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Details:

(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2007-08

(session year)

Senate

(Assembly, Senate or Joint)

Committee on ... Labor, Elections and Urban Affairs (SC-LEUA)

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
(**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
(**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

Plotkin, Adam

From: Mcginnis, Cindy
Sent: Monday, November 26, 2007 4:42 PM
To: Plotkin, Adam
Subject: FW: AB--308

Adam-

I thought you might be interested in this.

Cindy



From: Steve OConnell [mailto:oconsase@sbcglobal.net]
Sent: Monday, November 26, 2007 4:30 PM
To: Rep.Huebsch
Cc: Rep.Colon; Rep.Fields; Rep.Grigsby; Rep.Toles
Subject: AB--308

Speaker Huebsch,

I am writing to you as one of the Co-Chairs of the Milwaukee Commission on Police Community Relations to ask you to consider seriously the ramifications on the Greater Milwaukee community of the ongoing discussion of AB-308 and the failure to pass the law as it is written by Assembly Woman Toles and supported by her fellow legislators from Milwaukee.

The Commission worked very hard with Nan Hegerty to improve the relationship between MPD and the community-at-large. We have been in existence for all four years of her tenure as Police Chief. It took two years to finalize a Mediated Agreement with the Department and the Community with 20 recognized community leaders, reps from both Unions, and representatives of the Command Staff sitting around the table for two-three hours once a month. I'm not sure if you or members of the Assembly have even taken the time to read the mediated agreement which has led to some important changes in MPD. We are committed to carrying out our mission with the new Chief--in fact, we meet with him when he comes to town on Thursday. There is still much that needs to be done if the mediated agreement is to be fully enacted.

We have talked to the Police Union at length about the issue and how it appears to the residents of Greater Milwaukee. Also, it is important to note that we have met with the different groups that represent officers within the two unions and have had frank discussions about the community's perception of officers who have broken the law who continue to draw a salary even after they have been fired. We also are aware of how officers sometimes use the system to draw a salary and benefits and sometimes padding their pension up to the last day before their hearing before the Fire and Police Commission at which time they announce that they are retiring or they are leaving the force before they are finally terminated by the Fire and Police Commission.

We have also taken the time to meet with the legislative bureau to discuss the differences between policies that govern the other departments in the State and Milwaukee. Why there isn't uniformity across the State is a mystery to all who hear about the law.

Lastly, the Milwaukee community has been affronted too many times by officers who have broken the law and who have continued to be paid even though they have been fired. Folks are not interested in hearing about ongoing appeals and the appeal process that is used more often than not to continue to draw on a city budget that is already strapped.

11/26/2007

In meetings and discussion with officers on the force, they have expressed their embarrassment with how this whole thing has been dragged out. In many ways, Milwaukee is still a blue-collar City with roots that go back to some of the ugliest labor disputes in the country. The common citizen does not understand how the State can allow this process to continue when he or she knows that when someone is fired for just cause, their salary and benefits cease. Yes, an employee can appeal at which time he or she might be re-instated with back salary, etc. It sounds simple, but there is the perception that law officers are given more, as the union likes to say, "kicks at the cat" than the normal employee in any company in Milwaukee.

I am asking you to take seriously the arguments and reasons that are being brought to the table in Madison by the men and women elected to represent all the citizens of Milwaukee who are also citizens of the State of Wisconsin. MPD cannot continue appear to have more rights than an ordinary citizen in the State of Wisconsin and even their own counterparts in the State.

Thank you,
Steve O'Connell
3810 N. 56th Street
Milwaukee, WI. 53216



Plotkin, Adam

AB 308 ?

SB 176 ?

From: Bob Jacoby [jjacoby_10@hotmail.com]
Sent: Tuesday, November 27, 2007 11:16 AM
To: Abe Caceres; anne.clough@marquette.edu; Attnaugustine@aol.com; banks@msoe.edu; barbarajaniszewski@sbcglobal.net; bernadettewilliams@northwesternmutual.com; billpickering@northwesternmutual.com; Brendan Zyvaloski; bruce Spann@sbcglobal.net; dbice@journalsentinel.com; drabe@worldhousemusic.com; ekane@journalsentinel.com; gwendolynnb@hotmail.com; jim kowalski; jsedit@journalsentinel.com; Marge Jacoby; mayor@milwaukee.gov; mkatches@journalsentinel.com; Mike Murphy; Urban2, Pamela; pauljacoby@alliantenergy.com; Rep.Grigsby; rq45@wi.rr.com; rquindel@milwcnty.com; vhousesoccer@hotmail.com; watchdog@journalsentinel.com; Sen.Coggs
Subject: FW: fired police pay bill

Below is a quote from someone who knows.

If you are a citizen, contact your representatives or City Hall. If you work for the media, for gods sake do your job.

Any compromise on this issue is simply a smokescreen to protect bad cops and the politicians they pay.

The vast majority of cops who get charged by our office are charged with misdemeanors, but not really because the cops who respond are suspect (except, notably, in the Jude case). the investigating officers and detectives are utterly disgusted with the jerks because it makes them all look like rotten apples. Which they, in fact, (the criminal cops) do! Most of the bad cops, as we refer to them, have domestic violence issues, drunken fights in and out of bars (leading to battery, disorderly conduct, DV battery, DWI, DWI causing injury, obstructing the police--lying about sledding on duty, for example, etc.). The Journal Sentinel does a miserable job of reporting on cop convictions, except the felonies, and then [with the exception of Jude cops and the Detective who assaulted the prostitutes and was convicted of multiple sexual assault related charges last January] those convictions are, if reported at all, buried in the Metro section. So, the idea of saving "millions" if just the felony-charged cops do not get paid is horse manure. The above misdemeanants who would continue to get paid will cost millions!

The issue is disgusting--after all, if they win their appeal (rare!), then they get their back pay, etc. That's how it should be.

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You keep typing, we keep giving. Download Messenger and join the i'm Initiative now. [Join in!](#)



SB 176?

11-27-2007

Comparison of 2007 AB 308 and MPA Positions

2007 AB 308	MPA Proposal
<p>1. Complaint: The board, after receiving notice of appeal shall, within 5 days, serve the appellant with a copy of the complaint and a notice fixing the time and place of trial, which time of trial may not be less than 90 days nor more than 120 days after service of the notice and a copy of the complaint.</p>	<p>1. Complaint: Trial to be held between 60 and 120 days after the complaint is filed.</p>
<p>2. Trial Adjournment: The board may grant the accused or the chief an adjournment of the trial or investigation of the charges, for cause, not to exceed 15 days. In the course of any trial or investigation under this section each member of the fire and police commission may administer oaths, secure by its subpoenas both the attendance of witnesses and the production of records relevant to the trial and investigation, and compel witnesses and the production of records necessary for the trial. The trial shall be public and all witnesses shall be under oath. The accused shall have full opportunity to be heard in defense and shall be entitled to secure the attendance of all witnesses necessary for the defense at the expense of the city. The accused may appear in person and by attorney. The city in which the department is located may be represented by the city attorney. All evidence shall be taken by a stenographic reporter who first shall be sworn to perform the duties of a stenographic reporter in taking evidence in the matter fully and fairly to the best of his or her ability.</p>	<p>2. Trial Adjournment: No mandatory adjournment, only "for cause".</p>
<p>3. Salary During Suspension: No chief officer of either department or member of the fire department may be deprived of any salary or wages for the period of time suspended preceding an investigation or trial, unless the charge is sustained. No member of the police</p>	<p>3. Salary During Suspension: Paid suspension terminates if bound over for felony criminal charges. City reinstates and reimburses all wages, benefits, etc. only if reinstated.</p>

Comparison of 2007 AB 308 and MPA Positions

<p>force may be suspended under sub. (11) or (13) without pay or benefits until the matter that is the subject of the suspension is disposed of by the board or the time for appeal under sub. (13) passes without an appeal being made.</p>	
	<p>4. Additional Provisions:</p> <ul style="list-style-type: none">a. Fire and Police Commission retains jurisdiction (w/no chance for arbitration) on discipline when an officer is charged with a felony and also discharged by the Chief as a result of the same act(s) which constituted the felony criminal charge.b. Fire and Police Commission would have rule making authority. Addresses the <i>Casteneda</i> Decision.c. Expand number of Fire and Police Commissioners from 5 to 7 (Quorum remains at 3)d. Provide the right to choose between arbitration or Fire and Police Commission for all disciplines, other than those where the officer is also charged with a felony and is discharged for the same acts which constituted the felony criminal charge.e. Provide right to Circuit Court appeal from arbitral decision.f. Chief is to provide all exculpatory evidence, as well as all evidence relied upon in determination of guilt and discipline, at the same time as disciplinary charges are served on the member.





Tom Barrett
Mayor, City of Milwaukee

For Immediate Release:
November 28, 2007

Contact: Phillip Walzak
(414) 286-3677

*****MEDIA ADVISORY*****

Barrett to Travel to Madison, Urge Passage of Fair Police Pay Bill for Milwaukee Taxpayers

MILWAUKEE – Mayor Tom Barrett will travel to Madison on **Wednesday, November 28th** to appear before the State Senate Urban Affairs Committee and urge approval of SB 176 – the Coggs-Toles Police Pay Bill.

As a result of flawed State law, Milwaukee is the only city in Wisconsin that must continue to pay police officers who have been fired and charged with a crime until they are actually convicted and sentenced. A bill sponsored by Milwaukee legislators Sen. Spencer Coggs and Rep. Barbara Toles would fix this egregious situation by halting pay for officers at the point they are terminated.

Since 1990, Milwaukee property taxpayers have shelled out \$4,380,000 in total pay and benefits to officers fired and not reinstated. Since the original AB 599 hearing in September 2005 that the State Legislature failed to enact, Milwaukee property taxpayers have paid about \$2 million to officers fired and not reinstated. Thus far in 2007 fired cops not reinstated have cost Milwaukee taxpayers \$615,000.

"I don't want the property taxpayers in Milwaukee to be paying for people who have been fired and charged with a crime," said Milwaukee Mayor Tom Barrett. "If you're fired and charged with a crime, you don't get paid. That's the way it works in America."

WHAT: Mayor Barrett to appear before the State Senate Urban Affairs Committee and urge approval of SB 176 – the Coggs-Toles Police Pay Bill.

WHEN: Wednesday, November 28th, 2007. Approximately 11:00 AM.

WHERE: State Capitol, Madison, WI, Room 411 South.

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Milwaukee POLICE Association

Local #21 IUPA-AFL-CIO



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Christopher A. Moews

Daniel J. Halbur
Sebastian C.J. Raclaw

Office Secretaries: Debra Schneider, Candy Johnson

November 28, 2007

Dear State Senator,

I am here today regarding the proposed legislation by Senator Cogg's that affects the pay for fired Milwaukee Police Officers, SB 176. Senator Cogg's bill would change the current Section 62.50, Wis. Stats, which covers Milwaukee Police Officers. This proposed legislation, while well intentioned, harms all hard working police officers and their families, in addition to those that it intends to target.

Over the past year we have had four soon to be five officers that the Chief of Police has fired that were reinstated by the Fire & Police Commission. These officers would have been without pay or a means to provide for their families while awaiting their hearing if this Senate Bill would have been in place. Clearly these cases are the reason why we have the current law in place.

In March of 1985 a case that deals with this very issue was decided by the U.S. Supreme Court. In that case, Justice Marshall wrote a dissenting opinion that echoes true today. I ask that you read his opinion as part of your deliberation on SB 176.

The Milwaukee Police Association has been meeting with the City of Milwaukee since August/September of 2006 regarding the continuation of pay for fired Milwaukee Police Officers. We have also been meeting with the Mayor and several state legislators including Senator Cogg's and Representative Toles on this same issue.

During this entire process, we have proposed a number of changes to the current statute which not only meet the needs of the City, but also protect the hard working City of Milwaukee Police Officers.

If enacted, our proposed changes would have saved the City of Milwaukee hundreds of thousands of dollars. The MPA has proposed that:

1. **An Officer's pay would stop when he/she is charged with a felony and also suspended/discharged by the Chief as a result of the same act(s) which constituted the felonious criminal charge.**

This would include a provision where any such officer would be made whole for back pay and benefits only if they prevail and are re-instated to the MPD.

2. **There should only be an adjournment (of the Fire & Police Commission hearing) "for cause".**
No "mandatory adjournment" is necessary.
3. **Fire & Police Commission trials should be held between 60 and 120 days after the complaint is filed.**
This benefits the community by shortening the time for appeals to run their course, and makes it consistent with other forums (i.e., Circuit Court, etc.)
4. **The number of FPC Commissioners be expanded from 5 to 7 (with a quorum remaining at 3 for disciplinary purposes).**
This decreases each Commissioner's work load, which will in turn shorten the time for the appeal to run its course. It will allow the FPC to focus more on citizen complaints and "big picture" matters such as hiring practices/standards, etc.
5. **Our current arbitration process for discipline should be expanded.**
This would allow arbitration for all discipline other than those where the officer is also charged with a crime, bound over for trial and is discharged for the same acts which constituted the criminal charge.

This would enable the Commission to maintain control over the outcome of discharge cases that are truly "high profile," and preserve "citizen oversight" as to the type of discharge cases that most concern the public.

Historically, arbitration is faster than the normal FPC process. It would be concluded within 90 days, with the costs being shared equally between the City and the MPA (as per the collective bargaining agreement.)

Arbitration also enhances the FPCs' ability to focus on the "big picture" issues, such as hiring practices, rules, and testing.

6. **The Chief of Police would provide all exculpatory evidence, as well as all evidence relied upon in the determination of guilt and discipline, at the time the Officer is served with disciplinary charges.**
This would be necessary to speed up the entire process.

These are significant changes to the current legislation.

Unfortunately there are some who believe that all pay should stop upon termination, regardless of the basis for termination. That belief would discriminate against Milwaukee Police Officers simply because of the community in which he/she works – as the pay for every other Wisconsin Law Enforcement Officer, (including Milwaukee County Sheriff Deputies and suburban officers), continues until his/her discharge is heard before an Independent Board of Review. *See Section 62.13 & 59.26(9), STATS.* Such a discriminatory belief is simply unacceptable. *Even Governor Doyle was quoted last year saying that all police officers in the State of Wisconsin should be treated equally.*

In Mayor Barrett's March 29th statement, he said "every month I watch thousands and thousands of dollars leave city coffers to pay people who have been fired from their jobs and charged with crimes." In reality, however, it's the City that opts to pay officers even after they have been convicted of a felony. It is (and has been) the MPA's position that once an officer is convicted of a felony, he/she can no longer hold the position of a police officer. The City, on the other, hand continues to pay the officer until he/she is sentenced. This was also the case after three Milwaukee Common Council Members were convicted in Federal Court. The City of Milwaukee currently has a fourth Alderman who continues to get paid his salary, phone and auto allowance while in jail awaiting trial.

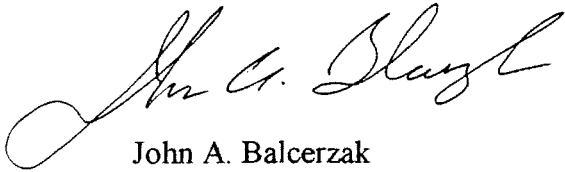
Contrary to Mayor Barrett's March 29th press release, Barrett stated in an April 3, 2007 interview that he remained hopeful and still optimistic that the City and the MPA can present a united front to the Wisconsin Legislature on a compromise bill.

The MPA agrees, and has offered the above as just such a compromise.

I'd ask that you keep in mind that an Officers' actions, whether reviewed in the courts or in the public eye, are judged on a "reasonableness" standard. "Reasonable" is defined as "rationally fitting, proper, or sensible." The MPA strongly believes that, after reading and understanding our proposal, you will deem it to be "Reasonable" as well.

Sincerely,

MILWAUKEE POLICE ASSOCIATION



John A. Balcerzak
President
Local #21, IUPA, AFL-CIO

JAB/cmj





STATE REPRESENTATIVE
17TH ASSEMBLY DISTRICT

**TESTIMONY OF STATE REPRESENTATIVE
BARBARA TOLES**

In favor of Senate Bill 176 – Police Pay After Termination

Senate Committee on Labor, Elections, and Urban Affairs
November 28, 2007

Good morning Chairman Coggs and members of the committee. I would like to thank you for holding this public hearing on Senate Bill 176 and for allowing me to speak in favor.

In 1980, Wisconsin passed legislation known as the “Law Enforcement Officers’ Bill of Rights”. This measure included a number of protections for state officers, such as the right to have a union representative or lawyer present during interrogations into alleged misconduct, and the right to engage in political activity off the job. Those provisions apply to all police officers in the state.

However, the law also has a provision that grants payment of a 1st class city police officer’s salary after discharge, pending the outcome of an appeal. Milwaukee is the only 1st class city in Wisconsin, hence making Milwaukee police officers the only officers in the state eligible for this benefit. Milwaukee fire fighters and other public safety personnel are excluded. SB 176 would end this practice, and provide the taxpayers in Milwaukee needed relief. Currently, the tax dollars of hard working Milwaukee residents are being paid to officers after they have been fired for just cause. Milwaukee Mayor Tom Barrett supports this legislation.

The current system is unfair to the men and women who work hard every day to protect and serve our city. It also places an undue burden on Milwaukee taxpayers. According to the Fire and Police Commission, there have been 108 terminations since 1990. All but four officers appealed. The City of Milwaukee paid over \$4.4 million in wages and benefits to those fired officers. Eight cases are still pending.

Perhaps the most well-known case involving fired officers concerns the severe beating of Frank Jude, Jr. in 2004. Three officers who were convicted in that case will be sentenced in federal court tomorrow. According to city records, it is estimated that those three officers alone cost the city just under half a million dollars in pay and benefits while they appealed their firings.

In 2005, officer Jon Bartlett, who was fired in the Jude beating case, was arrested for allegedly calling in a bomb threat to the 7th District Police Station where he worked. In February, 2006, within a one-week span, three Milwaukee officers were criminally charged with committing felonies. One officer was charged with taking bribes, another was charged with drug trafficking, and the third was charged with several sex crimes. That officer, Steven Lelinski, was charged with four felonies, including second degree sexual assault and attempted second degree sexual assault, and misdemeanor lewd and lascivious behavior. After the charges, Lelinski was immediately removed from the state Law Enforcement Standards Board by the governor, and was removed from the Milwaukee Police Association Executive Board. However, the City of Milwaukee could not remove him from the payroll because of state law.

Other examples of officer misconduct that led to termination include:

- Five police officers and a sergeant went sledding while on duty. One officer was seriously injured. The other officers, not wanting their on-duty activity to be discovered, moved the injured officer to the steps of a school and called in a false report of “officer down” and fabricated a story that he had been injured chasing a suspect. The injured officer also defrauded the City by filing a claim and receiving worker’s compensation for his alleged “duty-related” injuries. Four officers involved were dismissed and appealed to the Fire and Police Commission. The sergeant resigned before charges were issued by the Department, and one officer was suspended but did not appeal. The cost to the City in wages while the dismissal appeals were pending was \$85,239.36.
- A police sergeant, while on patrol, came across a female performing a sex act on a male in a parked car. The sergeant later took the female in his squad car, parked in a secluded area, and engaged in sexual acts with her for about half an hour, ignoring a radio call for service. The sergeant appealed his dismissal to the Commission, which upheld the dismissal. The cost to the City in wages while the appeal was pending was approximately \$7,157.60.
- An off-duty detective was drinking while driving intoxicated, crossed the center island, and swerved into oncoming traffic, colliding with a vehicle and sending its three occupants to the hospital. He was charged criminally for the crash and was dismissed from the Department. He resigned from the Department four months after appealing his dismissal. The cost to the City in wages while the appeal was pending was \$13,973.43.
- An off-duty officer intentionally smoked marijuana and tested positive during a random drug test. His dismissal was upheld by the Commission. The cost to the City in wages while the appeal was pending was \$28,489.12.
- A detective removed money from the scene of an investigation and kept it for his own personal use. He then went to a restaurant and consumed an alcoholic

beverage while on duty. In addition to being dismissed, he was charged criminally. The cost to the City was \$67,788.87.

- Several citizens observed a police officer pull a prisoner out of a squad car and beat him while the officer's partner was inside a fast food restaurant. The officer was dismissed and charged criminally. The cost to the City was \$36,346.79.

The Milwaukee Police Association, the union that represents police officers, wants to limit this legislation to those officers who have been fired for committing felonies. However, misdemeanors are not minor violations of the rules – they are criminal offenses. Milwaukee police officers have been fired for committing misdemeanors such as witness intimidation and exposing their genitals to children, and continued to be paid while they appealed. The MPA wants officers who are fired for committing misdemeanors and rule violations to continue being paid. They will argue that an officer who is fired for a rule violation is different from an officer who commits a felony. The problem with this argument is, in the real world, employees who violate standard workplace rules such as falsifying reports, accumulating excessive hours of unexcused or unapproved absences, or lying to supervisors can expect to be terminated. After they are fired, their pay stops!

The practice of paying fired police officers while they appeal provides an incentive for officers to file frivolous appeals and drag out the process as long as possible. Since 1990, almost half the fired officers who initially appealed their terminations either resigned or retired before their cases came to trial. Even the President of the Milwaukee Police Association acknowledged that current law creates an opportunity for the system to be manipulated.

In contrast, Milwaukee fire fighters, who are not paid during the appeals process, try to settle their cases as quickly as possible. The average fire fighter case in Milwaukee is resolved in half the time it takes for police appeals. Between 2003 and 2006, the longest fire fighter case took four months, or about 120 days. Police officer appeals during that same timeframe averaged 202 days. *- 2.5 mos. more*

SB 176 addresses that problem by setting a more realistic time frame for trials to be scheduled as part of the appeals process, giving both sides adequate time to prepare, and cutting down on the number of adjournments. Under current law, adjournments are granted automatically, giving officers an incentive to ask for one simply to delay the onset of the trial. SB 176 requires that either party must give a reason when requesting an adjournment. This is the same standard used in all other courts and jurisdictions in Wisconsin.

I am asking for your help today on behalf of Milwaukee taxpayers. I urge you to support Senate Bill 176, and I thank you for your time this morning.



SB 176

11-28-07
Date

- SC

- Wirch ?'s
- Brothman - likes bill
 - provision in budget about firing officer
 - contradictory actions in the senate
- SC - trying to fix abuse of system
 - glitch in system
 - commends Toles + Carpenter
- Brothman - save MKE taxpayers, but hurt rest of WI
- Brothman - other cities w/ less busy PrFC's
 - getting a PrFC review
- SC - agreed on amendment shortening adjournment
- Wirch - dragging it out counts for retirement + health care
- Lehman - willing to change firing procedure

→ Delay, delay, delay they get pay, pay, pay

- Toles

- detailed testimony w/ history
- Lelinski example
 - SC asks about meeting w/ AGOP yesterday
- Brothman - shouldn't take 200 days to wrap up cases
 - officer suspended w/ pay prior to firing by chief during investigation
- Brothman - back to budget provision
 - Toles comes back
- Wirch - guarantees due process

- Barrett

- Members SC + Toles
- praises good cops for service (vast majority)
 - have heard about minute minority of service
- two goals as Mayor - public safety + jobs
 - increase size of MPD
- Delays in system
 - 9/12/07 - FPC reversed Chief firing from 7/6
 - 2 mos., 6 days
 - reinstatements go much faster
 - losing cases get dragged out, winners decided ASAP
- distinction between felonies + misdemeanors
 - since 606 misdemeanors - bail jumping, battery, B+E, lwd + leccivious charges
 - criminal misdemeanor drags out process

- SC

- current law is fiscal incentive to drag out cases
- rule interaction same treatment
- how does Springfield, MA do it?
- two kicks @ the cat on getting fired
 - internal investigation by MPD before Chief fires

- Grothman

- misdemeanor issue ~~can~~
 - can be hired w/ past misdemeanor
 - not necessarily fired for committing misdemeanor on the job

- SC - Jude cops sentenced tomorrow

- close chapter on that tomorrow w/ sentencing

- Barrett cont.
 - SC - up for election next year ...
- John Balcerzak
 - officer has no due process prior to Chief firing
 - what is the pre-firing process in other munis
 - counter-proposal would have covered the Toles examples
 - offer evidence
 - Ch. 17 - Judge Franke ruled cops aren't
 - SC runs through steps to fire
 - system can be manipulated
 - officers don't control scheduling though
 - talk about delay of yesterday's hearing
 - conveyed message to Speaker
 - he's committed to compromise/resolve
 - sc - outside meetings keep us apart, not bring us together
 - external parties not involved in scheduling conflicts
 - Lehman - internal boards of review in other depts.
 - any specific proposal to create that in MKE?
 - internal board of review diff. from FRPC? — YES
 - used to have face to face w/ Chief & officer
 - only occurs now under arbitration
 - would there be evidence @ BOR - formal or informal?
 - leaned to informal, but formal would be good
 - SC, BOR loss = end of pay?
 - needs more info
 - need to address high-profile cases

- Carpenter

- had Breier as constituent
- officers upset by Breier's actions
- collective bargaining is where this should be addressed
- 85% support for this on constituent survey
- how many more cops could \$4.4 million have hired?
- Hebsch gave commitment to pass this bill by the end of the year in conference comtee.
- Gard jerked Toles around on it last session
- doesn't pass the smell test
- Grothman - same budget point
- Carp. - will try to get Hebsch to act
- justice delayed is justice denied



A handwritten word "Packet" is written in black ink and enclosed within a hand-drawn oval.**Plotkin, Adam**

From: Gonda, Jennifer [Jennifer.Gonda@milwaukee.gov]
Sent: Monday, December 03, 2007 5:31 PM
To: Sen.Lehman; Sen.Coggs; Sen.Grothman; Sen.Lasee; Sen.Wirch
Cc: Plotkin, Adam; Vornholt, Paul; Worcester, Barbara; Sen.Darling; Rep.WilliamsA; Rep.Toles; Rep.Sinicki; Rep.Cullen; Rep.Kessler; Rep.Fields; Sen.Plale; Rep.Stone; Rep.OttJ; Sen.Sullivan; Rep.Richards; Rep.Zepnick; Rep.Vukmir; Sen.Taylor; Rep.Young; Rep.Krusick; Rep.Gundrum; Rep.Honadel; Sen.Lazich; Rep.Colon; Rep.Wasserman; Rep.Grigsby; Sen.Carpenter; Rep.Staskunas
Subject: Letter from Mayor Barrett re. SB 176
Importance: High
Attachments: SB 176 hearing follow-up final.doc; Foley Brief.doc

Dear Senators,

Attached is a letter that includes follow-up information from last week's hearing on SB 176 - to eliminate the requirement to pay Milwaukee Police officers who are appealing their termination. We wanted you to have this prior to tomorrow's executive session on the bill.

I will hand-deliver a hard copy tomorrow morning.

Thanks for your support,
Jennifer

Jennifer Gonda Birnbaum
Senior Legislative Fiscal Manager
Intergovernmental Relations Division
City of Milwaukee, Wisconsin
Office: (414) 286-3492
Cell: (414) 708-7680
Fax: (414) 286-8547

12/04/2007



Tom Barrett
Mayor, City of Milwaukee

December 3, 2007

Committee on Labor, Elections and Urban Affairs

Dear Senators:

Thank you for the opportunity to testify before the Senate Committee on Labor, Elections and Urban Affairs last week. Senate Bill 176 is a very important piece of legislation to City of Milwaukee residents and I would appreciate your support.

Let me start by saying that Milwaukee residents and leaders greatly respect and value the job undertaken by the majority of our Milwaukee Police Officers. We admire the dedication and commitment they display on a daily basis to protect the lives and property of the residents of this community. By no means is this legislation intended to harm all hard-working police officers and their families. We recognize that our Police Department does a very good job with the resources available to them under very challenging circumstances.

The bottom line is that Milwaukee's public safety needs are great and our resources are severely limited. We appear to have a fundamental disagreement with the Milwaukee Police Association about where these limited funds should be spent. We believe our residents prefer their property tax dollars be spent paying officers who will actually be working on the street defending our citizens from criminals, rather than paying the salaries and benefits for the few who have been discharged for breaking the very laws they have sworn to uphold.

Since the last legislative session, city representatives have met with the MPA on multiple occasions to discuss changes to state statutes that require discharged Milwaukee police officers to continue to receive pay and benefits pending disciplinary appeal trials. We have also discussed changes to the statute aimed at creating more streamlined disciplinary appeal procedures and adding city resources to staff those activities.

The City's 2007 Budget restored the Fire and Police Commission (FPC) as a separate and independent agency and delegated recruitment and testing functions to the Department of Employee Relations to allow the Commission to focus on citizen oversight and policy issues. In addition, the Budget enhanced the Commission's ability to exercise its authority under 62.50 by:

- Providing the necessary funding for additional FPC Commissioners pending legislative changes aimed at expanding the size of the Commission;

- Creating a Paralegal position to assist in streamlining and expediting pre-trial and post-trial procedures and alleviate the citizen complaint backlog;
- Creating a Community Outreach Manager position to increase the Commission's visibility and credibility in the community and strengthen conciliation process for citizen complaints;
- Contracting with additional hearing examiners dedicated to citizen complaint trials in 2006 and 2007;
- Securing a commitment from the City Attorney's office to assign increased resources to expedite the scheduling of trials;
- Funding a total of 33 Police Services Assistants in the 07 and 08 Budgets to perform support functions so that sworn personnel can be returned to crime fighting activities.

Throughout our discussions with the MPA, it is apparent that we have reached consensus on issues related to expanding the size of the Commission, changing the timeline for scheduling disciplinary trials and eliminating provisions that allow for automatic adjournment of trials. However, many critical differences still exist and we have not been able to agree on a comprehensive package of legislation to present to you as a compromise.

During the hearing, the Milwaukee Police Association (MPA) made some statements and/or allegations that are inaccurate and I feel it is important for you and your colleagues to fully understand the City's efforts and position on this matter. Specifically, the following 6 allegations were raised by the Milwaukee Police Association at the public hearing:

1. The MPA asserts that the Fire and Police Commission does not adhere to the current statutory timeline for disciplinary appeal trials.

The Fire and Police Commission held a series of public hearings in 1998 and 1999 to address concerns by both the city and appellant attorneys regarding the challenges of the 5-15 day statutory timeline. As a result, the Fire and Police Commission adopted Rule XV Section 5, which outlines the Commission's procedure for handling trials in compliance with Wis. Stat. 62.50(14). Under this procedure, appellants are allowed to waive the statutory time limits found in 62.50(14) at the time they submit their notice of appeal.

Also, attached is a sample appeal notice used by Police Officers to waive this timeline. *The document clearly indicates that the request for waiver is based on the fact that 15 days is not enough time in which to complete the discovery, pre-trial procedures and other preparation needed by the appellant's legal counsel to effectively represent him or her. The timeline waiver is not mandatory if an officer requests an extension. In virtually every appeal, the officer has requested a waiver since this procedure was adopted.* The statutory timeline becomes irrelevant when each and every officer asserts their request for an automatic adjournment just prior to the scheduled hearing and also initially waives the 15-day statutory timeline. This results in continuing their salary well beyond what the writers of the original statute ever intended. Senate Bill 176 includes a provision that will extend the statutory timeframe from 5-15 days to 90-120 days in order to eliminate the need for the waiver.

2. The MPA stated that accused officers do not get due process prior to being disciplined by the Chief.

Employment relationships in the State of Wisconsin are generally governed by what is known as the "at-will" doctrine. The employment relationship can be severed at any time by either the

employer or the employee for any or no reason. Under the at-will doctrine, employers have the ability to terminate the employment of employees for any or no reason so long as it is not an illegal or discriminatory reason. However, rights extended to the Milwaukee Police Association under state law and their collective bargaining agreement further require that department disciplines based upon the “just cause” standard. Since the burden of proof falls on the employer, disciplinary actions are not issued lightly.

The Milwaukee Police Department’s internal investigation process is professional, lengthy and thorough. MPA’s suggestion that it is somehow tainted is unfounded. Each case gets a complete review by the department’s Professional Performance Division. In addition, each case involving significant discipline is subject to initial review and consultation with the Milwaukee City Attorney’s Office for legal sufficiency and compliance with the requirements of due process.

During the investigation each officer is interviewed with their legal counsel or chosen representative present and is given an opportunity to present any information in their defense. Prior to issuance of charges, each officer is formally served with a notice of the investigation and a complete summary of the investigation including witness statements and any exculpatory information, at which time the officer is then afforded once again the opportunity to respond and present any information, statements, or evidence in any form whatsoever to assist in the disposition of the investigation prior to the Chief rendering a decision.

In fact, Milwaukee Police Officers receive more due process than persons in any other type of employment relationship in this State. The Fire and Police Commission appeal process is an additional layer of protection for officers who are also afforded the same legal protections as other employees.

3. The MPA asserts that this legislation discriminates against officers in Milwaukee only, by treating them differently than officers in other cities.

There is only one statutorily mandated City of the First Class in Wisconsin – that is Milwaukee. Many provisions of the state statutes ranging from employee relations to government formation treat Milwaukee differently. The fact that there are different provisions than those applying to other cities does not render them discriminatory.

The City of Milwaukee has instituted many procedures to safeguard due process for its officers that are not present in other Wisconsin cities. These procedures are outlined in the attachment summarizing the investigative process. Any decision of the police chief in disciplining an officer is subject to initial review by the Milwaukee City Attorneys Office. In addition, under the reorganization of the Milwaukee Fire and Police Commission, any decision is also subject to independent review by the Director of the Milwaukee Fire and Police Commission while performing its statutorily mandated oversight responsibilities. The process in Milwaukee is different, but is not discriminatory and in many respects offers additional safeguards not present in other Wisconsin cities.

In the case of laws pertaining to police, there are several differences in Chapter 62 as well as Chapter 111. Some of these differences benefit the Officer, and some benefit the City. If the MPA is interested in matching up Milwaukee Police Officers with the rest of the state, there are several changes that will need to be made.

Aside from changing the disciplinary process, the collective bargaining process will need to be changed to eliminate issue-by-issue interest arbitration that benefits Milwaukee officers. In fact,

Milwaukee officers and the Milwaukee Police Supervisors are the only two unions in the entire state that are entitled to this type of interest arbitration procedure. All other unions in the state are subject to total package interest arbitration in which one side completely wins or loses the entire case. In this type of a process both parties are more reluctant to ask for too much and to go forward to arbitration.

The current bargaining law for our two police unions provides them with little incentive to be reasonable because there is absolutely no risk and they have everything to gain in utilizing the interest arbitration procedure. All other unions in the state must weigh the risk of asking for a new benefit versus losing the entire case.

4. A question was raised about why the City has hired officers with previous misdemeanor convictions and why not all officers with misdemeanors are discharged.

Wisconsin Fair Employment Law (Wisconsin Statutes 111.31-111.395) prohibits employment discrimination on the basis of “arrest and conviction record.” This statutory provision states that an employer may only refuse to hire a qualified applicant because of a conviction record for an offense that is substantially related to the circumstances of a particular job. Therefore, the Milwaukee Police Department has hired some officers with misdemeanor convictions that were deemed unrelated to the job. Usually that has occurred with very minor violations not likely to reoccur or violations that are very old with a long intervening record of no illegal conduct.

Likewise, the Police Department cannot terminate an employee for a misdemeanor conviction unless it is substantially related to the job of police officer. Therefore, not all officers with misdemeanor convictions are removed from office automatically.

5. The MPA takes issue with the fact that the City continues to pay officers after they have been convicted of a felony until they are sentenced. This is contrary to the MPA’s position that once an officer is convicted of a felony, he/she can no longer hold the position of a police officer.

This is another misleading argument. The answer is simple; we are required to continue paying the officer until sentencing under state law. Police Officers hold a “public office” for purposes of Wis. Stat. 17.03(5). This section states that a public office is vacant when an incumbent is convicted *and sentenced* by a state or federal court for treason, felony or other crime of whatsoever nature punishable by imprisonment in any jail or prison for one year or more, or for any offense involving a violation of the incumbent’s official oath.

6. The MPA contends that a recent ruling by Judge Foley (in his remarks, Balcerzak said Judge Franke) means that Police Officers are not officers of the municipality for purposes of Chapter 17 (as referenced in #5).

A Milwaukee County Circuit Court judge has made a ruling that is not precedential and that we believe to be in error and contrary to law. The City has appealed this decision to the Wisconsin Court of Appeals and is confident it will be overturned, based on applicable law and facts. Please see the attached brief for the City’s position on this matter.

Using dissenting Supreme Court opinions and recent court decisions that are currently under appeal demonstrate that the Milwaukee Police Association has a clear misunderstanding of the legal landscape in Wisconsin. It is my hope that these discrepancies are merely a case of the Milwaukee Police Association representative being poorly informed and not intentional misleading.

I am happy to be able to provide you with clarification on these issues. As written, this bill will give Milwaukee taxpayers a needed break. Please feel free to contact me if you would like to discuss this further.

Sincerely,

A handwritten signature in black ink that reads "Tom Barrett". The signature is written in a cursive, flowing style.

Tom Barrett
Mayor

TB:jg:mo

cc: Senator Russell Decker
Speaker Michael Huebsch
Milwaukee Delegation
Assembly Committee on Corrections and Courts

**STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT I**

Case No. 2007AP001771

**KATHERINE THOMAS AND MILWAUKEE
POLICE ASSOCIATION,**

Plaintiffs-Respondents,

v.

**MILWAUKEE CITY BOARD OF FIRE AND
POLICE COMMISSIONERS,**

Defendant-Appellant.

BRIEF AND APPENDIX OF DEFENDANT-APPELLANT

**APPEAL FROM DECISION OF THE CIRCUIT COURT OF MILWAUKEE
COUNTY, THE HONORABLE CHRISTOPHER R. FOLEY, CIRCUIT JUDGE
PRESIDING, CIRCUIT COURT CASE NO. 06-CV-007882**

**GRANT F. LANGLEY
City Attorney**

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I. STATEMENT OF THE CASE

This matter was commenced on August 22, 2006 when Katherine Thomas filed a summons and complaint seeking both certiorari review and statutory review as well as declaratory judgment against the Board of Fire and Police Commissioners (Board) regarding the Board's determination that it had no jurisdiction over an appeal that Ms. Thomas sought to have considered by the Board regarding Ms. Thomas' vacation from her public office. (Appl. App. pp. 101, 102, 448-452).

A return was made to the file by the Board on September 26, 2006 by the Affidavit of David L. Heard, and enclosing 39 documents. (Appl. App. pp. 119, 120).

On September 15, 2006, the intervenor-plaintiff Milwaukee Police Association (MPA) moved to intervene in the matter. (Appl. App. pp. 454-462). In response thereto the Board filed, on October 10, 2006, a Notice of Motion and Motion to Dismiss as well as a brief in support and affidavit in support thereof. (Appl. App. pp. 463, 464).

The matter was heard by the court on November 27, 2006 and on December 5, 2006 the court ordered the intervention of the MPA and set this matter for briefing if it were an appeal of discipline under Wis. Stat. § 62.50. The Board maintained throughout these proceedings that this is not and cannot be an appeal under Wis. Stat. § 62.50(20), since, Ms. Thomas was not disciplined, but, rather, by her conduct and admissions (moving out of the City of Milwaukee), she vacated her public office. *Eastman, et al. v. City of Madison, et al*, 117 Wis. 2d 106, 115, 342 N.W. 2d 764, 768 (Ct. App. 1983), *Klatt v. LIRC*, 266 Wis. 2d 1038, 1057, 669 N.W.2d 752, 662 (Ct. App. 2003); *Wellnitz v.*

Board of Fire and Police Commissioners of the City of Wauwatosa, 151 Wis. 2d 306, 311, 444 N.W. 2d 412, 414 (Ct. App. 1989). As a result, she has no appeal under Wis. Stat. § 62.50.

The Trial Court determined that on the facts presented Ms. Thomas is entitled to a hearing to determine if she is a resident of the City of Milwaukee, even though she has admitted to the Milwaukee Police Department (Department) that she is not a resident of the City of Milwaukee, and further that all the addresses she has told the Department were her addresses, except one that she moved from in February 2004, were, in fact, false, and that she was not a resident of the City of Milwaukee at the time of her interview. (Appl. App. pp. 101-107, 404-414).

II. ISSUES PRESENTED

Did the Trial Court commit clear error when it ruled that on the facts presented Ms. Thomas is entitled to a hearing under the provisions of Wis. Stat. 62.50 (20)?

Answer of the Trial Court: No.

Did the Trial Court commit clear error when it ruled that notwithstanding Wis. Stat. § 17.03(4)(d) and Chapter 184 of the Laws of 1874, and Section 2-01 of the Charter of the City of Milwaukee, it declared that Ms. Thomas was not an officer of the City of Milwaukee?

Answer of the Trial Court: No.

III. FACTS

1. 1. On September 21, 2005 Sergeant Heather Worth was conducting an interview of Police Officer Katherine Thomas who appeared with a representative of the MPA. (Transcript of Interview, p. 1; Appl. App. p. 403).
2. 2. The interview was being conducted because the Milwaukee Police Department was investigating Ms. Thomas regarding an allegation that she was not a resident of the City of Milwaukee. (Transcript of Interview, p. 1; Appl. App. p. 403).
3. 3. During the course of that interview, Ms. Thomas was asked for her address, and responded that her address is W2289 Northside Drive, Town of Concord, County of Jefferson, Wisconsin 53094. (Transcript of Interview, p. 2; Appl. App. p. 404).
4. 4. Ms. Thomas had previously listed the address of 707 East Townsend as her official address with the department and that was carried as her official address for purposes of the Personnel Division of the department. (Transcript of Interview, p. 2; Appl. App. p. 404).
5. 5. Ms. Thomas admitted that she does not live there. (Transcript of Interview, p. 2; Appl. App. p. 404).
6. 6. In fact, 707 East Townsend Avenue is owned by a friend one Kelly Fuerer. (Transcript of Interview, p. 2; Appl. App. p. 404).
7. 7. Ms. Thomas paid no utilities at 707 East Townsend Avenue and did not pay rent at that location. (Transcript of Interview, p. 3; Appl. App. 405).

8. 8. Ms. Thomas' mail was sent to 707 East Townsend Avenue and Kelly Fuerer forwarded it to Ms. Thomas in Watertown. (Transcript of Interview, p. 3; Appl. App. p. 405).
9. 9. Ms. Thomas is married and she has two children and they live at the Watertown address. (Transcript of Interview, p. 3; Appl. App. p. 405).
10. 10. Ms. Thomas kept no tangible items at 707 East Townsend Avenue. (Transcript of Interview, pp. 3, 4; Appl. App. pp. 405, 406).
11. 11. In fact, Ms. Thomas kept no property at 707 East Townsend Avenue. (Transcript of Interview, p. 4; Appl. App. p. 406).
12. 12. Ms. Thomas and her husband have owned the property at W2289 Northside Drive, Town of Concord, County of Jefferson, Wisconsin 53094 since approximately 2000 and they occupied the property in February of 2001. (Transcript of Interview, p. 4; App. App. p. 406).
13. 13. Ms. Thomas and her husband pay the utilities on W2289 Northside Drive, Watertown, Wisconsin 53094. (Transcript of Interview, p. 5; Appl. App. p. 407).
14. 14. Previously Ms. Thomas had lived at 3575 South 57th Street, but she moved from there to the Watertown address in December of 2003. (Transcript of Interview, p. 5; Appl. App. p. 407).
15. 15. When Ms. Thomas moved from the address at 3575 South 57th Street she listed a new address of 3466 South 15th Street, but Ms. Thomas never actually lived there. (Transcript of Interview, p. 5; Appl. App. 407).

16. 16. 3466 South 15th Street was actually occupied by an individual by the name of Kelly Walker, who is now married and has taken the name Mosley. (Transcript of Interview, p. 6; Appl. App. 408).

17. 17. Ms. Thomas identified mortgage instruments that she signed indicating that she and her husband Paul J. were borrowers, and that they signed on the mortgage the following statement,

“Occupancy. Borrower shall occupy, establish and use the property as borrower’s principle residence within 60 days after the execution of the security instrument and shall continue to occupy the property as far as principle residence for at least one year after the date of occupancy unless lender otherwise agrees in writing, which consent shall not be unreasonably withheld or unless extenuating circumstances exist which are beyond the borrower’s control.”

(Transcript of Interview, p. 8; Appl. App. p. 410).

18. 18. However, Ms. Thomas and her husband did not actually occupy the property at W2289 Northside Drive, Town of Concord, County of Jefferson, Wisconsin 53094 until December 2003. (Transcript of Interview, p. 9; Appl. App. p. 411).

19. 19. However, Ms. Thomas’ husband lived in the house in Watertown as of the year 2001. (Transcript of Interview, p. 10; Appl. App. 412).

20. 20. Ms. Thomas also filed documents with the Milwaukee Police Department indicating that for a time she lived at 5701 West Warnimont Avenue. (Transcript of Interview, p. 10; Appl. App. p. 412).

21. 21. Ms. Thomas lived at that address with her husband Paul J. from February 26, 2001 until December of 2003 even though some of the paperwork indicates that

Ms. Thomas lived at 3575 South 57th Street until February 27, 2004. (Transcript of Interview, p. 10; Appl. App. p. 412).

22.22. After Mr. Thomas moved to the home in Watertown, Ms. Thomas resided with her sister at 3575 South 57th Street. (Transcript of Interview, p. 10; Appl. App. 412).

23.23. Ms. Thomas never actually lived at 3466 South 15th Street even though she filed paperwork with the department indicating that she did live at that address. (Transcript of Interview, p. 11; Appl. App. p. 413).

AN EARLIER EFFORT ON THE PART OF OFFICER THOMAS TO SEEK A RESIDENCY EXCEPTION

24.24. On June 9, 1998 Ms. Thomas requested an exemption from the City residency requirement due to marriage. The minutes of the Board's meeting of July 9, 1998 at page 3 recite as follows:

e) The Director presented a letter dated June 9, 1998, from Police Officer Katherine Thomas, who requests an exemption of the City residency requirement due to marriage. The Director stated that Ms. Thomas is making her request under the new City of Milwaukee Charter Ordinance relative to exemptions. Ms. Thomas was hired as a Police Officer on March 14, 1994. She married Paul Thomas on December 30, 1995. Paul Thomas was hired as a police officer for the City of Watertown on May 4, 1998. Watertown requires its employees to live within 15 miles of the easternmost border of the city limits. Ms. Thomas was present. Assistant City Attorney Melanie Swank was recognized and read a portion of City Charter Section 5-02(7): "In the event that a city employee weds an employee of another jurisdiction which also has a residency requirement, mandating that its employee reside within that

jurisdiction's boundaries, and if that employment is in effect at the time of the marriage (emphasis added), the city service commission may grant the city employee an exemption from the city's residency requirements, provided that the following conditions are and remain in effect..." Ms. Thomas' situation does not fit the basic requirement. Mr. Thomas was not a public employee of a jurisdiction with a residency requirement at the time of their marriage. If he had been, the exemption might have applied. Bill Ward of the MPA asked if this matter could be delayed until it is known whether the Common Council would consider changing the ordinance. Otherwise, Ms. Thomas could just get divorced and then remarried. The Chair stated that the Commission must act on the information it has before it today, which indicates she does not qualify for an exemption. The Commission cannot grant even a temporary extension because she doesn't comply with the ordinance, and such action would circumvent legislative intent. Mr. Ward asked again if this matter could be laid over to the next meeting. The Chair stated that if Mr. Ward did not wish the Commission to act on this tonight, he could ask Ms. Thomas to withdraw her request and resubmit it later. Commissioner Welch asked if Mr. Ward was seeking an exemption for Ms. Thomas alone or for all personnel similarly affected. Mr. Ward stated he was going to seek an amendment to the ordinance to take this kind of situation into account. Commissioner Buckhanan moved to defer action on this matter until the next meeting on July 23, 1998. The motion failed for lack of a second.

Commissioner Dominguez stated that Ms. Thomas was familiar with the residency requirement before she married. Commissioner Welch asked what Mr. Ward thought was going to change between now and July 23. Mr. Ward stated he wants to see how council members feel about amending the ordinance. The Chair called for another motion. Hearing none, the request was denied. The Director clarified that this lack of action means Ms. Thomas remains bound by the residency requirement. The Director stated that if the ordinance is amended, the officer may appear again before the Board to renew her request.

(Appl. App. p. 128).

25.25. On February 15, 2001 the matter of Ms. Thomas' residency was again before the Board and on February 15, 2001 the following exchange took place:

The meeting resumed at 7:41 p.m. The Chair asked Steven Fronk, Hearing Examiner, to address the residency exemption request. On July 9, 1998, Police Officer Katherine Thomas had requested an exemption from the City's residency requirement based on marital hardship. Her request was denied. She appealed the matter, and the Honorable Rudolph T. Randa has remanded the matter back to the Board with a recommendation regarding further proceedings. Mr. Fronk stated that there had apparently been a miscommunication between himself and Attorney John Fuchs, who represents Ms. Thomas in this matter. It had been Mr. Fronk's belief that Ms. Thomas would appear tonight, and that testimony and other evidence would be received in order to satisfy the requirements of the Decision and Order of the Court. Although Attorney Fuchs had been informed by letter and telephone of tonight's meeting to gather information, he has appeared to state his client's case and has not brought his client with him. Attorney Fuchs was recognized for comment, giving his interpretation of the judge's order that the Board was only to make its decision for the record, not conduct a further hearing. He did, however, stipulate to treating the recommendation as requiring further proceedings in order to supplement the record and make a clearer finding. Mr. Fronk asked the Board to schedule another date for hearing this matter. It was the consensus of the parties to attempt to schedule this matter for March 1, 2001.

(Appl. App. p. 139).

26.26. On April 5, 2001 the matter was again before the Board and the minutes reflect the following regarding the exchange:

a) The Director returned to the Board the request of Police Officer Katherine Thomas for exemption of the City residency requirement. The Chair announced that the Honorable Rudolph Randa had remanded this matter back to the Board with a recommendation regarding further proceedings. The Chair noted that Ms. Thomas was not present. Assistant City Attorney Bruce Schrimpf read stipulations of fact into the record. Attorney John Fuchs, counsel for Ms. Thomas, made a presentation. Ms. Thomas then arrived and was questioned by Commissioners and Attorney Schrimpf. It was agreed that the record would be supplemented by 1) the

documentation of Mr. Thomas's request to the City of Watertown for a residency exemption and Watertown's response (Mr. Fuchs will supply); 2) copies of the disposition of Mr. Thomas' two applications for employment with the Milwaukee Police Department; and 3) response from Watertown as to whether they are willing to enter into a reciprocity agreement with the City of Milwaukee. Attorney Fuchs gave a closing argument. A deadline of May 10, 2001 was set for supplementing the record, which was later changed to May 1st upon recommendation of Steven Fronk, Hearing Examiner, The Chair announced that the Board would not deliberate this evening, given the need to supplement the record. Deliberations will be noticed for the May 10, 2001 Commission meeting.

(Appl. App. p. 142).

27.27. This matter was next before the Board on May 10, 2001, at which time Ms. Thomas withdrew her request for a residency exemption because of her marriage to Paul Thomas.

b) The Director returned to the Board the request of Police Officer Katherine Thomas for exemption of the City residency requirement (see minutes of February 15 and April 5, 2001). The Director announced that a letter has been received from counsel for Ms. Thomas, Attorney John Fuchs, wherein he informs the Board that Ms. Thomas has withdrawn her request because Ms. Thomas' husband has been granted a residency exemption by the City of Watertown Chief of Police.

(Appl. App. p. 210).

28.28. The reason why Ms. Thomas withdrew her residency exemption request, which was announced at the May 10, 2001 Board meeting is because on April 11, 2001 Robert A. Bender, City Attorney for the City of Watertown wrote to Mr. John Fuchs, the following:

I have received your April 9th letter regarding Watertown Police Officer Paul Thomas and Milwaukee Police Officer Kathy

Thomas, husband and wife. I have discussed this matter with our Chief of Police and he has told me that he has previously talked with a member of your law firm and has indicated that the City of Watertown has no intention of enforcing the residency requirement under our ordinances as it might apply to Officer Paul Thomas. I do not know if this is a concession that was made at the time of his employment, however, the chief told me that he has written a letter to Paul Thomas indicating that since his wife was a Milwaukee police officer, the requirement to live within 15 miles of the City of Watertown would not be imposed.

The need for a reciprocity agreement is therefore a moot point. I understand that the Thomas's have recently built a new home in the Town of Concord, Jefferson County, Wisconsin and that they probably do not want to move to the City of Milwaukee. The construction of their new home was not made on the basis of the Watertown residency requirement.

(Appl. App. p. 384).

A copy of that letter was obtained by the Board by virtue of an open records request submitted by Mr. Heard and over the objection of Mr. Fuchs on a claimed "invasion of privacy" of Ms. Thomas. (Appl. App. p. 377).

29.29. On November 15, 2005 Ms. Thomas again requested a residency exemption, because she had adopted two children from the former Soviet Union, and it was the opinion of social workers that it would be better if the children were brought up in a home where the two parents resided in the same home. (Appl. App. pp. 213, 214).

30.30. In that letter Ms. Thomas stated: "Subsequent to the governmental denials Paul and I faithfully complied with both residency requirements *until recently.*" (Appl. App. pp. 213, 214). (Emphasis added).

31.31. However, Ms. Thomas had, in fact, moved out of the City and become a resident of Concord, County of Jefferson, Wisconsin in December, 2003. (Appl. App. pp. 404, 410-412).

IV. ARGUMENT

A. The applicable departmental rules, Charter Ordinances, and Statutes.

The Milwaukee City Charter provides in relevant portion:

5-01. City Service; Officer Excepted. Officers of the city of Milwaukee who are elected by the people, or who by the statutes are required to be elected by the city council, inspectors and clerks of election, one deputy in each department whose office was created or exists by reason of statute, heads of any principal departments of the city, *all members of the fire and police departments and all other employes of the fire and police departments*, one private secretary of the mayor and any other officers, clerks or employes in the service of the city whose positions in the judgment of the city service commissioners cannot for the time being be subjected, with advantage to the public service, to the general rules prepared under the civil service law, shall not be affected as to their election, selection or appointment by such rules made by said commissioners.

5-02. Residency Requirements. 1. RESIDENCY REQUIRED. All employes of the city of Milwaukee are required to establish and maintain their actual bona fide residences within the boundaries of the city. Any employe who does not reside within the city shall be ineligible to employment by the city and his employment shall be terminated in the manner hereinafter set forth.

2. DEFINITION. The term "residence" employed in this section shall be construed to mean the actual living quarters which must be maintained within the city by an employe. Neither voting in the city nor the payment of taxes of any kind by itself by an employe shall be deemed adequate to satisfy the requirements of this section, nor shall the provisions of this section be satisfied by the maintaining of a rented room or rooms by an employe solely for the purpose of establishing residence in the city when it appears that his or her residence is outside of the city. Ownership of real property within the city,

when not coupled with maintaining of actual living quarters in the city as herein required, shall be deemed insufficient to meet the requirements of this section. The city service commission is authorized to investigate complaints made to it with respect to the residence of employes of the city and may initiate any such investigation on its own motion. Whenever such investigation shall be made, the city service commission shall make a finding with respect to whether or not such an employe is or is not actually a resident of the city in accordance with the requirements set forth herein. No consideration shall be given by the city service commission to the fact that such employe intends to maintain a residence in the city if actually he or she does not maintain such a residence as herein provided for.

3. DUAL RESIDENCE. In cases in which dual or multiple residences are rented, owned or maintained by an employe, it is not sufficient for the employe to claim city residency because of rental, ownership or maintenance of a residence in the city if the employe's actual living quarters are not in the city. The city service commission shall make final determination in dual or multiple residence cases as to which location constitutes an employe's actual living quarters, and it shall be the location which will be considered in establishing whether an employe complies with the intent of this section and city service rules relating to residency. The city service commission shall promulgate and publish a policy statement describing factors which it will consider when making residency determinations. This statement will in no way limit the commission's consideration to any specific set of factors. Decisions involving dual or multiple residency shall be based upon the totality of circumstances present in each case. The decision of the city service commission shall be final in respect to whether or not such employe's residence satisfies the provisions and requirements of this section.

...

7. HARDSHIP EXCEPTIONS.

a. Whenever it shall appear to the city service commission, considering the standards hereafter enumerated, that an employe should be granted temporary exception from the requirements of this section, the city service commission shall make a finding based upon the standards and shall file a report with the committee on finance and personnel, listing the name

of the employe and the reason or reasons for the exception, such report to be filed within 15 days of such action.

b. In the event that a city employe weds an employe of another jurisdiction which also has a residency requirement, mandating that its employe reside within that jurisdiction's boundaries, and if that employment is in effect at the time of the marriage, the city service commission may grant the city employe an exemption from the city's residency requirements, provided that the following conditions are and remain in effect:

b-i. That the other jurisdiction is willing to enter into an appropriate reciprocity agreement with the commission concerning such transactions.

b-2. That the city employe actually resides with his or her spouse in the spouse's jurisdiction.

b-3. That both employing jurisdictions retain their respective residency policies.

b-4. That the response time required for the exempted employe to arrive at work in emergency situations be reasonable as determined by the commission.

b-5. That the residency requirements of the other jurisdiction would preclude the married couple from living in the city of Milwaukee.

...

9. FIRE AND POLICE REGULATIONS.

The provisions of this section shall be fully applicable to members of the police force and the fire department. However, in the case of a member of the police force or fire department, or any clerical employe thereof, the determination as to residence shall be made by the fire and police commission, and the responsibility for the administration, interpretation and enforcement of this section shall be vested in the fire and police commission. (Emphasis added).

(Appl. App. pp. 318, 319, 320).

Wis. Stat. § 17.03(4)(d) provides:

17.03 Vacancies, how caused. Except at otherwise provided, a public office is vacant when:

...

(4) The incumbent ceases to be a resident of:

...
(d) If the office is local and appointive, and residency is a local requirement, the county, city, village, town, district or area within which the duties of the office are required to be discharged.

Rule XIV of the Board states in relevant portion:

Rule XIV.
RESIDENCY

Section 1. All employees of the City of Milwaukee, including all members of the Fire Department, are bound by City of Milwaukee Charter provisions regarding residency and are required to establish and maintain their actual and bona fide residence within the boundaries of the city throughout the period of employment by the city. It is strongly presumed that adequate housing, transportation, educational opportunities, health care and other amenities exist within the City of Milwaukee so as to permit all employees to establish and maintain a bona fide residence within the boundaries of the city as required. (Rev. 10/3/02)

Section 2. Unless an extension of time to establish residency or a temporary exemption from the residency requirement has been granted by the Board, failure of any employee of the Milwaukee Fire Department or Milwaukee Police Department to reside within the boundaries of the City of Milwaukee shall render the employee ineligible for continued employment and shall result in termination of that employee. (Rev. 10/3/02)

B. The complaint fails to state a claim upon which relief can be granted.

By Ms. Thomas' words when she ceased to become a resident of the City of Milwaukee in December 2003 her office became vacant.^[1]

This issue could not have been better clarified than in the matter of *Wellnitz v. Board of Fire and Police Commissioners of the City of Wauwatosa*, 151 Wis. 2d 306, 444 N.W.2d 412 (1989).

The *Wellnitz, supra*, case was a writ of prohibition, wherein Wellnitz, who was the Chief of Police of the City of Wauwatosa and moved to Elm Grove in Waukesha County, sought to restrain the board from declaring that he had vacated his position on December 14, 1987 and then took steps to appoint an interim chief. (151 Wis. 2d 306, 308, 444 N.W.2d 412, 413 (1989)). Pending at the time was a request by Chief Wellnitz, after he had moved out of the corporate limits of the City of Wauwatosa, to allow him to obtain a residency exemption. (*Id.*).

The Board was advised by the Wauwatosa City Attorney, that it no longer had power to grant a waiver, since Wellnitz had automatically vacated his office on December 14, 1987 when he moved out of the city. (*Id.*). The court determined that because Chief Wellnitz was subject to a residency requirement [which was actually Rule 7.02 of the Rules of the Board of Fire and Police Commissioners] once Chief Wellnitz moved from the jurisdiction, his office was vacant, and the board was deprived of jurisdiction to even consider a residency exemption for him. (151 Wis. 2d 306, 311, 444 N.W.2d 414 (Ct. App. 1989)).

^[1] From the state of this record, it is entirely possible that Ms. Thomas ceased to be a resident of the City of Milwaukee prior to December 2003 because of the dual residency situation, and because of the totally unverified claim that she was a resident of the City of Milwaukee until December of 2003.

The court cited 10 Opinions of the Attorney General 660, 661 (1921) in which, under a predecessor to Wis. Stat. § 17.03(4)(d), the Attorney General stated: ““An officer terminates his right to the office when he terminates his residence’ in the applicable geographic area.” (*Wellnitz, supra*, 151 Wis. 2d 306, 311, 444 N.W.2d 412, 413 (1989)).

C. The erroneous reliance on § 5-02-9 of the Milwaukee Charter.

Below Thomas relied on § 5-02-9 of the Milwaukee Charter, which provides:

9. FIRE AND POLICE REGULATIONS.

The provisions of this section shall be fully applicable to members of the police force and the fire department. However, in the case of a member of the police force or fire department, or any clerical employe thereof, the determination as to residence shall be made by the fire and police commission, and the responsibility for the administration, interpretation and enforcement of this section shall be vested in the fire and police commission.

Obviously, that section relates to a situation wherein there is a question or a dispute between the Board and the officer regarding the actual residence of the officer. In those cases where there is such a dispute, the Board is authorized to hold a hearing and take evidence to determine where the officer resides.

In this case there was no dispute. By her own admission, Ms. Thomas became a resident of the Town of Concord, Jefferson County sometime in December of 2003. At that point her office was vacant, and the Board no longer had jurisdiction over any questions regarding her actual residency. (*Wellnitz, supra*).

There no longer is a determination of residency to be made by the Board for Ms. Thomas. She, by her own admission, has established a residence, it is W2289 Northside

Drive, Town of Concord, County of Jefferson, Wisconsin. The fact needs no further proof *quod erat demonstrandum* (that which was demonstrated to be proved).

Having established residence in the Town of Concord, County of Jefferson, Wisconsin, Ms. Thomas has actually deprived the Board of the power to hear any “appeal” of her case. As was stated in *Wellnitz, supra*:

The office of Wauwatosa chief of Police became vacant when Wellnitz moved from Wauwatosa. See 10 Op. Atty. Gen 660, 661 (1921)(under predecessor to sec. 17.03 (4), Stats., ‘an officer terminates his right to the office when he terminates his residence’ in the applicable geographic area).’

Having terminated her public office, the Board lost jurisdiction to hear Thomas’ case, as there was no case to hear and it had no more power over her, since she voluntarily left her employment. Under Wis. Stat. § 62.50(3)(a), the Board may adopt rules for the “government of the members” of each department. However, if the person is no longer a member of the Department, obviously it has not power to adopt rules and thus to issue decisions regarding them. They have vacated the office they held.

D. The erroneous claim that *Wellnitz, supra*, does not apply because that case involved a Chief of Police and Thomas is only a member of the Department.

First, as is clear from the Charter of the City of Milwaukee, Thomas is, by law, an officer of the City, and, is therefore subject to the residency requirements unless an exception is granted to her.

Second, even if she is “just an employee” and not a Chief of Police or other higher ranking member of the Department, the law in Wisconsin is that one who violates a residency requirement, voluntarily vacates employment in an office, even if they are

merely rank and file. *Klatt v. LIRC*, 266 Wis. 2d 1038, 1057, 669 N.W. 2d 752, 762 (Ct. App. 2003). In that case a former patrol officer for the City of Waukesha moved out of Waukesha County (the requirement was to live within 20 minutes of the patrol station) and into Burlington because she married an individual who was a member of the Racine County Sheriff's Department and he was subject to a residency requirement in Racine County. (*Klatt, supra*, 266 Wis. 2d 1044-1046, 669 N.W. 2d 752, 755-56). As a result of failing to comply with the residency requirement of City of Waukesha, Klatt voluntarily quit her employment, and was thus ineligible for unemployment compensation benefits. (*Id.*).

The Trial Court fell into an error similar to the claims of the plaintiff when it determined that Ms. Thomas was not an officer of the City notwithstanding the clear legislative intent of § 2-01 of the Milwaukee City Charter. (Appl. App. p. 114).

However, the Charter of the City of Milwaukee at § 2-01 specifically refers to Chapter 184 of the Laws of 1874. Chapter 184 of the Laws of 1874 repealed and recreated the Charter of the City of Milwaukee. Chapter 184 of the Laws of 1874 provides as follows:

The officers of said city shall be a mayor, three aldermen from each ward, constituting a common council, a city treasurer, a city comptroller, a city attorney, a city clerk, a board of public works, a city engineer, a school board, a tax commissioner, ward assessors, a board of commissioners of the public debt, a board of health, justices of the peace, a chief of police, one chief engineer of the fire department, one or more harbor masters, three inspectors of election for each ward or election precinct, and as many bridge tenders, firemen, constables, **policemen and such other officers and agents as may be**

provided for by this act, or as the common council may from time to time direct. (Emphasis supplied).

Using this authority the Milwaukee Common Council adopted § 2-01 of the Milwaukee City Charter providing:

2-01. Officers of the City. The officers of said city shall be a mayor, one alderman from each ward, constituting a common council, a city treasurer, a city comptroller, a city attorney, a city clerk, commissioner of public works, a city engineer, a commissioner of assessments, district assessors, a board of commissioners of the public debt, commissioner of health, a chief of police, one chief engineer of the fire department, one or more harbor masters, 3 inspectors of election for each ward or election precinct and as many **firemen, policemen and such other officers and agents as may be provided for by ch. 184, L. 1874, or as the common council may from time to time direct.** (Emphasis supplied).

Therefore, Wis. Stat. § 62.09, applicable to cities not of the first class, as noted in footnote 6 of the Trial Court's opinion, is not the issue, and, in fact, is in error. The issue is Chapter 184 of the Laws of 1974, specifically recreating the Charter of the City of Milwaukee and setting forth who the officers of the City are. Thus, Katherine Thomas was an officer of the City and subject to Wis. Stat. § 17.03(4)(d).

Finally, Wis. Stat. § 17.29 provides: "The provisions of this chapter supersede all contrary provisions in either the general law or in special acts . . . and shall govern all offices whether created by general law or special act, unless otherwise specifically provided."

Despite being advised of the court's possible error by a motion for reconsideration, the Trial Court rebuffed the information provided by the Board, denied

reconsideration, and committed clear error as this court has interpreted Wis. Stat. § 17.03(4)(d) in *Wellnitz, supra*. (Appl. App. pp. 108, 109).

E. The erroneous claim that this is a disciplinary proceeding under Wis. Stat. § 62.50 (13)-(17).

Such a notion is debunked by the decision of the Court of Appeals in *Eastman et al v. city of Madison et al*, 117 Wis. 2d 106, 342 N.W. 2d 764 (Ct. App. 1983). In that case Gerald Eastman and Thomas P. Hanson were subject to a residency requirement of the City of Madison. Eastman was employed in the police department and Hanson in the fire department. (117 Wis. 2d at 110, 342 N.W. 2d at 764). Eastman and Hanson kept apartments in Madison, Madison mailing addresses, Madison telephone numbers and Madison automobile and voter registration. (117 Wis. 2d at 110, 342 N.W. 2d at 766). However, their families lived outside of the city, their children attended schools outside of the city and they spent most of their off-duty time outside of the city. (*Id*). Part of their claim was that the disciplinary procedures of Wis. Stat. § 62.13(5) should have been followed (the parallel provision to Wis. Stat. § 62.50(13)-(17) for disciplinary proceedings for cities not of the first class). The Court of Appeals stated:

Appellants also contend that the procedures of sec. 62.13 (5), Stats., for termination of police and fire personnel should have been followed. The ordinance [requiring residency] is not a disciplinary provision, and sec. 62.13 (5) is therefore inapplicable. Section 62.13 (5) on its face only applies to proceedings of a disciplinary nature. An unambiguous statute is given its ordinary and accepted meaning. *Milwaukee v. Lindner*, 98 Wis. 2d 624, 632, 297 N.W. 2d 828, 832 (1980). Appellants were not disciplined. Appellants were ineligible for employment because they did not reside in the city. Section 62.13 (5) is inapplicable to terminations which are not disciplinary. See *Kaiser v. Board of Police and Fire*

Commissioners, 104 Wis. 2d 498, 502 – 03, 311 N.W. 2d 646, 649 (1981).”

Eastman et al v. City of Madison et al, 117 Wis. 2d 106, 115, 342 N.W. 2d 764, 768 (Ct. App. 1983).^[2]

Likewise, Ms. Thomas is not entitled to the procedures of Wis. Stat. § 62.50 (13) to (17) since she has taken herself out of the protections of that statute.

V. CONCLUSION

For the reasons stated above, the determination of the Board that Ms. Thomas was no longer a resident of the City of Milwaukee, by virtue of her own admission, deprived it of jurisdiction to hear her case requesting an exception to the residency requirements of the City of Milwaukee.

The case of Ms. Thomas must be dismissed, and the action of the Board determining it no longer had jurisdiction of Ms. Thomas and her case must be affirmed under controlling precedent.

Dated and signed at Milwaukee, Wisconsin this ____ day of November, 2007.

GRANT F. LANGLEY
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ADDRESS:

^[2] This Court is reminded that even though *Eastman, supra*, was decided under Wis. Stat. § 62.13 and Ms. Thomas makes her claims under Wis. Stat. § 62.50, the two statutes are to be construed to result in uniform regulation of police and fire departments. Wis. Stat. § 62.13(12). Further, Wis. Stat. § 17.03(4)(d) applies to all cities of any class.

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FORM AND LENGTH CERTIFICATION

I hereby certify that this brief conforms to the rules contained in § 809.19(8)(b) and (c), Wis. Stats., for a brief and appendix produced with a proportional serif font. The length of this brief is 6, 135 words.

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