

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 09-25-01

BILL NO. SB 185

OR
SUBJECT _____

S. JAMES KLUSS
(NAME)

370 COPPER LA.
(Street Address or Route Number)

44 DISON DR. S3713
(City and Zip Code)

Wis. Prof Police Assn.
(Representing)

Speaking in Favor:

Speaking Against:

Registering in Favor:

but not speaking:

Registering Against:

but not speaking:

Speaking for information only; Neither for nor against:

Please return this slip to a messenger PROMPTLY.

Senate Sergeant-At-Arms
State Capitol - B35 South
P.O. Box 7882
Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 09-25-01

BILL NO. SB185

OR
SUBJECT _____

TIMOTHY J. O'LEARY
(NAME)

237 Knowlton Dr.
(Street Address or Route Number)

JANESVILLE WI 53588
(City and Zip Code)

JANESVILLE POLICE ASSOCIATION
(Representing)

Speaking in Favor:

Speaking Against:

Registering in Favor:

but not speaking:

Registering Against:

but not speaking:

Speaking for information only; Neither for nor against:

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State Capitol - B35 South
P.O. Box 7882
Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 9-25-01

BILL NO. SB 185

OR
SUBJECT _____

DENNIS LEHOTAY
(NAME)

340 ARHART RD.
(Street Address or Route Number)

JANESVILLE WI 53546
(City and Zip Code)

JANESVILLE POLICE ASSOC.
(Representing)

Speaking in Favor:

Speaking Against:

Registering in Favor:

but not speaking:

Registering Against:

but not speaking:

Speaking for information only; Neither for nor against:

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State Capitol - B35 South
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Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 9/05/01

BILL NO. SB 185
OR

SUBJECT _____

(NAME) Dana VanderWyst

2117 North St.

(Street Address or Route Number)

(City and Zip Code) Shabogaan WI 53083

(Representing) Self

Speaking in Favor:

Speaking Against:

Registering in Favor:

but not speaking:

Registering Against:

but not speaking:

Speaking for information only; Neither for nor against:

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State Capitol - B35 South
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Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 09-25-01

BILL NO. SB 185
OR

SUBJECT _____

(NAME) William Chese

6301 7-Mile Rd.

(Street Address or Route Number)

(City and Zip Code) Racine WI 53102

(Representing) Racine Police Assoc.

Speaking in Favor:

Speaking Against:

Registering in Favor:

but not speaking:

Registering Against:

but not speaking:

Speaking for information only; Neither for nor against:

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Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 09/25/01

BILL NO. SB 185-
OR

SUBJECT _____

(NAME) Steven C. Welterer

340 Gayler

(Street Address or Route Number)

(City and Zip Code) Madison, WI

(Representing) WI Dept. Police Assoc.

Speaking in Favor:

Speaking Against:

Registering in Favor:

but not speaking:

Registering Against:

but not speaking:

Speaking for information only; Neither for nor against:

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State Capitol - B35 South
P.O.Box 7882
Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 9.25.01

BILL NO. SB 185

OR
SUBJECT _____

GARY D. BURNS
(NAME)

25404 DUNDER DR

(Street Address or Route Number)

WONDOLA WI 54935

(City and Zip Code)

WISCONSIN PROFESSIONAL POLICE ASSOC
(Representing)

Speaking in Favor:

Speaking Against:

Registering in Favor:

but not speaking:

Registering Against:

but not speaking:

Speaking for information only; Neither for nor against:

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State Capitol - B35 South
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Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 09/25/01

BILL NO. SB 185

OR
SUBJECT _____

Andrew J. Garcia
(NAME)

7301 Shawmill RD

(Street Address or Route Number)

MADISON, WI 53717

(City and Zip Code)

W.P.P.A

(Representing)

Speaking in Favor:

Speaking Against:

Registering in Favor:

but not speaking:

Registering Against:

but not speaking:

Speaking for information only; Neither for nor against:

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State Capitol - B35 South
P.O.Box 7882
Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 09-25-01

BILL NO. 185

OR
SUBJECT Arbitration for

Discipline

Officer Tim Hahn
(NAME)

411 S. Carroll St

(Street Address or Route Number)

Madison, WI 53710

(City and Zip Code)

Madison Professional Police Officers

(Representing)

Speaking in Favor:

Speaking Against:

Registering in Favor:

but not speaking:

Registering Against:

but not speaking:

Speaking for information only; Neither for nor against:

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State Capitol - B35 South
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Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 7/25/01

BILL NO. SB 185

OR

SUBJECT Disiplinary Proceedings

For Police and Fire Fighters

(NAME) Chief Doug Pettit

383 Fall Street

(Street Address or Route Number)

Oregon 117. 53575

(City and Zip Code) Wis. Chiefs of Police Assoc.

(Representing)

Speaking in Favor:

Speaking Against:

Registering in Favor:

but not speaking:

Registering Against:

but not speaking:

Speaking for information only; Neither for nor against:

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State Capitol - B35 South
P.O.Box 7882
Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 2-25-01

BILL NO. SB 185

OR

SUBJECT _____

(NAME) Pete Christianson

1 S. Pinckney, Suite 600

(Street Address or Route Number)

MSW, WI 53701-2113

(City and Zip Code) Wis. State Fire Chiefs Assoc.

(Representing)

Speaking in Favor:

Speaking Against:

Registering in Favor:

but not speaking:

Registering Against:

but not speaking:

Speaking for information only; Neither for nor against:

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State Capitol - B35 South
P.O.Box 7882
Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 2-25-01

BILL NO. SB 185

OR

SUBJECT _____

(NAME) Pete Christianson

1 S. Pinckney, Suite 600

(Street Address or Route Number)

MSW, WI 53701-2113

(City and Zip Code) Wis. Newspaper Assoc.

(Representing)

Speaking in Favor:

Speaking Against:

Registering in Favor:

but not speaking:

Registering Against:

but not speaking:

Speaking for information only; Neither for nor against:

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Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 9-25-01

BILL NO. SB 185

OR
SUBJECT _____

(NAME) Jeanette Bell

(Street Address or Route Number) 7525 W Greenfield

(City and Zip Code) West Allis

(Representing) City

Speaking in Favor:

Speaking Against:

Registering in Favor:

but not speaking:

Registering Against:

Speaking for information only; Neither for nor against:

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Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 9-26-01

BILL NO. SB 185

OR
SUBJECT Police/Fire

(NAME) Ed Hule

(Street Address or Route Number) 1445 N. Main

(City and Zip Code) Madison, WI

(Representing) City of Allis & Cities

Speaking in Favor:

Speaking Against:

Registering in Favor:

but not speaking:

Registering Against:

Speaking for information only; Neither for nor against:

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Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 9/25/01

BILL NO. SB 185

OR
SUBJECT _____

(NAME) Curt Withynski

(Street Address or Route Number) 302 State Street, Suite 300

(City and Zip Code) Madison, WI 53703

(Representing) League of Wisconsin Municipalities

Speaking in Favor:

Speaking Against:

Registering in Favor:

but not speaking:

Registering Against:

Speaking for information only; Neither for nor against:

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State Capitol - B35 South
P.O.Box 7882
Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: Sept. 25 2007

BILL NO. SB 185

OR

SUBJECT _____

Scott Herrick

(NAME)

505 Wabta Pl.

(Street Address or Route Number)

Madison WI 53704

SELF

(Representing)

Speaking in Favor:

Speaking Against:

Registering in Favor:

but not speaking:

Registering Against:

but not speaking:

Speaking for information only; Neither for nor against:

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State Capitol - B35 South
P.O.Box 7882
Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 9/25/07

BILL NO. SB 185

OR

SUBJECT _____

Rick Gale

(NAME)

2831 S. 114 Street

(Street Address or Route Number)

WEST ALIS 53227

(City and Zip Code)

PERSONAL - FIRE FIGHTERS

(Representing)

Speaking in Favor:

Speaking Against:

Registering in Favor:

but not speaking:

Registering Against:

but not speaking:

Speaking for information only; Neither for nor against:

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State Capitol - B35 South
P.O.Box 7882
Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 9-25-07

BILL NO. SB 185

OR

SUBJECT _____

Lyle Vanderwey

(NAME)

2417 236

(Street Address or Route Number)

Shelbina WI 53083

WPPA

(Representing)

Speaking in Favor:

Speaking Against:

Registering in Favor:

but not speaking:

Registering Against:

but not speaking:

Speaking for information only; Neither for nor against:

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State Capitol - B35 South
P.O.Box 7882
Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: Sept. 25, 2001

BILL NO. SB 185

SUBJECT _____

GORDON McQUILLEN

(NAME)

122 West Wash, Ste. 900

(Street Address or Route Number)

Madison, WI 53703

(City and Zip Code)

W's Prof Police Assn

(Representing)

Speaking in Favor:

Speaking Against:

Registering in Favor:

but not speaking:

Registering Against:

but not speaking:

Speaking for information only; Neither for nor against:

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Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 9/25/01

BILL NO. SB 185

SUBJECT _____

RICHARD THAL

(NAME)

340 Cozier Ave

(Street Address or Route Number)

Madison, WI 53713

(City and Zip Code)

WPPA

(Representing)

Speaking in Favor:

Speaking Against:

Registering in Favor:

but not speaking:

Registering Against:

but not speaking:

Speaking for information only; Neither for nor against:

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State Capitol - B35 South
P.O. Box 7882
Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: _____

BILL NO. SB 185

SUBJECT _____

Sen. Burke

(NAME)

(Street Address or Route Number)

(City and Zip Code)

(Representing)

Speaking in Favor:

Speaking Against:

Registering in Favor:

but not speaking:

Registering Against:

but not speaking:

Speaking for information only; Neither for nor against:

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State Capitol - B35 South
P.O. Box 7882
Madison, WI 53707-7882



202 State Street
Suite 300
Madison, Wisconsin 53703-2215

608/267-2380
800/991-5502
Fax: 608/267-0645

E-mail: league@lwm-info.org
www.lwm-info.org

**To: Senator Dave Hansen, Chair, Senate Committee on Labor & Agriculture
Members of Senate Committee on Labor & Agriculture**

From: Curt Witynski, Assistant Director, League of Wisconsin Municipalities

Date: September 25, 2001

**Re: Opposition to Senate Bill 185, Allowing Arbitration of Police and Fire Commission
Disciplinary Decisions**

The League of Wisconsin Municipalities opposes SB 185, allowing police officers and fire fighters to seek arbitration following disciplinary decisions made by police and fire commissions (PFCs).

By way of background, this bill would affect approximately 131 Wisconsin cities and villages that are required by state law to have PFCs. A PFC is made up of 5 citizens appointed from the community. PFCs and police and fire chiefs are governed by the provisions of sec. 62.13, Stats., when hiring, promoting and disciplining police officers and firefighters. The PFC law was enacted in 1897 to remove politics from decisions relating to the hiring and disciplining of police and fire employees.

Confirmation??

The League opposes SB 185 for the following reasons:

- Allowing individual arbitrators to substitute their judgments for those of police and fire commissions would significantly undermine this state's 100-year practice of trusting non-partisan, voluntary, citizen commissioners to make fair, unbiased disciplinary decisions concerning police officers and fire fighters.
- It transfers to a non-resident arbitrator the PFC's statutory power to determine whether misconduct charges against a police officer or firefighter should be sustained. The proposal would overturn the 1995 Court of Appeals decision in the *City of Janesville* case holding that such a transfer of authority from the PFC to an arbitrator was prohibited.
- It renders a PFC's disciplinary decision meaningless. Under the bill, if a police officer or fire fighter decides to seek arbitration following a PFC's decision, the arbitrator's function would not be to review the PFC's decision within the limited scope permitted by court review. Rather, the arbitrator may choose to start anew and hold a de novo hearing. Consequently, under the bill, the hearing before the PFC becomes a step having no function in the process.
- We are not aware of any information suggesting that the current system is failing to adequately protect the rights of police officers and fire fighters. Indeed, the 7 just cause standards added to the statutory process at the request of the police unions in 1993 were designed to ensure a fair and unbiased review of discipline imposed by the chiefs of police and fire departments. The current process appears to be working just fine.

For these reasons we urge you to vote against SB 185. Thanks for considering the interests of municipalities on this important issue.

**LAW
ENFORCEMENT
EMPLOYEE
RELATIONS**



DIVISION

**WISCONSIN
PROFESSIONAL
POLICE
ASSOCIATION**

9730 W. Bluemound Road, Suite 21
Wauwatosa, WI 53226
(414) 257-4000
1-800-236-4002
Fax (414) 774-7080

September 25, 2001

340 Coyier Lane
Madison, WI 53713
(608) 273-3840
1-800-362-8838
Fax (608) 273-3904

The Honorable David Hansen
The State Senate
Madison, WI 53707

Dear Senator Hansen:

I would like to thank Chairperson Hansen and members of the Senate Labor and Agriculture Committee for this opportunity to speak today. My name is Richard Thal, and I am General Counsel of the Wisconsin Professional Police Association (WPPA). I am here to speak in favor of 2001 Senate Bill 185. Passage of this bill is needed so that the representatives of law enforcement officials and fire fighters may negotiate with cities, villages and towns over alternatives to the appeal procedures contained in Wis. Stat. § 62.13(5).

The legislature established police and fire commissions (PFCs) more than a hundred years ago to insulate the selection and removal of police officers and fire fighters from the vagaries of partisan politics. The purpose, role, and responsibilities of PFCs are essentially unchanged from the 1890s.

More than 60 years after it created the law requiring mayors to establish PFCs, the Wisconsin legislature enacted a public sector labor law. In 1959, Wisconsin became the first state to promote collective bargaining between public employers and employees; and since 1971 Wisconsin municipal employers have had a duty to bargain with law enforcement officials over contractual terms such as arbitration of discipline procedures. In 1973 the Wisconsin Employment Relations Commission (WERC) found that the City of Sun Prairie was bound by the contractual arbitration of discipline procedure that it had bargained. For over 20 years Sun Prairie and many other cities, villages, towns and

The Honorable David Hansen
September 25, 2001
Page 2

counties agreed to include arbitration of discipline procedures in collective bargaining agreements. Today in most Wisconsin counties arbitration of discipline provisions help deputy sheriffs' associations and county management resolve disputes in discipline cases.

In 1995, however, in *City of Janesville v. WERC*, 193 Wis. 2d 492, 500, 535 NW.2d 34 (1995 Ct. App.), the court of appeals found that given the appeal procedures specified in Wis. Stat. § 62.13(5), a provision in a collective bargaining agreement regarding arbitration of disciplinary actions was a prohibited subject of bargaining. In *Janesville*, the court of appeals held that the sole route of appeal for disciplined city law enforcement officers is statutory due process procedures of § 62.13(5). The court of appeals reversed a WERC decision that had found the opportunity for a police officer to appeal discipline to grievance arbitration could be harmonized with those statutory rights. This holding now applies to police officers in Wisconsin cities. The result of this holding is that police and fire fighters are now the only represented public employees in Wisconsin who cannot seek arbitration of discipline.

In contrast, deputy sheriffs employed by Wisconsin's counties can seek arbitration of discipline as an alternative to the statutory appeal procedures. *Eau Claire County v. Local No. 662*, 2000 WI 57. In *Eau Claire County* the Wisconsin supreme court concluded that a circuit court is not the exclusive forum in which a county law enforcement employee may challenge a disciplinary action imposed by a citizen review board. Consequently, city law enforcement employees are being treated differently than county law enforcement employees, despite the fact that all law enforcement officials are held to higher standards of conduct than all other municipal employees.

Under Senate Bill 185 Chapter 62 appeal routes would be preserved. But if an accused officer or fire fighter is subject to the terms of a collective bargaining agreement that provides an alternative to circuit court review, the accused employee would have the right to opt for circuit court review or for a collectively bargained alternative appeal procedure (such as arbitration of discipline), with the choice of either appellate procedure irrevocably waiving the affected officer's right to proceed under the other.

The WPPA has represented members before many different PFCs. Because each jurisdiction is unique, disciplinary procedures should be subject to negotiations between municipalities and police or fire fighter associations. Through bargaining, the parties

The Honorable David Hansen
September 25, 2001
Page 3

may agree to leave the process as it is or modify it to reflect what the parties can agree to. The bargaining process involves both parties and requires negotiation and agreement before any alternatives to statutory procedures would be allowed.

In brief, passage of Senate Bill 185 is needed so that police officers who have been disciplined will have the same rights to challenge the fairness of the discipline as other municipal employees. Under Senate Bill 185 police officers would have that right.

Thank you again for this opportunity to speak to you today.

Sincerely,

A handwritten signature in cursive script that reads "Richard Thal".

Richard Thal
WPPA General Counsel

RT:jmu

Cullen
Weston
Pines
& Bach

A Limited Liability
Partnership

Attorneys at Law

122 West Washington Avenue
Suite 900
Madison, Wisconsin 53703
(608) 251-0101
(608) 251-2883 Fax

Gordon McQuillen, Attorney for
Wisconsin Professional Police Association
September 25, 2001

Lee Cullen
Lester A. Pines
Steven A. Bach
Alison TenBruggencate
Gordon E. McQuillen
Carol Grob
Linda L. Harfst

Curt F. Pawlisch
Elise Clancy Ruoho
Mary Wright
Jordan Loeb
Tamara B. Packard
Shana R. Lewis
Nicholas E. Fairweather

Of Counsel:
Cheryl Rosen Weston

**TESTIMONY TO THE SENATE COMMITTEE ON LABOR
AND AGRICULTURE IN SUPPORT OF 2001 SB 185**

The Wisconsin Professional Police Association urges that you **support** **SB 185**, legislation to permit arbitration as an alternative to circuit court review of police and fire commission ("PFC") disciplinary decisions. The legislation seeks to restore long-standing collective bargaining rights that were taken away by a Wisconsin Court of Appeals decision.

Background:

Wisconsin law generally provides that PFCs hear disciplinary matters involving police officers. Wis. Stat. § 62.13(5). Many collective bargaining agreements between law enforcement unions and municipal employers also permit arbitration of such disputes. In 1983, the Wisconsin Employment Relations Commission determined that an arbitration provision of a collective bargaining agreement could be reconciled with the duties of police and fire commissions under Wis. Stat. § 62.13(5). City of DePere, WERC Decision No. 19703-B (Dec. 1, 1983). In DePere, WERC concluded that a law enforcement officer could appeal an adverse determination made by a police and fire commission either to a circuit court, as provided by statute, or to arbitration, as provided under a collective bargaining agreement. This practice had been in place in many municipalities before DePere and prevailed for the next 12 years.

Then, in 1995, the Wisconsin Court of Appeals held that certain provisions of a collective bargaining agreement between a law enforcement union and its municipal employer could not be reconciled with Wis. Stat. § 62.13 despite the collective bargaining rights afforded law enforcement officers under Wis. Stat. § 111.70, *et seq.* City of Janesville v. WERC, 193 Wis. 2d 492, 500, 535 N.W. 2d 34 (Ct. App. 1995). The Janesville decision precluded the use of arbitration as an

alternative to circuit court review of a PFC disciplinary decision. Subsequent experience has shown police officers that the unavailability of arbitration for disciplinary matters is unfair.

Bases for support of SB 185:

Every day, police officers stand in harm's way to protect society. Ensuring that police officers are treated fairly in employment matters is one way that our state can express its appreciation to these officers. It was undoubtedly this appreciation which motivated the state legislature to pass 1993 Wis. Act 53, the Law Enforcement Officers' Bill of Rights. That law, adopted two years prior to the Janesville decision, provided that officers may only be suspended or terminated for just cause.

It is now time for the legislature to act again. As I noted above, arbitration of discipline for police officers is hardly new. For many years, it was accepted by the Wisconsin Employment Relations Commission, and by municipalities. During the 12-year stretch between the DePere and Janesville decisions, not a single bill was introduced in the state legislature to render circuit court review the sole and exclusive avenue for appeal of PFC decisions.

Moreover, arbitration of discipline is already permitted for every other non-supervisory public employee, including some law enforcement officers. Deputy sheriffs, for instance, may arbitrate adverse disciplinary decisions rather than seek circuit court review, a right recently upheld by the Wisconsin State Supreme Court in Eau Claire County v. General Teamsters Union Local 662, 2000 WI 57, 611 N.W.2d 744 (2000). Likewise, Wis. Stat. § 118.22(4) allows a collective bargaining agreement to modify, waive or replace any relevant statutory provisions relating to renewal of teacher contracts.

WPPA submits that passage of SB 185 would have virtually no fiscal impact on municipalities. Under the bill, police officers could only elect arbitration or circuit court review, not both. Thus the legislation does not create a new remedy but rather restores an alternative to the existing remedy of circuit court review. Additionally, the number of cases that will be arbitrated statewide are unlikely to exceed a handful in any given year. Prior to Janesville, WPPA police officers from 175 locals statewide generated only half a dozen cases annually for arbitration as an alternative to circuit court review. WPPA also represents deputy sheriffs who, as noted above, already can arbitrate adverse county disciplinary decisions. Again, WPPA deputy sheriffs from 52 locals statewide generate only half a dozen cases annually for arbitration as an alternative to circuit court review. Moreover, this legislation will not extend the time that an officer may receive compensation while suspended. Under the Law Enforcement Officers' Bill of Rights, an officer receives compensation during a disciplinary suspension while his or her case awaits a decision by the PFC. Once

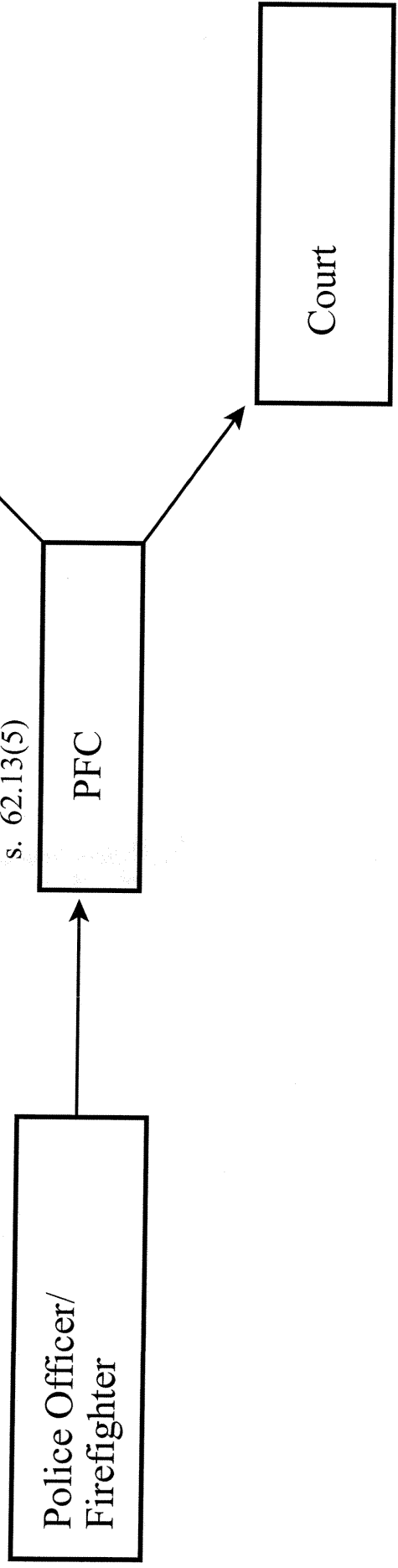
the PFC acts to terminate the officer's employment, that officer may not receive further payment unless the board is reversed on appeal to the circuit court. The same would apply if the officer selects arbitration as an alternative appeal mechanism.

Despite the expected infrequency of appeals, an alternative to circuit court review is sorely needed. Allowing officers, who are proud and highly trained professionals, the opportunity to submit their grievances to arbitration would ensure procedural fairness. Too often, local PFCs have become highly political and procedurally irregular tribunals. PFC members are appointed by the mayor, are not subject to a confirmation procedure, and are not trained. In Madison, one PFC member has a criminal record. In one northern community, the mayor who had announced that he wanted to "clean up the police department" encouraged the Chief of Police to file charges against officers, then began badgering and coercing members of the PFC into resigning if they didn't agree with him. Two members did. Additionally, as the Wisconsin Attorney General has noted in another context, PFCs represent the interests of employers. 77 Op. Wis. Att'y Gen. 181 (1988). Conversely, arbitrators are experienced and impartial experts in the field of labor discipline.

Similarly, arbitration offers a sound alternative to circuit court review. Arbitrators are experienced in the area of law labor disputes, while circuit court judges hear such cases very infrequently. Moreover, arbitration can afford a faster remedy than circuit court review, an important factor for police officers who have unfairly lost their jobs.

For these reasons, WPPA urges that you **support SB 185.**

DISCIPLINARY PROCEDURE UNDER SB 185





CITY OF WEST ALLIS

WISCONSIN



MAYOR'S OFFICE

JEANNETTE BELL
Mayor

September 25, 2001

Senator David Hansen, Chair
Labor and Agriculture Committee
Room 411 South – State Capitol
Madison, Wisconsin

Dear Senator Hansen and Committee Members:

Representing the City of West Allis, I speak and register in opposition to SB185. West Allis has optional powers for its Police and Fire Commission, and the citizens serving on the Commission take their responsibilities very seriously, particularly their role to review disciplinary actions by the Chiefs.

Being responsible for the discipline of the Departments, our Police and Fire Chiefs use thorough research and act in a manner that reflects the importance of such decisions. If the officer is unsatisfied with the Chief's decision, it can be appealed to the Commission. By having the choice of an arbitrator or circuit court, there is concern that the decision will be overturned, not on the basis of process but that the decision will be overturned for reasons not allowed under current law. In a time of calling for more accountability on the part of public officials, SB185 goes in the opposite direction towards less accountability to the citizens that public employees are charged to serve.

Officers have protection in State Statute 62.13, under the seven steps in the Officer Bill of Rights. Adding a different possibility for review will result in an imbalance in the system that currently protects the interests of both sides.

I urge you to not support SB185. Thank you.

Sincerely,

Jeannette Bell,
Mayor

JB:jfw
MYR\CORR\ST185.TESTIMONY

September 25, 2001

Statement of Scott Herrick
to the
Senate Labor and Agriculture Committee

Re. Senate Bill 185: *Opposing*

I am a former member and president of the Madison Board of Police and Fire Commissioners, and have acted for several years as its special counsel. From time to time I have represented other PFC's around the state, and I was a citizen member of the Joint Legislative Council Special Study Committee formed three years ago to address legislative issues affecting PFCs. I appear today in my personal capacity, basing my comments on this experience.

Since the 1890s Wisconsin has had a state-wide system of open citizen accountability for public safety personnel. Rooted in classic civil service, good-government thinking from our progressive era, PFCs have had major responsibility for hiring, promotions, and serious discipline for more than a century. In my opinion our system has been a fundamental contributor to our state's enviable tradition of honest, effective, and humane government.

In 1993 the Wisconsin Legislature adopted the most far-reaching amendments to our PFC statute in a century by adding the "Law Enforcement Officers Bill of Rights," the so called "7 Standards of Just Cause," now WS 62.13(5)(em). This change in the law not only set new substantive and procedural standards for our PFCs, but also directed our circuit courts to apply the 7 Standards again on appeal, at WS 62.13(5)(i). An early draft of the 1993 legislation had provided simply that local municipalities could bargain the PFC process, anticipating that the 7 Standards would gradually find their way into collective bargaining agreements. Instead of that piecemeal approach, the bill as enacted wisely went straight to the point and simply adopted the 7 Standards as the state-wide rule, for all PFCs and all appeals.

The legal and practical effects of that legislation are still being worked out, in departments and PFCs across the state and in the courts.

In 1998 Wisconsin legislative leadership established a joint study committee to address remaining concerns under developing case law and practice under the statute. I was privileged to be appointed to that committee. Unfortunately, for reasons which remain obscure, we held only one introductory meeting, did no actual work, and dissolved abjectly with the end of that legislative session.

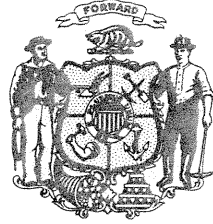
In the light of this history and this experience SB 185 in my opinion has three crucial defects.

1. The bill does not solve a real problem. Police and fire officers have a full range of appeal options from PFC disciplinary orders under current statute and practice, including statutory appeal, judicial review by writ of *certiorari*, and in some instances federal civil rights litigation.
2. The bill does not change, amend, update, revise, reform, or improve the PFC system in any comprehensive way; instead, the bill tinkers with it. The bill ignores the state-wide, standard procedure for hearings before the PFC, which will continue as before, but then intervenes at the appeal level only, and in so open-ended a manner as to leave us completely uncertain as to what will be done. We are left with a disjointed, potentially incoherent system. As an attorney practicing in this area I can tell you that we have hardly begun to deal with the legal issues posed by the Law Enforcement Officers Bill of Rights; the courts take a lot of time. But SB 185 will not solve any of the problems we have, while adding an entire new batch of its own. I ask you, please: DO NOT TINKER.
3. The bill abandons the ideal of state-wide uniformity of public safety discipline, replacing it with local appeal arrangements negotiated between municipalities and unions. This abandonment in turn poses two further problems:
 - a. PFCs as constituted for the past century do not represent either the city or the

employees; they are not parties to collective bargaining agreements. They provide a quasi-judicial tribunal for discipline and for citizen complaints, and an independent public voice. Leaving discipline to be worked out in bargaining between municipalities and unions alone would sacrifice this key but subtle protection of the public.

- b. Local bargaining will produce a variety of local solutions to a matter which has been identified explicitly for a century as one of state-wide concern. The bill puts no limits on the scope of the bargaining to be permitted, so that we cannot predict what may be agreed upon. Hard-pressed municipalities will be tempted to trade off disciplinary arrangements for economic concessions. Some local arrangements will bar the public from appeal hearings. Some will provide that the so-called appeal will really be a new trial, making the PFC hearing a waste of time and money. For the first time we will have different disciplinary procedures for officers of different ranks, for police and fire officers, and for different communities. PFCs are creatures of state law, not of local ordinance or contract, and our PFC process should be the same everywhere in the state, reflecting uniformly our values of due process, openness, civilian control, and judicial oversight.

I know that some of my friends in police and fire departments are discontent with the PFC discipline system. I urge you to consider an alternative approach to addressing their feelings: Reconvene a Joint Legislative Council Study Committee broadly representative of municipalities, public safety personnel, PFC's, legislators, and the public, and with a broad mandate to review and if necessary reform and recodify our respected but admittedly venerable PFC system. Then follow through the committee's work to achieve a comprehensive restatement of public safety accountability suitable for the next century. I pledge you my wholehearted support to that effort. Meanwhile, I repeat my plea: Please don't tinker.



BRIAN BURKE

WISCONSIN STATE SENATOR

Senate Chair, Joint Committee on Finance

TESTIMONY OF SENATOR BRIAN BURKE ON SENATE BILL 185

Before the Senate Committee on Labor and Agriculture

September 25, 2001

Thank you, Mr. Chairman, and members of the Committee, for the opportunity to speak to you today in support of Senate Bill 185, which relates to the arbitration of disciplinary procedures for certain law enforcement officers and firefighters.

Every day, police officers and firefighters stand in harm's way to protect society. Ensuring that they are treated fairly in employment matters is one way we can express our appreciation to them.

Arbitration of discipline is hardly new. For years it was accepted by the Wisconsin Employment Relations Commission, and by municipalities. Arbitration of discipline is already permitted for other public employees, including some law enforcement officers.

Deputy Sheriffs, for instance, may arbitrate adverse disciplinary decisions rather than seek circuit court review, a right recently upheld in the Wisconsin State Supreme Court. In fact, under current law, all county law enforcement officers and firefighters may elect, pursuant to the terms of a collective agreement, to arbitrate disciplinary decisions of a county rather than appeal such decisions to circuit court.

Police officers in cities, villages and towns once enjoyed the same right until the Wisconsin Court of Appeals determined that this right was inconsistent with the provisions of Wis. Stat. § 62.13(5). The decision precluded the use of arbitration as an alternative to circuit court review of a police and fire commission disciplinary decision. Subsequent experience has shown that the unavailability of arbitration for disciplinary matters is simply unfair.

This legislation seeks to restore the right of all police officers and firefighters, pursuant to the terms of a collective bargaining agreement, to arbitrate disciplinary decisions made by a board of police and fire commissioners as an alternative to circuit court review. I appreciate your consideration and respectfully seek your support of the bill.

Senate

**Committee on Labor and Agriculture
Senator Dave Hansen, Chair**

PAPER BALLOT

Date: September 28, 2001

Bill: Senate Bill 185 -- Relating to: disciplinary procedures for certain local law enforcement officers and fire fighters.

Motion: Passage

Moved by: Hansen

Seconded by: Decker

Aye: _____ **No:** _____



Senator Russ Decker

Please return to Senator Hansen's office (by messenger) by **5 pm Friday, September 28, 2001.**

Thank you. Please call the Committee Clerk, Lisa Ellinger, at 266-5670 if you have any questions.

Senate

**Committee on Labor and Agriculture
Senator Dave Hansen, Chair**

PAPER BALLOT

Date: September 28, 2001

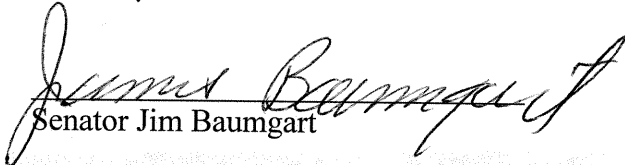
Bill: Senate Bill 185 -- Relating to: disciplinary procedures for certain local law enforcement officers and fire fighters.

Motion: Passage

Moved by: Hansen

Seconded by: Decker

Aye: K **No:**


Senator Jim Baumgart

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Senate

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Senator Dave Hansen, Chair**

PAPER BALLOT

Date: September 28, 2001


Bill: Senate Bill 185 -- Relating to: disciplinary procedures for certain local law enforcement officers and fire fighters.

Motion: Passage

Moved by: Hansen

Seconded by: Decker

Aye: _____ **No:** _____



Senator Alan Lasee

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Senate

**Committee on Labor and Agriculture
Senator Dave Hansen, Chair**

PAPER BALLOT

Date: September 28, 2001

Bill: Senate Bill 185 -- Relating to: disciplinary procedures for certain local law enforcement officers and fire fighters.

Motion: Passage

Moved by: Hansen

Seconded by: Decker

Aye: _____ **No:** X _____



Senator Sheila Harsdorf

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Senate

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Motion: Passage

Moved by: Hansen

Seconded by: Decker

Aye: _____ **No:** _____



Senator Dave Hansen

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