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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**

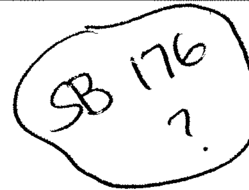
INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- 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**

* Contents organized for archiving by: Mike Barman (LRB) (October/2010)

FOR IMMEDIATE RELEASE

FOR INFORMATION CALL



December 3, 2007

Ald. Joe Davis, Sr.
(414) 286-3787

State Assembly Committee Will Take Up "Watered Down" Version Of Rep. Toles' Bill Tuesday; Fired Officers Will Continue To Be Paid While Legislature Mulls Issue

Ald. Davis Urges Lawmakers to Support Strong, Original Version of Bill

Milwaukee Ald. Joe Davis, Sr. today urged members of the Assembly's Committee on Corrections and Courts to reject a "watered down" version of Rep. Barbara Toles' bill that would change the state law that currently allows fired Milwaukee police officers to receive full pay and benefits until their appeals are exhausted with the Fire and Police Commission.

During a hearing at 10 a.m. tomorrow (Tuesday, December 4, 2007) at the State Capitol, the Committee on Corrections and Courts is expected to vote on a substitute version of Rep. Toles' bill – one that would actually worsen the situation for Milwaukee taxpayers when it comes to paying fired officers, the alderman said.

"It is time for our state legislators to do the right thing and remove this benefit that is found literally nowhere else in the nation, and that means approving the bill offered by Milwaukee Representative Barbara Toles," said Ald. Davis.

"In the world that most workers live in, employees who have serious violations of workplace rules such as falsifying reports or lying to supervisors can expect to be terminated, and their pay goes away," he said. "It's time for state legislators to take the burden of paying fired officers off the backs of the taxpayers of the City of Milwaukee."

-More-

Fired Officers' Pay/ADD ONE

The original version of Rep. Toles' bill would end pay for fired officers at termination. However, the Assembly version allows officers fighting termination to defend themselves in a hearing before the Fire and Police Commission before losing their pay. At such a hearing, the chief of police would be required to present a case against an officer to the commission, which would then make the decision about termination.

The state Senate's version of the Toles bill is strong and is acceptable to city leaders, Ald. Davis said. A crowded Senate hearing last week on that version of the bill attracted dozens of speakers, including Mayor Tom Barrett.

Since 1990 Milwaukee taxpayers have paid over $4 million to police officers fired for just cause.

-30-

200 EAST WELLS STREET --- MILWAUKEE, WI --- 53202-3570 --- (414) 286-3285

FORWARD
E PLURIBUS UNUM

WISCONSIN LEGISLATURE

P.O. BOX 8952 · MADISON, WI 53708

SB 176 Folder

FOR IMMEDIATE RELEASE December 28, 2007

For further information, please contact:
Senator Glenn Grothman 1-800-662-1227

Grothman and Gottlieb Offer Comprehensive Proposal to Protect Taxpayers from Excessive Costs During Police and Firefighter Discipline Processes

Madison...Today, Senator Glenn Grothman (R-West Bend) and Representative Mark Gottlieb (R-Port Washington) introduced a comprehensive bill to resolve the problem of excessive pay, and taxpayers' expense, for the discipline and dismissal of police officers and firefighters.

"I've always been proud to sponsor Representative Toles and Senator Coggs' bill dealing with the outrageous salaries paid to rogue officers in the Milwaukee police force. However, it's now apparent this is a statewide problem and it would be hypocrisy at its worst to only address the Milwaukee problem," said Grothman. Three weeks ago, SB 176 authored by Senator Coggs and Representative Toles passed the State Senate but incredibly did not deal with similar problems in the rest of the state.

"The state budget, as vetoed into law by Governor Doyle, contains ambiguous and confusing language that may be interpreted to allow the terms of a union contract to supersede the authority of a local Police and Fire Commission in disciplinary matters", Gottlieb stated. "This bill eliminates that confusion and restores the authority of citizen commissions that has existed for over 100 years."

"Even now, Officer Michael Grogan of the City of Madison has been paid over $248,000 for over three years for not working as the Madison Police and Fire Commission waits to deal with his termination for an incident in which he broke into someone else's house," said Grothman.

The Grothman/Gottlieb bill creates a uniform statewide standard by doing the following:

1) Stops the pay of Milwaukee police and fire fighters if they have been fired and criminally charged. Elsewhere, stop the pay of officers where the chief has recommended termination to the Police and Fire Commission and the officer has been criminally charged.

2) Restores the disciplinary power of the police and fire commissions as existed prior to the 2007 state budget.

--- 30 ---

FORWARD
E PLURIBUS UNUM

Tom Barrett
Mayor, City of Milwaukee

SB 176 Folder

For Immediate Release
January 15, 2008

Contact: Eileen Force
414-286-8504

Mayor Barrett released the following statement today after a State Assembly Committee voted to advance a bill that requires the City to continue paying fired police officers:

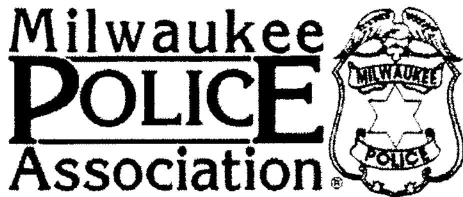
"I'm disappointed that party politics are getting in the way of responsible taxpayer protection in the city of Milwaukee. If Republicans want to force Milwaukee taxpayers to pay officers fired and charged with crimes like battery, hit and run, and intimidation of a witness, that's fine for their communities but not for Milwaukee.

The bill passed in the Senate last month on a bipartisan vote is the right way to protect Milwaukee taxpayers from spending one more dime on fired officers. To those who think that's too harsh, I invite them to pay out the millions of dollars it is costing our city to pay fired officers.

The people of Milwaukee expect the full Assembly to do the right thing and allow Milwaukee taxpayers to use limited resources to pay for cops on the street, not on the couch in their homes."

-30-

FORWARD
E PLURIBUS UNUM



Local #21 IUPA-AFL-CIO

OFFICE: 6310 WEST BLUEMOUND ROAD, MILWAUKEE, WI 53213
PHONE: (414) 778-0740 · FAX: (414) 778-0757 · e-mail: police@execpc.com
www.milwaukeepoliceassoc.com

John A. Balcerzak, President
Thomas E. Fischer, Vice-President
Mark A. Sikora, Secretary/Treasurer

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John T. Belsha, Mark D. Buetow, Daniel J. Halbur
Troy K. Jankowski, Christopher A. Moews, Sebastian C.J. Raclaw

Office Secretaries: Debra Schneider, Candy Johnson

Press Release

CONTACT: JOHN BALCERZAK:
PHONE: (414) 778-0740

FOR IMMEDIATE RELEASE
JANUARY 15, 2008

TO: ALL MILWAUKEE AREA MEDIA

FROM: MILWAUKEE POLICE ASSOCIATION, LOCAL #21, IUPA, AFL-CIO

RE: BILL TO STOP PAY FOR DISCHARGED MILWAUKEE POLICE OFFICERS

SB176 would have stopped the pay for all discharged Milwaukee Police Officers before they have a due process hearing by the Fire and Police Commission regardless of the reason for discharge. This would discriminate against all City of Milwaukee Police Officers simply because of the community in which he/she works.

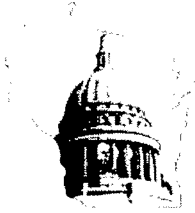
Over the past year, the FPC has reinstated five Milwaukee Police Officers who had been wrongly discharged. These officers would have been without pay or a means to provide for their families while awaiting their FPC hearings if SB176 had been in place. These cases are the very reason for the current law which has been in place since 1977 and provides for a hearing by the FPC before an officer's pay can be stopped.

The change tailors SB176 to achieve the real goal, which is to stop the pay for those officers who the courts believe should not be a police officer. The main element is that an officer's pay should stop when he/she is charged with a felony, bound over for trial at the preliminary hearing and also discharged by the Chief as a result of the same act(s) which constituted the criminal charge. The pay for any such officer would remain stopped unless they were re-instated by the FPC.

The pay for the officers in the cases that have been cited by the Mayor himself would have been stopped under this amended legislation while not unduly harming officers such as the ones who were re-instated by the FPC.

The other elements in this legislation would ensure that the FPC hearings are conducted in a timely manner, thereby minimizing the pay for discharged police officers.

FORWARD
E PLURIBUS UNUM



PRESS STATEMENT

FOR IMMEDIATE RELEASE
For more information, contact:
Rep. Garey Bies (608) 266-5350

SB 176 Folder

January 15, 2008

BIES STATEMENT ON MILWAUKEE POLICE PAY

"Today the Assembly Corrections Committee acted to end the pay of Milwaukee Police officers charged with a felony. This action will end payments to officers accused of the worst crimes yet continue to protect the due process rights of those brave men and women who are asked to patrol the streets of Milwaukee and keep our friends and families safe.

"The legislature should not act to diminish the rights of our state's police officers to below that which we grant to criminals."

END

First for Wisconsin!

Capitol: P.O. 8952, Madison, WI 53708-8952 • (608) 266-5350 • Fax: (608) 282-3601
Toll-Free: (888) 482-0001 • Rep.Bies@legis.state.wi.us
Home: 2590 Settlement Road, Sister Bay, WI 54234 • (920) 854-2811

FORWARD
E PLURIBUS UNUM

Plotkin, Adam

From: justice justice [justiceforjudejusticeforall@yahoo.com]
Sent: Wednesday, January 16, 2008 9:17 AM
To: kdegenhardt@wi.rr.com
Subject: FYI

For Your information: The Senate is voting on the Police Pay Bill. If you want police pay to be discontinue for fire officers call Wisconsin Senator Coggs at
(877) 474-2000 as soon as possible (ASAP) Thank You.

Justice For Jude Justice For All

01-16-08

SB 176
Folder

FORWARD
E PLURIBUS UNUM

Stephen L. Nass
Wisconsin State Representative

January 16, 2008

Speaker Mike Huebsch
Room 211 West
State Capitol

RE: Payment to Fired Milwaukee Police Officers – AB 308 and SB 176

Dear Speaker Huebsch:

The people of Wisconsin are extremely frustrated with the lack of common sense in the Legislature. The leadership of both parties can hide behind bipartisanship to increase taxes and fees by $763 million, but fail to protect taxpayers from blatantly obvious defects in state law.

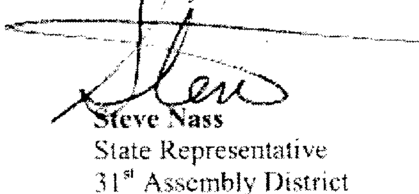
The time has come for common sense to prevail on the issue of continued salary payments to fired Milwaukee Police Officers. Legislation dealing with the Milwaukee issue has been introduced by Senator Coggs and Representative Toles. I am a cosponsor of this legislation. The senate version, SB 176, passed on an overwhelming bipartisan vote of 30-3.

It is clear that the taxpayers of Milwaukee and the membership of the Wisconsin State Senate have come to a reasonable conclusion on how to fix this matter --- passage of Senate Bill 176. The Assembly version, Assembly Bill 308, passed committee with a gutting amendment.

While I prefer a statewide solution to this problem and a bill is being drafted to accomplish this goal (Rep. Gottlieb/Sen. Grothman), it is unlikely to clear the legislative process in time for passage by both houses before the end of the session. The taxpayers of Milwaukee can't afford to wait another year for a statewide solution that may never pass.

As Speaker, you have the power to schedule Senate Bill 176 and allow both Republicans and Democrats in the Assembly to pass a bipartisan solution to a serious problem plaguing the taxpayers in the City of Milwaukee. Please put an end to the political pandering that has blocked this legislation for years. ***I request that you schedule Senate Bill 176 for an Assembly vote before the end of the January floor period.***

Sincerely,



Steve Nass
State Representative
31st Assembly District

Office: P.O. Box 8953 · Madison, WI 53708-8953 · (608) 266-5715
Toll Free: (888) 529-0031 · E-mail: Rep.Nass@legis.state.wi.us

FORWARD
E PLURIBUS UNUM

STATE REPRESENTATIVE
BARBARA L. TOLES

17th Assembly District

FOR IMMEDIATE RELEASE
January 16, 2008

FOR FURTHER INFORMATION
Contact: Rep. Barbara Toles
(608) 266-5580

SB 176 Folder

No Relief for Milwaukee Taxpayers

Statement by Representative Barbara Toles on Police Pay Vote

Yesterday the Assembly Committee on Corrections and Courts had an opportunity to come to the aid of Milwaukee taxpayers by passing legislation that would stop the pay of all fired Milwaukee police officers. Instead, the committee chose to pass a watered down version of my legislation on a party line vote of six to five. The committee approved a substitute amendment offered by committee chairman Representative Garey Bies, which would cut off pay only for officers who have been terminated and charged with felonies. The committee voted on the premise that only "officers accused of the worst crimes" should have their pay ended. **Officers fired for committing misdemeanors or violations of department rules will continue to be paid after termination**.

Misdemeanors are not minor violations, they are criminal offenses. Some of the reasons officers have been fired from the Milwaukee Police Department include, exposing their genitals to children, domestic violence, sexual assault, intimidating witnesses, battery of a handcuffed prisoner, testing positive for marijuana, stealing money from the scene of an investigation, being intoxicated while on duty, and filing false worker's compensation claims for injuries sustained while sledding on duty.

The Milwaukee Police Association argues that an officer who is fired for a rule violation is different from an officer who commits a felony. However, 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 fired. Upon termination their pay stops.

Last month, the Senate approved my bill to end pay for all fired Milwaukee police officers by a bi-partisan vote of thirty to three. With yesterday's vote, the Assembly Committee on Corrections and Courts demonstrated a lack of concern for the taxpayers of Milwaukee, and leaves us questioning the integrity of the legislative process.

P.O. Box 8953
Madison, WI 53708

rep.toles@legis.state.wi.us
(608) 266-5580

FORWARD
E PLURIBUS UNUM

Plotkin, Adam

From: Paul Peck [paul.peck@gmail.com]
Sent: Sunday, January 20, 2008 2:25 PM
To: Governor Jim Doyle; Sen.Coggs; Mayor Tom Barrett
Subject: frankenstein versus Dracula

SB 176 Folder

Senator Coggs bill to redraft secton 62.50 of the State Statutes has been passed over in committee in favor of an alturnative bill drafted by a special interest lobby group, the Milwaukee Police Association.

Senator Coggs sought to end the Statutory requirement that forces milwaukee tax payers to pay the salaries of police officers after they have been fired, but allows officers to be paid retroactively if the termination is not upheld in appeal. The adopted bill still requires the city to pay salaries and benefits to officers who have been fired for misconduct, but if the termination is not reveresed in a legal appeal, the officer must pay the city back the salaries and benefits they received. In some cases, a lesser amount of compensation is acceptable including no repayment of salaries after the officer has been fired.

If one is to realize that the appeal process takes on average over 2 years (and many cases lasting over 3 years), how on earth could any person pay back 100% of 3 years of salary and benefits from their new job after being fired from the city or if the misconduct merited jail time?

This is a debt that no honest man could pay, and the police union's bill mandates conditions to allow officers never to make good on their fudiciary duties.

Statute 62.50 (18) was and always will be a form of "Structural Police Corruption" that creates circumstances that inherently limits the Chief of Police in 1st Class Cities in addressing the issues of police misconduct within his or her ranks by requiring money from the departments budget to pay the salaries of officers after they are fired instead of using that money to fulfill the chiefs vision of crime reduction within our community. The bill, motivates any good chief to keep inappropriate officers on the duty rolls even if doing so is contrary to promoting a police culture of integrity.

The Governor has the power through the line item veto to eliminate Statute 62.50 (18) entirely, which creates conditions of common practice around the nation.

Instead of circulating a petition, I have ordered 500 cards that voice support for Mayor Barrett and the city of Milwaukee in their efforts to change this unjust law. I have paid for these postcards myself and will pay the postage. I will distribute them using the post paid return mailers included in Junk Mail I receive daily, along with a letter asking the reader to mail the post card to the Mayors office. I will distribute these cards as best I can through personal associations, asking them to mail the card either anonymously or with a signature. The cards should arrive to me in 2 weeks.

Since my lobby methods and funds are limited, and my marketing strategy more novel than effective in design, I do not know how many cards will be received by the Mayors office. It is my hope that enough shall be received and that the Mayors office that the results of my grassroots effort to voice citizen support of Senator Coggs' and Mayor Barretts' efforts can be shared with other policy makers. It is my hope that the alturnative bill drafted by a special interest group can be addressed through a line item veto or some other legal means to right this terrible wrong.

Paul Peck

FORWARD
E PLURIBUS UNUM

Plotkin, Adam

From: WJ Lanier [wjlanier@hotmail.com]

Sent: Sunday, January 20, 2008 7:25 PM

To: Sen.Coggs; Rep.Toles

Subject: SB 176; Police

Thank you both for your leadership on the issue of police accountability. Obviously, the assembly committee vote for the watered down version on pay for fired officers was disappointing. As always, if I can be of any assistance, please let me know.

Rev. Walter J. Lanier, J.D.

Climb to the top of the charts! Play the word scramble challenge with star power. Play now!

FORWARD
E PLURIBUS UNUM

SB 176 Folder
Date ?

Dear State Senator,

I am writing regard to the proposed legislation by Representative Toles that affects the pay for fired Milwaukee Police Officers. Representative Toles' bill would change the current Section 62.50, 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.

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 Representative Toles and Senator Coggs 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, bound over for trial and also 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. **The Fire and 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 Fire and Police Commission have "rule making authority".**
   This benefits the FPC by addressing the *Casteneda* decision, and provides the FPC with the rule making authority it presently lacks.

5. **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.

6. **Our current arbitration process for discipline should be expanded.**

This would allow an officer the ability to choose between arbitration or the FPC for all discipline other than those where the officer is also charged with a felony, bound over for trial and is discharged for the same acts which constituted the felonious 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. If the Officer chooses arbitration, 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.

This proposal meets the goal of the M.C.C.P.R., as well as the "Parc Report"

7. **An Officer be able to appeal an arbitral decision to Circuit Court, under the same standard as is currently applied to Circuit Court appeals from the FPC under Wis. Stat. 62.50 (21)**

The standard being: "under the evidence, was there just cause to sustain the charge(s) against the accused," and "was the decision reasonable."

8. **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 Police Officer 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.

If the City of Milwaukee believes these proposed changes are unacceptable, it should ask legislators to eliminate Section 62.50, STATS., in its entirety, and treat our police officers like every other police officer in the State of Wisconsin. *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 Alds. Paul Henningson and Rosa Cameron were convicted in Federal Court.

Why does the City continue to pay convicted felons?

Contrary to Mayor Barrett's March 29th press release, Barrett stated in an April 3, 2007 interview that he remained hopeful and s 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 it be 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

FORWARD
E PLURIBUS UNUM

SB 176 Folder

Date ?

Department of Administration
Intergovernmental Relations Division

Tom Barrett
Mayor

Sharon Robinson
Director of Administration

Sharon Cook
Director of Intergovernmental Relations

Proposal to Modify the Pay Provision for Fired Milwaukee Police Officers

Background

In 1979, the Wisconsin State Legislature passed a law, which included a provision requiring the City of Milwaukee to keep discharged police officers on the payroll until their appeal is heard by the city's Fire and Police Commission.

Since 1990, 97 police officers have been discharged by Milwaukee Police Chiefs and the vast majority have not been reinstated. The city has paid over $3.7 million in salaries and benefits to these officers (including cases pending). About one-third resign, retire or withdraw their appeal shortly prior to their trial before the Fire and Police Commission, collecting pay as long as possible under this unique state law. A summary of the disposition of the 97 cases is as follows:

- 11 cases are pending
- 31 appellants retired or resigned prior to their trial
- 36 discharges went to trial and were upheld
- 1 officer was removed from office after being convicted of a felony
- Only 2 officers did not appeal their discharge
- Only 12 appealed cases were reduced to a suspension and 4 were reinstated

Milwaukee's Police Discharge Procedure

Like many other large police departments in the United States, Milwaukee's Police Chief is empowered to discharge officers. Prior to imposing a discharge, the Milwaukee Police Department's Professional Performance Division conducts a lengthy internal investigation. Due process requirements are met by a step-by-step procedure that includes notifying the officer of the charges, an internal investigation, an interrogation/interview, and an employee opportunity to respond to the allegations. The entire process is well documented, interviews are taped and the member is provided with documentation and the interview tape.

If the internal investigation determines that the charges are warranted, the Chief serves the Police Officer with an Order of Termination. The Officer has 10 days to notify the city whether they will appeal the discharge to the Fire and Police Commission. Upon notification of appeal, the Fire and Police Commission has 5 days to serve the appellant with a copy of the complaint.

Milwaukee's Appeal Process

The appeals process for discharges is outlined in the section 62.50 of the Wisconsin State Statutes. The appeal can be quite lengthy, particularly if the officer is facing criminal charges. The statutory pay provision and the automatic adjournment afforded to the terminated employee under 62.50 provide an incentive for the appellant officer to extend the process as long as possible.

Statutorily, the Fire and Police Commission is required to set a trial date 5-15 days from when the complaint is served. Due to longstanding concerns from all parties involved, appellants are given the

Room 606, City Hall, 200 East Wells Street, Milwaukee, WI 53202 - Phone (414) 286-5584 - Fax (414) 286-8547
www.milwaukee.gov

opportunity to waive the statutory timeline for trial. These waivers are premised 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. This waiver procedure is the result of a series of public hearings held in 1998 and 1999 by the Fire and Police Commission, during which city and appellant attorneys outlined their mutual concerns regarding the statutory timeline.

Once the trial date is set, the statutes entitle each party to an automatic adjournment. Unlike every other legal proceeding in this state, this adjournment can be requested without any stated reason and with no required notice. This right to adjournment has been exercised by nearly all appellants. The City rarely exercises this right. The adjournments are unnecessary and often exercised at the very last minute, making it difficult to promptly reschedule trial dates. Both parties are also entitled to an adjournment for cause, as is standard practice in all other legal proceedings.

In the cases of officers who have been charged with crimes, the Fire and Police Commission does not proceed with employment hearings until the criminal cases are resolved. The City has no control over the timeframe of criminal proceedings. These trials can be delayed for many months or even years, while the officers continue to receive city pay and benefits.

Conclusion

The Fire and Police Commission recently underwent a "best practices" audit by the Police Assessment Resource Center that addressed some internal constraints relating to the appeal process. As a result, the Commission is making several organizational and procedural changes it can accomplish internally. In addition, the City is seeking legislation to expand the number of appointments to the Commission, while still allowing cases to be heard by panels of three Commissioners. These changes should help reduce the length of appeals.

However, it is clear that the largest contributors to the lengthy appeal process are pending criminal charges and the appellant's right to an automatic adjournment. Both of these delays are beyond control of city officials and the reason we should change this state law.

When hired by the Fire and Police Commission, Milwaukee Police Officers take an oath of office and swear to:

- Support the constitution of the US and State of Wisconsin
- Enforce all the laws of the US, State and the City of Milwaukee
- Obey all the lawful orders of superior officers

The City of Milwaukee is very proud of our 1,700 men and women in uniform, most of which do a fine and very difficult job while putting their lives at risk. At the same time, we are disturbed by the individuals who take an oath of office and then violate the same laws they were hired to enforce. Therefore, we are seeking changes in state law to shorten the appeals timeline and modify the provision requiring us to pay officers while appealing their termination.

For more information, please contact:
Jennifer Gonda, Legislative Fiscal Manager – Sr
City of Milwaukee, Intergovernmental Relations Division
Phone: (414) 286-3492 E-Mail: jgonda@milwaukee.gov

FORWARD
E PLURIBUS UNUM

Department of Administration
Intergovernmental Relations Division

Tom Barrett
Mayor

Sharon Robinson
Director of Administration

Sharon Cook
Director of Intergovernmental Relations

SB 176 Folder

Date?

To: Wisconsin State Senate
Wisconsin State Assembly

From: Maria Monteagudo, Employee Relations Director

RE: LRB 0630- Relating to payment of a 1st class city police officer's salary after termination.

Last week you may have received a letter from the Milwaukee Police Association (MPA) regarding LRB 0630 authored by State Representative Barbara Toles. This proposed legislation is currently circulating for co-sponsorship and the deadline to sign on is 5:00 pm today. We would appreciate your support.

Some of the statements and/or allegations made by the MPA are inaccurate and we feel it is important for you and your colleagues to fully under understand the City's efforts and position on this matter as you consider whether to support this legislation.

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 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 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 pilot program of Community Safety Officers who will respond to non-emergency calls for police services.

Throughout our discussion with the MPA, it is apparent that we have reached consensus on the 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 between the MPA and the City. Please see the attached chart summarizing those other issues.

Another misleading area of the letter from MPA pertains to why the City continues to pay convicted felons. The answer is simple; it is required under state law. Police Officers hold a "public office" for purposes of section 17.03(5) of the state statutes. 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.

In summary, while only 2 of the 3 provisions in Representative Toles' proposal reflect "agreement" between the City of Milwaukee and the Milwaukee Police Association, we believe LRB 0630 is a good stepping stone for further discussion in the legislature. While we have been hopeful we could present a united front to the legislature, the MPA refuses to drop the issue of whether the arbitration process for discipline should be expanded in a manner similar to that proposed for the rest of the state in Assembly Bill 57. This issue is not germane to this legislation and needs to remain a separate area of discussion. Therefore, we feel there is only one remaining area of contention that is relevant to the statutes and this legislation.

Thank you for your time and consideration of our response. We look forward to working with you on this very important legislative proposal and would appreciate your support as it moves forward.

Issue	MPA's Position	City's Position
Police Pay	An officer's pay should stop when he/she is charged with a felony, bound over for trial and is discharged by the Chief as a result of the same act(s) which constituted the felonious criminal charge.	An officer's pay and benefits should stop when he/she is fired for conduct which also results in criminal charges (felonies AND misdemeanors). When an officer is fired for conduct that results in a serious misdemeanor charge, it is the City's position that salary and benefits should stop pending appeal. Example of serious misdemeanor charges include: battery, resisting/obstructing an officer, endangering safety by use of a weapon, criminal damage to property, 4th degree sexual assault, and aiding/encouraging parolee to violate parole.
FPC's Rule Making Authority	The Fire and Police Commission has "rule making authority".	The City is arguing the Commission's rule-making authority provided for under 62.50 in Court.
Arbitration as a choice for all disciplinary issues	Expand the current arbitration process for discipline by allowing an officer the ability to choose between arbitration or the FPC for all discipline other than those where the officer is also charged with a felony, bound over for trial and is discharged for the same acts which constituted the felonious charge. Historically, arbitration is faster than the normal FPC process. If the Officer chooses arbitration, 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.) 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.	Many disciplinary actions within the MPD involve high profile cases. The FPC should be the sole body responsible for appeals involving serious discipline of personnel to ensure consistency and uniformity in determining the appropriate consequence for employee misconduct. This system enhances the Board's ability to identify areas of concerns including the ability to assess the Chief's performance when dealing with serious disciplinary issues and other employment matters. Under the current system the "public" has the ability to let the FPC know what their concerns are in relation to matters involving police personnel. Allowing members to have their appeals heard by an arbitrator decreases the "transparency" of the process and the public's perception of how they can be heard. In consideration to the argument that this proposal would alleviate the workload of the Commission and its ability to "focus" on serious big picture/policy issues, the City has offered increasing the threshold of

		discipline that can be grieved through arbitration from 5 days or less to 10 days or less.
Standard for appealing arbitral decision	An Officer should be able to appeal an arbitral decision to Circuit Court, under the same standard as is currently applied to Circuit Court appeals from the FPC under Wis. Stat. 62.50 (21) The standard being: "under the evidence, was there just cause to sustain the charge(s) against the accused," and "was the decision reasonable."	The standard used to review FPC dispositions by the courts is broader than that used in reviewing arbitral decisions. The standard in essence determines if under the evidence there was just cause to sustain the charges against the accused. The court may require additional evidence and may require the board to take additional testimony to make part of the record. As a result, this standard may result in a new "trial" of the charges. The circuit court review of an arbitral decision is more limited. The review is confined to whether the award was procured by corruption or fraud, whether there was evident partiality on the part of the arbitrator, whether the arbitrator was guilty of certain specified misconduct, or whether the arbitrator exceeded his/her power.
Evidence to be provided when member is served with disciplinary charges.	The Chief of Police must 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.	Rule XV Section 6(a) of the FPC rules requires the Police Department to give the appellant within 10 days after the appeal is filed a list of: witnesses to be called to prove the allegations, copies of all reports, summaries of reports, witness statements and summaries of witness statements which the MPD intends to rely upon to support its case, AND, all documents which are *exculpatory in nature.* This is a procedural issue addressed in the rules of the Fire and Police Commission, not under the statute. If the MPA is arguing that the Department is not in compliance with this requirement, the Fire and Police Commission should be notified for appropriate action.

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Steps for terminating office – MPD

Accused officer is:

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

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

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

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

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

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

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

8. Chief makes decision. Officer is informed.

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from Mil. Police Assoc

SB 176 Folder

U.S. Supreme Court

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

470 U.S. 532

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

No. 83-1362.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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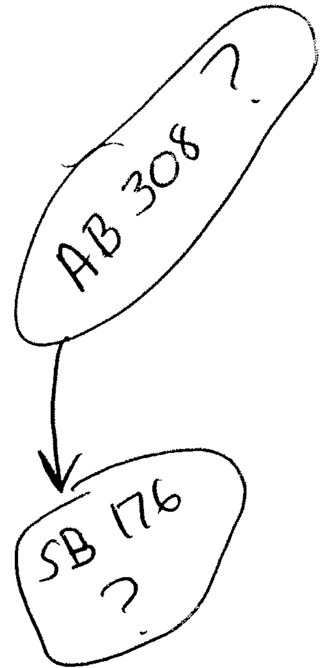
Cities where Police Chiefs have power to fire officers

City	Population
Milwaukee	573,000 (2006)
Boston	591,000 (est. 2006)
Minneapolis	372, 811 (est. 2005)
Anaheim, CA	334,000 (est. 2006)
*Cincinnati	332,000 (est. 2006)



*Cincinnati City Manager has sole authority to suspend or terminate

(b) The approval of a deputy chief or higher or, when applicable, the Fleet Safety Committee, is required if the incident giving rise to the DCC involves one or more of the following:

i) A criminal or traffic offense.

ii) Insubordination.

iii) A formally reported citizen complaint.

iv) Circumstances investigated by Internal Affairs Bureau personnel.

v) The order of a higher ranking supervisor to conduct the investigation, unless the order was to resolve the incident at a lower level.

vi) A sworn employee at fault in an on-duty traffic accident.

(3) Written reprimand, the second step in progressive discipline.

(a) A sergeant or higher authority may issue a written reprimand when the employee has previously been issued a DCC for the same or similar offense within the time period specified by the current collective bargaining contract.

(b) Any supervisor in the reviewing chain of command may recommend a written reprimand. If this recommendation deviates from progressive discipline, ***only the Chief of Police may approve the recommendation***.

(4) Departmental charges, the highest level of discipline in the Division.

(a) Sustained departmental charges may result in leave forfeiture, suspension, demotion, and/or termination.

(b) Departmental charges shall be reserved for violations of criminal law, serious breaches of discipline, and repeated violations of the same or similar rules when lesser forms of discipline have already been issued.

(c) Any supervisor in the reviewing chain of command may recommend departmental charges. ***Only the Chief of Police can departmentally charge sworn personnel.***

3. Chain of Command

a. If not in agreement with a lower-ranking supervisor's recommendations, cause areas of disagreement to be further reviewed, discussed, or clarified.

b. If recommending modification of lower-ranking supervisor's recommendations, articulate justification for doing so.

4. Sworn Personnel Receiving Discipline

a. Upon receiving a DCC or a written reprimand, appeal the discipline through the grievance process outlined in the current collective bargaining contract, as desired.

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Date?

Comparison of Sen. Coggs' Police Pay Bill SB 176 and Carpenter budget amendment

Same provisions

1. Pay would not be provided to officers who are fired.
    a. Carpenter budget amendment is the same as SB 176.

Different provisions

1. SB 176 changes time limit to schedule a trial. Current time limit is 5 to 15 days. SB 176 would require scheduling a trial in 30 to 60 days.
    a. Carpenter amendment does not address this provision

2. SB 176 eliminates the right of the accused and/or the chief to request an adjournment of the trial or investigation of the charges of up to a 15-days.
    a. Carpenter amendment does not address this provision.

3. Carpenter amendment would eliminate provision that requires City of Milwaukee to fund two liaison officers from Milwaukee Police Association.
    a. SB 176 does not address this provision.

4. Carpenter amendment eliminates requirement to establish a system of administering the collective bargaining agreement by an employee of the department who is not directly accountable to the chief or FPC.
    a. SB 176 does not address this provision.