

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

JUNE 25, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 95-3522-FT

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

**AFSCME, DISTRICT COUNCIL #48 AMERICAN
FEDERATION OF STATE, COUNTY & MUNICIPAL
EMPLOYEES, AFSCME, AFL-CIO,**

Plaintiff-Appellant,

v.

**MILWAUKEE COUNTY and MILWAUKEE COUNTY
PENSION BOARD,**

Defendants-Respondents.

APPEAL from an order of the circuit court for Milwaukee County:
LAURENCE C. GRAM, JR., Judge. *Reversed and cause remanded with directions.*

Before Wedemeyer, P.J., Sullivan and Schudson, JJ.

PER CURIAM. Milwaukee District Council 48, American Federation of State, County and Municipal Employees, AFSCME, AFL-CIO (the union) appeals from an order dismissing its complaint against Milwaukee

County and Milwaukee County Pension Board.¹ The complaint sought a declaratory judgment addressing the eligibility, if any, of a union member for pension benefits from Milwaukee County if the member was terminated for just cause after ten years of service. Because the trial court failed to state any basis for its discretionary decision dismissing the union's complaint, this court concludes that the trial court's order must be reversed and the cause remanded for further proceedings.

The parties stipulated and the trial court agreed to decide the issues raised in the union's complaint upon the parties' respective briefs, affidavits and oral argument. Upon the conclusion of the oral argument and without the presence of a court reporter, the trial court orally dismissed the union's complaint. The union's brief alleges in pertinent part that the following exchange then took place between the union counsel and the trial court:

The court microphone was not on and counsel for AFSCME, asked the court, "did you say that the case is dismissed?" The court said "yes, the case is dismissed." The attorney for AFSCME then asked the court "why is the case dismissed?" It may be that the court stated that the Union does not have standing to sue, but this counsel is not exactly sure what the court said. The microphone was not turned on and there was no court reporter present and no record was made of what the court said. Persons in the courtroom do not all agree as to what the court said. If the court said that the AFSCME union did not have standing to sue, certainly there was no judicial explanation as to why the union did not have standing to sue.

These factual assertions are not disputed by the county and pension board's brief.

The disposition of a request for a declaratory judgment is committed to the sound discretion of the trial court. *State ex rel. Brennan v.*

¹ This is an expedited appeal under RULE 809.17, STATS.

Branch 24 of Circuit Court of Milwaukee, 104 Wis.2d 72, 75, 310 N.W.2d 629, 630 (1981). We will uphold the trial court's discretionary decision dismissing a declaratory judgment complaint in the absence of evidence that the decision resulted from an erroneous exercise of discretion. *Id.*

It has been long established that "the exercise of discretion is not the equivalent of unfettered decision-making." *Hartung v. Hartung*, 102 Wis.2d 58, 66, 306 N.W.2d 16, 20-21 (1981). Instead, a proper discretionary decision demonstrably relies upon the facts in the record and upon the appropriate and applicable law. *Id.* "Additionally, and most importantly, a discretionary determination must be the product of a rational mental process by which the facts of record and law relied upon are stated and are considered together for the purpose of achieving a reasoned and reasonable determination." *Id.*

It is undisputed that the record in this matter is barren of either a written or oral statement by the trial court explaining its decision to dismiss the union's complaint. Because the record shows nothing of the trial court's consideration of the facts of record or its reasoning, we are unable to conclude that the trial court reached a decision that a reasonable judge could reach and that its decision was consistent with the applicable law. Accordingly, we reverse the trial court's order dismissing the union's complaint and remand the cause with the direction that the trial court make a record of its exercise of discretion capable of appellate review.

By the Court.—Order reversed and cause remanded with directions.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.