

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

March 11, 1997

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(1), 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. 96-2579

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

KENNETH GABLE,

Plaintiff-Appellant,

v.

**SHERIFF JAMES KANIKULA, MARINETTE
COUNTY, WISCONSIN, MARINETTE
COUNTY SHERIFF'S DEPARTMENT AND
MARINETTE COUNTY CIVIL SERVICE
COMMISSION,**

Defendants-Respondents.

APPEAL from a judgment of the circuit court for Marinette County: LARRY JESKE, Judge. *Reversed and cause remanded with directions.*

Before LaRocque, Myse and Madden, JJ.

MYSE, J. Kenneth Gable appeals a judgment dismissing his complaint alleging a right to contest his termination before the Marinette County Civil Service Commission. Gable contends that under the rules of the civil service commission and the employment contract governing the terms of his employment with Marinette County, he was entitled to a hearing before the

commission on his allegation that his termination was without just cause and politically motivated by the sheriff. Because we conclude that the civil service ordinance and Gable's employment contract provide that a supervisory employe may not be dismissed from office except for reasons enumerated in the civil service ordinance and that the commission is vested with the authority to determine whether terminations are in accordance with the civil service ordinance, we reverse the judgment and remand with directions to order a hearing on Gable's complaint before the commission.

Kenneth Gable was a lieutenant with the Marinette County Sheriff's Department and was assigned to supervise the Marinette County Jail. In considering the sheriff's department budget, Marinette County decided to eliminate the county jail supervisor position. The sheriff then notified Gable that because his position had been eliminated he would be terminated as an employe of the sheriff's department. Gable was subsequently rehired as a deputy but not reinstated to his supervisory status.

Gable alleges that his termination was pretextual based upon his political activities and that the sheriff terminated his employment without just cause and in violation of the employment contract between the County and supervisory employes and the provisions of the civil service ordinance. Gable petitioned for a hearing before the civil service commission but the hearing was denied based upon the commission's determination that it had no jurisdiction to entertain Gable's complaint that he was terminated without just cause and in violation of the civil service ordinance.

Gable filed a complaint asking the circuit court to order the commission to grant a hearing in regard to his allegations. The circuit court denied the writ and dismissed his complaint.

Gable's allegation that the contract and civil service ordinance provided a hearing before the commission in regard to whether his termination was without just cause presents a question of both statutory interpretation and the interpretation of contractual language. Each of these questions raises a question of law which this court determines without deference to the trial court's determination. *Wagner Mobile, Inc. v. Madison*, 190 Wis.2d 585, 591,

527 N.W.2d 301, 303 (1995); *Bank of Barron v. Gieseke*, 169 Wis.2d 437, 454-55, 485 N.W.2d 426, 432 (Ct. App. 1992).

Marinette, Wis., Civil Service Ordinance § 5.08(6) (July 1, 1989), provides that all permanent employees "shall not be dismissed from such office or suspended except as provided in § 5.09." Section 5.09 enumerates a variety of grounds upon which discipline or dismissal may be had against civil service employees. The parties agree that Gable was a permanent employee as that term is used in the ordinance.

The collective bargaining agreement applicable to Gable provides: "If the grievance shall be under the jurisdiction of the Civil Service Commission, the grievance shall there be governed by the Wisconsin State Statutes." The civil service ordinance provides specific grounds upon which an employee may be disciplined or terminated and the contract grants jurisdiction to the civil service commission regarding matters of discipline or termination of supervisory employees. The contract also expressly provides that grievances under the jurisdiction of the civil service commission are governed by the Wisconsin statutes. Therefore, we conclude that the unambiguous provisions of the civil service ordinance and employment contract mandate application of the Wisconsin state statutes to this dispute and the statutes require a hearing before the commission in regard to Gable's complaint.

Marinette County contends that it elected to be governed only in a limited way by the statutes of the State of Wisconsin and that because it did not specifically adopt all of the provisions of §§ 59.07 and 59.21 and ch. 63, STATS., the statutes are inapplicable to Gable's grievance. Whatever intention Marinette County may have had when adopting the civil service ordinance, it is clear that the ordinance specified the grounds upon which supervisory employees could be disciplined or terminated. While Marinette County may not have fully understood that by adopting such provisions it was subjecting themselves to the jurisdiction of the statutes, their subjective intent cannot change the clear and unambiguous provisions of the civil service ordinance. We therefore conclude that cases decided by our court construing a county's obligation under ch. 63 are applicable to Marinette County and may be used as guidance in resolution of this dispute.

In *Watkins v. Milwaukee County Civil Serv. Comm'n*, 88 Wis.2d 411, 276 N.W.2d 775 (1979), the employe contended that his resignation was coerced and amounted to an improper termination. The commission refused to grant a hearing on the claim of constructive discharge. Our supreme court determined that the filing of charges against an employe was not a prerequisite to a commission hearing and that once the commission was granted jurisdiction in regard to questions of discipline and termination it must exercise that jurisdiction. *Id.* at 422, 276 N.W.2d at 780. That is exactly the circumstance in this case.

The sheriff and the County contend that Gable was not terminated but was removed from his position by virtue of budgetary constraints determined by the county board. There are two reasons why such an assertion does not support the County's position that the commission had no jurisdiction. First, we note that Gable contends that the reasons advanced, budgetary considerations, were pretextual and that the true reason for his termination was based upon his political beliefs. Whether such assertion is valid is not the issue before us. Because Gable contends that the proffered reasons of budgetary constraints were pretextual in nature, he is entitled to a hearing before the civil service commission to present evidence in support of his assertion.

Even more importantly, the elimination of a lieutenant as the supervisor of the county jail may justify Gable's reassignment to another position. The County does not explain why termination rather than reassignment was the appropriate response to the county board's budgetary action. Moreover, if budget restraints required the elimination of a lieutenant's position from the sheriff's department, the record is silent as to why Gable and not any other employe would be subject to removal. This silence presents a question of fact for the civil service commission to resolve.

Gable also asserts as an additional basis for relief that he was denied procedural due process based upon the County's refusal to hold a hearing before the civil service commission. Because we have concluded that he was entitled to a hearing before the commission under the terms of the county ordinance and the employment contract, we need not address this further basis for relief. Gable's further contention that he is entitled to immediate reinstatement and back pay is a matter to be resolved at the trial level and before the commission and, accordingly, will not be addressed by this court as part of this appeal.

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

Not recommended for publication in the official reports.