

WISCONSIN STATE
LEGISLATURE
COMMITTEE HEARING
RECORDS

2007-08

(session year)

Assembly

(Assembly, Senate or Joint)

Committee on
Corrections and
Courts
(AC-CC)

(Form Updated: 07/24/2009)

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Assembly Committee on Corrections and the Courts

DATE _____

Moved by _____ Seconded by _____

AB 57 SB _____ Clearinghouse Rule _____

AJR _____ SJR _____

A _____ SR _____ Other _____

A/S Amdt _____

A/S Amdt _____ to A/S Amdt _____

A/S Sub Amdt _____

A/S Amdt _____ to A/S Sub Amdt _____

A/S Amdt _____ to A/S Amdt _____ to A/S Sub Amdt _____

AB 57

Be recommended for:

- | | |
|---|--|
| <input checked="" type="checkbox"/> Passage | <input type="checkbox"/> Indefinite Postponement |
| <input type="checkbox"/> Introduction | <input type="checkbox"/> Tabling |
| <input type="checkbox"/> Adoption | <input type="checkbox"/> Concurrence |
| <input type="checkbox"/> Rejection | <input type="checkbox"/> Nonconcurrence |

	Committee Member	Aye	No	Absent	Not voting
1.	Rep. Garey Bies, chair				
2.	Rep. Phil Montgomery, vice-chair				
3.	Rep. Dean Kaufert				
4.	Rep. Carol Owens				
5.	Rep. Mark Gundrum				
6.	Rep. Daniel LeMahieu				
7.	Rep. Joe Parisi				
8.	Rep. Mark Pocan				
9.	Rep. Sheldon Wasserman				
10.	Rep. SONDY POPE-ROBERTS				
11.	Rep. Donna Seidel				
	Totals				

MOTION CARRIED

MOTION FAILED

Assembly Committee on Corrections and the Courts

DATE _____

Moved by _____ Seconded by _____

AB 57 SB _____ Clearinghouse Rule _____

AJR _____ SJR _____

A _____ SR _____ Other _____

A/S Amdt 1

A/S Amdt _____ to A/S Amdt _____

A/S Sub Amdt _____

A/S Amdt _____ to A/S Sub Amdt _____

A/S Amdt _____ to A/S Amdt _____ to A/S Sub Amdt _____

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Passage

Introduction

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11.	Rep. Donna Seidel				
	Totals				

MOTION CARRIED

MOTION FAILED

Assembly Committee on Corrections and the Courts

DATE _____

Moved by _____ Seconded by _____

AB 57 SB _____ Clearinghouse Rule _____

AJR _____ SJR _____

A _____ SR _____ Other _____

A/S Amdt 1

A/S Amdt _____ to A/S Amdt _____

A/S Sub Amdt _____

A/S Amdt _____ to A/S Sub Amdt _____

A/S Amdt _____ to A/S Amdt _____ to A/S Sub Amdt _____

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11.	Rep. Donna Seidel				
Totals					

MOTION CARRIED

MOTION FAILED



WISCONSIN ALLIANCE OF CITIES

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March 7, 2007

TO: The Honorable Members of the Committee on Corrections and Courts

FROM: Edward J. Huck, Executive Director

RE: AB 57, Retrial of Protective Employees

The Wisconsin Alliance of Cities vigorously opposes AB 57 because contract negotiations are not the place to deal with misconduct by law enforcement personnel at any level. Further, the legislature should insulate citizens from any effort by police unions to protect bad officers from discipline rendered by citizens from the community in which they were hired to serve.

Further, this bill creates an entirely new trial process that will be borne by innocent property tax payers and local governments trying to keep their good police.

While sheriffs derive their powers from the constitution and are elected, police chiefs and our officers are responsible to the public, not politicians or out-of-town arbitrators. Any political decision can be decided before arbitrator rules, but not if a police and fire commission is judging an alleged violation of the public's trust.

The "Seven Just Cause Standards" are designed to protect officers from arbitrary treatment by sheriffs and chiefs. There is no reason why an arbitrator should have to oversee a retrial of an officer, when the courts can judge whether the police and fire commission followed the law.

We believe this bill is not permissive because of "boiler plate" language that exists in our contracts. If the legislature wants to clarify this bill is, permissive language should be added to the bill.

We believe that criticisms of the police and fire commission process should be remedied and that the process should be expanded to include all gun-carrying servants of the public, either county or municipal. Thank you.

Please reject this legislation. Thank you.



Halverson, Vicky

From: Chief Dan Trelka~Sturgeon Bay Police Department [chfdjt@charterinternet.net]
Sent: Wednesday, March 07, 2007 9:52 AM
To: Rep.Bies
Cc: Arleigh Porter
Subject: Fw: AB57

----- Original Message -----

From: Chief Dan Trelka~Sturgeon Bay Police Department
To: Rep.bies@legis.wisconsin.gov
Cc: [Arleigh Porter](#)
Sent: Wednesday, March 07, 2007 9:50 AM
Subject: AB57

Hi Garey,

How are you? I just wanted to drop you a note and let you know I oppose passage of AB57. I shutter when I think of Paul Theis being able to appeal his police and fire commission decision to an arbitrator. The system we have now forces police administrators to discipline in a fair and impartial manner. The Police Officer Bill of Rights is working. It's a good systems. I would like to see us stick with it.

Dan Trelka



Halverson, Vicky

From: Neil Cameron [Neil.Cameron@appleton.org]
Sent: Wednesday, March 07, 2007 10:43 AM
To: Rep.Bies; Rep.Gundrum; Rep.Kaufert; Rep.Montgomery; Rep.Owens; Rep.Parisi;
Rep.Pocan; Rep.Pope-Roberts; Rep.Seidel; Rep.Wasserman
Cc: Rep.Lasee; Rep.Ott; Rep.Roth; Rep.Wieckert; Sen.Ellis
Subject: AB 57

Memorandum

To: Assembly Committee Corrections and Courts

From: Neil Cameron, Fire Chief

Date: March 7, 2007

Sub.: AB 57

I write to you today to express opposition to the changes proposed by AB 57 that would allow review of Police and Fire Commission employee disciplinary decisions by the Wisconsin Employment Relations Commission. Currently the avenue of appeal is to the circuit court system. Police and Firefighters are placed in a position of great public trust and respect. On a daily basis their choices and actions impact the very lives and livelihoods of our citizens. These employees are expected to meet the highest standards of the local communities with regard to trust, integrity, and judgment. To reduce the ability of local commissions acting under statutory authority by allowing a non-judicial review of their decisions is not in the public interest.

The elected policy makers in each community are permitted by the legislature to determine the level of fire protection to be provided and the organizational make-up of any fire department that may be created. This approach is consistent with the strongly held Wisconsin philosophy of local control and autonomy. When enacted State Statute 62.13 created a system through which local communities could create, staff, and manage their local fire department through the use of a Police and Fire Commission. Again this approach is closely tied to the high value placed on home rule. Police and Fire commissions are constrained by the statutory provisions, when dealing with hiring and disciplinary decisions, which provide a strong framework to ensure both potential and existing employees are treated fairly and receive a full and complete due process hearing in the event of any disciplinary action. Today actions of the commission may be appealed to the circuit court. The proposed legislation would have the effect of undermining the ability of communities to influence the expectations of those appointed to provide for their safety.

Changing this long standing public policy will significantly undermine the fundamentals of Home Rule that are held to be valuable in the State of Wisconsin. Today Police and Fire Commissions are appointed on staggered terms and provide a strong local flavor to the administration and oversight of the employment decisions for employees charged with critical public safety responsibilities. Remember, these are the employees who are expected to garner the highest levels of public trust as they deal with citizens experiencing great trauma and stress in their lives. To undermine that authority by allowing a single individual, who has no local connection or community accountability, to overturn a decision of five community appointed commissioners is in direct conflict with founding principles of local governance.

I would encourage you to speak with your local Fire and Police Chiefs to discuss local impacts before making your decision. I would be glad to speak directly with you to clarify any of these concerns. I may be reached at (920) 832-5810 or neil.cameron@appleton.org.



From: "Talis, John" <Talis@co.dane.wi.us>
To: "Scott Herrick" <SNH@herricklaw.net>
Date: 3/7/07 2:45PM
Subject: RE: PFC legislation

AB 57

Scott:

I now have two hearings tomorrow morning, so I am not going to be able to make the hearing.

If you want to refer to the following in your testimony, or submit it on my behalf, either is fine with me:

My name is John Talis. I have been a member of the City of Madison Police & Fire Commission since approximately 2003. From 1991 to 2001 I was an attorney in private practice representing labor unions, in particular fire fighter unions. In that capacity, I litigated a number of disciplinary cases on behalf of fire fighters before a number of different police and fire commissions around the State of Wisconsin pursuant to sec. 62.13, Stats.

Throughout my time representing fire fighters in private practice, I and others representing labor had significant concerns about the fairness and impartiality of the disciplinary procedure pursuant to sec. 62.13, Stats., in that we believed police and fire commissioners develop professional relationships with chiefs through the promotional and other processes which do not exist with particular officers accused of misconduct or the involved local union presidents. This raised a question of the impartiality (or at least the appearance of impartiality) of police and fire commissions in disciplinary cases pursuant to sec. 62.13, Stats. And while my service on the Madison Police and Fire Commission has shown that commissioners are hard-working, diligent, and make every effort to fairly decide disciplinary cases, it has not resolved my concern about the appearance of impartiality described above from the perspective of labor. There are improvements to sec. 62.13, Stats., that could and should be made to address these concerns (e.g. adding language make a mayor's nomination to the PFC subject to the approval of the local union presidents, so that affected officers have more direct input into the selection of the decisionmakers who could ultimately terminate their jobs and related benefits such as pensions).

Unfortunately, the current proposal fails to constructively address these concerns, and instead sets up a cumbersome and wholly unworkable process by which a case is heard by a PFC, but can then be appealed and tried a second time before a labor arbitrator. This proposal simply does not make sense. Why would anyone want to waste substantial time working as a volunteer PFC member on evenings and weekends when your disciplinary decisions are effectively merely advisory and subject to plenary review by a labor arbitrator anyway? And the proposed system promises to double litigation costs—including litigation costs for labor—as all parties litigate the same case twice, once before the PFC and a second time before a labor arbitrator. And does the Legislature intend to have the arbitrator's decision further reviewed pursuant to Ch. 788, Stats., as other arbitration decisions can be?

There are improvements to sec. 62.13, Stats. that should be made, but this is not one of them. If the intention is to eliminate PFCs by statute and put labor arbitrators in their place pursuant to sec. 111.70, Stats. that should be debated and decided directly on the merits rather than through the present oblique proposed statutory amendment that would have the same practical effect. This proposal should be rejected.

-----Original Message-----

From: Scott Herrick [mailto:SNH@herricklaw.net]
Sent: Monday, March 05, 2007 1:27 PM
To: Sparkman, Wesley; Talis, John; gdlowe@inxpress.net;
lawton@lathropclark.com; shivabidar@tds.net
Subject: PFC legislation





Wisconsin State Fire Chiefs' Association, Inc.

Together We Can Make A Difference

- Education
- Prevention
- Safety
- Suppression
- EMS

DATE: **March 8, 2007**

TO: **Committee on Corrections and Courts**

FROM: **Wisconsin State Fire Chiefs Association**

RE: **Assembly Bill 57**

The Wisconsin State Fire Chiefs Association representing 862 fire departments with over 900 chief officers opposes Assembly Bill 57. I received a call yesterday from Larry Plummer president of the Wisconsin State Firefighters Association representing over 11,000 firefighters who asked that I let the committee know that they oppose Assembly Bill 57 also.

Police & Fire Commissions in each community across the State of Wisconsin are comprised of residents of that local community. Each community develops rules and regulations that set the standard by which the members of their public safety units must conduct themselves. When disciplinary action is taken by a police or fire chief the Police & Fire Commission reviews the information and administers the appropriate discipline to the public safety officer using the standards that have been set by that community. That public safety officer currently has the right to appeal the decision of the Police & Fire Commission to the circuit court, if they are not satisfied with the process or the disciplinary action taken by the Commission. Assembly Bill 57 would allow the public safety officer the option of by-passing the Police & Fire Commission process and choose an arbitrator, who has no ties to the local community, to review the information and decide on the disciplinary action. This option will hinder the ability of the local community to establish and maintain the standard to which they desire the public safety officers of their community to perform.

The Wisconsin State Fire Chiefs Association feels that the current process of a Police & Fire Commission review and the ability of the officer to appeal the Police & Fire Commission disciplinary decision in circuit court is a fair and equitable system. The Wisconsin State Fire Chiefs Association strongly opposes Assembly Bill 57 and asks that the committee members oppose this legislation also.

If you have any questions you may contact David Bloom, Legislative Liaison at 608-444-3324. Thank you for the opportunity to express our opposition to this legislation.

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Phone: 608-210-7261 • Fax: 608-210-7235
Email: bloomd@town.madison.wi.us



MURPHY DESMOND[®]

L A W Y E R S

MEMORANDUM

To: Chairman Garey Bies and members of the Assembly Committee on Corrections & Courts

From: Alice O'Connor, representing Wisconsin Chiefs of Police Association

Re: Opposition to AB 57 – Arbitration of Police and Fire Commission

Date: 8 March 2007

The Wisconsin Chiefs of Police have great respect for the main author of this legislation but wish to respectfully oppose AB 57 unless it is significantly amended. AB 57, if passed in its current form, will gut more than 200 years of Police and Fire Commission disciplinary decisions for police officers charged with misconduct.

Assembly Bill 57 allows police officers and firefighters to appeal Police and Fire Commission (PFC) disciplinary decisions by seeking arbitration pursuant to a mandatory collective bargaining agreement imposed on municipalities. Currently officers can appeal a PFC decision through a circuit court proceeding.

This bill, as written, undermines a police chief's authority to deal with a bad officer, however rare the occurrence. A police chief could be put in an untenable situation of having to accept the return of a rogue police officer who has "arbitrarily" had an arbiter reverse a PFC decision. The chiefs recognize that Rep. Bies believes some "good officers" are unfairly disciplined by PFC's who he views as "too political." If that is the case, why not look at the PFC process itself or the appointment process to the PFC? Removing a system that has kept our police departments connected to the communities they serve for two centuries makes no sense.

This legislation in its current form will cripple the authority of a police chief to remove a bad officer from their Department. Police chiefs are ultimately responsible for the police officers who serve the department and their communities. This is a serious flaw in AB 57 as currently written.

The Wisconsin Chiefs of Police Association wishes to work with Rep. Bies and others to remedy problems with the current system without gutting aspects that work well in many communities. The chiefs believe Wisconsin has among the finest police officers in the country and the majority of officers never come before a PFC. However, the reality is that law enforcement officers are held to a higher standard than other city employees. When someone puts on a police uniform, they hold power, authority and public trust.

We believe more conversations are needed to find an acceptable remedy to problems Rep. Bies says exist. If need be, we recommend a Legislative Council Study Committee. A study committee could develop well thought out policy considerations that are not solved or addressed by AB 57. No policy should undermine the police chiefs overarching responsibility to the communities they serve and the officers under their supervision.

8 March 2007

Page 2

Issues that need to be addressed include:

1. What in the current system needs fixing? What and where is the problem? What works and doesn't work?
2. Is there a way to remove the "politics" from the appointment process? Should someone other than the Mayor appoint members to a PFC? If so, who? What criteria should be used to select specific members willing to serve?
4. Is there a problem with the current structure of PFC? If so, how should the structure be changed? Should the current PFC system of discipline be scrapped completely? If so, what system should be put in its place?
5. What are the cost implications to create a different kind of discipline oversight system for police officers? What would that system look like?
6. If adopted, should arbitration decisions, like PFC decisions, be required to adhere to a "community standard?"
7. What is the best, unbiased way to deal with appropriate discipline for rouge officers?
8. Under what authority should a Police Chief be able to remove a "bad" officer from his or her department?
9. Should disciplined police officers be the only group of city employees given a "second kick at the cat" outside the circuit court process? Should other city employees be given similar options?
10. Should the Attorney General's office provide more legal support for PFCs if there is adequate evidence they aren't working?

Under AB 57, the PFC's disciplinary decision and authority would become meaningless. Police chiefs authority would be undermined as well. We urge Rep. Bies and members of this committee not to move this bill forward in its current form. We also urge support for removal of the language that is currently in the Governor's proposed budget bill. Thank you in advance for your consideration.

AOC:ssf:cen
070053/Bies mm



March 8, 2007
Statement of Scott Herrick to the Assembly Committee on Corrections and the Courts
Re. Assembly Bill 57: *Opposing*

I am a lawyer in private practice, a former member and president of the Madison Board of Police and Fire Commissioners, and I have acted for several years as its special counsel. From time to time I have represented other PFC's around the state in disciplinary hearings, 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.

Please do not be dismayed by the bulk of my submission; most of that material is reference copies of my testimony and comments from previous sessions. I will do my lawyer's best to be concise today.

Some of you know that I am a strong advocate for Wisconsin's century-old tradition of a state-wide system of open citizen accountability for public safety personnel. Rather than review and defend that tradition today in broad terms, I will attempt to focus on a peculiarity of this bill which has puzzled me every session since the proposal surfaced more than a decade ago, right after the legislature adopted the Law Enforcement Officers Bill of Rights, which inserted the "Seven Standards of Just Cause" into our statute and modified the judicial appeal process substantially. To explain that peculiarity I must briefly review the current PFC process, and then show how this bill would change it. I have prepared the attached simple flow charts to aid in this explanation - - I call them "roadmaps to PFC Discipline." They are attached immediately following these comments.

Map 1 shows the three basic components of the current PFC discipline system, with references to the pertinent statutory provisions: complaints, at WS 62.13(5)(a) through (c); the PFC hearing process, including the "just cause" standards and salary protection until the PFC finishes, at WS 62.13((d) through (h); and judicial review, at WS 62.13(5)(i), supplemented by "certiorari" review under Wisconsin non-statutory or "common" law. Note that judicial review or intervention is available not only on appeal from a disciplinary decision, shown at the right of Map 1, but also at the early stages, beginning even before a hearing is convened, as shown along the bottom of the map, under the first two components. I always welcome with enthusiasm any opportunity to explain, advocate, and defend this system, but I will not do so here.

Map 2 shows the change which AB 57 proposes to make from the current PFC discipline system. This is where the peculiarity comes in. At each previous hearing on this subject in earlier sessions, and on many other occasions, advocates of this change make their case by criticizing - - attacking, really - - the fairness, competence, consistency, and general uprightness of PFC's generally, or more

often of a particular unnamed PFC in a certain horror story some years ago, where something terrible happened. *But this bill does absolutely nothing about PFC's.* That focal point of all the criticism, those biased, untrained, unpredictable citizens, is left completely alone by the bill.

Instead of changing the part of the system that is alleged to be the problem, the bill provides an extra, alternative appeal route, AFTER the PFC. Mind you, in 1994 the existing appeal process was tailored uniquely to the PFC context, and nobody I know of has raised any serious complaints about the consistent unfairness of our circuit courts, Court of Appeals, or Supreme Court in these matters, but for some unstated reason that's where the change is proposed. In my roadmap, the change appears down at the lower right corner - - I have crudely circled it. Everything else on Map 2 is identical to Map 1.

The obvious practical effect of this new pathway is that we would have two trials - - first a PFC trial, and then, instead of a true appeal, a new trial in front of an arbitrator. A do-over, a mulligan. A check of my files shows me that the most recent serious PFC disciplinary cases I have been involved in accumulated respectively 2731 pages of transcript and 130 exhibits over 26 hearing sessions; 946 pages of transcript over 9 sessions; 2051 pages over 17 sessions; 700 pages over 5 sessions; and 1006 pages over 5 sessions. With the salary meter running the whole time, of course. Now we would have our same PFC hearing, followed by a duplicative arbitration hearing: 2 for the price of 2.

Remember that the bill deals only with the *statutory appeal* process - - the bill kicks in at WS 62.13(5)(i) only. Our state courts have long recognized a parallel right of judicial review by common-law "certiorari," which by definition picks up matters and issues not covered by 62.13(5)(i) - - and believe me, there are many such matters and issues - - and so "cert" will remain in place. So we will have two hearings instead of one - - PFC plus arbitration - - and also judicial review in certiorari - - not to mention the side-trips to federal court that come up from time to time. And of course creative lawyers will seek ways to take the arbitration decision to court.

Municipalities, chiefs, unions, PFC's, and courts will be grappling with this oddity for years. Be warned: in legal matters, Rube Goldberg devices can cost real money.

Many folks do not understand that PFC's as constituted for the past century represent neither the municipal employer nor the officer. PFC's are not parties to collective bargaining agreements. PFC's are no more perfect than any other piece of our checked-and-balanced democracy, but they provide an independent, quasi-judicial citizen tribunal for discipline and for citizen complaints, and an

independent public voice. Leaving police and fire discipline to be worked out at the bargaining table between municipal labor-relations staff and unions would take us back a century or more to very risky contamination of our professional protective service by local political give and take all over the state.

Is it now time to re-examine the fundamental relationships among Wisconsin citizens, municipalities, elected officials, and our protective service officers? If so, that task should be undertaken with the respect, care, and intellectual honesty that our police officers, firefighters, and citizens deserve, and that honors our progressive tradition. It should be done by a blue-ribbon task force of the finest people in police and fire uniforms, the best legal experts, and the most dedicated citizens we can find. A Joint Legislative Council Special Study Committee was formed several years ago to address legislative issues affecting PFC's, but unfortunately that committee never held its first working session. Perhaps the time has come for a more effective and comprehensive effort.

But I ask you, please: Beware the dangers and costs of simple and superficial fixes illustrated by AB 57. Wisconsin PFC's are a proven component of our civic life. Act only with care and caution. If you perceive a problem, be sure the solution fits, and be sure it doesn't make things worse. Don't tinker with the PFC statute.

Roadmaps to PFC Discipline: Wis. Stats. 62.13, Police and fire departments

Map 1: Present Law

uniform statewide (non-Milwaukee) process; non-bargainable

Complaint

(5)(a) - (c)

may be filed by "aggrieved person," or Chief, or commissioner, or commission

PFC Hearing

(5)(d) - (h)

*convene within 30 days of complaint
"just cause" standards*

Judicial Review

(5)(i), "Appeal"

*just cause determined by circuit court judge
and
"Certiorari" (non-statutory)
legal issue not reached in "appeal"*

non-statutory, "common law" judicial supervision and review:

prohibition, injunction, mandamus, certiorari

Roadmaps to PFC Discipline: Wis. Stats. 62.13, Police and fire departments

Map 2: Proposed alternative appeal process (AB 57)

appeal process at WS 62.13(5)(i) would be subject to bargaining

Review

Complaint

(5)(a) - (c)

may be filed by "aggrieved person," or Chief, or commissioner, or commission

PFC Hearing

(5)(d) - (h)

convene within 30 days of complaint
"just cause" standards

disciplined officer chooses between present law
and bargained arbitration clause

Choice One, current law:

(5)(i), "Appeal"

just cause determined by circuit court judge
and

"Certiorari" (non-statutory)

legal issues not reached in "appeal"

or

Choice Two, AB 57:

Arbitration in lieu of (5)(i);

judicial "certiorari" remains for non-(5)(i)
matters

non-statutory, "common law" judicial supervision and review:

prohibition, injunction, mandamus, certiorari





OREGON POLICE DEPARTMENT

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VILLAGE OF OREGON
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DOUGLAS H. PETTIT
Chief of Police

Testimony Assembly Bill 57 – Disciplinary Procedures for Police Officers/Fire Fighters

Assembly Committee on Courts and Corrections

March 8, 2007 – 9:30 a.m.

Good Morning. My name is Doug Pettit. Thank you for the opportunity to provide testimony this morning related to Assembly Bill 57. First let me take just a minute to provide you with a little background about myself. Perhaps it will provide you with some insight into why I have chosen to appear today and express the concern that the Wisconsin Chiefs of Police Association has with this particular Legislative Proposal.

I have served as a police officer for the past thirty two years with the Oregon Police Department. I have served as the Chief of Police for the past twenty two years. My tenure as a Police Chief is outside the norm for police chiefs nationally and within the state. I have had a long professional association with the Wisconsin Chiefs of Police Association. I'm a past President for the Association. I have served on the Wisconsin Chiefs of Police Association's Legislative Committee for the past 20 years serving as the Committee's Chairperson for the past 10 years.

Additionally, I'm a life member of the International Association of Chiefs of Police and serve on that Association's Executive Committee and Legislative Committee.

The Wisconsin Chiefs of Police Association is opposed to Assembly Bill 57. Our association has opposed similar proposed legislation each time that it has been brought before the legislature for consideration.

If this bill was to become law it would remove a statutory process which has existed for over one hundred years. This statutory process has permitted municipalities the ability to use a community standard when making decisions related to what is or what is not acceptable conduct for its police officers and fire fighters.

When candidates are hired for the position of police officer with a police agency, they voluntarily swear to uphold the laws of the United States, the State of Wisconsin, and the municipality for which they serve. Additionally, they swear to abide by the Code of Ethics and the Code of Conduct of our profession. For the most part the men and women who serve our citizens and their communities do it with integrity, dedication to the job, and are above reproach. As with any profession, we have a few that slip through the cracks and fail their co-workers, departments, and communities who have put so much trust in them. Their misconduct rises to a level where additional counseling, training,

and warnings are no longer the proper remedy to protect the department and citizens who they swore to serve.

It is those times where we need a system in place that provides the Police Chief with appropriate options based on that community's standard to effectively deal with the bad police officer (that rouge officer) who should have never be allowed to wear the badge. This is exactly where the Police and Fire Commission System has served our communities well for over 100 years and has provided a system which restores the level of trust that we need from our citizens to effectively do our jobs. This bill throws out the process spelled out in State Statute 62.13 with the bath water.

I would like to point out a couple of examples where I feel a State Appointed Arbitrator would not have the same sense of what the community standard is when rendering a decision as a citizen board representing the community based on that standard. It is not their fault because they don't live in the community, and they are simply hired to render a decision. Upon making the decision, they leave the community and are not affected by or have to live with the decision that they have made regardless of how it might affect the community and the department.

My first hypothetical example is where a police chief discovers that a police officer during the course his/her employment has been untruthful during the course of his or her duties. After going

through the due process steps articulated in State Statute 62.13, the police chief files charges with the police commission to terminate the officer's employment. After holding a hearing where the officer, the police department, and Police Commission are represented by attorneys, the Police Commission sustains the charges, and the officer is discharged. Under the current system the officer and the union who represented him/her can appeal the Commission decision to Circuit Court who then reviews the process to determine if all of the proper procedures have been followed and there was fair representation. Under this proposed legislation the officer and union representation can appeal the decision to an arbitrator not just to have the arbitrator decide if proper procedures have been followed but to retry the entire disciplinary case and have all the evidence presented all over again, thus doubling the expense for disciplinary cases for municipalities throughout the state.

I have heard supporters of this proposed legislation stating the reason that this proposed process is fairer than the current system is because the officer may not have been able to present their complete case at the Commission Hearing. My response to that is shame on the union representation of the officer. As I previously stated, all parties have legal representation. I would suspect if the officer was not able to get all of the information into the Police and Fire Commission Hearing that it was because he/she was poorly represented, and this will not be fixed under this proposal. I would

also suggest that the information was not permitted into the Commission Hearing because of the rules of evidence are in play during the course of the proceeding. A Police and Fire Commission hearing must follow proper rules of evidence the same as our Judicial System.

So to finish my first example allow me to suggest after the appeal that the State Arbitrator reverses the Police Commission ruling and returns the officer back to the police department. Can anyone answer the question now what? If the officer is dismissed for being untruthful and even if an arbitrator determines that being untruthful is not a sufficient reason to be terminated, the department is now in a no win situation. At that point the officer is damaged goods, and if a defense attorney discovers in a future case that the officer was disciplined for being untruthful, the officer's credibility comes into question on any future court case. If the court agrees with a defense argument that the officer has no standing in the court because of his/her untruthfulness, then what duties is a police chief to assign that officer where they will never have to testify in court. I don't believe that reasonable accommodations can be made.

I have personally heard of arbitrator's rulings that shocked the consensus of a community by putting officers back on the job for similar violations of work rules. It has been my experience that the other police officers in the department do not want bad officers

returning to the job because they feel that by virtue of association with the affected officer that they may be viewed differently by the public and tainted by that officer's action, and as I stated before, the other officers understand their obligations related to the Law Enforcement Code of Ethics and the Code of Conduct. Anytime a police officer does something wrong and that wrong doing is highlighted by the media it affects us all, and each time it erodes the public's trust a little more.

My second example would be a Police Chief uncovers a police officer using illegal drugs off duty, which is a violation of a state law that the police officer has sworn to uphold. An arbitrator puts the police officer back to work after we go through the entire process which I discussed earlier. We have now by virtue of that ruling included police officers into the same employee category as a waste water treatment plant operator for disciplinary procedures. A waste water treatment plant operator is not held to the same community standard as a police officer by society, by the media, or by the public in general, nor should they be. As soon as we have decided it is okay to allow police officers to violate the very laws that they have taken an oath to uphold, then we have lost something as a society. During the Jockos Drug Investigation case involving members of the Madison Fire Department, the case was presented by attorneys representing the various fire fighters that the offense was not a case for termination if the fire fighters did

not use the cocaine on the job. Every morning that I read the paper, I wonder how we got to this place in the discussion where people were debating if it is okay for fire fighters to use an illegal drug off duty just so long as they were not using it on duty. I thought to myself when did this happen, when did we make a consensus decision that Fire Fighters are no longer held to the higher standard of public trust. My fear is that this proposed legislation will start us down that slippery slope.

I would also suggest if we are ready and willing to decide that police officers and fire fighters should be treated the same as any other public employee for review of discipline and you are prepared to take away an effective tool from police and fire chiefs to address bad officers, then it is fair to hold police and fire chiefs feet to the fire when an officer does something that shocks the public and the media reports it differently and with much more enthusiasm than when other public employees do something wrong. I think we all know why police officers misdeeds make the headlines while other public employee's misdeeds go completely unreported. It is because the media recognizes that police officers do hold that public trust, and with that they should be held to a higher standard.

I have also heard it stated by supporters of this proposed legislation that this proposal will not affect current labor agreements because the provision to allow the option to appeal to an arbitrator vs.

circuit court must be added to the labor agreement and only if the municipality agrees can it make its way into the labor agreement. Nothing could be further from the truth. It is the opinion of many very competent labor attorneys in the state that this issue would be a mandatory subject to bargaining. When the municipal labor agreement is negotiated upon expiration, this means that this provision would be a mandatory subject of bargaining between the parties. So in essence a state arbitrator would be rendering a decision whether a provision should be added to the labor agreement allowing disciplinary decisions rendered by Police and Fire Commission to be appealed to another state arbitrator or even perhaps that same arbitrator in the future. This is the old preverbal the fox watching the hen house scenario and a loss for the municipality. If the union representatives truly believe that this legislative proposal would only lead to a permissive subject of bargaining, then they clearly would not object to this bill being amended to include clear language articulating that this is a permissive subject to bargaining.

Lastly, I would like to ask what is broke with the current process. I have always been of the mind set that if it is not broke don't try to fix it, this system is not broke.

One additional thing that I have heard is the process is too political. The Police and Fire Commission Members are appointed by local politicians, and virtue of that process the commission is

not a true independent community review body. Well let me suggest neither are State Arbitrators. They are selected by the WERC Governing Board which is appointed to their positions by politicians. No matter what the process or who appoints who, we can not take the human factor out of any disciplinary process. I'm here to dispel on overstatement that I have heard about the current Police and Fire Commission system which is that the Commission is a rubber stamp for the Police and Fire Chiefs. I know a large number of Police Chiefs who do not enjoy that type of relationship with their Commission, and as a matter of fact, in a lot of cases the opposite is true. If there is certain aspect of the current system which needs addressing, I would hope you have the foresight to form a special legislative committee to address those issues and not throw out a century old proven process.

I again want to thank you for the opportunity to speak with you today about this very important subject which is a very large concern of the Wisconsin Chiefs of Police Association membership throughout the state. I have spoken to many police chiefs throughout the state, and this proposed legislation is of paramount concern for them. The Wisconsin Police Chiefs Association welcomes the opportunity to work with sponsors of Assembly Bill 57 to find compromise in the best interest of the citizens of the state and the law enforcement community.

I encourage this committee to reject this proposed legislation and vote no to Assembly Bill 57.

I would be happy to answer any questions that the committee may have for me.





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NEW BERLIN FIRE DEPARTMENT

Chief Edward L. Dobernig

March 8, 2007

Wisconsin State Assembly Officers- Committee on Corrections and Courts

Gary Bies- Chair,
Dean Kaufert
Mark Gundrum
Joseph Parisi
Sheldon Wasserman
Donna Seidel

Phil Montgomery-Vice Chair
Carol Owens
Daniel LeMahieu
Mark Pocan
Sondy Pope-Roberts

RE: Assembly Bill 57 (LRB-0925) and Companion Senate Bill 21 regarding disciplinary procedures for local police officers and fire fighters

Dear Committee on Corrections and Courts Members:

As a Fire Chief with twenty-six years of Wisconsin fire service experience, I strongly oppose Assembly Bill 57 and relating language in the Governor's Budget Bill. During my extensive career as a union fire fighter and as a chief officer, I have had the experience of working with two Police and Fire Commissions. I have found the decisions made by these citizens' boards fair, logical and in the best interest of the community and the protective service, based on Wisconsin Statutes Section 62.13 and particularly the "Seven Steps of Just Cause." Allowing the use of third party arbitrators' to circumvent a proven honest system, illustrates the power of strong protective service unions and their relationship with arbitrators.

Wisconsin is blessed with a proven and unbiased process for the balancing the needs of the community with the rights of our local protective service employees. Assembly Bill 57 erodes a progressive impartial system that is in the finest traditions of Wisconsin; the Police and Fire Commission. I believe I have done my duty over the past twenty-six years and have today by informing you of my position on this issue.

Sincerely


Edward L. Dobernig, Fire Chief

Cc. Mary Lazich, Wisconsin State Senator

Attention: **Gary Bles**

Date: 3/8/2007

Company: Wisconsin State Assembly

Number of Pages: 2

Fax Number: 1-608-282-3601

Voice Number:

From: **Chief Edward Dobernig**

Company: City of New Berlin Fire Dept.

Fax Number: 262-785-6133

Voice Number: 262-785-6120

Subject: Public Hearing March 8, 2007, Assembly Bill 57

Comments:

Dear Assembly Committee on Corrections and Courts Members,

Unfortunately I am not able to attend your hearing on this issue. I must be on duty protecting my community. Please view the attached document regarding my opposition to this legislation. Thank you for your consideration.

Sincerely,

Edward Dobernig, Fire Chief
City of New Berlin, Wisconsin