

**WISCONSIN SUPREME COURT PERMITS POLICE CHIEFS AND  
POLICE AND FIRE COMMISSIONS TO DEMOTE SUPERVISORY  
EMPLOYEES ON PROBATIONARY STATUS WITHOUT  
REQUIRING A DUE PROCESS HEARING**

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The Wisconsin Supreme Court held on May 30, 2003, that police chiefs and/or police and fire commissions may demote police supervisory employees on probationary status back to the position from which they were promoted without having to justify such action in a “just cause” hearing. The case is *Kraus v. City of Waukesha Police and Fire Commission*, 2003 WI 51. The full text of the decision is available at <http://www.courts.state.wi.us/html/sc/01/01-1106.htm>.

Waukesha Police Chief Leslie Sharrock promoted patrol officer Steven Kraus on November 24, 1994, to the position of Sergeant, subject to successfully completing a one-year probationary period. One week before the probationary period ended, Chief Sharrock reappointed him as a patrol officer. Chief Sharrock provided no reason for the action. The Police and Fire Commission denied Officer Kraus a “just cause” hearing because his demotion was not related to a disciplinary action. Rather, he was demoted because his performance was not equal to the performance expected of its supervisory officers.

Officer Kraus challenged his denial to a “just cause” hearing. The issue worked its way up to the Wisconsin Supreme Court where the Wisconsin Chiefs of Police Association through its legal counsel submitted an amicus brief and participated in oral argument.

The Supreme Court denied Officer Kraus the right to a hearing because his demotion was not a “penalty,” *e.g.*, the result of a disciplinary charge. As a result, the Court’s prior opinion in *Antisdel v. Oak Creek Police and Fire Commission*, 2000 WI 35, 234 Wis. 2d 154, 609 N.W.2d 464 did not apply to Officer Kraus.

In *Antisdel*, the Court held that police officers promoted to supervisory positions from subordinate positions and given probationary periods to prove themselves were entitled to a “just cause” hearing if they were demoted during their probationary period because of a disciplinary charge.

The Court decided that Chief Sharrock did not demote Officer Kraus based on a disciplinary charge, but because he was “unsuited for service as a police sergeant.” This fell short of “discipline.” Thus, Officer Krause could not avail himself of a “just cause” hearing.

The Court warned that probationary periods must not extend indefinitely or for an inordinate length of time. The relevant rule at the Waukesha Police Department gave Chief Sharrock discretion regarding how long the probationary period should be for the supervisory ranks. This was permissible as long as it was not applied unfairly. The Court did not offer comment on what would be too long of a probationary period, but held a one-year period was reasonable.

A companion case, issued the same day, addresses similar issues in a unionized setting. *City of Madison v. WERC and IAFF Local 311*. The court provided important guidance about when

probation discussions can be submitted to arbitration, with the general approach that arbitration is normally not available.

These issues will be discussed in greater detail at the WCPA conference August 10-13, 2003 in Appleton. Please plan to attend.

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