

SUPREME COURT OF WISCONSIN

Pasko v. City of Milwaukee, 2002 WI 33, 252 Wis. 2d 1

643 N.W.2d 72 (2002) · No. 99-2355 · Decided April 24, 2002

SUMMARY

The Wisconsin Supreme Court held that claim preclusion did not bar the Milwaukee Police Association's mandamus action because the union was not in privity with the individual officers who brought an earlier action. The court further held that Wis. Stat. § 62.50(9), standing alone, did not impose a positive and plain duty to fill police alarm operator vacancies by promotion. The court remanded for factual determinations concerning the collective bargaining agreement, the existence of vacancies, and whether the vacancies constituted newly created offices.

CASE DETAILS

COURT	Supreme Court of Wisconsin
WRITING FOR THE COURT	William A. Bablitch
JURISDICTION	Wisconsin
DECIDED	April 24, 2002
DOCKET	99-2355
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The City and other defendants petitioned for review of a court of appeals decision holding that the Milwaukee Police Association's mandamus action was not barred by claim preclusion and that the Association was entitled to a writ compelling promotions.
STANDARD OF REVIEW	Questions of claim preclusion and statutory interpretation are reviewed de novo. The court also independently reviewed whether the mandamus prerequisites were established.
PRECEDENTIAL VALUE	Published Wisconsin Supreme Court opinion; precedential
PARTIES	Robert Pasko, Scott Warren, Michael Wolfram, Elizabeth Pridmore-Dahlke, Patrick LaBelle, Gertie Gilliam, Terese Ulickey, Henry Zimmerman, Anna Merhalski, Alfonso Salinas, Richard Thompson, Jean Docter, Charlene Guiliani, Harold Davis, David Granica, Audrey Warren, Mary Sikora, Linda Scholler, Joseph Suttle, Vicki Kakonis, Jeanne Sirna, Timothy Ridgway, Pamela Holmes, Milwaukee Police Association v. City of Milwaukee, Board of Fire and Police

Commissioners, City of Milwaukee, Milwaukee Employees' Retirement System and Annuity and Pension Board, Arthur Jones, in his official capacity as Milwaukee Police Chief

TOPICS

res judicata statutory interpretation civil procedure municipal law employment contracts

PRACTICE AREAS

civil procedure municipal law employment law labor law remedies

QUESTIONS PRESENTED

1. Whether the Milwaukee Police Association's mandamus action was barred by claim preclusion because individual union members had previously litigated related claims.
2. Whether Wis. Stat. § 62.50(9), standing alone, created a positive and plain duty requiring the City to fill police alarm operator vacancies by promotion as they occurred.
3. Whether the record established that the collective bargaining agreement, alone or in conjunction with Wis. Stat. § 62.50(9), required promotions and that qualifying vacancies existed.

HOLDINGS

1. Claim preclusion did not bar the Association's action because the Association was not in privity with the individual officers who brought the prior action, and applying preclusion would be unfair to the Association and its other members.
2. Wis. Stat. § 62.50(9) does not, standing alone, create a positive and plain duty requiring the City to fill police alarm operator vacancies by promotion as they occur.
3. The Association's entitlement to mandamus could not be determined on the existing record; remand was required to determine whether the collective bargaining agreement required promotions, whether vacancies existed, and whether those vacancies were newly created offices.

KEY QUOTATIONS

“In order for a writ of mandamus to be issued, four prerequisites must be satisfied: “(1) a clear legal right; (2) a positive and plain duty; (3) substantial damages; and (4) no other adequate remedy at law.”” (¶ 24)

“Thus, we conclude that the statute alone does not create a positive and plain duty for the chief to, as the MPA argues, fill these vacancies by promotion as they occur.” (¶ 29)

FACTUAL BACKGROUND

Milwaukee police officers were regularly assigned to perform police alarm operator duties while being paid at the lower police-officer rate and without promotion. After the officers obtained back pay under the collective bargaining agreement, the Milwaukee Police Association sought a writ of mandamus requiring the City to fill police alarm operator vacancies by promotion under Wis. Stat. § 62.50(9). The record did not establish whether

the collective bargaining agreement required such promotions, whether vacancies currently existed, or whether the vacancies were in newly created offices.

PROCEDURAL HISTORY

In the first action, individual police officers obtained summary judgment and back-pay relief on a collective-bargaining-agreement claim. They did not appeal dismissal of their statutory promotion claim. In the second action, the officers and the Milwaukee Police Association sought mandamus under Wis. Stat. § 62.50(9); the circuit court granted defendants summary judgment based on claim preclusion. The court of appeals reversed as to the Association and ordered a writ, and the Wisconsin Supreme Court reversed and remanded for further proceedings.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand to the circuit court to determine whether the collective bargaining agreement requires promotions to vacancies, whether police alarm operator vacancies currently exist, and whether those vacancies constitute newly created offices under Wis. Stat. § 62.50(9).

CASES CITED

- Pasko v. City of Milwaukee, 222 Wis. 2d 274, 588 N.W.2d 642 (Ct. App. 1998)
- Pasko v. City of Milwaukee, 2001 WI App 55, 241 Wis. 2d 226, 624 N.W.2d 859
- DePratt v. West Bend Mut. Ins. Co., 113 Wis. 2d 306, 334 N.W.2d 883 (1983)
- Northern States Power Co. v. Bugher, 189 Wis. 2d 541, 525 N.W.2d 723 (1995)
- Hart Steel Co. v. Railroad Supply Co., 244 U.S. 294, 298 (1917)
- Paige K.B. v. Steven G.B., 226 Wis. 2d 210, 594 N.W.2d 370 (1999)
- Alexopoulos v. Dakouras, 48 Wis. 2d 32, 179 N.W.2d 836 (1970)
- McCourt v. Algiers, 4 Wis. 2d 607, 91 N.W.2d 194 (1958)
- Richards v. Jefferson County, 517 U.S. 793, 795 (1996)
- F.P.R. v. J.M., 137 Wis. 2d 375, 404 N.W.2d 530 (1987)
- Desotelle v. Cont'l Cas. Co., 136 Wis. 2d 13, 400 N.W.2d 524 (Ct. App. 1986)
- Chad M.G. v. Kenneth J.Z., 194 Wis. 2d 689, 535 N.W.2d 97 (Ct. App. 1995)
- Amber J.F. v. Richard B., 205 Wis. 2d 510, 557 N.W.2d 84 (Ct. App. 1996)
- Chase Manhattan Bank, N.A. v. Celotex Corp., 56 F.3d 343, 346 (2d Cir. 1995)
- Abels v. Titan Int'l, Inc., 85 F. Supp. 2d 924, 933-35 (S.D. Iowa 2000)
- Patients Comp. Fund v. Lutheran Hosp.-LaCrosse, Inc., 223 Wis. 2d 439, 588 N.W.2d 35 (1999)
- Law Enforcement Standards Bd. v. Village of Lyndon Station, 101 Wis. 2d 472, 305 N.W.2d 89 (1981)
- State v. T.J. Int'l, Inc., 2001 WI 76, 244 Wis. 2d 481, 628 N.W.2d 774

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