

STATE OF WISCONSIN

CIRCUIT COURT  
BRANCH 31

MILWAUKEE COUNTY  
EGGERT & CERMELE, S.C.

MILWAUKEE POLICE ASSOCIATION,  
Local 21, IUPA, AFL-CIO  
Itself and on behalf of its Members, and  
MICHELLE GRUTZA,

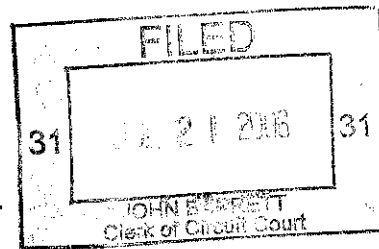
**COPY**

Plaintiffs,

Case No.: 06-CV-003254

v.

BOARD OF FIRE AND POLICE  
COMMISSIONERS for the CITY OF  
MILWAUKEE, and the CITY OF  
MILWAUKEE,



Defendants.

**DECISION**

STATEMENT OF THE CASE

Plaintiff Michelle Grutza ("Officer Grutza") attended a party at a fellow Milwaukee Police Officer's home on October 24, 2004. Officer Grutza was off-duty that night. That evening, Frankie Jude, Jr. ("Mr. Jude") was severely beaten; Officer Grutza did not physically contact him. The Milwaukee Police Department ("MPD") conducted an internal investigation regarding the incident. Chief Nannette Hegerty ("Chief") issued Order No. 2005-83 on May 23, 2005, terminating Officer Grutza for failing to prevent the injuries suffered by Mr. Jude. The Chief terminated Officer Grutza for: 1) Failure to Take Action to Preserve Public Peace and Protect Life and Property; and 2) Gross Neglect of Duty.

At about the same time, the Chief alleged the same charges against MPD Officer Bradley Blum ("Officer Blum"), who was off-duty and present at the party on October 24, 2004. Officer Blum was also terminated.

Officers Grutza and Blum filed appeals alleging the Chief lacked "just cause" as required by Wis. Stat. § 62.50(17)(b), but the Board of Fire and Police Commissioners ("Board") sustained the charges against Officer Blum on January 25, 2006. Before hearing Officer Grutza's appeal, the Board determined that an unpaid suspension was more appropriate than termination for Officer Blum, and imposed a 60-day suspension on him for *each* of the two counts to be served consecutively. The Board cited § 62.50(17)(a) as the source of its power to issue such a suspension.

The Chief offered to settle the claim against Officer Grutza on January 1, 2006, if she accepted the same disciplinary penalty as Officer Blum. Officer Grutza did not agree to that settlement because the Board had not issued a written decision at the time and she did not know whether the 60-day suspensions would be served concurrently or consecutively. Before the decision came out, the Chief and Officer Grutza agreed to a conditional settlement whereby the officer would receive the same disciplinary penalty as Officer Blum, but Officer Grutza could seek a declaratory judgment challenging the Board's interpretation of § 62.50(17)(a). In the February 1, 2006, hearing that was scheduled to decide Officer Grutza's appeal, Hearing Examiner Janine Geske made a record of the conditional settlement between Officer Grutza and the Board.

On February 4, 2006, the Board issued its written decision ordering Officer Blum to serve a 120-day suspension (consecutive 60-day suspensions for each count). The Board reasoned that it did not want to terminate Officer Blum, but it instead desired to impose the most severe discipline short of termination. Therefore, the Board interpreted § 62.50(17)(a) to give it the power to impose a 60-day suspension for *each* sustained charge against Officer Blum.

The Milwaukee Police Association, on behalf of Officer Grutza, brought this action to challenge the Board's interpretation of § 62.50(17)(a) and recover Officer Grutza's lost

compensation for the second 60-days in question. Officer Grutza filed for summary judgment and the Board filed a request for dismissal.

### STANDARD OF REVIEW

A justiciable controversy must exist between parties before this Court may issue a declaratory judgment. Wagner v. Milwaukee County Election Comm'n, 2003 WI 103, ¶ 8, 263 Wis. 2d 709, ¶ 8, 666 N.W.2d 816, ¶ 8. In Wagner, the court discussed that a justiciable controversy exists between two parties when: 1) a party has an interest in contesting a claim of right; 2) the parties' interests are adverse; 3) the claimant's interest can be legally protected; and 4) the issue is "ripe for judicial determination." Id. at ¶ 8. The four factors are used to ensure a court rules on an actual controversy and does not issue an advisory opinion; however, the purpose of a declaratory judgment is to provide certainty and security, so the court, by statute, must liberally construe § 806.04. Wis. Stat. § 806.04(12).

If the plain meaning of the statutory text is clear, the court does not look beyond the plain meaning of the text to find legislative intent. Hull v. State Farm Mut. Auto. Ins. Co., 222 Wis. 2d 627, 642, 586 N.W.2d 863, 869 (1998). A statute is not ambiguous simply because the parties disagree on its meaning. Bosco v. LIRC, 2004 WI 77, ¶ 24, 272 Wis. 2d 586, 681 N.W.2d 157. If the language is ambiguous, the court may look to extrinsic evidence to determine its meaning. Hull, 222 Wis. 2d at 642. The court may look at "the statute's purpose, context, scope and history to ascertain the intent of the legislature." Id.

## ANALYSIS

### DECLARATORY JUDGMENT

Officer Grutza seeks a declaratory judgment under § 806.04 determining the power of the Board to discipline police officers under § 62.50(17)(a). The Board contends that there exists no justiciable controversy between it and Officer Grutza, so a declaratory judgment is not proper. The Board does not address the second or third factors of the justiciable controversy test, but it does claim the first and fourth factors are not met. The Board claims it is not a party to this case because the agreement that determined the length of Officer Grutza's suspension was made between only the officer and the Chief, so it has no interest in contesting the claim of right. The Board claims no responsibility for Officer Grutza's suspension because it did not directly order the officer's suspension and was never given opportunity to rule on that suspension because Officer Grutza withdrew her appeal after negotiating a settlement with the Chief. The Board also claims this issue is not ripe for determination because it has no interest in contesting Officer Grutza's claim.

Officer Grutza responds that the Board has an interest in contesting this claim of right because the Court's interpretation of § 62.50(17)(a) will define the Board's power to discipline. While aware of the identical charges against the officers, the conditional settlement between the Chief and Officer Grutza, and the effect of its decision on Officer Grutza, the Board ruled on Officer Blum's case. (Pl.'s Ex. C at 3-4; Pl.'s Ex. B.) The Board clearly stated that it intended to suspend Officer Blum for the maximum allowable time under § 62.50(17)(a) and issued a 120-day suspension to accomplish that goal. (Pl.'s Ex. D at 11.) With Janine Geske as the hearing examiner, the Board was made aware of Officer Grutza's conditional settlement. In her examination, Hearing Examiner Geske made explicit reference to the details of Officer Grutza's agreement with the Chief. The details of that hearing provide strong evidence that the Board

knew Officer Grutza reserved her right to appeal to this Court the issue of whether or not the 60-day suspensions could be administered consecutively.

You understand that based on this agreement you (Officer Grutza) will receive from the Chief ultimately an order suspending you without pay for two 60-day penalties, the question of whether it's 120 days or 60 days can be argued by your lawyer.

(Pl.'s Ex. C at 7.)

Officer Grutza presents the more compelling argument because the Board issued an order in the companion case involving Officer Blum under § 62.50(17)(a), and the Board needs only to have an interest in contesting the claim made against it. The conditional settlement between Officer Grutza and the Chief established a direct relationship between the Board's decision regarding Officer Blum and Officer Grutza's disciplinary penalty. The charges brought against both Officers Blum and Grutza were identical and the Board ruled knowing that its decision would identically affect each officer.

The Board's interest in this case is so significant that a declaratory judgment from this Court would be far from an advisory opinion. Adjudication of this issue would provide specific answers and statutory interpretations for the benefit of all parties. An administrative agency, like the Board, is limited to the power the Wisconsin State Legislature ("legislature") grants to it. The source of the Board's judicial power to discipline Officers Blum and Grutza is found in § 62.50(17)(a), so it has a high interest in how this Court interprets § 62.50(17)(a).

The Board's claim of lack of ripeness for judicial determination is not applicable because the Board has an interest in contesting this lawsuit. The Board also argues the case should be dismissed because Officer Grutza did not include all parties with an interest in the case, namely the Chief. The Chief of Police has no interest in how this Court interprets § 62.50(17)(a) because, as the Board admits, that subsection pertains only to the Board's disciplinary power, whereas § 62.50(11) pertains to the Chief's disciplinary power.

This Court liberally construes the declaratory judgment statute as adverse interests between two parties regarding a legally protected right are present in this case. Therefore, a declaratory judgment is proper.

### STATUTORY INTERPRETATION

The issue in this case is whether the Board may discipline an officer who is “suspended without pay for a period not exceeding 60 days...” as stated in § 62.50(17)(a) for a maximum of 60 days for *all* sustained charges or for 60-day consecutive periods for *each* sustained charge.

Section 62.50(17)(a) reads as follows:

Within 3 days after hearing the matter the board shall, by a majority vote of its members and subject to par. (b), determine whether by a preponderance of the evidence the charges are sustained. If the board determines that the charges are sustained, the board shall at once determine whether the good of the service requires that the accused be permanently discharged or be suspended without pay for a period not exceeding 60 days or reduced in rank. If the charges are not sustained the accused shall be immediately reinstated in his or her former position, without prejudice. The decision and findings of the board shall be in writing and shall be filed, together with a transcript of the evidence, with the secretary of the board.

Wis. Stat. § 62.50(17)(a).

Officer Grutza reads this section to allow the Board to suspend an officer for up to 60 days if that officer is found guilty of all charges arising out of the same transaction or set of events. Officer Grutza contends both charges arose from the same transaction or set of events; thus, the 120-day suspension exceeds the disciplinary limits imposed on the Board by the legislature. The Board argues the word “charges” refers to a statement of complaint, citing Webster’s Dictionary. The Board also argues the two charges sustained against Officer Grutza are separate rule violations, so a 60-day suspension for each rule violation would be in order.

After reading § 62.50(17)(a) for its plain meaning, this Court holds that according to the statute, a police officer may “be permanently discharged or be suspended without pay for a period not exceeding 60 days or reduced in rank,” if the Board sustains charges that arise out of

the same transaction or set of events. The Board argues Officer Grutza failed to preserve the peace at the time Mr. Jude sustained injuries, then neglected her duty by not providing information to the on-duty police at the scene. Officer Grutza's failure to act on Mr. Jude's behalf is the transaction or set of events that led to both charges and her subsequent suspension.

By using the term “charges,” the Legislature expressly provides for the possibility that an officer could be charged with several counts arising out of a single transaction or set of events. Under § 62.50(17)(a), the Board may only take one of three disciplinary actions against an officer for charges that arise out of the same transaction or set of events, regardless of the number of rule violations, courts, or charges. Any other reading of the statute would be beyond the plain meaning of the language.<sup>1</sup>

The Board cites State ex rel. Smits v. City of De Pere to show a yearlong suspension is reasonable. State ex rel. Smits v. City of De Pere, 104 Wis. 2d 26, 310 N.W.2d 607 (1981). Smits relies on § 62.13(5) as the source for the Board’s power to issue such a suspension. Section 62.50(17)(a) applies specifically to “1st class cities” (cities with a population over 150,000 as defined by § 62.05(1)(a)), so the legislature has distinguished the disciplinary powers of cities’ Police and Fire Commission Boards based on population. Milwaukee is a “1st-class city” and its Board is governed by § 62.50, whereas De Pere is not a “1st class city” and its Board is governed by § 62.13, so the Smits case is not applicable to the case at bar.

The Board argues that a chief may issue several suspensions consecutively. In Parker, former Milwaukee Chief of Police Arthur Jones issued multiple consecutive suspensions against

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<sup>1</sup> For example, the Board could hypothetically sustain ten charges against an officer for one transaction or set of events and suspend a police officer without pay for almost two and half calendar years (600 work days at five work days per week). The plain meaning of the statute restricts the Board to termination, a maximum 60-day suspension, or a demotion for the totality of any charges sustained arising out of the same transaction or set of events. None of these disciplinary options is a light reprimand, and the idea of limiting the Board to suspending an officer for no more than 60 days, while also giving the options to demote or terminate, promotes a uniform application of the statute while keeping with its intent and purpose.

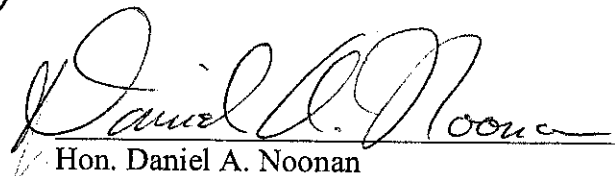
several police officers. See Parker v. Jones, 226 Wis. 2d 310, 595 N.W.2d 92 (1999). Each charge carried a suspension of less than five days, so Chief Jones argued the suspensions could not be appealed under § 62.50(13). The Parker court interpreted that the five-day rule in § 62.50(13) must be taken as an aggregate, effectively acquiescing to the idea that multiple suspensions could be served consecutively. Id. at 317, 595 N.W.2d at 95. Parker is distinguishable from the case at bar because Parker interpreted the meaning of § 62.50(13), not the meaning of § 62.50(17)(a). While a Chief of Police may issue several consecutive suspensions to an officer for separate “charges” under § 62.50(13), the Board is limited to a maximum 60-day suspension for *all* sustained “charges” arising out of the same transaction or set of events by § 62.50(17)(a).

### CONCLUSION AND ORDER

Based upon all the foregoing reasons, the Board’s motion to dismiss is DENIED and Officer Grutza’s motion for summary judgment is GRANTED. As required by § 62.50(22), Officer Grutza must be reinstated to her former position immediately and reimbursed for lost compensation if she has served more than 60 workdays of her suspension.

Dated this 21<sup>st</sup> day of July, 2006, at Milwaukee, Wisconsin.

BY THE COURT:

  
Hon. Daniel A. Noonan