union's brief, the Complainant made no claim against the Union through the Union's internal grievance procedures. As the Union points out, federal courts have ruled that a complainant must exhaust internal union grievance procedures against a union as a precondition to making a statutory claim. (Cf., *TINSLEY V. UNITED PARCEL SERVICE*, 635 F.2D 1288 (7TH CIR., 1980) The Article XIX of constitution of the International Brotherhood of Teamsters sets forth the procedure for aggrieved members to bring internal charges against other union members, officers, or agents. (Union Ex. #7) Furthermore, Article XIX, Sec. 13(a) requires that "Every member...who claims to be aggrieved...shall be obliged to exhaust all remedies provided for in this Constitution and by the International Union before resorting to any court, tribunal, or agency against the International Union, any subordinate body or any officer or employee thereof." (Union Ex. #7, p. 11) There is no evidence that the Complainant here took any internal steps whatsoever to have his claims addressed, nor is there any indication that such an effort would have been futile. For this reason, as well, therefore, the Complainant's claim against the Union must be dismissed.

Claims against the County

The Commission's authority is limited to "those powers which are expressly or impliedly conferred upon it by statute." *BROWNE V. MILWAUKEE BOARD OF SCHOOL DIRECTORS*, 83 WIS.2D 316, 333 (1978). In this case, therefore, the allegations of the complaint must fall within the parameters of the Municipal Employment Relations Act (111.70 et seq, Wis. Stats.) in order to raise enforceable claims. To the extent that the complaint alleges violations of legal authority other than MERA, such are not enforceable by the Commission.

Here, the Complainant has made claims against the County based upon alleged violations of Secs. 59.26(9)(a) and 164.015, Wisconsin Statutes. Sec. 59.26(9)(a) states that a deputy sheriff may not be suspended without pay for actions within the scope of his employment until the matter is disposed of by the grievance committee. The Complainant maintains that this statute was violated when the Sheriff told him in the meeting on May 16, 2003 that he would henceforth be suspended without pay. Sec. 164.015 states that law enforcement officers may not be prohibited from engaging in political activity. The Complainant maintains that this statute was violated on when the Sheriff took the position on May 20, 2003, reiterated in a letter from the County Administrator on June 6, that the severance agreement barred the Complainant from running for Sheriff in the future. Neither of these statutes falls within the jurisdiction of the WERC, although they could arguably fall within WERC jurisdiction if the violations were motivated by the Complainant engaging in labor activity protected under Sec. 111.70(2), or were part of a pattern of conduct to interfere with, coerce, or discourage the Complainant from engaging in protected labor activity

prohibited under Sec. 111.70(3)(a). There is nothing in the record, however, that indicates any nexus between the alleged violations and the Complainant's exercise of his rights under Sec.111.70(2) or prohibited activity under Sec. 111.70(3)(a). Thus, the claims against the County are, likewise, dismissed.

Dated at Fond du Lac, Wisconsin this 24th day of August, 2005.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

John R. Emery /s/

John R. Emery, Examiner

