

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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**INFORMATION COLLECTED BY COMMITTEE  
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\*\* **07hr\_ab0308\_AC-CC\_pt01**

➤ Miscellaneous ... Misc  
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# SEN. SPENCER COGGS

SENATE DISTRICT 6

State Capitol  
Room 123-South

Toll-free: 877-474-2000  
Madison: (608) 266-2500

Wednesday, May 9, 2007

News Release  
For Immediate Release

AB 308  
File

## Sen. Coggs responds to MPA on Police Pay Bill

I was greatly disappointed to see recent statements from the Milwaukee Police Association (MPA) regarding the Fired/NoPay bill introduced by Rep. Toles and myself to end the multi-million dollar rip-off of taxpayer's dollars in the City of Milwaukee.

It is beyond my comprehension that the union should want to continue pay and benefits for police officers who've been charged with a serious crime and subsequently fired.

I strongly disagree with the union's statement on Monday, starting with the headline on the news release that indicates the MPA is agreeing to "Concessions." There is no "give" in their concessions, only "take."

To be clear: The history of this legislation shows that the MPA has reneged on its agreement to work towards eliminating the "Fired with Pay" practice. We have sought to end pay and benefits for police officers charged with misdemeanors and felonies, the MPA has "conceded" to offering a loss of pay and benefits for felons only.

Perhaps the union does not remember the misdemeanor charges in the past brought against Milwaukee police officers. They include: Battery; Resisting/Obstructing an Officer; Hit and Run of an Occupied Vehicle; Endangering Safety by Use of a Weapon; Violation of Harassment/Domestic Abuse Injunction; Criminal Damage to Property; 4<sup>th</sup> Degree Sexual Assault; and Aiding/Encouraging a Parolee to Violate Parole.

I agree with Mayor Tom Barrett's statement that cops should not draw pay and benefits if they are charged with either felonies or serious misdemeanors. The cost is scandalous in both dollars and the police department's integrity. These cases can run for years. More than **\$3 million** has been paid to fired officers since 1990, and this happens only in the City of Milwaukee, nowhere else in the state.

Another of MPA's fictitious "concessions" published in the media would insert arbitration into the process of disciplining officers. We already have such a process. It's called the Fire and Police Commission (FPC), a citizen panel that weighs disciplinary actions. Sending these kinds of cases to arbitration would be a step backwards, and once again single out the Milwaukee Police Department for policies and privileges that exist nowhere else in the state, except Milwaukee.

Finally, one local elected official asserted yesterday that our Fired No/Pay "may" not move forward. Those with experience with the legislative process know better. The two-year session of the Legislature has just begun. The bill was introduced only yesterday. I find it curious that we are just getting started and the MPA is already holding a news conference. Keep in mind that the "spoils" MPA seeks would require legislation, too.

> Stop posturing and get to work. <

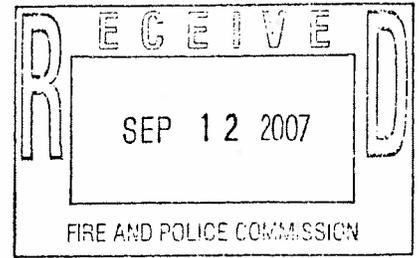
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September 12, 2007

HAND DELIVERED

Mr. David Heard  
Executive Director  
Board of Fire and Police Commissioners  
200 East Wells Street, Suite 706  
Milwaukee, WI 53202



Dear Mr. Heard:

Please take notice that I hereby appeal from Personnel Order # [REDACTED] of the Chief of Police of the Milwaukee Police Department, dismissing me from service. Said Order was made on the 7<sup>th</sup> of September, 2007.

I have retained the law firm of Cermele & Associates, S.C., 6310 West Bluemound Road, Suite 200, Milwaukee, Wisconsin, 53213 to represent me, and would request that all further proceedings and communications in this matter be handled through my attorney.

I hereby waive my right set forth in §62.50(14), Stats., to a hearing on my appeal within 15 days. I do not waive any other rights, including my right to have the appeal heard within a reasonable amount of time. This waiver is based on the fact that 15 days is not enough time in which to complete the discovery, pretrial procedures and other preparation needed to effectively represent me by my attorney.

Yours very truly,

[REDACTED SIGNATURE]

PeopleSoft Number [REDACTED]

Found In The  
AB 308  
Folder



## Comparison of 2007 AB 308 and MPA Positions

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

## Comparison of 2007 AB 308 and MPA Positions

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





## Memorandum

To: Members, Assembly Corrections and the Courts Committee  
From: Rep. Garey Bies, Chair  
Date: November 30, 2007  
Re: Assembly Bill 308

Attached to this memo please find a copy of a substitute amendment to AB 308 which will receive both a public hearing and executive action on Tuesday, December 4<sup>th</sup>.

*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





**WILLIE L. HINES, JR.**



**COMMON COUNCIL PRESIDENT**  
ALDERMAN, 15TH DISTRICT

December 3, 2007

State Assembly Committee on Corrections and Courts  
Wisconsin State Legislature  
225 Northwest  
Madison, Wisconsin

Dear Honorable Committee Members,

I am writing to formally and respectfully request that you reject the substitute proposal to Assembly Bill 308. Like other municipalities around the state of Wisconsin, Milwaukee faces significant financial restraints. We cannot afford to pay terminated police officers and divert pay from those who would serve our city with honor and dignity.

We are entering a new season of crime fighting in Milwaukee. We have a new chief, Edward Flynn, and our local elected officials have banded together in support of him as our leader in law enforcement. I urge you to give Chief Flynn – and all future chiefs – the authority to terminate his own officers, with the full power that any termination should entail.

The citizens of Milwaukee, as well as citizens around the State of Wisconsin, recognize that our current system does not adequately empower the position of Chief of Police, nor does it responsibly address the fiscal investment of our taxpayers.

Please reject the substitute proposal to AB 308 and preserve the integrity of the original legislation. Thank you for your consideration.

Sincerely,

Willie L. Hines Jr.  
Common Council President  
Alderman for the 15<sup>th</sup> District

Cc: Mayor Tom Barrett  
Chief Edward Flynn  
Common Council members



# Milwaukee POLICE Association

Local #21 IUPA-AFL-CIO



OFFICE: 6310 WEST BLUEMOUND ROAD, MILWAUKEE, WI 53213  
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Mark D. Buetow  
Christopher A. Moews

Daniel J. Halbur  
Sebastian C.J. Raclaw

Office Secretaries: Debra Schneider, Candy Johnson

December 3, 2007

Dear State Representative:

I am here today regarding the proposed legislation by Representative Barbara Toles that affects the pay for fired Milwaukee Police Officers, AB 308. Representative Toles' bill would change the current Section 62.50, Wis. Stats, which covers Milwaukee Police Officers. This proposed legislation, while well intentioned, harms all hard working police officers and their families, in addition to those that it intends to target.

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

In March of 1985 a case that deals with this very issue was decided by the U.S. Supreme Court. In that case, Justice Marshall wrote a dissenting opinion that echoes true today. I ask that you read his opinion as part of your deliberation on ~~AB-308~~.

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

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

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

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

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

2. **There should only be an adjournment (of the Fire & Police Commission hearing) “for cause”.**

No “mandatory adjournment” is necessary.

3. **Fire & Police Commission trials should be held between 60 and 120 days after the complaint is filed.**

This benefits the community by shortening the time for appeals to run their course, and makes it consistent with other forums (i.e., Circuit Court, etc.)

4. **The number of FPC Commissioners be expanded from 5 to 7 (with a quorum remaining at 3 for disciplinary purposes).**

This decreases each Commissioner’s work load, which will in turn shorten the time for the appeal to run its course. It will allow the FPC to focus more on citizen complaints and “big picture” matters such as hiring practices/standards, etc.

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

This would allow arbitration for all discipline other than those where the officer is also charged with a crime, bound over for trial and is discharged for the same acts which constituted the criminal charge.

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

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

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

6. **The Chief of Police would provide all exculpatory evidence, as well as all evidence relied upon in the determination of guilt and discipline, at the time the Officer is served with disciplinary charges.**

This would be necessary to speed up the entire process.

These are significant changes to the current legislation.

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

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

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

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

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

Sincerely,

MILWAUKEE POLICE ASSOCIATION



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

JAB/cmj





**TESTIMONY OF STATE REPRESENTATIVE  
BARBARA TOLES**

In favor of Assembly Bill 308 – Police Pay After Termination

Assembly Committee on Corrections and Courts  
December 4, 2007

Good morning Chairman Bies and members of the committee. I would like to thank you for holding this public hearing on Assembly Bill 308 and for allowing me to speak in favor.

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

However, the law also has a provision that grants payment of a 1<sup>st</sup> class city police officer’s salary after discharge, pending the outcome of an appeal. Milwaukee is the only 1<sup>st</sup> class city in Wisconsin, hence making Milwaukee police officers the only officers in the state eligible for this benefit. Milwaukee fire fighters and other public safety personnel are excluded. AB 308 would end this practice, and provide the taxpayers in Milwaukee needed relief. Currently, the tax dollars of hard working Milwaukee residents are being paid to officers after they have been fired for just cause. Milwaukee Mayor Tom Barrett supports this legislation.

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

Perhaps the most well-known case involving fired officers concerns the severe beating of Frank Jude, Jr. in 2004. Three officers who were convicted in that case were sentenced in federal court last week. One received 17 years and three months in prison and the other two 15 years 8 months. According to city records, it is estimated that those three officers alone cost the city just under half a million dollars in pay and benefits while they appealed their firings.

In 2005, officer Jon Bartlett, who was fired in the Jude beating case, was arrested for allegedly calling in a bomb threat to the 7<sup>th</sup> District Police Station where he worked. In February, 2006, within a one-week span, three Milwaukee officers were criminally charged with committing felonies. One officer was charged with taking bribes, another was charged with drug trafficking, and the third was charged with several sex crimes. That officer, Steven Lelinski, was charged with four felonies, including second degree sexual assault and attempted second degree sexual assault, and misdemeanor lewd and lascivious behavior. After the charges, Lelinski was immediately removed from the state Law Enforcement Standards Board by the governor, and was removed from the Milwaukee Police Association Executive Board. However, the City of Milwaukee could not remove him from the payroll because of state law. He is currently serving a prison sentence of 21 years nine months.

Other examples of officer misconduct that led to termination include:

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

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

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

The Milwaukee Police Association, the union that represents police officers, wants to limit this legislation to those officers who have been fired for committing felonies. However, misdemeanors are not minor violations of the rules – they are criminal offenses. Milwaukee police officers have been fired for committing misdemeanors such as witness intimidation and exposing their genitals to children, and continued to be paid while they appealed. Other officers have been fired for things such as: shooting someone, leaving the scene, and not calling for help; striking a handcuffed prisoner; being in a nightclub while on duty and failing to investigate a crime; filing a false report of a back injury; battery – domestic violence; battery to a prisoner; and bail jumping. The MPA wants officers who are fired for committing misdemeanors and rule violations to continue being paid. They will argue that an officer who is fired for a rule violation is different from an officer who commits a felony. The problem with this argument is, in the real world, employees who violate standard workplace rules such as falsifying reports, accumulating excessive hours of unexcused or unapproved absences, or lying to supervisors can expect to be terminated. After they are fired, their pay stops!

The practice of paying fired police officers while they appeal provides an incentive for officers to file frivolous appeals and drag out the process as long as possible. Since 1990, almost half the fired officers who initially appealed their terminations either resigned or retired before their cases came to trial. Even the President of the Milwaukee Police Association acknowledged that current law creates an opportunity for the system to be manipulated. Under the bill, if an officer is terminated, appeals, and wins the appeal, he or she would be entitled to back pay and have his or her position reinstated.

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

AB 308 addresses that problem by setting a more realistic time frame for trials to be scheduled as part of the appeals process, giving both sides adequate time to prepare, and cutting down on the number of adjournments. Under current law, adjournments are granted automatically, giving officers an incentive to ask for one simply to delay the onset of the trial. AB 308 requires that either party must give a reason when requesting an adjournment. This is the same standard used in all other courts and jurisdictions in Wisconsin.

Voting in favor of my version of AB 308 is the right thing to do because I am here advocating for changes that will help provide relief to the taxpayers of Milwaukee and allow us to use the money we are currently paying fired officers to hire additional officers to work to combat crime in our city, and free up funds for other needed city services.

Voting in favor of the substitute amendment is the wrong thing to do because the police union is here advocating on behalf of its membership to make changes simply because they don't like the way some things are handled within the Milwaukee Police Department, Internal Affairs in particular. It wants to retain this benefit of paying officers after they have been fired, which has been abused by the membership and proven to be extremely costly to Milwaukee taxpayers.

I am asking for your help today on behalf of Milwaukee taxpayers. I urge you to support Assembly Bill 308, and I thank you for your time this morning.



**Palkowski, Jeff**

**From:** Joseph / Carolyn Knitter [firecop@wi.rr.com]  
**Sent:** Thursday, December 06, 2007 4:29 PM  
**To:** Sen.Plale; Rep.Honadel  
**Subject:** Milwaukee Police Termination Pay  
**Attachments:** Residency Decision.pdf

Gentlemen:

I hope things are well for the both of you. I have been following, very closely, the reports in the Journal-Sentinel regarding the activities of the Assembly and Senate concerning the issue of pay after termination for fired Milwaukee Police Officers. I felt compelled to share my wife's story with you. You may have seen it on Channel 12 back in September but, if not, I would like to provide you with some background.

First off, I have been a resident of South Milwaukee for the past 23 years and literally designed and built the house I live in near Blakewood School over 20 years ago. I have been a member of the South Milwaukee Fire Department for the same amount of time, rising to my current rank of Captain nearly 14 years ago. I have strong feelings about South Milwaukee and feel a great level of dedication and obligation to my community. In fact, I was offered the Fire Chief's position in the Village of Greendale back in January and turned the offer down with my desire to remain attached to South Milwaukee a strong factor in my decision.

Now my wife's story. We met nearly 12 years ago and married about 9 years ago. Since the day we met, we have enjoyed separate households and lifestyles. To the best of our knowledge, our somewhat unconventional and unorthodox lifestyle, as some see it, is becoming more common. My Wife, Carolyn, is a Police Sergeant for the City of Milwaukee, currently assigned to the Communications Division. Over 5 years ago, the Internal Affairs Division (IAD) of MPD responded to an "anonymous" complaint of my Wife's alleged violation of the City's residency requirements. I'll remind you that our living conditions have not changed one bit for the entire time we have know each other. IAD initiated an investigation that, after compiling over 455 hours of documented covert surveillance, interviews with neighbors, and other investigative techniques involving over 22 Detectives, Sergeants, Captains and other members of the Milwaukee Police Department, culminated in a termination order issued by then-Chief Nan Hegerty on July 7, 2007.

My Wife, now devastated by this order, came to her own defense and hired a local attorney to explain her side of the story which, by the way, was never requested by IAD. On September 12th, 2007, the City of Milwaukee Fire and Police Commission UNANIMOUSLY OVERTURNED Chief Hegerty's order and re-instated my Wife to her position. Had she been removed from the payroll as a result of Chief Hegerty's termination order that resulted from an absolutely terrible and incomplete investigation, our family would have had to endure a significant reduction in earnings at the hands of incompetent investigators.

I have attached the written decision of the Milwaukee Fire and Police Commission so you can see exactly what the Commission ruling said. By the way, the hearing on September 12th lasted for over 8½ hours, yet it only took the Commission 16 minutes to make their decision.

I implore you to carefully consider the wording of the bill. This case is absolute proof that a family could suffer significantly at the hands of a wrongful termination for a rule violation. You must remember that the residency requirement is a rule violation and not a crime.

Thank you for taking the time to hear our side of the story concerning this bill.

Please feel free to cal me at 414-588-6373 if you would like more information.

Joseph Knitter

12/7/2007

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

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**In the matter of the appeal of  
Police Sergeant  
CAROLINE KNITTER  
from**

**SUMMARY OF PROCEEDINGS,  
FINDINGS OF FACT  
AND DECISION**

**MPD Personnel Order Number 2007-162**

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**SUMMARY OF PROCEEDINGS**

A hearing was held on September 12, 2007 regarding this appeal before Commissioners Woody Welch, Richard Cox and Leonard Sobczak with Steven Fronk acting as Hearing Examiner on behalf of the Board. Appellant Caroline Knitter appeared in person and by Attorney John Fuchs. Chief of Police Nannette Hegerty appeared by Assistant City Attorney Michael Tobin, Police Sergeant David Arnold and Deputy Inspector Mary Hoerig. The appeal was from Personnel Order No. 2007-162 discharging Police Sergeant Caroline Knitter for allegedly violating Milwaukee Police Department Rule 4, Section 2/040.00 by failing to reside in the City of Milwaukee. Prior to taking testimony on the merits Attorney Fuchs moved to dismiss the proceedings, claiming that pursuant to City Charter 5-02 only the Fire and Police Commission (*not the Chief of Police*) had the authority to determine the residence of a police department employee and the responsibility to administer, interpret and enforce the Charter section concerning residency. The Board denied the motion.

**Testimony of Police Sergeant David Arnold:** Arnold testified at length regarding an investigation as to whether or not Sergeant Caroline Knitter resided in the City of Milwaukee as required by MPD Rule 4, Section 2/040.00. The investigation began with the Professional Performance Division (PPD) doing a basic background check of documentation in 2003 and continued intermittently thereafter for more than

four years, into 2007. Surveillance was conducted on several dates during the periods of January-April 2004, May-June 2005 and January-February 2006. On a number of occasions Sergeant Knitter was observed arriving at and leaving either her reported City of Milwaukee residence or her husband's reported City of South Milwaukee residence. Most of the observations, according to Sergeant Arnold, were at or near the South Milwaukee home. Two different automobiles and two motorcycles which were registered in her name were seen on a number of occasions at or near one or the other location with the majority of the observations, according to Sergeant Arnold, being made in South Milwaukee. On cross-examination Arnold was shown two photographs - one of Caroline Knitter's auto and one of an auto belonging to a person who lived very near the South Milwaukee address who owned an auto of the same make, model, year and color. Arnold could not tell them apart, and conceded that surveillance often failed to specifically identify Caroline Knitter as the driver of the auto observed in the vicinity of the South Milwaukee home. On a number of occasions Caroline Knitter was observed leaving the Milwaukee residence mid-morning (presumably after spending the night) and proceeding in the direction of the South Milwaukee residence. She was listed on the a mortgage on the South Milwaukee home as a co-borrower, but was registered to vote and had voted more than once at the polling place for the Milwaukee address. She had never voted at the South Milwaukee address. At least one person who lived near the Milwaukee home said that Caroline Knitter was a neighbor with whom she had spoken on several occasions. People who lived near the South Milwaukee home also identified Caroline Knitter as a neighbor. Caroline Knitter rented her reported Milwaukee home from Sylvia Johnson, who retired from MPD as a detective in 2004. Despite the fact that Johnson was a sworn employee when the investigation began, it was not until late in the investigation that anyone from PPD interviewed Johnson. She told them, when interviewed, that Caroline Knitter definitely lived at the Milwaukee address.

**Testimony of Attorney John Talsky:** As legal counsel for Pyramax Bank, Talsky had access to and had reviewed the file concerning the refinance of Joseph Knitter's South Milwaukee home. According to Talsky, the title report did not list Caroline Knitter as a co-owner even though she had signed as a co-borrower on the mortgage. The law in Wisconsin requires that a spouse sign the mortgage on any property listed as homestead even if it is the homestead of only one party. The fact that Caroline Knitter was listed on the mortgage could not lead one to infer that she resided there.

**Testimony of MPD Captain Gregory Moore:** Moore was familiar with Caroline Knitter due to the fact that they had both worked the same shift at the Administration Building and later at the Communications Division at District 3. Moore testified that he regularly saw Knitter arrive in civilian clothes and change into her uniform at work. Moore had no specific knowledge as to where she resided, but had on more than one occasion called her at her home in Milwaukee regarding work-related issues.

**Testimony of Bradley DeBraska:** As former president of the Milwaukee Police Association, DeBraska was familiar with the rules of the Milwaukee Police Department and specifically the rule requiring that a member reside in Milwaukee. Knitter contacted DeBraska in 2007 and explained her situation to him. DeBraska advised her to keep good records but gave her no further advice. It was DeBraska's opinion, based upon what Knitter had told him, that Knitter was in compliance with the rule requiring her to reside in Milwaukee.

**Testimony of Sylvia Johnson:** Johnson is a former MPD detective who owns the home where Caroline Knitter indicates she resides in Milwaukee. Johnson resided in the Milwaukee home until she retired in 2004 and testified that Knitter regularly slept there, kept clothing, food and furniture in the home, had her own phone line and computer, did all yard work, landscaping and maintenance. Knitter paid \$200 per month rent and split the utility bills with Johnson until Johnson moved out in late 2004. Once Knitter had the house to herself she paid all utilities in addition to paying \$200 per

month rent. Johnson testified that there was no doubt in her mind that Caroline Knitter resided in the home in Milwaukee, that PPD had not asked her prior to March 2006 about where Caroline Knitter resided, and that when asked she told PPD that Knitter definitely resided at the home in Milwaukee.

At the close of the Department's case Attorney Fuchs, on behalf of Appellant Knitter, made a motion to dismiss the charges and the Department's case claiming they had failed to put forth a *prima facie* case in support of their contention that Caroline Knitter failed to reside in the City of Milwaukee. The Board, after a period of deliberation, granted that motion.

**Findings of Fact re: Alleged Violation of MPD Rule 4, Section 2/040.00**

**(Failure to Reside in the City of Milwaukee)**

*Based upon testimony and evidence received, as to that charge contained in Order No. 2007-162,*

*The Board does hereby make the following Findings of Fact.*

1. Caroline Knitter, at all times pertinent hereto, was a member of the City of Milwaukee Police Department and bound by the rules, regulations and procedural requirements thereof.
2. The Department has failed to provide sufficient evidence to show that Caroline Knitter could reasonably have been expected to have had knowledge of the probable consequences of the alleged conduct. The actual "conduct" in this case is, for the most part, not in dispute. Caroline Knitter rents a home in Milwaukee from Sylvia Johnson where she keeps a significant amount of personal property. It would appear from this record that she often sleeps there and performs yard and maintenance work as needed. Her husband, Joseph Knitter, owns a home and lives in South Milwaukee. Caroline keeps her motorcycle and at least some other personal property there, and occasionally spends the night and a portion of her off-duty time with her husband at the South Milwaukee home. She votes in Milwaukee, not in South Milwaukee. She belongs to a health club in Cudahy, as do a number of other Milwaukee Police Department members. There are actually very few disputed "facts" in this case, yet the conclusion that a reasonable person should draw from those facts is unclear.
3. MPD Rule 4, Section 2/040.00 which requires Police Department members to reside in the City of Milwaukee is reasonable. Current law allows municipalities to require that employees reside within that municipality. MPD Rule 4, Section 2/040.00 is in accord with the law and the City charter.

4. The effort to discover whether Caroline Knitter failed to reside in the City of Milwaukee, although giving the outward appearance of fairness and objectivity, was not reasonable. Sylvia Johnson, Knitter's roommate and landlord, was not interviewed until the latter stages of the investigation despite the fact that as a sworn Department member she could have been ordered to supply accurate responses. The interior of the 43<sup>rd</sup> Street premises was never, to the best of our knowledge, inspected by PPD to determine contents and habitability. The investigation itself went on far too long, with brief periods of investigation separated by lengthy periods of inactivity. This is not the way that a residency investigation should be conducted.
5. Chief of Police Nannette Hegerty or those acting on her behalf failed to discover substantial evidence that Caroline Knitter violated Rule 4, Section 2/040.00 as described in the complaint. The evidence, at best, is inconclusive. Knitter, in her response to charges, identified more than 30 specific points regarding the investigation summary with which she took issue and which she felt led to a less than complete and accurate of her living situation. We would concur.
6. Chief of Police Nannette Hegerty is applying Rule 4, Section 2/040.00 fairly and without discrimination. Police Department members have been discharged from the Department for violating this rule in the past. Despite the fact that we disagree with the conclusion drawn by the Chief, we see no indication that the Chief intended to treat Caroline Knitter any differently than any other department member who was believed to be in violation of the rule.

## DECISION

The record in this case shows that the Milwaukee Police Department Professional Performance Division reviewed real estate records, utility records and voting records, interviewed neighbors and property owners, and conducted surveillance sporadically for more than 3 years. Despite all of the time and effort put forth in this case, we find that the case presented to us is not persuasive. We will attempt to utilize those factors outlined in City Service Personnel Policy 87-4 in explaining just how we reached this conclusion.

The issue of where the employee's family resides is to be considered, but we do not consider it conclusive in and of itself. Caroline Knitter's husband Joseph Knitter resides in the South Milwaukee home which he built 20+ years ago. His children from a former marriage have continued on occasion to reside with him in that home even after he married Caroline Knitter. Joseph Knitter is a member of the South Milwaukee Fire Department and therefore works a non-typical work schedule with extended periods on and off duty. He shares custody of his children from the previous marriage. All of this leads us to believe that the family life of a couple such as Caroline and Joseph Knitter is, by necessity, what many would term "non-typical." Given these circumstances, we can infer very little about Caroline Knitter's residence from where her husband resides.

Tangible property is another consideration. The Department has presented evidence that, on occasion, cars and motorcycles belonging to Caroline Knitter are kept at the South Milwaukee home. We have also seen evidence that those same items are, on occasion, kept at the Milwaukee home. Testimony and evidence shows that the Milwaukee home is fully furnished, stocked with food, and that Caroline Knitter has furniture, a computer, exercise equipment, personal items, closets full of clothes and (at least on occasion) a dog at the Milwaukee

location. This evidence, if taken alone, would seem to lead one to infer that Caroline Knitter resides in Milwaukee but as previously indicated we view no single factor or inference as conclusive in cases such as this.

Receipt of correspondence is another issue. The only evidence we have to consider in this regard is that Caroline Knitter received mail at the Milwaukee address. What, if any correspondence she received at the South Milwaukee home of Joseph Knitter is unknown to us. There is little evidence and little insight to be gained from attempting to determine where Caroline Knitter receives correspondence.

Where does Caroline Knitter spend her off duty time? Surveillance in this case was conducted on 82 dates out of a possible 1000+ days over a period of 3 years while Caroline Knitter was being investigated, albeit sporadically. In most instances the surveillance consisted of observations which lasted only a few minutes before being terminated, apparently because of fears that the surveillance would be discovered. On a number of occasions Caroline Knitter was observed going to her husband's South Milwaukee home either at the end of her shift or in mid-morning after apparently spending the night at the Milwaukee home. On other occasions she was observed driving in the area of one or the other home or walking a dog near the South Milwaukee home. On some occasions her car or motorcycle was observed parked at one or the other location for an extended period of time. There is testimony in the record from Sylvia Johnson that, at least until Johnson moved out in 2004 and as best as Johnson can tell at this time, Caroline Knitter regularly sleeps, exercises, eats and does yard work at the Milwaukee home. The question of where Caroline Knitter spends most of her off-duty time cannot be accurately determined from this record.

The issue of what address Caroline Knitter lists on official documents is equally inconclusive. She is listed on the South Milwaukee mortgage as a co-

borrower but is not listed as a coinsured on the title insurance policy. Voting records have her at the Milwaukee address. The Department served her personally with the order of discharge in this case at the Milwaukee address. The evidence concerning where Caroline Knitter receives official documents is of little value in making a determination in this case.

Which of the two locations is more suitable in terms of aesthetics, habitability, comparative comfort, convenience and regular access? Both locations appear to be comfortable, well maintained single family homes. The Milwaukee home where Caroline Knitter claims she resides is somewhat larger and quite a bit closer to her work location. The South Milwaukee home where her husband resides has a larger lot and is closer to the health club where Caroline Knitter is said to spend a good portion of her off duty time.

Questions concerning where habitation is fixed without any present intent to move, where there is an intent to make a permanent domicile, and the comparison of owned versus rental property again leave any conclusion one might draw open to conjecture. Caroline Knitter married Joseph Knitter in 1999. She works what most people would call "second shift" while Mr. Knitter works the very long and irregular hours that are the norm for a fire department employee. Their schedules, in all likelihood, rarely mesh perfectly and when they do he often had his children from a prior marriage in his home. Comparing a rental situation to an "owned" home might lead one to assume that the rental property would be the less permanent and therefore less indicative of an intention to use as a permanent domicile, but in this case the evidence is much less compelling and certainly not convincing. There is no evidence in the record to indicate that prior to 1999 Caroline Knitter owned a home or that she "downgraded" her living situation by renting a place in Milwaukee after she married Joseph Knitter. Caroline Knitter currently has an entire home in

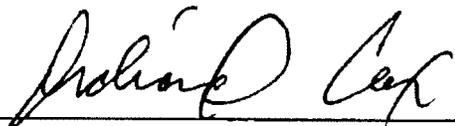
Milwaukee to herself, within minutes of her work location, with everything from furniture to food to exercise equipment and without anyone to interfere with her quiet enjoyment of her off time unless she so chooses. It is almost impossible in this case to determine where Caroline Knitter intends to remain for the foreseeable future, or what should be viewed as permanent versus transient.

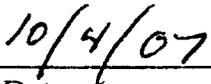
For all of these reasons we have determined that the record in this case is insufficient, even if viewed in a light most favorable to the department, to show that Caroline Knitter failed to reside in the City of Milwaukee.

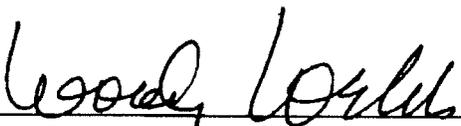
**The motion of Appellant to dismiss the charge of failure to reside in the City of Milwaukee is hereby granted. Police Sergeant Caroline Knitter shall be reinstated and allowed to return to work as soon as practicable.**

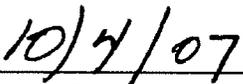
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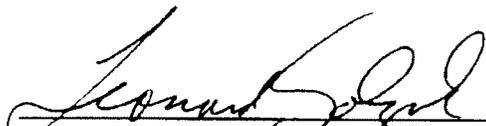
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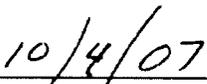
  
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Richard Cox, Commissioner

  
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Woody Welch, Commissioner

  
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Leonard Sobczak, Commissioner

  
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