

Assembly

Record of Committee Proceedings

Committee on Corrections and the Courts

Assembly Bill 185

Relating to: disciplinary procedures for certain local law enforcement officers and fire fighters.

By Representatives Bies, Ainsworth, Albers, Gunderson, Hines, Kerkman, Lehman, Musser, Ott and Townsend; cosponsored by Senators Stepp and Kanavas.

March 10, 2005 Referred to Committee on Corrections and the Courts.

March 23, 2005 **PUBLIC HEARING HELD**

Present: (9) Representatives Bies, Gundrum, Underheim,
Suder, LeMahieu, Pope-Roberts, Wasserman,
Seidel and Parisi.

Absent: (1) Representative Owens.

Appearances For

- Garey Bies — Rep., 1st Assembly District
- David Mahoney — WI Professional Police Association
- Gordon McQuillen — WI Professional Police Association
- Scott Favour — Madison Professional Police Officer's Association

Appearances Against

- Michael Vaughn — WI Chiefs of Police Association
- Scott Herrick
- Ed Huck — WI Alliance of Cities

Appearances for Information Only

- None.

Registrations For

- Cathy Stepp — Sen., 21st Senate District
- Jim Palmer — WI Professional Police Association

Registrations Against

- None.

May 4, 2005

EXECUTIVE SESSION HELD

Present: (9) Representatives Bies, Gundrum, Underheim,
Owens, Suder, LeMahieu, Pope-Roberts,
Wasserman and Seidel.

Absent: (1) Representative Parisi.

Moved by Representative Suder, seconded by Representative
Underheim that **Assembly Bill 185** be recommended for passage.

Ayes: (8) Representatives Bies, Gundrum, Underheim,
Owens, Suder, LeMahieu, Wasserman and
Seidel.

Noes: (1) Representative Pope-Roberts.

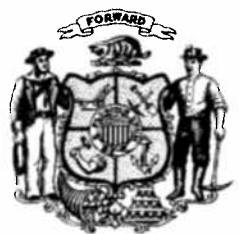
Absent: (1) Representative Parisi.

PASSAGE RECOMMENDED, Ayes 8, Noes 1

Andrew Nowlan
Committee Clerk



WISCONSIN STATE LEGISLATURE



March 23 2005
Statement of Scott Herrick to the Assembly Committee on Corrections and the Courts
Re. Assembly Bill 185: *Opposing*

I am a lawyer in private practice and 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 PFCs around the state, and I was a citizen member of the Joint Legislative Council Special Study Committee formed several years ago to address legislative issues affecting PFCs. I have frequently represented PFCs in judicial review and other litigation, including several cases recently decided by the Wisconsin Supreme Court. 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.

Under Wisconsin law, the PFC system has always been independent of collective bargaining. Our legislature and courts have never allowed municipalities to bargain away the basic structure provided by statute for police and fire discipline, either through arbitration provisions or otherwise.

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," including 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 substantively 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 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 the light of this history and this experience AB 185 in my opinion has three crucial defects.

1. First, rather than change, amend, update, revise, reform, or improve the PFC system in any comprehensive way, it sets up an awkward and expensive local bypass which essentially duplicates or parallels the PFC process. The bill simply ignores the state-wide, standard procedure for hearings before the PFC, so that they continue as before, but then intervenes at the appeal level only, in an open-ended manner which leaves us completely uncertain as to what will be done in any given city or case. We would be left with a disjointed, potentially incoherent system.

Presumably one of the results of this legislation would be that in some municipalities PFC decisions, reached after extensive and expensive hearing procedures during which the officer continues to receive full pay, would be followed by a start-over arbitration re-trial, making the PFC hearing a kind of dry-run or warm-up act for the real thing. A PFC hearing, followed by an arbitration hearing: 2 for the price of 2.

The role of the PFC in the arbitration which would follow its decision is not specified. Under current law, PFCs defend their decisions in the judicial appeal; would PFCs prosecute the new arbitration appeals, or simply sit on the sidelines while the parties go again? Remember that PFCs are a tribunal to hear cases, not a party to the cases; and PFCs are not parties to the union contracts, so it would be up to each union and municipality to determine how the arbitration would be handled - - leaving the PFCs completely out of the picture.

Remember also that the bill deals only with the *statutory appeal* process. Our state courts have long recognized a parallel right of judicial review by common-law "certiorari," which is not affected by this bill and will remain in place. So we will have two hearings instead of one, an appeal by arbitration, and review in certiorari - - not to mention the federal cases that come up from time to time. And of course creative lawyers will seek ways to take the arbitration decision to court. In legal matters, Rube Goldberg devices can cost real money to operate.

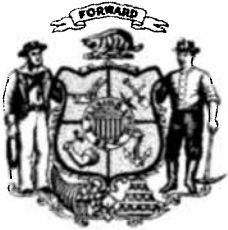
2. The bill abandons the ideal of state-wide uniformity of public safety discipline, replacing it with local appeal arrangements negotiated between municipalities and unions, which inevitably will vary from city to city. This abandonment in turn poses two further problems:

- 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 an independent, quasi-judicial citizen tribunal for discipline and for citizen complaints, and an independent public voice. Leaving discipline to be worked out in bargaining between municipal labor-relations staff and unions would sacrifice this fundamental protection of the larger public interest.
 - 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, so that we cannot predict what may be agreed upon. Hard-pressed municipalities may be tempted to trade off disciplinary arrangements for economic concessions, especially given the costs cities would face under the bill. For the first time we will have different disciplinary procedures for officers of different ranks, for police and fire officers (who work under separate contracts), for different communities. For the first time, the citizen complaint process will be different from the process for official discipline. 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, regardless of who is the complainant and who the respondent.
3. Finally and fundamentally, the bill does not solve a real problem. Appeals from PFC discipline are not broken. Police and fire officers are assured fair treatment in disciplinary matters under current statute and practice through a full range of appeal options, including statutory appeal, judicial review by common-law writ of *certiorari* - which the bill ignores -, and in some instances federal civil rights litigation.

I know that some of my friends in police and fire departments are discontent with the PFC discipline system. But AB 185 will not solve any of the problems we may have, while adding an entire new batch of its own. I ask you, please: Beware the dangers and costs of simple and superficial fixes. Wisconsin PFCs are a proven component of our civic life. Please DO NOT TINKER with the PFC statute.



WISCONSIN STATE LEGISLATURE



March 28, 2005

TO: Chairperson Bies and the Honorable Members of the Committee on Corrections and Courts

FROM: Edward J. Huck, Executive Director, Wisconsin Alliance of Cities

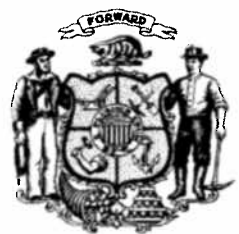
RE: AB 185

Thank you Chairperson Bies for allowing me to testify last week. As you requested I am outlining my testimony so you may share it with Committee members who had other commitments.

I believe I made the following points in opposition to the bill:

- The bill excludes Milwaukee because the first time it was drafted Wally Kunicki was Speaker of the Assembly. It has been redrafted without change since.
- Sheriffs derive their powers from the State's Constitution and Police Chiefs derive their powers from the people.
- Police and Fire Commissions represent the people not the body politic.
- The Janesville decision that made discipline a forbidden subject of bargaining did so to protect the public from the body politic.
- The bill would remove the public's standing. A deal could be cut between the city and the union before arbitration, even if the case were prompted by a citizen complaint. Citizens now have the same standing as any Chief.
- This bill is not about appeal, but creates a whole new hearing.
- This bill was combined with the "Seven Just Cause Standards" at one time. Under the direction of then Majority Leader Ellis a compromise was struck that avoided arbitration and put the standards in the statutes. I made that recommendation personally.
- Arbitrators are arbitrary and consistently make decisions based on their own self-interest.
- The current system is the same for all cities.

Thank you again for holding a hearing on this very important piece of legislation. I hope you find in favor of the public on this one.



Assembly Republican Majority

Bill Summary

Contact: Andrew Nowlan, Office of Rep. Garey Bies

AB 185: Disciplinary Procedures for Public Safety Officers

Relating to: Disciplinary procedures for certain local law enforcement officers and fire fighters.
By Representatives Bies, Ainsworth, Albers, Gunderson, Hines, Kerkman, Lehman, Musser, Ott and Townsend, cosponsored by Senators Stepp and Kanavas.

Date: June 14th, 2005

BACKGROUND

Generally, under current law, a law enforcement officer or fire fighter employed by a city, village, town, or county (local public safety officer) may be disciplined by a police or fire chief, sheriff, county board, civil service commission, grievance committee, or board of police and fire commissioners, depending on the unit of government for which the officer works and whether the county for which the officer works has in effect a civil service system. Discipline, under current law, includes suspension, reduction in rank, suspension, and reduction in rank and dismissal.

Also under current law, except in Milwaukee, no local public safety officer may be suspended, reduced in rank, suspended and reduced in rank, or dismissed by a grievance committee, civil service commission, county board, or board of police and fire commissioners (tribunal) unless the tribunal determines that there is "just cause," as described in the statutes, to sustain the charges that have been brought against the local public safety officer. If the charges are sustained and the officer is disciplined under an order of the tribunal, he or she may appeal the order to the circuit court, except that a county law enforcement officer, under a recent decision of the Wisconsin Supreme Court, may proceed either with an appeal to the circuit court or with the grievance procedures, including arbitration, in the officer's collective bargaining agreement. If the officer appeals to the circuit court, the court must determine whether, upon the evidence and based on the statutory description of "just cause," to sustain the charges against the accused officer and the tribunal's order. If the charges and the tribunal's order are sustained, the tribunal's order is final and conclusive. If the court reverses the tribunal's order, the officer is reinstated and entitled to pay as though he or she were in continuous service. Similar procedures, other than the "just cause" standard, apply to police officers employed by a first class city.

SUMMARY OF AB 185

Under this bill, for city, village, or town public safety officers, if an accused officer is subject to the terms of a collective bargaining agreement that provides an alternative to the appeal process to a circuit court, the appeal process in the collective bargaining agreement applies to the accused officer and not the current law process that involves an appeal to a circuit court, unless the officer chooses to appeal the tribunal's decision to a circuit court. If the alternative to the appeals process includes a hearing, the hearing must be open to the public. An accused officer who chooses to appeal the tribunal's decision through a collectively bargained alternative to the current law appeal process is considered to have waived his or her right to circuit court review of the tribunal's decision. The provisions of this bill do not apply to police officers or fire fighters employed by a first class city.

AMENDMENTS

There were no amendments offered in Committee.

FISCAL EFFECT

A fiscal estimate prepared by the Office of the Director of State Courts indicated that "there will be only a minor impact on the workload of the circuit courts from this change."

PROS

1. Allows city, village or town public safety officers to bargain for an alternative to appealing a grievance procedure to the circuit court: arbitration. This is enabling legislation only.
2. The arbitration alternative is currently in place for county deputy sheriffs.
3. Why shouldn't police and fire officers be treated differently than other public employees?
4. Arbitrator would provide an unbiased resolution of dispute.
5. If the public safety officer is at fault, this process would not provide for an escape from proper justice for that individual.

CONS

1. Municipal Police and Fire Commissions are to represent the people, from which the Police Chiefs and Fire Chiefs derive their power. Conversely, Sheriffs derive their powers from the constitution.
2. Reduces the clout of the Police and Fire Commissions (PFC)
3. Process is simply a re-trial and would not fix any problem with a PFC.

SUPPORTERS

Rep. Garey Bies, author; Sen. Cathy Stepp, lead co-sponsor; Wisconsin Professional Police Association; Madison Professional Police Officer's Association.

OPPOSITION

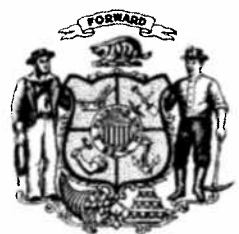
Wisconsin Chiefs of Police Association; Scott Herrick; Wisconsin Alliance of Cities.

HISTORY

Assembly Bill 185 was introduced on 3-10-2005, and referred to the Assembly Committee on Corrections and the Courts. A public hearing was held on 3-23-2005. On 5-04-2005, the Committee voted 8-1 [Rep. Pope-Roberts voting NO, Rep. Parisi Absent] to recommend passage of AB 185.



WISCONSIN STATE LEGISLATURE





June 21, 2005

Bill File

The Honorable Garey Bies
State Representative
State Capitol
Room 125-West
Madison, WI

- HAND DELIVERED -

Dear Representative Bies:

Thank you for your letter requesting a public hearing on Assembly Bill (AB) 185, which relates to disciplinary procedures for certain local law enforcement officers and fire fighters. I appreciate you sharing the legislative intent of this bill with me, as well as providing me with the bill history in the state Assembly.

As I review the legislation that has been referred to the Senate Committee on Veterans, Homeland Security, Military Affairs, Small Business and Government Reform and prepare upcoming committee agenda, I will surely keep your desire for a hearing on AB 185 in mind.

Again, thank you for your letter of request. I will be certain to contact you prior to any hearing on this legislation to accommodate your schedule.

Sincerely,

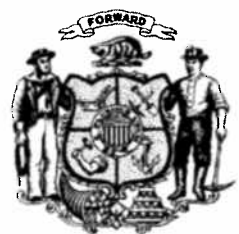
A handwritten signature in cursive script that reads "Ron Brown".

Ron Brown
State Senator
31st District

RB:dkl



WISCONSIN STATE LEGISLATURE



no date

Written Testimony of Representative Garey Bies
Assembly Committee on Corrections and the Courts
Assembly Bill 185 – Disciplinary Procedures for Law Enforcement

Fellow Committee members, I appreciate the opportunity to submit my testimony in support of Assembly Bill 185, relating to disciplinary procedures for certain local law enforcement officers and fire fighters.

AB 185 is a redraft of 2003 Assembly Bill 128, which received a public hearing but failed to receive executive action in committee last session. The language was then included as an amendment to the budget adjustment bill last year but ultimately was vetoed.

AB 185 is a good piece of legislation that extends an opportunity for an appeal process currently available to Deputy Sheriffs, to town, village and city public safety officers. However, this legislation does not provide the appeals opportunity automatically, but permits the opportunity if included in the collective bargaining agreements.

Now, why should we extend this appeals process privilege to all public safety officers? Because it is the right thing to do. This legislation will affect very few people, but those that are affected will see their livelihood benefited. Today's public safety officers have a lot of time and money invested in their careers. I believe they should be given a fair method to be judged if they are accused of misconduct. With the quality and class of people who choose to be a public safety officer and with the amount of time most departments put into screening their applicants, it is quite likely that this law would seldom, if ever, be used. But should it be needed, it should be available.

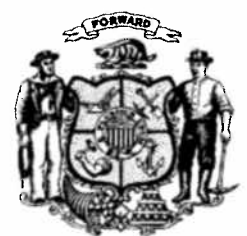
Four years ago, I asked the Wisconsin Employment Relations Commission how this law would affect arbitration requests. The Commission estimated that no more than an increase of 4 to 6 cases per year would result. Further, it was indicated that most cases that reach this point are cases in which the department involved did a poor job of investigation and preparation of the case. The better the department does in handling a disciplinary case, the less likely it will ever get to this point.

The bottom line to this issue is to give the opportunity to use this appeals process to the people who, by the nature of their jobs, put their lives on the line every day when they put their uniforms and badges on. These men and women act selflessly to protect others with their own lives and never think twice upon doing so.

I respectfully request your support of AB 185 in committee. I would be happy to answer any questions that you may have. Thank you.



WISCONSIN STATE LEGISLATURE



Make applicable to Milwaukee.

Seidel question

AB 185

Does not apply to chief's of police (not they oppose bill).

^{level}
Looking for arbitration

Simply a re-trial doesn't "fix" problems with PFCs.

Enabling legislation

Makes the PFC process meaningless.

Should police & fire be treated differently than other public employees.

Who would be the parties
in a retrial of PFC
procedure in arbitration



Arbitrator would provide an
unbiased resolution of dispute.

185

Allows for arbitration agreement as an alternative to circuit court for an appeal of a city police/fire officer.