

**WISCONSIN SUPREME COURT
WEDNESDAY, MARCH 6, 2007
10:45 a.m.**

2004AP3306

State ex rel. Jose Castaneda v. Woody Welch, et al.

This is a certification from the Wisconsin Court of Appeals, District I (District IV Court of Appeals judges presiding). The Court of Appeals may certify cases that cannot be decided by applying current Wisconsin law. The Wisconsin Supreme Court, as the state's preeminent law-developing court, often accepts such certifications from the Court of Appeals. This case originated in Milwaukee County Circuit Court, Judge Patricia D. McMahon, presiding. District I Court of Appeals is located in Milwaukee.

This case could determine the scope of Milwaukee Fire and Police Commission's rulemaking authority.

The underlying facts arose from an incident in which officers executed a search warrant at a grocery store where Jose Castaneda worked. Castaneda and 24 other employees alleged police misconduct when officers entered the store to execute a search warrant for prescription drugs, sales receipts, order forms, and other items.

According to the employees' complaint, filed with the commission, a large number of men entered the store with handguns, shotguns, and rifles drawn. They were yelling and shouting in English but many of the workers present spoke only Spanish. The men were wearing blue jackets or vests without badge numbers or nameplates or visible identifying information. Individuals were detained and forced to lie on the floor or stand with their hands over their heads for an extended time.

Castaneda and the employees allege that Milwaukee Police Department rules and regulations were violated and asked the commission to investigate the actions of all police officers involved. But the complaints did not identify individual officers because identities were concealed.

The commission took no action on the complaints because they didn't associate a particular officer with a particular act of misconduct as required under rules for processing citizen complaints.

Castaneda successfully sought declaratory judgment from the circuit court, arguing the rules were invalid because the commission lacked the statutory authority to enact them and that the rules set up hurdles too restrictive to permit citizen complaints against the police or fire department.

The circuit court said statutes limited the authority of the commission "to rules for governance and selection only. It does not grant authority for rules with respect to investigation and trial procedures." The rules adopted and implemented by the commission served to frustrate rather than further legislative intent and served as a barrier to citizens seeking redress from their government, the Court of Appeals concluded.

In its defense, members of Milwaukee Fire and Police Commission relied on a case that involved interpretation of Wis. Stat. § 62.13, which guides fire and police commissions in the state outside Milwaukee. However, the trial court determined

Wis. Stat. § 62.13 provides broader rulemaking authority than Wis. Stat. § 62.50, which guides the Milwaukee Fire and Police Commission.

In its certification, the Court of Appeals states that if the commission's view of its authority is correct, a complaint must be dismissed if it fails to identify a particular officer. By contract, if the citizen complaint is correct, the commission has no authority to adopt rules and screen out meritless complaints, and the commission can be compelled to conduct a trial in virtually every instance in which a complaint is made.

The Supreme Court is expected to interpret Wis. Stat. § 62.50 with regard to rulemaking authority under the circumstances presented, which is not addressed by a published opinion.