WISCONSIN STATE LEGISLATURE COMMITTEE HEARING RECORDS

2007-08
(session year)

Assembly
(Assembly, Senate or Joint)

Committee on Corrections and Courts (AC-CC)

(Form Updated: 07/24/2009)

COMMITTEE NOTICES ...

➢ Committee Reports ... CR
**

➢ Executive Sessions ... ES
**

➢ Public Hearings ... PH
**

➢ Record of Comm. Proceedings ... RCP
**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL ...

➢ Appointments ... Appt
**

Name:

➢ Clearinghouse Rules ... CRule
**

➢ Hearing Records ... HR (bills and resolutions)
** **07hr_ab0308_AC-CC_pt03**

➢ Miscellaneous ... Misc
**

( )

JSOnline
MILWAUKEE
JOURNAL SENTINEL

www.jsonline.com | Return to regular view

Original Story URL:
http://www.jsonline.com/story/index.aspx?id=603755

AB 308 File

Editorial: Let's join the real world

Unique in the nation, Milwaukee is required to keep paying fired cops. The Legislature must stand up to the police union and rescind this absurd law.

From the Journal Sentinel

Posted: May 9, 2007

The Legislature must at last end a perk the state mandates for fired Milwaukee police officers: their pay.

Even cops convicted of crimes keep drawing their salaries until they've exhausted their appeals to the Fire and Police Commission. In no other city in the nation do dismissed officers keep getting paid.

The persistence of this ridiculous requirement, which encourages officers to string out their appeals, testifies to the strength of the Milwaukee Police Association. But lawmakers must do what's right for public policy, the city and its taxpayers, not for a narrow interest.

Around the world, to be fired almost always means to be taken off the payroll. Why should Milwaukee police be any different?

MPA President John Balcerzak pointed to the cases of two officers fired because of rules violations but reinstated months later on appeal. Without the state law in question, the officers would have gone broke, he argued.

We don't mean to sound heartless, but so? They should be happy they got their jobs back. The average Milwaukee worker wouldn't have gotten that; cops have stronger appeal rights than does the average worker. What's more, under proposed legislation, reinstated officers would get back pay.

Balcerzak has an alternate proposal. He would cut off pay only to fired officers who are charged with felonies. That's nowhere near good enough. "Fired" should mean "fired."

The Legislature must stand up to the union and can this awful requirement, as a bill sponsored by Rep. Barbara Toles and Sen. Spencer Coggs, both Milwaukee Democrats, would do.

To read Assembly Bill 308, go to www.legis.state.wi.us/2007/data/AB-308.pdf

From the May 10, 2007 editions of the Milwaukee Journal Sentinel
Have an opinion on this story? Write a letter to the editor or start an online forum.


FORWARD

111.335
111.335 Arrest or conviction record; exceptions and special cases.
111.335(1)
(1)
111.335(1)(a)
(a) Employment discrimination because of arrest record includes, but is not limited to, requesting an applicant, employee, member, licensee or any other individual, on an application form or otherwise, to supply information regarding any arrest record of the individual except a record of a pending charge, except that it is not employment discrimination to request such information when employment depends on the bondability of the individual under a standard fidelity bond or when an equivalent bond is required by state or federal law, administrative regulation or established business practice of the employer and the individual may not be bondable due to an arrest record.

111.335(1)(b)
(b) Notwithstanding s. 111.322, it is not employment discrimination because of arrest record to refuse to employ or license, or to suspend from employment or licensing, any individual who is subject to a pending criminal charge if the circumstances of the charge substantially relate to the circumstances of the particular job or licensed activity.

111.335(1)(c)
(c) Notwithstanding s. 111.322, it is not employment discrimination because of conviction record to refuse to employ or license, or to bar or terminate from employment or licensing, any individual who:

111.335(1)(c)1.
1. Has been convicted of any felony, misdemeanor or other offense the circumstances of which substantially relate to the circumstances of the particular job or licensed activity; or

111.335(1)(c)2.
2. Is not bondable under a standard fidelity bond or an equivalent bond where such bondability is required by state or federal law, administrative regulation or established business practice of the employer.

111.335(1)(cg)
(cg)
111.335(1)(cg)1.
1. Notwithstanding s. 111.322, it is not employment discrimination because of conviction record to deny or refuse to renew a license or permit under s. 440.26 to a person who has been convicted of a felony and has not been pardoned for that felony.

111.335(1)(cg)2.
2. Notwithstanding s. 111.322, it is not employment discrimination because of conviction record to revoke a license or permit under s. 440.26 (6) (b) if the person

holding the license or permit has been convicted of a felony and has not been pardoned for that felony.

111.335(1)(cg)3.
3. Notwithstanding s. 111.322, it is not employment discrimination because of conviction record to refuse to employ a person in a business licensed under s. 440.26 or as an employee specified in s. 440.26 (5) (b) if the person has been convicted of a felony and has not been pardoned for that felony.

111.335(1)(cm)
(cm) Notwithstanding s. 111.322, it is not employment discrimination because of conviction record to refuse to employ as an installer of burglar alarms a person who has been convicted of a felony and has not been pardoned.

111.335(1)(cs)
(cs) Notwithstanding s. 111.322, it is not employment discrimination because of conviction record to revoke, suspend or refuse to renew a license or permit under ch. 125 if the person holding or applying for the license or permit has been convicted of one or more of the following:

111.335(1)(cs)1.
1. Manufacturing, distributing or delivering a controlled substance or controlled substance analog under s. 961.41 (1).

111.335(1)(cs)2.
2. Possessing, with intent to manufacture, distribute or deliver, a controlled substance or controlled substance analog under s. 961.41 (1m).

111.335(1)(cs)3.
3. Possessing, with intent to manufacture, distribute or deliver, or manufacturing, distributing or delivering a controlled substance or controlled substance analog under a federal law that is substantially similar to s. 961.41 (1) or (1m).

111.335(1)(cs)4.
4. Possessing, with intent to manufacture, distribute or deliver, or manufacturing, distributing or delivering a controlled substance or controlled substance analog under the law of another state that is substantially similar to s. 961.41 (1) or (1m).

111.335(1)(cs)5.
5. Possessing any of the materials listed in s. 961.65 with intent to manufacture methamphetamine under that section or under a federal law or a law of another state that is substantially similar to s. 961.65.

111.335(1)(cv)
(cv) Notwithstanding s. 111.322, it is not employment discrimination because of conviction record to refuse to employ in a position in the classified service or in a

position described in s. 230.08 (2) (k) a person who has been convicted under 50 USC, Appendix, section 462 for refusing to register with the selective service system and who has not been pardoned.

111.335 - ANNOT.

History: 1981 c. 334; 1991 a. 216; 1993 a. 98; 1995 a. 448, 461; 1997 a. 112; 2001 a. 16; 2003 a. 33; 2005 a. 14.

111.335 - ANNOT.

A rule adopted under s. 165.85 properly barred a nonpardoned felon from holding a police job. Law Enforcement Standards Board v. Lyndon Station, 101 Wis. 2d 472, 305 N.W.2d 89 (1981).

111.335 - ANNOT.

A conviction for armed robbery in and of itself constituted circumstances substantially related to a school bus driver's licensure. Gibson v. Transportation Commission, 106 Wis. 2d 22, 315 N.W.2d 346 (1982).

111.335 - ANNOT.

An employer's inquiry is limited to general facts in determining whether the "circumstances of the offense" relate to the job. It is not the details of the criminal activity that are important, but rather the circumstances that foster criminal activity, such as opportunity for criminal behavior, reaction to responsibility, and character traits of the person. County of Milwaukee v. LIRC, 139 Wis. 2d 805, 407 N.W.2d 908 (1987).

111.335 - ANNOT.

There is no requirement that an that an employer take affirmative steps to accommodate individuals convicted of felonies. Knight v. LIRC, 220 Wis. 2d 137, 582 N.W.2d 448 (Ct. App. 1998), 97-1606.

111.335 - ANNOT.

When evaluating an individual for the position of reserve officer, a sheriff's department may consider information in its possession concerning the individual's juvenile record, subject to prohibitions against arrest record and conviction record discrimination contained in the WFEA. 79 Atty. Gen. 89.

111.335 - ANNOT.

Race, Crime, and Getting a Job. Pager. 2005 WLR 617.

111.335 - ANNOT.

Discrimination in employment on the basis of arrest or conviction record. Mukamel. WBB Sept. 1983.

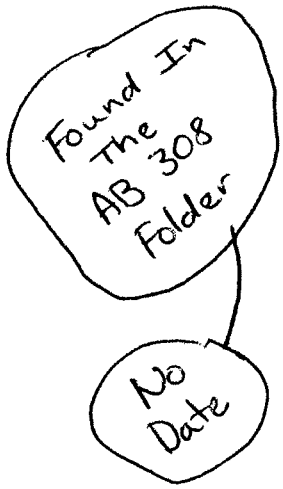

FORWARD

Why stop pay for Police Officers charged with Misdemeanors?

Discontinuing pay for Police Officers charged with felonies pending appeal of termination to FPC is an obvious desire, but why differentiate between those charged with felonies vs. misdemeanors?

Examples of misdemeanor crimes Milwaukee Police Officers have been charged with:

- **Battery (940.19)
- **Resisting/Obstructing an Officer (946.41)
- **Disorderly Conduct (947.01)
- **Hit and Run Occupied Vehicle (346.67)
- **Endangering Safety by Use of Weapon (941.20)
- **Violation of Harassment/Domestic Abuse Injunction (947.013)
- **Criminal Damage to Property (943.01)
- **4th Degree Sexual Assault (Contact w/out Consent - 940.225)
- **Aiding/encouraging parolee to violate parole (946.46)



*** All of the above are misdemeanors with which a Milwaukee police officer has been or is currently charged and for which that officer has remained on the payroll pending appeal of his/her termination to the Fire and Police Commission.*

Other misdemeanor crimes:

- Intimidation of Witnesses (940.42)
- Exposing Genitals to a Child (948.10)
- Receiving property for promise to refrain from prosecuting (946.67)

Misdemeanor crimes that are serious enough to warrant the discharge of a Police Officer are serious enough to end pay. There is no justification to continue pay for those charged with misdemeanors and who are terminated for such conduct.


FORWARD

No Date

Found In The AB 308 Folder

Steps for terminating office – MPD

Accused officer is:

1. Issued a PI-21, a form that informs officer of the investigation and nature of the allegations.
    a. Contains brief synopsis of allegations
    b. Also indicates that disciplinary action may result and that information obtained cannot be used in a criminal investigation.

2. Unless the investigation is a pressing concern (police action causing death of great bodily harm), the PI-21 spells out the schedules for:
    a. The officer's interrogation/interview approx 7-10 days after PI-21 is served.
    b. Every additional interrogation requires a new PI-21

3. All interrogations/interviews are taped.
    a. Officer is given a copy of tape.

4. If formal charges are issued, a letter is personally served upon the accused, along with a copy of the formal charges and a copy of a summary of the investigation.

5. The letter and information provides an opportunity for the member to file an "in The Matter of Report to the Chief" .. a response to the charges within 7 days of being serviced.

6. The officer may consult with an attorney to prepare the Matter of Report.
    a. Officer has 7 days to submit report.

7. Chief considers Matter of Report (officer's response) before making any decision.
    a. Investigation may be re-opened if information provided by the officer warrants.

8. Chief makes decision. Officer is informed.

Department of Employee Relations
City of Milwaukee
03/02/06

MPD Personnel Investigations

The following is a summary of the MPD Investigation/Disciplinary process. This summary addresses concerns regarding the alleged lack of information disciplined officers have throughout the course of the investigation, when charges are filed, and when the discipline is imposed.

INTERNAL INVESTIGATION INFORMING THE MEMBER

Member is issued form PI-21: Internal Investigation Informing Member. This form indicates that the department is presently investigating the member. The PI-21 sets forth the nature of the investigation through a brief synopsis of the allegation(s). The form also indicates that disciplinary action may result and that answers given in the internal investigation cannot be used against the member in a criminal proceeding. It informs the member that he/she has the right to a representative who may be present for consultation at all times during the interrogation. It informs the member that refusal to respond during investigation or any untruthful response could result in suspension or termination.

Unless there are "exigent circumstances" that require an immediate interview of the member - such as perhaps the member has been involved in some police action that causes death or great bodily harm - the PI-21 form spelling out what is being investigated schedules the date for the member's interrogation/interview approx 7-10 days after that PI-21 form is served on the member. The member and his/her union representative have a number of days to prepare for this interview. Every separate oral interview requires the issuance of a PI-21 form. Thus, if MPD conducts a follow-up interview, it would issue a new PI-21 form and follow this procedure. Additionally, even when there are exigent circumstances that dictate an interview prior to the normal 7-10 day time frame, the MPD provides a "reasonable" opportunity for the member who is to be questioned to obtain the presence of, and consult with, their union rep prior to the interview.

All PI-21 interviews are taped. Upon conclusion of an interview, the member is given a copy of the PI-21 interview tape. The member therefore has a copy of all questions asked by MPD and all answers provided to MPD in the course of the interview. Thus the member and his/her union have a great deal of information long before the charges and summary of the investigation are delivered.

NOTIFICATION LETTER

If formal charges are issued against a member, a letter is personally served upon the accused member along with a copy of the formal charges and a copy of a summary of the investigation. The summary of the investigation contains the details and facts of the investigation. It includes the names of the witnesses interviewed and a summary of their statements.

Items that are not part of the summary of the investigation include pictures (although what pictures depict is provided in the summary and included), individual interviews with witnesses (although summaries of the interviews are provided), the member's last performance evaluation (available to the member otherwise), and prior year "activity report" with performance measures (available to member otherwise).

This letter and the information provided offer an opportunity to the member to file an "in The Matter Of Report to the Chief" in response to the charges within 7 days of being served. A copy of the letter, a copy of the formal charges and a copy of the summary of the investigation is also sent to the member's labor organization.

IN THE MATTER OF REPORT

The member may consult with a representative in the preparation of the In the Matter Of Report. The member has 7 days after receiving the notice to submit the report which may include:

- A written statement of the member's side of the story including the names, addresses and phone numbers of any additional witnesses which the member wishes the investigators to interview, specifying the nature of the information possessed by the additional witnesses.

- Any mitigating factors or circumstances which the member may wish the Chief to consider before deciding upon discipline.

The Chief will consider the In the Matter of Report before making any decision regarding guilt or innocence or the possible imposition of a penalty. The investigation may be re-opened if information provided by the member so warrants it. If the member chooses not to provide a report and respond to the charges, the Chief may be compelled to base disciplinary decisions solely upon the information possessed by the Department.


FORWARD

U.S. Supreme Court

CLEVELAND BOARD OF EDUCATION v. LOUDERMILL, 470 U.S. 532 (1985)

470 U.S. 532

**CLEVELAND BOARD OF EDUCATION v. LOUDERMILL ET AL.
CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT**

No. 83-1362.

**Argued December 3, 1984
Decided March 19, 1985 ***

JUSTICE MARSHALL, concurring in part and concurring in the judgment.

I agree wholeheartedly with the Court's express rejection of the theory of due process, urged upon us by the petitioner Boards of Education, that a public employee who may be discharged only for cause may be discharged by whatever procedures the legislature chooses. I therefore join Part II of the opinion for the Court. I also agree that, before discharge, the respondent employees were entitled to the opportunity to respond to the charges against them (which is all they requested), and that the failure to accord them that opportunity was a violation of their constitutional rights. Because the Court holds that the respondents were due all the process they requested, I concur in the judgment of the Court.

I write separately, however, to reaffirm my belief that public employees who may be discharged only for cause are entitled, under the Due Process Clause of the Fourteenth Amendment, to more than respondents sought in this case. I continue to believe that before the decision is made to terminate an employee's wages, the employee is entitled to an opportunity to test the strength of the evidence "by confronting and cross-examining adverse witnesses and by presenting witnesses on his own behalf, whenever there are substantial disputes in testimonial evidence," Arnett v. Kennedy, 416 U.S. 134, 214 (1974) (MARSHALL, J., dissenting). Because the Court suggests that even in this situation due process requires no more than notice and an opportunity to be heard before wages are cut off, I am not able to join the Court's opinion in its entirety. [470 U.S. 532, 549]

To my mind, the disruption caused by a loss of wages may be so devastating to an employee that, whenever there are substantial disputes about the evidence, additional predeprivation procedures are necessary to minimize the risk of an erroneous termination. That is, I place significantly greater weight than does the Court on the public employee's substantial interest in the accuracy of the pretermination proceeding. After wage termination, the employee often must wait months before his case is finally resolved,

during which time he is without wages from his public employment. By limiting the procedures due prior to termination of wages, the Court accepts an impermissibly high risk that a wrongfully discharged employee will be subjected to this often lengthy wait for vindication, and to the attendant and often traumatic disruptions to his personal and economic life.

Considerable amounts of time may pass between the termination of wages and the decision in a post-termination evidentiary hearing - indeed, in this case nine months passed before Loudermill received a decision from his postdeprivation hearing. During this period the employee is left in limbo, deprived of his livelihood and of wages on which he may well depend for basic sustenance. In that time, his ability to secure another job might be hindered, either because of the nature of the charges against him, or because of the prospect that he will return to his prior public employment if permitted. Similarly, his access to unemployment benefits might seriously be constrained, because many States deny unemployment compensation to workers discharged for cause. * Absent an interim source of wages, the employee might be unable to meet his basic, fixed costs, such as food, rent or mortgage payments. He would be forced to spend his savings, if he had any, and to convert his possessions to [470 U.S. 532, 550] cash before becoming eligible for public assistance. Even in that instance

> "[t]he substitution of a meager welfare grant for a regular paycheck may bring with it painful and irremediable personal as well as financial dislocations. A child's education may be interrupted, a family's home lost, a person's relationship with his friends and even his family may be irrevocably affected. The costs of being forced, even temporarily, onto the welfare rolls because of a wrongful discharge from tenured Government employment cannot be so easily discounted," id., at 221.

Moreover, it is in no respect certain that a prompt postdeprivation hearing will make the employee economically whole again, and the wrongfully discharged employee will almost inevitably suffer irreparable injury. Even if reinstatement is forthcoming, the same might not be true of backpay - as it was not to respondent Donnelly in this case - and the delay in receipt of wages would thereby be transformed into a permanent deprivation. Of perhaps equal concern, the personal trauma experienced during the long months in which the employee awaits decision, during which he suffers doubt, humiliation, and the loss of an opportunity to perform work, will never be recompensed, and indeed probably could not be with dollars alone.

That these disruptions might fall upon a justifiably discharged employee is unfortunate; that they might fall upon a wrongfully discharged employee is simply unacceptable. Yet in requiring only that the employee have an opportunity to respond before his wages are cut off, without affording him any meaningful chance to present a defense, the Court is willing to accept an impermissibly high risk of error with respect to a deprivation that is substantial.

Were there any guarantee that the postdeprivation hearing and ruling would occur promptly, such as within a few days of the termination of wages, then this minimal

predeprivation [470 U.S. 532, 551] process might suffice. But there is no such guarantee. On a practical level, if the employer had to pay the employee until the end of the proceeding, the employer obviously would have an incentive to resolve the issue expeditiously. The employer loses this incentive if the only suffering as a result of the delay is borne by the wage earner, who eagerly awaits the decision on his livelihood. Nor has this Court grounded any guarantee of this kind in the Constitution. Indeed, this Court has in the past approved, at least implicitly, an average 10- or 11-month delay in the receipt of a decision on Social Security benefits, Mathews v. Eldridge, 424 U.S. 319, 341 -342 (1976), and, in the case of respondent Loudermill, the Court gives a stamp of approval to a process that took nine months. The hardship inevitably increases as the days go by, but nevertheless the Court countenances such delay. The adequacy of the predeprivation and postdeprivation procedures are inevitably interwined, and only a constitutional guarantee that the latter will be immediate and complete might alleviate my concern about the possibility of a wrongful termination of wages.

The opinion for the Court does not confront this reality. I cannot and will not close my eyes today - as I could not 10 years ago - to the economic situation of great numbers of public employees, and to the potentially traumatic effect of a wrongful discharge on a working person. Given that so very much is at stake, I am unable to accept the Court's narrow view of the process due to a public employee before his wages are terminated, and before he begins the long wait for a public agency to issue a final decision in his case.

[Footnote *] See U.S. Dept. of Labor, Comparison of State Unemployment Insurance Laws 425, 435 (1984); see also id., at 4-33 to 4-36 (table of state rules governing disqualification from benefits for discharge for misconduct).

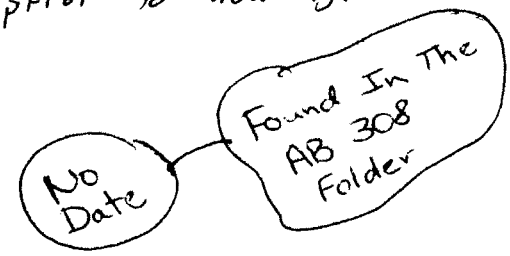

FORWARD

In all other municipalities pay is not terminated until officer is granted a hearing.

↓

Under 308, Milwaukee will be only municipality that terminates pay prior to hearing.

The officer Appeal



To provide a letter to the chief is not the ability to mount a defense.

Sub ch III of 111 Are all statutes relating to milwaukee police in one place?

This is not a hearing where you can present witnesses or cross-examine.

* ? > Bill to eliminate 62.50 & 111.77(8)

Germaine?

Misdemeanor Threshold?

City still hire officers w/misdemeanor convictions and officers with misdemeanor convictions still serve.
- As said by Mayor Barrett

AB 308

Toles - "The abuse that occured years ago does not happen today."

→ But could it? Just because it doesn't, does that mean it can't?

108 terminations since 1990, all but four appealed to the FPC.

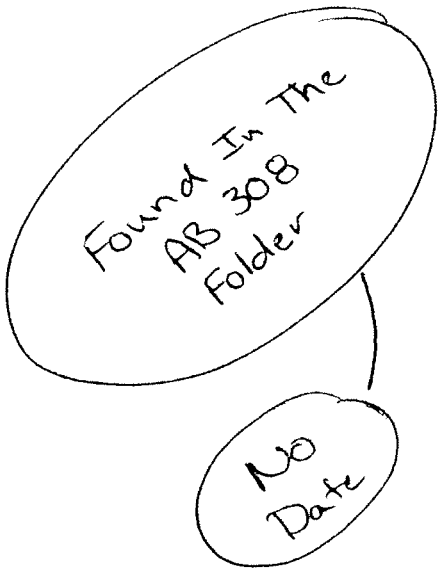
AB 308 does not align city of Milwaukee with the rest of the state.

Change in the arbitration of the discipline

Misdemeanor

City of Milwaukee
Lobbyist

Jennifer Gonda
(414) 708 7860 cell
(414) 286 - 3492 office



A question for the FPC →

How many members have police experience?

"I tried officers before the FPC."

Q) So you would not characterize your actions before the chief as a trial?

Get rid of 62.50?

→ If the FPC is the oversight authority, should it not be before the FPC that the hearing to determine the future of the officer occur?

→ In the justice system, a suspect is questioned or interrogated prior to the filing of charges. This equates to the point in the process before the chief. The hearing before the FPC equates to the trial in the court room.

No Date

Found In The AB 308 Folder

Am I - Mussoir

psychologist relating SUP at Sandridge

Clerical

AM Classification Special

Tobin:

"The system worked before and will work again"

→ Then why change?

~~How many police~~

In how many municipalities across the state terminate pay of officers prior to a hearing before a fire & police commission?

Do you think your responses would be different