

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 16, 1997

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

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

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.

No. 97-1319

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

**GARY MARTEN, SHERIFF OF MARATHON COUNTY,
MARATHON COUNTY SHERIFF'S DEPARTMENT AND
COUNTY
OF MARATHON,**

PLAINTIFFS-RESPONDENTS,

v.

**MARATHON COUNTY DEPUTY SHERIFF'S ASSOCIATION,
INC., WISCONSIN PROFESSIONAL POLICE
ASSOCIATION, LAW ENFORCEMENT EMPLOYEE
RELATIONS
DIVISION AND GARY BABL,**

DEFENDANTS-APPELLANTS.

APPEAL from a judgment of the circuit court for Marathon County:
THOMAS G. GROVER, Judge. *Reversed.*

Before Cane, Myse and Curley, JJ.

MYSE, J. The Marathon County Deputy Sheriff's Association, Inc., the Wisconsin Professional Police Association, and Gary Babl (collectively Babl) appeal a declaratory judgment that invalidated an employment contract provision allowing for the arbitration of disputes. Babl contends that Sheriff Gary Marten, the Sheriff's Department, and Marathon County (collectively Marten) are precluded by estoppel from challenging the arbitrator's authority.¹ We agree and reverse the judgment.

This case arose after the Marathon County Sheriff charged Gary Babl with several disciplinary violations, and recommended the termination of his employment. Following a hearing, the County's grievance committee decided to terminate Babl's employment. Babl then requested arbitration of this decision, as provided for under the collective bargaining agreement (the agreement) then in force between the County and the Wisconsin Professional Police Association, Law Enforcement Employee Relations Division. Both sides agreed to the referral to arbitration.

The arbitrator determined that terminating Babl's employment was an inappropriate punishment and reversed the grievance committee. Marten then filed a summons and complaint seeking declaratory relief to void the provision of the agreement that provided for arbitration. The trial court ultimately determined that the provisions of §§ 59.26(8)(a) through (d), STATS., created the exclusive

¹ Babl also argues on appeal that the trial court erred by failing to harmonize ch. 59, STATS., with the Municipal Employment Relations Act (MERA), §§ 111.70-111.77, STATS.; that declaratory relief is not the proper vehicle to challenge an arbitrator's determinations; and that the trial court erred by refusing to strike various parties as improper parties to the declaratory action. Our decision on Babl's estoppel argument makes resolution of these issues unnecessary.

vehicle for removing a deputy sheriff, and that the agreement provision providing for arbitration was void because it conflicted with the statute. Babl appeals.

Babl argues that Marten should be estopped from attacking the validity of the arbitration because Marten stipulated to the arbitration referral and criticized it only after his position was rejected. We agree. The recent supreme court decision in *Milas v. Labor Ass'n of Wisconsin, Inc.*, No. 96-1197 (Wis. Dec. 2, 1997), controls the outcome of this case. In *Milas*, the court held on almost identical facts that equitable estoppel was established as a matter of law. *Id.* at 14. There, as here, the County brought disciplinary proceedings against a deputy sheriff, and agreed to refer the matter to arbitration. *Id.* at 11. There, as here, the County did not object to the arbitrator's jurisdiction until after the arbitrator ruled against it. *Id.* at 12. The *Milas* court held that equitable estoppel was therefore established, and denied giving the County the chance to have “two bites at the apple.” *Id.* at 15 (quoting *United Indus. Workers, Serv., Transp., Prof'l Gov't of North Am. v. Government of the Virgin Islands*, 987 F.2d 162, 169 (3rd Cir. 1993)). We conclude that under the facts of this case equitable estoppel also precludes the County from challenging the arbitrator's decision. The judgment of the circuit court is therefore reversed.

By the Court.—Judgment reversed.

Not recommended for publication in the official reports.

