

FILED
04-10-2024
Burnett County
Clerk of Court
2024CV000044

STATE OF WISCONSIN

CIRCUIT COURT

BURNETT COUNTY

NOAH GAUSMAN,
12878 County Road D,
Grantsburg, WI 54840,

Petitioner,

v.

Administrative Agency Review

Case Code: 30607

STATE OF WISCONSIN, LAW ENFORCEMENT
STANDARDS BOARD,
17 West Main Street, P. O. Box 7070,
Madison, WI 53707-7070,

Respondent.

PETITION FOR JUDICIAL REVIEW

Petitioner Noah Gausman (“Petitioner”), by his undersigned counsel, petitions the Court pursuant to Wis. Stat. § 227.52 et seq. to review the decision of the Respondent, the State of Wisconsin, Law Enforcement Standards Board (“LESB”) dated March 12, 2024 (the “Decision”), which denied Petitioner’s request for a waiver of requirements to regain law enforcement employment.

The grounds for this Petition are as follows:

PARTIES

1. Petitioner Noah Gausman is a Wisconsin resident who has served as a law enforcement officer for various law enforcement agencies over the past decade. Petitioner resides at 12878 County Road D, Grantsburg, WI 54840.

2. Respondent State of Wisconsin, Law Enforcement Standards Board is an agency of the State of Wisconsin as that term is defined in Wis. Stat. § 227.01(1). LESB’s principal office is located at 17 West Main Street, Madison, WI 53707.

VENUE & JURISDICTION

3. Venue is proper in this County pursuant to Wis. Stat. § 227.53(1)(a)3. because Petitioner resides in this county.

4. This Court has jurisdiction to hear this appeal pursuant to Wis. Stat. § 227.52 et seq. because this Petition seeks review of a final decision of the LESB, from which Petitioner is aggrieved, as explained herein.

STATEMENT OF FACTS

5. Petitioner graduated from the law enforcement officer training academy at Wisconsin Indianhead Technical College on May 15, 2014, and began service as a part-time law enforcement officer.

6. During his law enforcement career, Petitioner left law enforcement employment and was re-hired by other law enforcement agencies, always as a part-time officer. Petitioner has served honorably throughout his career, never facing discipline or having so much as a complaint filed against him.

7. Petitioner chooses to work part-time because he is a single father and needs to dedicate substantial time to the care and upbringing of his son and is generally unavailable to work full-time hours as a law enforcement officer.

8. Effective September 1, 2022, Petitioner resigned his position as a part time law enforcement officer with the Star Prairie Police Department, where he had worked since January of 2021.

9. On May 26, 2023, approximately 9 months later, Petitioner was hired as a part-time law enforcement officer with the Balsam Lake Water Safety Patrol.

10. During the summer of 2023, Petitioner was informed by LESB that he no longer met the training requirements for law enforcement employment due to a policy change that, unbeknownst to Petitioner, was unilaterally adopted by the LESB in March of 2021.

11. This LESB policy was not adopted as a rule pursuant to Wis. Stat. Ch. 227; instead, the board apparently just voted to adopt the policy and began enforcing it against all part-time law enforcement officers like Petitioner.

12. Specifically, the adopted policy allows only *full-time* law enforcement officers, and not *part-time* law enforcement officers like Petitioner to leave law enforcement employment and find new law enforcement employment within three years without having to repeat the entire law enforcement officer training academy course.

13. The policy adopted by LESB reads (in relevant part, with emphasis added):

“A law enforcement or tribal law enforcement officer who holds law enforcement or tribal law enforcement employment for at least (1) consecutive year **full-time** prior to termination of employment has three (3) years from their last date of employment to re-gain employment as a law enforcement or tribal law enforcement officer . . . A law enforcement or tribal law enforcement officer who holds law enforcement or tribal law enforcement employment for less than one (1) consecutive year **full-time** prior to termination of employment, has three (3) years from the date they successfully completed preparatory law enforcement officer training, or three (3) years from the date they last held law enforcement employment for at least (1) consecutive year **full-time** to re-gain employment as a law enforcement or tribal law enforcement officer.”

14. Prior to this policy change, part-time law enforcement officers and full-time law enforcement officers were treated the same.

15. This policy was not adopted as an administrative rule and is not published in the Wisconsin Administrative Code.

16. On September 7, 2023, Petitioner was notified that on September 6, 2023, the LESB determined that because of this anti-part-time officer policy, he was not allowed to continue as a

law enforcement officer and had to complete a full 720-hour law enforcement preparatory training academy course again. *See Ex. A.*¹

17. Petitioner then requested a hearing to appeal that decision, which was held before the LESB's executive committee on November 14, 2023. *See Ex. B, A transcript of the November 14, 2023, hearing.*

18. At that hearing it was again made clear that but for the March, 2021 LESB policy change, Petitioner could have continued to serve as a law enforcement officer in Wisconsin.

19. Specifically, at the hearing, one of the LESB executive committee members, Racine Police Department Deputy Chief Jessie Metoyer asked: "If I am reading this correctly, the law changed or our policy changed in March of 2021 . . . So prior to March 2nd of 2021, would he have qualified?" Dana Vike, who was presenting the case against Petitioner at the hearing, responded: "He would have because prior to March 2nd, 2021, whether you are part-time or full-time if you left employment, you had three years to come back into employment." *See Ex. B, Tr. At 40:14-25.*

20. This statement was correct. As explained earlier, Petitioner left law enforcement employment with the Star Prairie Police Department on September 1, 2022 – where he had worked for more than one year. Prior to the adoption of the anti-part-time policy, Petitioner would have had up to three years to obtain new law enforcement employment (and indeed he did leave one agency and regain law enforcement employment at another agency within 3 years without issue prior to the anti-part-time policy's adoption). Most recently, he took a new law enforcement job on May 26, 2023 – approximately 9 months after leaving his previous law enforcement job.

¹ The record in this administrative appeal will be transmitted to the Court within thirty days of service of this Petition, pursuant to Wis. Stat. § 227.55(1). The exhibits referenced in this Petition will be part of that record, and are included here for convenience of the parties and the Court.

21. Nonetheless, at the end of the November 14, 2023, hearing, the LESB executive committee unanimously voted to “deny the appeal and uphold the LESB’s decision given on September 6, 2023.” *See Ex. B.* Tr. at 42:20-43:13.

22. Following that vote, the hearing examiner told all parties he would “prepare a proposed decision” for the LESB, and that the parties would have an opportunity to send objections to that proposed order in writing. *See Ex. B.*, Tr. At 43:20-25.

23. Petitioner subsequently retained counsel who wrote to the LESB to make clear that the March 2021 policy adopted by LESB was unlawful because it had never been adopted as an administrative rule, as required by state law. *See Ex. C.*

24. Respondent did not respond to that letter.

25. Instead, on February 6, 2024, Petitioner received the proposed decision from the LESB which affirmed the denial. *See Ex. D.*

26. Seemingly aware that its reliance upon the unlawful policy was an invalid reason to deny Petitioner’s request, the proposed decision included Findings of Fact which stated: “Mr. Gausman did not complete law enforcement training during the 2018/2019 fiscal year or the 2019/2020 fiscal year . . .” *Ex. D*, Prop. Order, Findings of Fact ¶ 5. The proposed decision then made conclusions of law that *those facts* are what purportedly disqualify Petitioner from law enforcement employment. *Ex. D*, Prop. Order, Conclusions of Law ¶ 6. These reasons were not included in the September 7, 2023 letter to Petitioner informing him of the initial denial. *Ex. A.*

27. Raising the 2018/19 and 2019/20 training issue at the hearing was a new ground for denying certification and was a violation of due process and was arbitrary and capricious because Petitioner had no notice that LESB intended to raise that issue at the hearing and because that issue had previously been resolved in Petitioner’s favor by LESB.

28. The sole issue raised in the September, 2023 denial letter sent to Petitioner was recently adopted “anti-part-time” law enforcement officer policy. *Ex. A*.

29. Petitioner was given an opportunity to respond to that proposed decision, and did so with several objections, including that the March, 2021 policy was unlawful, that the LESB’s decision to regulate part-time and full-time officers differently was *ultra vires*, and that the LESB was acting in an arbitrary and capricious and otherwise unlawful manner. *See Exs. E and F*.

30. As Petitioner explained in his letter objecting to those findings of fact and conclusions of law, he was not employed during the times the LESB accused him of failing to obtain training, and so was not required to complete any training as a law enforcement officer. *See Ex. E at 2*.

31. Indeed, the LESB itself had previously concluded that Petitioner was not required to undergo training during those times—something that was acknowledged during the November 14, 2023, hearing in this matter. *Ex. B, Tr. 22:19-24*.

32. More specifically, the LESB had previously “decertified” Petitioner in the Fall of 2019 for purportedly failing to complete the mandatory training, but then subsequently reinstated him because “he had resigned prior to the end of the state fiscal year.” (*Ex. B, Tr. 22:22-24*). That is, the LESB already determined that Petitioner did not need to submit to training for the time periods in which he was not a law enforcement officer and re-certified him with full knowledge of this.

33. Nevertheless, as Petitioner pointed out in his response to the LESB’s proposed decision, the LESB is using Petitioner’s alleged incomplete training (which it previously approved) as a basis for decertifying Petitioner now. *See Ex. E*.

34. On March 5, 2024, the LESB met to consider whether to adopt the proposed order and to review Petitioner's objections. There was no discussion by LESB at that meeting regarding any of Petitioner's objections, and the proposed order was adopted as written.

35. On March 13, 2024, the Board e-mailed Petitioner the Final Decision and Order (which was dated March 12, 2024), which included the now-final proposed order. *See Ex. G.*

NATURE OF PETITIONER'S AGRIEVEMENT

36. LESB's Decision is a final decision subject to judicial review under Wis. Stat. § 227.52 et seq.

37. LESB's Decision adversely affects Petitioner's substantial interests. As a result of the Decision, Petitioner is not allowed to continue working as a law enforcement officer in Wisconsin unless he repeats the full law enforcement officer training academy course at great cost to himself both financially and in time required.

38. Petitioner is aggrieved by the LESB's action because it enforces an unlawfully adopted policy from March, 2021 to his detriment. As the record reflects (and as explained herein), but for the March, 2021 policy change, Petitioner would have been able to continue his law enforcement employment. However, because he was a "part-time" law enforcement officer, the policy change prohibited him from leaving his employment at one law enforcement agency and taking a job at a different agency. And because Petitioner voluntarily terminated his part-time employment, the policy would not allow him to obtain a new law enforcement job.

39. Petitioner is also aggrieved because the LESB has changed its position, previously determining that he did not need to obtain training when he was not employed as law enforcement, as explained herein.

40. Finally, Petitioner is aggrieved because nothing in state law allows LESB to distinguish between part-time and full-time law enforcement officers, and yet because the LESB policy makes that distinction, Petitioner is now prohibited from serving as a law enforcement officer without re-enrolling in a law enforcement preparatory academy and completing the full course once again.

41. Petitioner has lost his job because of the Decision. As a result, this Decision has created a significant hardship for Petitioner, and Petitioner is aggrieved by that significant hardship.

GROUND FOR REVIEW

42. The Decision challenged in this action is unlawful, arbitrary, capricious, erroneous, and an abuse of discretion, and should be reversed, vacated, and remanded for, *inter alia*, the following reasons:

a. First, the Decision is based upon an unlawfully adopted policy of the agency. As the record clearly reflects in this case, but for that policy change, Petitioner would still be a certified and employed law enforcement officer in Wisconsin. Since it is undisputed that the policy was *not* lawfully adopted as a rule, it is unlawful for the board to enforce it. *See* Wis. Stat. § 227.10(1) (“Each agency shall promulgate as a rule each statement of general policy and each interpretation of a statute which it specifically adopts to govern its enforcement or administration of that statute.”); *see also* Wis. Stat. § 227.10(2m) (“No agency may implement or enforce any standard, requirement, or threshold, including as a term or condition of any license issued by the agency, unless that standard, requirement, or threshold is

explicitly required or explicitly permitted by statute or by a rule that has been promulgated in accordance with this subchapter . . .”).

b. Second, even if the policy change were somehow determined to have been adopted lawfully, it would still exceed the Respondent’s authority because nothing in state law allows them to regulate part-time and full-time officers differently. The Decision in this case purporting to deny Petitioner’s request because he worked part-time is an exercise of discretion which is thus outside the range of discretion delegated to the Respondent by law.

c. Third, the Decision represents a change in LESB’s interpretation of its own policies without adequate explanation thereof and is arbitrary and capricious and violates Petitioner’s due process rights. Notably, the Decision includes findings of fact that “Mr. Gausman did not complete law enforcement training during the 2018/2019 fiscal year or the 2019/2020 fiscal year . . .” *Ex. G*, Final Decision and Order, Findings of Fact, ¶ 5. And the Decision made conclusions of law that those facts disqualify Petitioner from law enforcement employment. *Ex. G*, Final Decision and Order, Conclusions of Law, ¶ 6. But, as Petitioner noted in his objection letter, and as was plainly acknowledged during the administrative hearing in this case, Petitioner was not employed as a law enforcement officer during those times, and the LESB had previously certified him as a law enforcement officer with full knowledge that he did not complete that training. Now, LESB appears to be using this lack of training, which it previously approved of, against Petitioner.

d. Fourth, the Decision does not reflect the actual record of the agency actions in this matter. Respondent has moved the goal posts throughout this process:

initially informing Petitioner he was decertified because of the March, 2021 policy (*Ex. A*), and during his November 14 hearing voted to uphold that decision (*Ex. B*). Only later did Respondent claim that the “real” reason for his decertification was because of a lack of training while he was not employed as a law enforcement officer—even though the LESB had previously affirmatively allowed that very activity by Petitioner.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs request judgment in his favor as follows:

- A. Declaring that the Decision is reversed, set aside, and vacated, or in the alternative remanded to LESB for further action;
- B. Such other relief as the Court may deem just and equitable.

Dated this 10th day of April, 2024.

WISCONSIN INSTITUTE FOR LAW & LIBERTY, INC.

/s/ Electronically signed by Lucas T. Vebber

Lucas T. Vebber (WI Bar No. 1067543)

Nathalie E. Burmeister (WI Bar No. 1126820)

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**STATE OF WISCONSIN
DEPARTMENT OF JUSTICE**

**Josh Kaul
Attorney General**

**Division of Law Enforcement Services
Training and Standards Bureau**

**17 West Main Street
P.O. Box 7070
Madison, WI 53707-7070
(608) 266-8800
FAX (608) 266-7869
V/TTY 1-800-947-3529**

September 7, 2023

Noah Gausman
12878 County Road D
Grantsburg, WI 54840

Dear Mr. Gausman,

I regret to inform you that at its September 6th meeting, the Law Enforcement Standards Board (LESB) denied your request for a waiver of the requirement to regain law enforcement employment within a three year time frame. The Committee cited the LESB Policy:

Per the LESB Policy and Procedures Manual: "A law enforcement or tribal law enforcement officer who holds law enforcement or tribal law enforcement employment for less than one (1) consecutive year full-time prior to termination of employment, has three (3) years from the date they successfully completed preparatory law enforcement officer training, or three (3) years from the date they last held law enforcement employment for at least one (1) consecutive year full-time, to regain employment as a law enforcement or tribal law enforcement officer. Failure to gain or regain employment within the time frames specified will require re-completion of the entire preparatory law enforcement officer training program to regain eligibility for certification as a law enforcement or tribal law enforcement officer. The LESB may establish other requirements it deems appropriate on an individual case-by-case basis."

This means you will have to complete the full 720-hr Law Enforcement Preparatory Training Academy before you are considered for certification as a Law Enforcement Officer by the LESB. The deadline to complete the academy is 5/26/2024.

If you have any questions, please contact me at (608) 266-7380 or mullenge@doj.state.wi.us

Sincerely,

Gerald Mullen
Compliance Officer
Wisconsin Department of Justice
Training and Standards Bureau

**EXHIBIT
A**

LAW ENFORCEMENT STANDARDS BOARD
TRANSCRIPT OF PROCEEDINGS, on 11/14/2023

**STATE OF WISCONSIN
LAW ENFORCEMENT STANDARDS BOARD**

**In the Matter of the Law Enforcement
Certification of Noah Gausman**

Case Number: LESB-23-0003

TRANSCRIPT OF VIDEOCONFERENCE PROCEEDINGS

Tuesday, November 14, 2023

11:11 a.m. to 12:22 p.m.

Reported by: Rebecca Farris, Stenographer

EXHIBIT

LAW ENFORCEMENT STANDARDS BOARD
TRANSCRIPT OF PROCEEDINGS, on 11/14/2023

1 TRANSCRIPT OF VIDEOCONFERENCE PROCEEDINGS,
 2 held in the above-captioned action, before
 3 Rebecca Farris, a Stenographic Court Reporter and
 4 Notary Public in and for the State of Wisconsin,
 5 taken from various remote locations, on the 14th day
 6 of November 2023, commencing at 11:11 a.m. and
 7 adjourning at 12:22 p.m.

8
 9 A P P E A R A N C E S
 10

11 S. MICHAEL MURPHY
 12 Assistant Attorney General
 13 WISCONSIN DEPARTMENT OF JUSTICE
 14 17 West Main Street, Madison, Wisconsin 53703
 15 murphysm@doj.state.wi.us
 16 appearing on behalf of the LESB as the
 17 Hearing Examiner

18 NOAH GAUSMAN
 19 12878 County Road D, Grantsburg, Wisconsin 54840,
 20 appearing pro se

21 DANA VIKE
 22 Certification & Curriculum Program Supervisor
 23 WISCONSIN DEPARTMENT OF JUSTICE
 24 17 West Main Street, Madison, Wisconsin 53703
 25 vikedg@doj.state.wi.us
 appearing on behalf of the Bureau of Training &
 Standards

26 ALSO PRESENT: TODD DELAIN, KATIE MAULE,
 JESSIE METOYER, MATT KENNEDY,
 JERRY MULLEN, RON BETLEY,
 STEVE WAGNER, TIMOTHY CARNAHAN,
 KALVIN BARRETT

1 I N D E X

2 WITNESS	Page(s)
3 DANA VIKE	
4 Direct Examination by Ms. Vike	19
5 Cross-Examination by Mr. Gausman	25
6 Examination by the Executive Committee	26
7 Additional Questions by the Executive Committee	36
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9 CLOSING ARGUMENT	
10 By Mr. Gausman	30
11	
12	
13 E X H I B I T S	
14 No. Description Identified	
15 TSB 1 Law Enforcement Standards Board policy on time frames for law enforcement officers to gain law enforcement or tribal law enforcement employment. Policy prior to March 2, 2021, and policy in place since March 2, 2021 (TSB 001)	19
16	
17 TSB 2 Officer Noah Gausman Wisconsin law enforcement employment history (TSB 002-003)	--
18	
19 TSB 3 Waiver write-up for Officer Noah Gausman along with a letter supplied by Officer Noah Gausman, and a letter supplied by Balsam Lake Police Department Chief Thomas Thompson, provided by the Training & Standards Bureau to the LESB Executive Committee for review on August 8, 2023. (TSB 004-006)	21
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25	

1 E X H I B I T S (continued)

2 No.	Description	Identified
3 TSB 4	Waiver denial letter sent by Compliance Officer Gerald Mullen to Officer Noah Gausman (TSB 007)	--
4		
5 TSB 5	Email and attachments from Officer Noah Gausman to Division of Law Enforcement Services (DLES) Administrator Steven Wagner (TSB 008-013)	--
6		
7 TSB 6	Email from Officer Noah Gausman to DLES Administrator Steven Wagner requesting a hearing (TSB 014)	--
8		
9 TSB 7	Email from Gary Schneider, member on the Board of the Balsam Lake Protection and Rehabilitation District, to the Attorney General's Office, requesting an appeal of the LESB Executive Committee's decision to deny the waiver for Officer Noah Gausman (TSB 015)	--
10		
11		
12		
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14		
15	(All exhibits are received on page 15)	
16		
17		
18		
19	(Original transcript filed with the DOJ)	
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1 SHERIFF DELAIN: Today is
 2 November 14th. It is approximately
 3 11:11 a.m. This is the meeting of the
 4 Law Enforcement Standards Board Executive
 5 Committee related to an appeal request.
 6 And I apologize. It was set for
 7 11:00 a.m., but our Executive Law Enforcement
 8 Standards Board Executive Committee ran a few
 9 minutes late, so we're starting this just a
 10 few minutes late.

11 So with that, we're going to go ahead
 12 and move to our roll call, our introductions.
 13 And with that, I'm going to turn it over to
 14 Katie.

15 MS. MAULE: Sheriff Barrett, can
 16 you hear us?
 17 SHERIFF BARRETT: (No response)
 18 MS. MAULE: I'm guessing that will
 19 sort itself out.
 20 Superintendent Carnahan?
 21 SUPERINTENDENT CARNAHAN: I'm here.
 22 MS. MAULE: Thank you.
 23 Sheriff Delain?
 24 SHERIFF DELAIN: Present.
 25 MS. MAULE: Thank you. Deputy

LAW ENFORCEMENT STANDARDS BOARD
TRANSCRIPT OF PROCEEDINGS, on 11/14/2023

6.9

<p>1 Chief Metoyer? 2 DEPUTY CHIEF METOYER: (Indicating) 3 MS. MAULE: Thanks. Administrative 4 Wagner? 5 ADMINISTRATIVE WAGNER: I'm here. 6 MS. MAULE: Thank you. You do have 7 a quorum without Sheriff Barrett, and I will 8 contact him. But if you would like to 9 go ahead? 10 SHERIFF DELAIN: Yes. I'm just 11 going to move on to Agenda Item 3 yet because 12 I think we can get through that without 13 Sheriff Barrett anyway. 14 So with that, Katie, if you could talk 15 about the proof of posting for public meeting 16 notice. 17 MS. MAULE: Yes. Today's hearing 18 agenda was posted on WILENET on November 3rd. 19 It was posted on the public meeting notice 20 website on November 3rd. It was published in 21 the Wisconsin State Journal on November 7th. 22 It was posted at Risser Justice Center on 23 November 6th, and it was sent to 24 Jonathan Anderson of the Marshfield 25 News-Herald on November 3rd.</p>	<p>1 So with that, I'm going to turn it over 2 to the assistant attorney general Mike Murphy 3 to talk about this appeal. 4 HEARING EXAMINER MURPHY: Before we 5 start the agenda, I want to see is -- 6 Mr. Gausman, are you on this call? Can you 7 hear us? 8 MR. GAUSMAN: Yes, I can. 9 HEARING EXAMINER MURPHY: Okay. 10 What I'm showing as a connection for you is 11 not video. I just want to confirm, are you 12 intending to be on phone today and not video? 13 MR. GAUSMAN: If that's all right. 14 HEARING EXAMINER MURPHY: That is 15 all right. I just don't want you thinking 16 you're on video and none of us be able to see 17 you, so I was just checking. 18 MR. GAUSMAN: Yes. 19 HEARING EXAMINER MURPHY: I also 20 see -- this may be a good time. It looks to 21 me like Sheriff Barrett's connection may be 22 on. 23 Sheriff Barrett, can you see and hear 24 us? 25 SHERIFF BARRETT: I can, yes.</p>
<p>1 I verify that the meeting notice 2 publication procedures have been followed. 3 SHERIFF DELAIN: All right. 4 Thank you, Katie. 5 Based upon the information I have been 6 provided today, I believe that the proof of 7 posting of public meeting notice has been 8 completed, and we are clear to continue with 9 this appeal hearing. So with that, I am 10 going to move on to Agenda Item Number 4. 11 But if we can just kind of maybe pause 12 for one second and give Katie an opportunity 13 to try to reach out to Sheriff Barrett to see 14 if we can get him connected here. I know he 15 was connected at the last meeting just a few 16 minutes ago, so we will just see if we can 17 maybe send him the link again or try to get 18 him connected. 19 I see that Sheriff Barrett is there. He 20 might have everything connected, but however, 21 maybe there's still some technical issues 22 with him being able to communicate with us. 23 I guess we will continue and hope that 24 Sheriff Barrett here can get this resolved 25 rather quickly.</p>	<p>1 HEARING EXAMINER MURPHY: Great. 2 Thank you. 3 And last here, for the court reporter, 4 do you have the connection that you need and 5 can you confirm that we are now on the 6 record. 7 THE COURT REPORTER: Thank you. I 8 am here on the record, and I can hear 9 everyone. 10 HEARING EXAMINER MURPHY: Okay. 11 Wonderful. Good morning. My name is 12 Mike Murphy. I'm an assistant attorney 13 general with the Department of Justice. 14 This is a hearing before the Executive 15 Committee of the State of Wisconsin 16 Law Enforcement Standards Board in the matter 17 of Noah Gausman, Case Number LESB-23-0003. 18 On September 7th, 2023, the Law 19 Enforcement Standards Board denied 20 Mr. Gausman's request for a waiver of 21 training requirements to regain law 22 enforcement employment. On September 21st, 23 2023, Mr. Gausman requested a hearing on the 24 Board's September 7th, 2023, decision. That 25 hearing is being held today.</p>

LAW ENFORCEMENT STANDARDS BOARD
TRANSCRIPT OF PROCEEDINGS, on 11/14/2023

<p>1 The hearing is being held before the Law 2 Enforcement Standards Board's Executive 3 Committee pursuant to the Wisconsin 4 Administrative Code. It is being transcribed 5 by a court reporter. The hearing will be a 6 Class 2 contested case hearing under 7 Chapter 227 of the Wisconsin Statutes. 8 The fair play provisions of Chapter 227 9 and the procedures set forth in the Wisconsin 10 Administrative Code will be followed. This 11 proceeding is not strictly bound by the rules 12 of evidence that apply in court proceedings, 13 but it is subject to 227 -- excuse me, 14 subject to Section 227.45 of the statutes, 15 which provides that basic principles of 16 relevancy, materiality, and probative force 17 shall govern all questions of factual proof. 18 All evidence having a reasonable 19 probative value shall be admitted, but 20 immaterial, irrelevant, or unduly repetitive 21 information shall be excluded. If any party 22 has an evidentiary objection at any point, 23 they may raise it at any time. 24 In accordance with the Board's policies 25 for the conduct of due process hearings, I</p>	<p>1 the exceptions of communications that are 2 part of the preparation for and conducting of 3 this hearing, such as prehearing conferences 4 among the parties. 5 Today each party will have an 6 opportunity to present its case through 7 witness testimony and the submission of 8 documentary evidence. Ms. Vike will present 9 her case first. Mr. Gausman will present his 10 case second. 11 For any witness called, there will be an 12 opportunity for both direct and 13 cross-examination. Once the 14 cross-examination of each witness is 15 complete, the members of the Executive 16 Committee will have an opportunity to ask 17 each witness follow-up questions. 18 If any member of the Executive Committee 19 at any time needs immediate clarification on 20 some point about a witness's testimony during 21 direct or cross-examination, the committee 22 member may interrupt to request such 23 clarification. 24 In addition, it's possible that I may 25 occasionally ask a question if I believe</p>
<p>1 have been appointed to advise the Board and 2 the Executive Committee on any legal issues 3 that may arise and to rule on procedural and 4 evidentiary questions. 5 I will not be involved in the 6 decision-making on the substantive issues in 7 this case. A recommended decision on whether 8 to affirm, reverse, or modify the earlier 9 action will be made by a vote of the 10 Executive Committee and the final decision 11 will ultimately be made by a full -- excuse 12 me, by a vote of the full Law Enforcement 13 Standards Board. 14 For the purpose of presenting the case 15 in support of the action under review, 16 certification and curriculum program 17 supervisor Dana Vike has been assigned to 18 represent the Training and Standards Bureau 19 in the prior decision, which supplies the 20 staffing needs of the Board. Mr. Gausman 21 will be representing himself. 22 When Mr. Gausman initiated this appeal, 23 a conflict screen was created by the 24 Department of Justice to prevent Ms. Vike and 25 myself from communicating about the case with</p>	<p>1 there is a point that needs clarification or 2 on which the existing factual record is 3 confusing or incomplete. 4 Once all the evidence has been 5 presented, the parties will each be given an 6 opportunity to present any closing arguments. 7 The Executive Committee will then deliberate 8 on the evidence and will decide what action 9 to recommend to the full board. The 10 deliberations may take place in a closed 11 session if the committee votes to go into a 12 closed session at that time. 13 Following the deliberations, the 14 committee will vote in open session on any 15 proposed action. After such vote is taken, 16 the hearing portion of this meeting will 17 adjourn. The parties will later be sent a 18 written opinion embodying the action taken by 19 the Executive Committee. That written 20 decision will be the proposed decision of the 21 Board. It will include a notice giving each 22 party an opportunity to submit written 23 objections to the proposed decision. 24 After the opportunity to submit written 25 objections, the full board will consider the</p>

LAW ENFORCEMENT STANDARDS BOARD
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<p>1 proposed written decision and any objections 2 that have been received and will decide to 3 adopt, reject, or modify the proposed 4 decision. The parties will then receive a 5 final written decision from the Board, which 6 will include an explanation of any and all 7 appeal rights. 8 Any question from the parties thus far? 9 All right. 10 Before we begin, I understand that the 11 parties conferred prior to this hearing 12 regarding exhibits and documentary evidence. 13 I received a packet of joint exhibits marked 14 numbers TSB Exhibit 1 through TSB Exhibit 7. 15 And the members of the Executive Committee 16 have received those as well. It was unclear 17 from the correspondence that I got exactly 18 the status of those documents, so I want to 19 ask now if either party wants to move for 20 those exhibits to be admitted into evidence 21 in this hearing. 22 Ms. Vike, I think I can see you talking 23 but you are on mute. Is there a motion to 24 admit these into evidence? 25 MS. VIKE: Yes, making a motion to</p>	<p>1 their positions if they would like. This is 2 optional. You do not have to do it. 3 We will start with Ms. Vike and then 4 proceed to Mr. Gausman. After that, we will 5 start with the presentation of Ms. Vike's 6 evidence. 7 Ms. Vike, I will turn to you first. Do 8 you want to make a brief opening statement? 9 MS. VIKE: No, I don't have an 10 opening statement. 11 HEARING EXAMINER MURPHY: Thank 12 you. 13 Mr. Gausman, would you like to present a 14 brief opening statement? 15 MR. GAUSMAN: Brief, I suppose if I 16 may. I hope everybody has had a chance to 17 read through the documents that were sent on 18 behalf of me, from me and from people who 19 support myself, for lack of a better term. 20 To keep it brief, law enforcement is 21 something that I know and love, and it's 22 something that I have done for some time now. 23 And it's a career path that I chose, and it's 24 something that I want to maintain. 25 I hope that my viewpoints can be seen</p>
<p>1 admit the documents as evidence. 2 HEARING EXAMINER MURPHY: Thank 3 you. Are there any objections to the 4 admission of those documents into evidence? 5 And this is the TSB Exhibit 1 through 6 TSB Exhibit 7 that I was sent prior to this 7 hearing? 8 Hearing no objections, TSB Exhibit 1 9 through TSB Exhibit 7 are accepted and 10 admitted into the record. 11 I believe I saw an announcement where 12 those documents were provided to the 13 Executive Committee members. Can someone 14 confirm that in your packet you have those? 15 In what I have seen, they start on page 8. 16 SHERIFF DELAIN: Yes. This is 17 Chairperson Sheriff Delain, and I can confirm 18 that the Exhibits 1 through 7 have been 19 included in our packet. 20 HEARING EXAMINER MURPHY: Thank 21 you. We are ready to proceed with the 22 hearing. 23 Before the presentation of any evidence, 24 I want to give each side an opportunity to 25 briefly summarize for the Executive Committee</p>	<p>1 today, and feel free to ask any questions of 2 me. I apologize for the ignorance on my part 3 as far as this goes. This is new to me. I 4 wasn't able to find someone to help me 5 represent here, but I will do my best. 6 Thank you. 7 HEARING EXAMINER MURPHY: All 8 right. Thank you. We will turn now to 9 evidence. 10 Ms. Vike, do you have any witnesses to 11 call? 12 MS. VIKE: I do not. 13 HEARING EXAMINER MURPHY: 14 Mr. Gausman, do you have any witnesses to 15 call? 16 MR. GAUSMAN: No, I don't. 17 HEARING EXAMINER MURPHY: Well, 18 then it appears that no party has witnesses. 19 The packet of exhibits sent in advance are 20 now admitted into evidence. I guess, I will 21 see if any party has any other documentary 22 evidence to submit? 23 Ms. Vike, do you have any other evidence 24 to submit of any sort today? 25 MS. VIKE: No. I mean, I have</p>

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<p>1 hearing testimony to provide, but other than 2 that I don't have evidence. 3 HEARING EXAMINER MURPHY: So will 4 you be testifying, is that what -- is that 5 right? 6 MS. VIKE: I guess, yeah. I was 7 going to give an explanation of the point of 8 view of the Training and Standards Bureau and 9 kind of the background of the original 10 recommendation. 11 HEARING EXAMINER MURPHY: Yes, just 12 from a logical perspective, if that is going 13 to be evidence, you're testifying to facts, 14 we should swear you in, and then Mr. Gausman 15 will have a chance to cross-examine. 16 If it's argument about the evidence 17 already in the record, that is fine as part 18 of closing. 19 However, you want to do that is fine 20 with me. 21 MS. VIKE: Okay. You can swear me 22 in, and I will provide the testimony. 23 HEARING EXAMINER MURPHY: Okay. So 24 the first witness today will be from 25 Ms. Vike.</p>	<p>1 The policy as it applies to 2 Officer Gausman states that a law enforcement 3 or tribal law enforcement officer who holds 4 law enforcement or tribal law enforcement 5 employment for less than one consecutive year 6 full-time prior to termination of employment, 7 has three years from the date they 8 successfully completed preparatory law 9 enforcement officer training, or three years 10 from the date they last held law enforcement 11 employment for at least one consecutive year 12 full-time, to regain employment as a law 13 enforcement or tribal law enforcement 14 officer. Failure to gain or regain 15 employment within that time frame, within the 16 time frames specified, will require 17 recompletion of the entire preparatory law 18 enforcement officer training program to 19 regain eligibility for certification as a law 20 enforcement or tribal law enforcement 21 officer. 22 This policy has been in place since 23 March of 2021. The policy was updated in 24 March 2021 so that officers in the state of 25 Wisconsin are held to the same high standards</p>
<p>1 Ms. Vike, please raise your right hand. 2 DANA VIKE, 3 called as a witness, being first duly 4 sworn in the above cause, testified 5 under oath as follows: 6 HEARING EXAMINER MURPHY: Please 7 proceed. 8 9 DIRECT EXAMINATION 10 By Ms. Vike: 11 MS. VIKE: So Noah Gausman, he is a 12 part-time law enforcement officer with the 13 Balsam Lake Water Safety Patrol. He began 14 employment with Balsam Lake Water Safety 15 Patrol on May 26th, 2023, and at the time he 16 was hired, he had been out of law enforcement 17 since September 1st, 2022. 18 Per the current Law Enforcement 19 Standards Board policy in place since 20 March 2nd of 2021, Officer Gausman does not 21 qualify for recertification as a law 22 enforcement officer without recompletion of 23 the Law Enforcement Academy. The Law 24 Enforcement Standards Board policy is 25 included in your packets under Exhibit 1.</p>	<p>1 as officers transferring to law enforcement 2 employment in Wisconsin from other states. 3 The policy change was not intended to require 4 part-time officers who maintain law 5 enforcement employment certification to have 6 to recomplete the Law Enforcement Academy. 7 A request for extension of 8 Officer Gausman's eligibility for 9 certification was submitted to the Training 10 and Standards Bureau in August 2023. It 11 provided to the Law Enforcement Standards 12 Board for review at the September 6th, 2023, 13 Law Enforcement Standards Board meeting. 14 Jerry Mullen provided a recommendation 15 against the waiver. His recommendation and 16 letter submitted in support of the waiver are 17 included in your packet under Exhibit 3. 18 Jerry recommended against the waiver for 19 the following reasons: Officer Gausman has 20 only held employment as a law enforcement 21 officer part-time since graduating from the 22 Law Enforcement Academy in 2014. More 23 importantly, Officer Gausman has not held 24 consistent law enforcement employment having 25 gaps with law enforcement employment,</p>

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<p>1 including a gap of approximately one and a 2 half years between his employment with 3 Balsam Lake Police Department and his hire 4 with the Frederic Police Department in 5 December 2020 as well as gaps in completion 6 of annual recertification training. 7 On September 4th, 2019, Officer Gausman 8 was decertified by the Law Enforcement 9 Standards Board for failure to complete 10 recertification training between 11 July 1st, 2018, and June 30th, 2019. 12 Following the September 2019 board meeting, I 13 received a phone call from Officer Gausman 14 letting me know that he had resigned his 15 position with Balsam Lake on June 27th, 2019, 16 a couple of days before the end of the state 17 fiscal year. I also found out that the 18 Balsam Lake Police Department had disbanded. 19 I had recommended to the Law Enforcement 20 Standards Board at its December 3rd, 2019, 21 meeting that Officer Gausman's 22 decertification be reversed since he had 23 resigned prior to the end of the state fiscal 24 year. The Law Enforcement Standards Board 25 expressed some reservations as</p>	<p>1 Training and Standards Bureau was unaware 2 that he had resigned from his position with 3 Star Prairie on September 1st, 2022. We 4 became aware of his resignation while 5 completing the annual recertification 6 training audit. 7 No training hours were included in 8 Acadis for Officer Gausman for state fiscal 9 year 2023, which ran from July 1st, 2022, 10 through June 30th, 2023. Through 11 communication with the Star Prairie Police 12 Department in August of 2023, it was 13 determined that he had resigned. Officer 14 Gausman had resigned in September 2022 and 15 that his status was subsequently updated in 16 Acadis. Officer Gausman, the Balsam Lake 17 Water Safety Patrol were notified at that 18 time that he didn't -- Officer Gausman did 19 not qualify for certification. 20 The Training and Standards Bureau does 21 not believe there are sufficient mitigating 22 circumstances for Officer Gausman to qualify 23 for a waiver of the Law Enforcement Standards 24 Board policy. Our recommendation included 25 under Exhibit 3 as provided to the</p>
<p>1 Officer Gausman completed no recertification 2 training during state fiscal year 2019 and 3 resigned approximately four days before the 4 end of the state fiscal year. 5 And although Officer Gausman provided a 6 resignation date of June 27th, 2019, I do not 7 know when he last actively worked for 8 Balsam Lake Police Department, which is a 9 boat patrol agency, and I am not sure if any 10 boat patrol work was done beyond summer of 11 2018. The agency did not submit a request 12 for reimbursement of recertification training 13 beyond summer of 2018. 14 Between December 20th, 2020, and 15 September 1st, 2022, Officer Gausman held 16 part-time law enforcement positions with the 17 Frederic Police Department and the 18 Star Prairie Police Department. Between 19 September 1st, 2022, and May 26th, 2023, 20 Officer Gausman did not hold law enforcement 21 employment. 22 When Officer Gausman was hired by Balsam 23 Lake Water Safety Patrol in May 2023, he was 24 also listed in Acadis as a part-time officer 25 with the Star Prairie Police Department. The</p>	<p>1 Law Enforcement Standards Board on 2 September 6th, 2023, continues to stand. 3 HEARING EXAMINER MURPHY: Thank 4 you. 5 Mr. Gausman, if you would like, you have 6 an opportunity to cross-examine this witness. 7 So this would be a time if you have questions 8 for this witness. You will separately have 9 an opportunity to testify, if you would like. 10 But do you have any questions for this 11 witness? 12 MR. GAUSMAN: Just a brief question 13 on clarification here. 14 15 CROSS-EXAMINATION 16 By Mr. Gausman: 17 MR. GAUSMAN: When I was employed 18 by Balsam Lake Police Department originally, 19 it was through the town municipality, and 20 although Ms. Vike stated that it was a boat 21 patrol agency, it was also a municipal police 22 department at that time, and I was doing both 23 duties. 24 It was a requirement to work the town 25 festivals and other times and holidays and</p>

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<p>1 situations throughout my employment through 2 Balsam Lake. That was required to maintain 3 my employment. If I was to fail to do so, I 4 was given the option to resign if I was not 5 to complete the work that was expected of me. 6 So I did maintain working through Balsam Lake 7 until my resignation date.</p> <p>8 HEARING EXAMINER MURPHY: Okay. Do 9 you have any questions or any other questions 10 for this witness?</p> <p>11 MR. GAUSMAN: No, not at this time.</p> <p>12 HEARING EXAMINER MURPHY: Thank 13 you. That concludes the testimony of 14 Ms. Vike.</p> <p>15 And Ms. Vike, do you have any other 16 witnesses or evidence to present today?</p> <p>17 MS. VIKE: I do not.</p> <p>18 HEARING EXAMINER MURPHY: Do any 19 Executive Committee board member have any 20 questions for this witness? Hearing none, 21 that concludes the testimony --</p> <p>22 SHERIFF DELAIN: Hold on, sir.</p> <p>23 EXAMINATION</p> <p>24 By the Executive Committee: 25 I just want to confirm, can you</p>	<p>1 already in the record to discuss or submit 2 today?</p> <p>3 MR. GAUSMAN: Not any additional 4 formal evidence, no.</p> <p>5 HEARING EXAMINER MURPHY: Thank 6 you. And when I ask about witnesses, this 7 would also be your opportunity to testify, so 8 I will just ask. Do you want to give 9 testimony today? Do you want to be sworn in 10 and give factual testimony? It is up to you 11 whether or you want to or not, but this would 12 be the time.</p> <p>13 MR. GAUSMAN: Will I still have an 14 additional chance for closing, or is this my 15 chance?</p> <p>16 HEARING EXAMINER MURPHY: It 17 will be each side will have a chance for 18 closing arguments. And closing arguments 19 will be a discussion of the evidence and any 20 conclusions to be drawn from the evidence.</p> <p>21 So if you plan to introduce facts, if 22 you tend to -- if you plan to tell the 23 Executive Committee anything that you want to 24 then rely on for argument, this is the time. 25 You will have a chance for closing</p>
<p>1 restate the years that he did not complete 2 the mandatory 24 hours of inservice to 3 maintain certification?</p> <p>4 MS. VIKE: Yes. So that was at the 5 end of his employment the first time with 6 Balsam Lake Police Department, and that would 7 have been between July 1st, 2018 and 8 June 30th, 2019.</p> <p>9 SHERIFF DELAIN: Thank you.</p> <p>10 HEARING EXAMINER MURPHY: Any other 11 question from Executive Committee members for 12 this witness? Okay. Hearing none, that 13 concludes the testimony of Ms. Vike.</p> <p>14 Ms. Vike, do you have -- I already asked 15 you, but I will ask you. Do you have any 16 other witnesses for evidence to present 17 today?</p> <p>18 MS. VIKE: I do not.</p> <p>19 HEARING EXAMINER MURPHY: Thank 20 you. Okay.</p> <p>21 Mr. Gausman, do you have any witnesses 22 to call today, or do you wish to testify?</p> <p>23 MR. GAUSMAN: I have no witnesses.</p> <p>24 HEARING EXAMINER MURPHY: Do you 25 have any documentary evidence that is not</p>	<p>1 argument, but that is really the time to talk 2 about what the evidence means in regard to 3 the conclusion that the Committee is going to 4 reach.</p> <p>5 If you want to say anything factually, 6 this would be the time to do that now.</p> <p>7 MR. GAUSMAN: Okay. I guess I 8 don't have anything at this time.</p> <p>9 HEARING EXAMINER MURPHY: Okay. I 10 will just ask Ms. Vike, any rebuttal 11 witnesses? Technically there is not anything 12 to rebut, but I will give you the 13 opportunity.</p> <p>14 MS. VIKE: No.</p> <p>15 HEARING EXAMINER MURPHY: Okay. 16 Thank you. That will conclude evidence for 17 today. So each side will now have an 18 opportunity to give closing arguments.</p> <p>19 Then, Ms. Vike, we will start with you. 20 Do you have any closing arguments to make?</p> <p>21 MS. VIKE: I don't have any 22 additional closing arguments, no.</p> <p>23 HEARING EXAMINER MURPHY: Thank 24 you. 25 Mr. Gausman, is there anything that you</p>

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<p>1 would like to say in closing? 2 MR. GAUSMAN: Yes. Based on -- you 3 know, law enforcement is very important to 4 me, and at this time it seems like law 5 enforcement is so critical, and there is so 6 many people who are resigning and quitting to 7 get out of the job, for whatever reasons they 8 may be, via political or just not a fit for 9 them. You know as I was always told, prior 10 to training, after training, this was a 11 calling. This is something that I want to 12 do. This is something that I am attempting 13 to do for a lifetime. This is what I have 14 chosen to do, and I am committed to it. 15 Just trivial, I don't mean to take too 16 much of your time. When I was with the 17 Star Prairie, I toured the new River Falls 18 Police Department. I was told that officers 19 were given an opportunity to get a full 20 pension before 20 years of service, and there 21 was only a few signal digit year of service 22 before the department was going to offer them 23 full pension, and multiple officers had 24 resigned because law enforcement wasn't for 25 them.</p>	<p>1 department. And I think that this law change 2 could be very detrimental to law enforcement 3 in Wisconsin. 4 I understand that law enforcement 5 officers should be held to a high standard, 6 and I am held to that standard. I have the 7 same training. You know, there is nothing 8 less that I can or have to do because I am 9 part-time versus full-time. 10 I'm hoping that -- moving forward, my 11 ultimate goal is to maintain my 12 certification. I love this job. I don't 13 have the opportunity to go back to school. 14 You know, I'm a homeowner. I am a single 15 father. And the closest school is hours from 16 my location. I have got all my money 17 invested in this career. Being part-time, I 18 wasn't offered a handgun, a service weapon. 19 I had to provide that myself. Bulletproof 20 vest, I have had to buy myself, all my 21 uniforms. My ammunition I have had to 22 purchase myself. And I have got all of this 23 equipment, and I have got all this time and 24 dedication and training. 25 I just hope that -- there has been a</p>
<p>1 Especially in the position that I am in 2 now, this is my documents submitted from 3 Tom Kelly and from Gary in support for me. 4 My department relies on part-time work. They 5 don't always have work for me in the winter, 6 you know, this is a boat patrol position. 7 If my employment was taken away from 8 them -- I had started in May and I worked all 9 summer long and I'm set up with them. I have 10 got specific training to this job. They had 11 stated in their letters that there is a good 12 chance that if I cannot be employed with 13 their department or part-time officers cannot 14 be employed with their department, that they 15 may have to disband. 16 Balsam Lake is a very large lake in 17 northern Wisconsin. It is very highly 18 populated by tourism. There were multiple 19 crashes with injuries this year, and normally 20 no one to respond to those issues. It's very 21 clearly there is a need for law enforcement 22 on this lake and for areas all over 23 Wisconsin. It's my understanding that lake 24 patrol down towards Madison area is employed 25 by part-time people through the parks</p>	<p>1 Polk County deputy -- I know I talked to 2 Ms. Vike about this, who had worked for the 3 Polk County Sheriff's Department and had 4 resigned, and it had been more than 5 three years before he applied for his job 6 again, and Ms. Vike explained to me the 7 process of how he got his job back. The law 8 states that you only have three years. He 9 was retired for more than three years, and if 10 there was an exception to that, hopefully 11 this can be a case-by-case basis. And my 12 hopes is that there can be an exception made 13 for this too. 14 I understand the law. I understand 15 there has been -- that law changed. However, 16 I wasn't notified. I don't know where to get 17 that information. Since then I have talked 18 with Mr. Wagner and he has explained that 19 there is -- every update from the Law 20 Enforcement Standards Board is published, is 21 made public. However, I didn't know about 22 that. My employer didn't know about this. I 23 reached out to an auditor for the DOJ. I 24 wasn't aware of this law change. 25 I acted in good faith the way I thought</p>

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<p>1 I was supposed to do this. Things happen. I 2 found new employment through Balsam Lake. I 3 found an opportunity to resign from 4 Star Prairie. I took that chance with the 5 knowledge that it was a good potential 6 possibility that I was going to get hired 7 through Balsam Lake. This is somewhere where 8 I want to stay.</p> <p>9 I understand that maybe the DOJ is 10 trying to remove officers who are jumping 11 from job to job who are missing their annual 12 training. However, that's not my intention.</p> <p>13 At this time in my life being a single 14 father, I can only do part-time employment. 15 Later in the future I hope that changes, you 16 know, if I do get an opportunity to be in law 17 enforcement again. This is a lifelong goal 18 of mine to stay in law enforcement.</p> <p>19 There is additional things I can say. I 20 don't want to take too much more of your 21 time. I guess my report is in my letter. Me 22 losing my certification and the effects of 23 that are sent in letters from the board 24 members from the Balsam Lake Association. 25 I'm certainly open to any questions.</p>	<p>1 Carnahan has got a question. 2 Is it -- when I reviewed the materials 3 and the exhibits, it was my understanding 4 that the last recorded training in Acadis was 5 during the '18/'19 fiscal year; is that 6 correct?</p> <p>7 MS. VIKE: No. He has done 8 training since then. The '18/'19 fiscal year 9 he had not done any training, and that was 10 when the original case was made for 11 decertification, but then he said, well, I 12 resigned like four days before the end of the 13 fiscal year, so he doesn't qualify.</p> <p>14 And then, let me look here to see, he 15 did some training, I believe, when he was 16 with Frederic and Star Prairie, but then 17 there was no training after leaving Star 18 Prairie Police Department and being hired 19 with Balsam Water Lake Safety Patrol. But 20 then again, he is not required to do training 21 during that when he is not employed.</p> <p>22 So that's when we realized was during 23 the audit for this current -- this last state 24 fiscal year for recertification training that 25 he didn't have any training entered into</p>
<p>1 If there is any training I can do to get 2 my certification back, I am more than open to 3 any training or anything that I have to do. 4 I am just unable to go back through and start 5 all the way over from scratch. And I don't 6 think that's fair. I have already done that. 7 I have got a lot of on-the-job experience. I 8 have got many years of annual training, 9 required training that I have completed.</p> <p>10 So I know in discussions with 11 Mr. Wagner, it was mentioned that there was 12 an opportunity to take a training course, 13 potentially. I don't know if that was in the 14 works or something that was a possibility. 15 My department is more than willing to pay for 16 anything they can to get my employment back. 17 And I am willing to do what I can minus 18 starting over from the beginning to do that.</p> <p>19 That's all I have at this time. I 20 appreciate your time.</p> <p>21 HEARING EXAMINER MURPHY: Thank 22 you. Is there any questions from Executive 23 Committee members for either of the parties 24 here today?</p> <p>25 SUPERINTENDENT CARNAHAN: Yeah,</p>	<p>1 Acadis with Star Prairie, and that's when we 2 found out, well, he had left Star Prairie. 3 Star Prairie had failed to let us know that 4 he left there in September of 2022, so we 5 weren't aware of that until August of 2023.</p> <p>6 SUPERINTENDENT CARNAHAN: Okay. 7 Thank you.</p> <p>8 SHERIFF DELAIN: Dana, just to 9 follow-up to the superintendent question a 10 little bit more. How many hours of training 11 are you showing that he has completed since 12 2018?</p> <p>13 MS. VIKE: Let me look and see.</p> <p>14 SHERIFF DELAIN: I understand it's 15 supposed to be 24 hours of inservice 16 annually, including the weapons qualification 17 annually and biennial EVOC training. But 18 maybe you can just highlight that.</p> <p>19 MS. VIKE: Yes. It looks like 20 approximately 37 or 38 hours.</p> <p>21 SHERIFF DELAIN: Since 2018?</p> <p>22 MS. VIKE: Yes.</p> <p>23 MR. GAUSMAN: I don't believe that 24 to be correct. Last time I checked Acadis, 25 it was nearly 700 hours.</p>

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<p>1 MS. VIKE: Not since 2018. So I 2 show between 2018 and 2021 there's no hours 3 listed at all. So starting in June -- or 4 March 2021, we have hours listed from you, 5 and I've got a one-hour course, a four-hour 6 course, a two-hour, two hour, two hour, 7 two hour, two hour, two hour, two hour, 8 two hour, two hour, a bunch of eLearning 9 online two-hour courses, a three-hour course, 10 a two, four, six, seven, eight hours, nine, 11 ten, so I can go through -- lets see, 21. So 12 four, five, six, seven, eight, nine, ten, 11, 13 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 14 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 15 34, 35 -- 35 hours and 45 minutes since 2018. 16 So that's going from 2021 as far as what has 17 been entered into Acadis. 18 If you have done other training that 19 wasn't entered in there, I don't know. But 20 this is from March 31st, 2021, through 21 June 24th, 2022. 22 SHERIFF DELAIN: In that time 23 frame, Dana, are you showing -- obviously no 24 weapons qualification '18, '19, '20. What 25 about weapons qualification in '21 and '22,</p>	<p>1 questions and answers? 2 MR. GAUSMAN: Not at this time. I 3 know I have done both years of -- I think 4 that was explained. I have done both years 5 of handgun qualification when I was with 6 Star Prairie, and I also did EVOC. I don't 7 remember that fiscal year, but I do believe 8 that was stated also. 9 But, nope, no further questions from me. 10 HEARING EXAMINER MURPHY: I 11 understand. Any other questions from the 12 Executive Committee for either of the 13 parties? Go ahead. 14 DEPUTY CHIEF METOYER: This 15 question is for Dana. If I am reading this 16 correctly, the law changed or our policy 17 changed in March of 2021? 18 MS. VIKE: Correct. 19 DEPUTY CHIEF METOYER: So prior to 20 March 2nd of 2021, would he have qualified? 21 MS. VIKE: He would have because 22 prior to March 2nd, 2021, whether you are 23 part-time or full-time, if you left 24 employment, you had three years to come back 25 into employment.</p>
<p>1 and then biennial EVOC training? Is there 2 any documentation of that between '18 and -- 3 MS. VIKE: So yes, so he did the 4 handgun qualification June 2018 and then 5 again March 31st, 2021. The biennial vehicle 6 pursuit requirement, June 2018 and then 7 May 13th, 2021. And he has done handgun 8 qualification, June 24th, 2022, was the last 9 time. 10 SHERIFF DELAIN: So he would 11 have -- 12 MS. VIKE: And so he hasn't done -- 13 he didn't do vehicle pursuit for the 2021 14 through 2023 biennium. 15 SHERIFF DELAIN: Right, that's what 16 I was trying to say. Biennial EVOC would 17 have been missed during that time frame; is 18 that correct, Dana? 19 MS. VIKE: Correct. Correct. 20 SHERIFF DELAIN: That's all I have 21 for questions. Thank you. 22 HEARING EXAMINER MURPHY: 23 Mr. Gausman, just in the interest of making 24 sure everyone is heard, do you have anything 25 that you want to discuss or comment on those</p>	<p>1 DEPUTY CHIEF METOYER: Thank you. 2 MS. VIKE: Yes. 3 HEARING EXAMINER MURPHY: 4 Mr. Gausman, anything you would like to add 5 to that issue? 6 MR. GAUSMAN: No, not at this time. 7 HEARING EXAMINER MURPHY: Okay. 8 Any other questions from members of the 9 Executive Committee? Seeing none, we have 10 now completed openings, evidence, closings 11 and questions, so that concludes the evidence 12 and arguments portions of today's hearing, 13 which we will proceed with the agenda. 14 SHERIFF DELAIN: All right. Thank 15 you. At this time I will seek a motion to go 16 into closed session for the purposes of 17 deliberating this hearing in front of us 18 today. 19 DEPUTY CHIEF METOYER: I will make 20 that motion. 21 SHERIFF DELAIN: All right. Deputy 22 Chief Metoyer made a motion to go into closed 23 session. Do I have a second? 24 SHERIFF BARRETT: Sheriff Barrett 25 seconds.</p>

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<p>1 SHERIFF DELAIN: Sheriff Barrett 2 with a second. 3 Any additional discussion? Hearing 4 none. 5 All of those in favor of going into 6 closed session, signify with an aye. 7 (Indicating) 8 SHERIFF DELAIN: Any opposed, 9 signify with a nay. Hearing none. 10 Thank you. 11 Katie, if you would be able to move us 12 into a closed session meeting room, please. 13 MS. MAULE: Okay. Come back out 14 when you are ready. 15 (Discussion held off the record) 16 SHERIFF DELAIN: The time is 17 12:20 p.m., and we are returning to open 18 session. And with that, I will seek a 19 motion. 20 DEPUTY CHIEF METOYER: I will make 21 a motion to deny the appeal and uphold the 22 LESB's decision given on September 6th, 2023. 23 SHERIFF DELAIN: We have a motion 24 by Deputy Chief Metoyer to deny the appeal 25 and uphold the Law Enforcement Standards</p>	<p>1 objections will then go to the full board 2 where the full board will consider the 3 proposed decision. 4 SHERIFF DELAIN: All right. Thank 5 you, Mr. Murphy. Based upon that and we know 6 where we are going, at this point, I think, 7 that should conclude this hearing. 8 So I will seek a motion to adjourn. 9 SUPERINTENDENT CARNAHAN: Carnahan 10 moves to adjourn. 11 SHERIFF DELAIN: Thank you, 12 Superintendent. We have a motion to adjourn 13 from the superintendent to adjourn. Do I 14 have a second? 15 SHERIFF BARRETT: Sheriff Barrett 16 seconds. 17 SHERIFF DELAIN: Second by 18 Sheriff Barrett. 19 Any other discussion? Hearing none. 20 All those in favor, signify with aye. 21 Aye. 22 (Indicating) 23 SHERIFF DELAIN: All right. This 24 adjourns our 11:00 a.m. hearing, and we will 25 see you again at 1:30 for our next hearing.</p>
<p>1 Board's September 6th, 2023, decision. Do I 2 have a second? 3 SHERIFF BARRETT: Sheriff Barrett 4 seconds. 5 SHERIFF DELAIN: We have a second. 6 Any other discussion related to the decision? 7 Hearing none. 8 All those in favor, signify with an aye. 9 Aye. 10 (Indicating) 11 SHERIFF DELAIN: Any opposed, 12 signify with a nay. Hearing none, that 13 motion carries unanimously. 14 And with that, I will turn it back over 15 to Mr. Murphy to explain what will happen 16 next. 17 HEARING EXAMINER MURPHY: Thank 18 you. So for next steps, we will be ordering 19 a transcript from the court reporter. After 20 I have that, I will prepare a proposed 21 decision from -- for the Board. That 22 proposed decision I will send to each of the 23 parties. The parties will have an 24 opportunity to send me any objections in 25 writing. The proposed decision and any</p>	<p>1 Thank you, and we will see you in about an 2 hour. 3 (Adjourning at 12:22 p.m.) 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>

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<p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: center;">STATE OF WISCONSIN LAW ENFORCEMENT STANDARDS BOARD</p> <hr/> <p>In the Matter of the Law Enforcement Certification of Noah Gausman Case Number: LESB-23-0003</p> <hr/> <p>STATE OF WISCONSIN)) ss. COUNTY OF DANE)</p> <p>I, REBECCA FARRIS, a Stenographic Court Reporter and Notary Public in and for the State of Wisconsin, do hereby certify that the foregoing proceedings was taken in shorthand by me and thereafter converted to typewriting using computer-aided transcription.</p> <p style="text-align: center;">Dated November 20, 2023.</p> <hr/> <p>Rebecca Farris Stenographic Court Reporter Notary Public, State of Wisconsin</p>	

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December 22, 2023

VIA ELECTRONIC MAIL

Ron Betley, Director
Training & Standards Bureau
Wisconsin Department of Justice
P.O. Box 7857
Madison, WI 53707-7857
betleyrw@doj.state.wi.us

**RE: *In the Matter of Law Enforcement Certification of Noah
Gausman***
Case No. LESB-23-0003

Dear Director Betley:

I am writing regarding the above-referenced case before the Law Enforcement Standards Board (LESB). As you know, LESB decertified Mr. Gausman as a law enforcement officer earlier this year.

Mr. Gausman was informed, by LESB, that his employment with Balsam Lake Water Safety Patrol “falls outside of LESB policy (in place since 3/2/2021).” That March 2, 2021, policy is attached hereto (this document came from the packet of documents sent to Mr. Gausman by LESB, and was labeled by LESB as “Exhibit 1”). His current status in LESB’s Arcadis portal is “Lapsed.”

The March 2, 2021 document cited by LESB to claim that Mr. Gausman is out of compliance with LESB policy, however, was not lawfully adopted. It appears LESB simply voted to amend their policy in a meeting and then put it in their policy manual, and at no point did LESB adopt this policy as a rule pursuant to Chapter 227. As a result, its enforcement against Mr. Gausman and other law enforcement officers in Wisconsin is unlawful.

Pursuant to Wis. Stat. § 227.10(1), “Each agency shall promulgate as a rule each statement of general policy and each interpretation of a statute which it specifically adopts to govern its enforcement or administration of that statute.” The policy referenced and enforced by LESB is very clearly a rule which has never been promulgated as such.

EXHIBIT
C

Further, pursuant to Wis. Stat. § 227.10(2m), “No agency may implement or enforce any standard, requirement, or threshold, including as a term or condition of any license issued by the agency, unless that standard, requirement, or threshold is explicitly required or explicitly permitted by statute or by a rule that has been promulgated in accordance with this subchapter.”

LESB’s cited March 2, 2021 policy was thus required to be promulgated as a rule pursuant to Wis. Stat. § 227.10(1), it plainly was not, and is thus unlawful. In addition, enforcing this policy is also unlawful under Wis. Stat. § 227.10(2m), which prohibits LESB from implementing or enforcing this requirement against Mr. Gausman (and others) because it “is not explicitly required or explicitly permitted by statute or by a rule . . .”

Wis. Stat. § 165.85(4)(a)1. allows LESB to “establish a preparatory program of law enforcement and tribal law enforcement officer training, which shall include not less than 600 hours of training.” And those preparatory training program policies “need not be promulgated as rules under ch 227.” However, the March 2, 2021 policy is not a “preparatory program” standard. And the exemption under that section from rulemaking *only* applies to “the criteria and policies established under this paragraph.” It does not, therefore, apply to the March 2, 2021 policy adopted by LESB, which only applies to already employed law enforcement officers who, by definition, have already *completed* a preparatory training course.

The Legislature very carefully, and clearly, did not exempt any and all policies and regulations adopted by the LESB from rulemaking.

Mr. Gausman is just one of what I am sure are many part time law enforcement officers in Wisconsin harmed by this unlawful policy change. I am writing to request that LESB immediately act to rescind this unlawful policy and to reinstate Mr. Gausman’s status as a Law Enforcement Officer in Wisconsin.

If we do not hear from you by January 12, 2024, Mr. Gausman is prepared to take all legal steps to protect his rights.

Thank you.

Sincerely,



Lucas T. Vebber
Attorney for Noah Gausman

cc: Sheriff Todd Delain, Chairperson of the LESB
(Todd.delain@browncountywi.gov)

Law Enforcement Standards Board Policy on Time Frame for Law Enforcement Officers to Re-Gain Law Enforcement or Tribal Law Enforcement Employment

Policy Prior to March 2, 2021

A law enforcement or tribal law enforcement officer who holds law enforcement or tribal law enforcement employment for at least one (1) consecutive year prior to termination of employment, has three (3) years from their last date of employment to re-gain employment as a law enforcement or tribal law enforcement officer. After three (3) years of unemployment, law enforcement and tribal law enforcement officers must repeat the entire preparatory law enforcement officer training program to re-gain eligibility for certification as a law enforcement or tribal law enforcement officer.

A law enforcement or tribal law enforcement officer who holds law enforcement or tribal law enforcement employment for less than one (1) consecutive year prior to termination of employment, has three (3) years from the date they successfully completed preparatory law enforcement officer training, or three (3) years from the date they last held law enforcement employment for at least one (1) consecutive year, to re-gain employment as a law enforcement or tribal law enforcement officer. Failure to gain or re-gain employment within the time frames specified will require re-completion of the entire preparatory law enforcement officer training program to re-gain eligibility for certification as a law enforcement or tribal law enforcement officer.

Policy Since March 2, 2021

A law enforcement or tribal law enforcement officer who holds law enforcement or tribal law enforcement employment for at least one (1) consecutive year **full-time** prior to termination of employment, has three (3) years from their last date of employment to regain employment as a law enforcement or tribal law enforcement officer. After three (3) years of unemployment, law enforcement and tribal law enforcement officers must repeat the entire preparatory law enforcement officer training program to regain eligibility for certification as a law enforcement or tribal law enforcement officer.

A law enforcement or tribal law enforcement officer who holds law enforcement or tribal law enforcement employment for less than one (1) consecutive year **full-time** prior to termination of employment, has three (3) years from the date they successfully completed preparatory law enforcement officer training, or three (3) years from the date they last held law enforcement employment for at least one (1) consecutive year **full-time**, to regain employment as a law enforcement or tribal law enforcement officer. Failure to gain or regain employment within the time frames specified will require re-completion of the entire preparatory law enforcement officer training program to regain eligibility for certification as a law enforcement or tribal law enforcement officer.

The LESB may establish other requirements it deems appropriate on an individual case-by-case basis. An application for an extension or waiver of LESB policy must be approved by the LESB. Applicants may request an extension or waiver by submitting form DJ-LE-342, "Application for Extension of the Time Frame to Regain Officer Employment," available for download from Wilenet. If approved, a condition of approval will be the requirement that the applicant successfully complete the law enforcement reciprocity exam within one year.



STATE OF WISCONSIN
Law Enforcement Standards Board

In the Matter of Noah Gausman

PROPOSED DECISION
Case No. LESB-23-0003

PRELIMINARY RECITALS

On September 6, 2023, the State of Wisconsin Law Enforcement Standards Board (the "Board") denied Noah Gausman's request for a waiver of training requirements to regain law enforcement employment.

Gausman requested a hearing on the Board's decision pursuant to Wis. Stat. § 227.42. The hearing was held before the Board's Executive Committee on November 14, 2023, via Zoom videoconferencing. Assistant Attorney General S. Michael Murphy served as hearing examiner pursuant to Wis. Stat. § 227.46(1) and the Board's written policies and procedures.

Pursuant to Wis. Stat. § 227.47(1), the parties to this proceeding are certified as follows:

State of Wisconsin
Law Enforcement Standards Board
17 West Main Street, P.O. Box 7070
Madison, WI 53707-7070

Noah Gausman
12878 County Road D
Grantsburg, WI 54840

Training and Standards Bureau
Division of Law Enforcement Services
Wisconsin Department of Justice
17 West Main Street, P.O. Box 7070
Madison, WI 53707-7070

EXHIBIT
D

FINDINGS OF FACT

1. Noah Gausman completed law enforcement officer training in May 2014. (Appeal Hearing Exhibits, meeting of board's Executive Committee ("Ex.____:___").) (Ex. 2.)

2. Mr. Gausman has been employed part-time by law enforcement agencies as follows: Balsam Lake Police Department from May 9, 2015, to June 27, 2019; Frederic Police Department from July 24, 2015, to November 14, 2018; Frederic Police Department December 20, 2020, to July 30, 2021; Star Prairie Police Department from January 1, 2021, to September 1, 2022. (Ex. 2-3.) Hearing Transcript ("Tr. ___"). (Tr. 19:11-17, 23:14-21.)

3. Mr. Gausman has not held full time law enforcement employment in Wisconsin. (See Ex. 2, 4; Tr. 21-22.)

4. Mr. Gausman was not employed as a law enforcement officer for approximately 1.5 years between June 28, 2019, and December 20, 2020, before being hired by the Frederic PD on December 20, 2020, and then the Star Prairie PD on January 1, 2021. (Ex. 2-3; see Tr. 23:5-18.)

5. Mr. Gausman did not complete law enforcement training during the 2018/2019 fiscal year or the 2019/2020 fiscal year. (Tr. 36-38.) He resumed annual training in March 2021. (Tr. 38.)

6. Mr. Gausman was not employed as a law enforcement officer for approximately nine (9) months between September 1, 2022, and May 26, 2023, prior to being hired by the Balsam Lake Water Safety Patrol on May 26, 2023. (Ex. 2-3; Tr. 19:11-15, 23:18-23.) As Mr. Gausman stated in his submissions: "I resigned in good standing from the Star Prairie Police Department on September 1, 2022. I was hired with Balsam Lake Water Safety Patrol on May 26, 2023." (Ex. 3.)

7. The Wisconsin Department of Justice Training and Standards Bureau ("TSB") became aware of Mr. Gausman's training and employment gaps during an audit of officer recertification training. (Ex. 2-3; Tr. 24:3-6, Tr. 36-37.) Balsam Lake Water Safety Patrol was then notified that Mr. Gausman did not qualify for certification as a law enforcement officer. (Tr. 24:16-19.)

8. In August 2023, Gausman requested an extension or wavier of training requirements for recertification. (Tr. 21:7-10; see Ex. 4.)

9. The Board reviewed the request at its September 6, 2023, meeting and denied the request. (Ex. 4; *see* Tr. 21:7-17.)

10. On September 7, 2023, Wisconsin Department of Justice Training and Standards Bureau Compliance Officer Gerald Mullen notified Gausman that on September 6, 2023, the Board denied his request for a waiver. The notification included an explanation that Gausman would need to complete the full 720-hour Law Enforcement Preparatory Training Academy by May 26, 2024, before he is considered for certification as a Law Enforcement Officer by the LESB. (Ex. 4.)

11. Gausman requested a hearing on that Board decision in a September 21, 2023, via email to Steven Wagner, Administrator of the Division of Law Enforcement Services at the Wisconsin Department of Justice. (Ex. 6.)

DISCUSSION

Considering the November 14, 2023, hearing testimony and the exhibits admitted into the record, the Board affirms the September 6, 2023, decision to deny Gausman's request for a waiver of training requirements for recertification.

The Board is charged by statute with the responsibility of certifying and decertifying individuals as qualified to be employed as law enforcement officers, and establishing and enforcing educational and training standards for law enforcement officers in Wisconsin. Wis. Stat. § 165.85(2)(b), (3)(c), (cm), (4)(a); Wis. Admin. Code LES § 6.02.

An officer's certification is terminated when such officer leaves law enforcement employment. Specifically, "upon the termination of employment of any law enforcement. . . officer, that officer's certification shall be terminated until there is received by the bureau from a new employer the verification of employment standards form required by rules of the board. The board shall then determine the amount of training, if any, required of the officer for recertification." Wis. Admin. Code LES § 6.02.

A law enforcement officer who was previously certified and left employment, such as Mr. Gausman, may request recertification without additional training. Wis. Admin. Code LES § 3.05. As relevant here, if the officer left employment, and therefore lost certification, within the past two years, then the Board may, in its discretion, recertify the officer without additional training. Wis. Admin. Code LES § 3.05(2).

Consistent with the Board's authority, the Board maintains a Policy & Procedures Manual ("Manual") that discusses the circumstances under which training may, or may not, be required for recertification. As relevant here, the Manual provides:

A law enforcement or tribal law enforcement officer who holds law enforcement or tribal law enforcement employment for less than one (1) consecutive year full-time prior to termination of employment, has three (3) years from the date they successfully completed preparatory law enforcement officer training, or three (3) years from the date they last held law enforcement employment for at least one (1) consecutive year full-time, to regain employment as a law enforcement or tribal law enforcement officer. Failure to gain or regain employment within the time frames specified will require re-completion of the entire preparatory law enforcement officer training program to regain eligibility for certification as a law enforcement or tribal law enforcement officer.

(Manual at 47.) These standards help ensure that law enforcement officers are sufficiently trained, including by requiring that Wisconsin officers are held to the same training standards as officers transferring to employment in Wisconsin from other states. (Tr. 20-21.) This Manual provision has been in place since March of 2021. (Ex.1; Tr. 20:22-23; 40:16-18.) The Manual containing the policy is publicly published and publicly available, including on the Law Enforcement Standards Board website.¹

Here, Mr. Gausman has never held full time law enforcement employment and has significant employment gaps since his 2014 completion of law enforcement training. He was not employed as a law enforcement officer between May 15, 2014, and May 9, 2015; between June 28, 2019, and December 20, 2020; or between September 1, 2022, and May 26, 2023, for a total of over three years of non-law enforcement employment since he completed training. (Ex. 2; Tr. 19:11-15, 23:18-23.) It is undisputed that he was not employed as a law enforcement officer for approximately nine (9) months between September 1, 2022, and May 26, 2023. (Ex. 2, 5; *see* Tr. 23:5-23, Tr. 19:11-15.)

¹ <https://wilenet.widj.gov/training-standards/law-enforcement-standards-board-lesb> (last accessed December 21, 2023.)

Additionally, Gausman did not complete mandatory annual recertification training during the 2018/2019 fiscal year or the 2019/2020 fiscal years. That annual training is required to continue to be a certified law enforcement officer in Wisconsin. Wis. Stat. § 165.85(4)(a)7.

Mr. Gausman left law enforcement employment, and therefore became decertified, on September 1, 2022. Mr. Gausman now seeks recertification for the purpose of new employment with the Balsam Lake Water Safety Patrol. (Ex. 2; Tr. 19:11-15, 23:18-23.) However, May 26, 2023, is approximately nine years from Mr. Gausman's law enforcement officer training, and he has never held full time law enforcement employment. These are considerations relevant to the Board's discretion to waive, or not waive, recertification requirements when person who was previously certified seeks new law enforcement employment. Wis. Admin. Code LES § 3.05. In this instance, the Board declined to waive the requirements.

This outcome is particularly appropriate here, where it has been nearly 10 years since Mr. Gausman completed initial training, he has never held full-time law enforcement employment, he has periods of no law enforcement employment since his initial training, and his annual training has periods of lapse. The Board is committed to ensuring that Wisconsin law enforcement officers have proper and current training. Here, that requires that Mr. Gausman complete a Law Enforcement Preparatory Training Academy before recertification as a law enforcement officer.

In Mr. Gausman's submissions, he primarily argues that when he resigned from the Village of Balsam Lake Police Department in 2019, he was told that he had three years to regain employment without retraining, despite his part-time status. (Ex. 3.) He then argues that he was unaware of any change to that practice, as reflected in the Manual, when he resigned from the Star Prairie Police Department on September 1, 2022. (Ex. 3, 5.) At the hearing, he stated that he was unaware that the Manual including updates are published and publicly available. (Tr. 33:14-24.)

However, Wis. Admin. Code LES § 3.05 gives the Board discretion on whether to waive his training requirements upon a request for recertification. The Board here has properly declined to waive the requirement in light of Gausman's training and employment history.

We understand from December 22, 2023, letter from an attorney writing on behalf of Mr. Gausman that Mr. Gausman now argues that the three-year discussion in the Manual, referred to by the TSB in its initial decision, is an unpromulgated rule. We appreciate that view, but the Board relies for its decision on Wis. Admin. Code LES § 3.05, which gives it discretion whether to waive the training requirement in particular cases like Mr. Gausman's. Based on these facts, as discussed above, the Board declines to waive training requirements.

Nonetheless, to Mr. Gausman's point, the current Manual provision has been in place since March 2021 and is publicly available. (Tr. 20:22-23; 40:16-18.) The Manual provision was therefore in place when Mr. Gausman resigned from the Star Prairie Police Department on September 1, 2022. Mr. Gausman's unawareness of the Manual provision when he resigned from part-time employment is not grounds to disturb the Board's decision to decline his request for a waiver of the training requirements.

In sum, the November 14, 2023, hearing evidence does not persuade the Board that the September 6, 2023, decision was incorrect. Mr. Gausman did not show any error or improper exercise of discretion. Accordingly, for the reasons stated in this decision, the Board **AFFIRMS** the September 6, 2023, decision.

CONCLUSIONS OF LAW

1. Under Wis. Stat. § 165.85(3)(c), the Board may certify persons as being qualified to be law enforcement officers.
2. Under Wis. Stat. § 165.85(3)(cm)2, the Board may decertify a law enforcement officer who fails to comply with a rule, policy, or order of the board relating to curriculum, training or recruitment.
3. Under Wis. Stat. § 165.85(4)(a)7, "no person may continue as a certified law enforcement or tribal law enforcement officer unless that person maintains law enforcement or tribal law enforcement employment and completes annual recertification training. Any officer who is subject to this subdivision shall complete at least 24 hours of recertification training each fiscal year beginning in the fiscal year following the fiscal year in which he or

she is certified as a law enforcement or tribal law enforcement officer by the board.”²

4. Under Wis. Admin. Code LES § 6.02(1), “upon the termination of employment of any law enforcement. . . officer, that officer's certification shall be terminated until there is received by the bureau from a new employer the verification of employment standards form required by rules of the board. The board shall then determine the amount of training, if any, required of the officer for recertification.”

5. Under Wis. Admin. Code LES § 3.05(2), a law enforcement officer who was previously certified within the past two years may, in the Board's discretion, be recertified without additional training. Such officer can request waiver of the training requirements for recertification. Wis. Admin. Code LES § 3.05. The Board may then make a discretionary decision on that request.

6. Mr. Gausman did not complete at least 24 hours of recertification training each fiscal year between 2018 and 2020 and therefore became ineligible to continue as a law enforcement officer.

7. Mr. Gausman left law enforcement employment, and therefore became decertified, on September 1, 2022.

8. On September 6, 2023, the Board properly exercised its discretion to deny Gausman's request for a waiver of training requirements. The Board properly advised Gausman that he is required to complete Law Enforcement Preparatory Training before being considered for certification as a Law Enforcement Officer in Wisconsin.

9. Accordingly, the Board's September 6, 2023, decision is Affirmed.

DECISION

The Board's September 6, 2023, decision is **AFFIRMED**.

² Wis. Stat. § 165.85(4)(a)(7) and (8) contain an exception for a Sheriff that is not relevant here.

NOTICE OF RIGHT TO FILE OBJECTIONS

Any party adversely affected by the attached proposed decision may file objections to it with the Board as provided in Wis. Stat. § 227.46(2). The objections must be submitted in writing and must briefly state the reasons and authorities for each objection. The objections may be accompanied by written argument. The written objections and any accompanying argument must be submitted to Assistant Attorney General S. Michael Murphy, Wisconsin Department of Justice, P.O. Box 7857, Madison, Wisconsin 53707-7857. Objections and arguments may also be submitted via e-mail to murphysm@doj.state.wi.us. All written objections and arguments must be received no later than February 21, 2024.

At its meeting on March 5, 2024, the Board will consider the proposed decision and any objections that may have been submitted and will thereafter issue a final written decision. The final written decision will be accompanied by a notice of appeal rights setting out the alternative methods by which a person may request administrative or judicial review of that decision.

Dated Tuesday, February 6, 2024.

STATE OF WISCONSIN
LAW ENFORCEMENT STANDARDS BOARD

By: s/S. Michael Murphy
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February 21, 2024

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Assistant Attorney General S. Michael Murphy
Wisconsin Department of Justice
P.O. Box 7857
Madison, Wisconsin 53707-7857

RE: In The Matter of Noah Gausman
Law Enforcement Standards Board, Case No. LESB-23-0003
Objections and Argument in Response to Proposed Decision

Dear AAG Murphy:

I represent Mr. Noah Gausman in this matter. On February 6, 2024, Mr. Gausman received an electronic copy of the Proposed Decision in this matter. That Proposed Decision stated that Mr. Gausman was required to file any objections (along with any argument) no later than February 21, 2024.

Background

This issue is before the Law Enforcement Standards Board (the Board) because Mr. Gausman appealed a denial of a waiver request. That original denial was made on September 6, 2023, and conveyed to Mr. Gausman via letter dated September 7, 2023. A copy of that letter is included in the record as Exhibit 4. The *only* reason given for denial was the LESB's policy change from March 2021 which adversely impacted part-time officers such as Mr. Gausman. (*See*, Ex. 4, stating "The Committee cited to the LESB policy: . . ." and then copying the March 2021 policy into the letter).

Objections/Argument

i. Error in the Proposed Decision

First, there appears to be a typo in the Proposed Decision, preventing Mr. Gausman from fully reviewing and responding to the Proposed Decision. Paragraph 2 of the "Discussion" section (Page 3 of the Proposed Decision) cites to "Wis. Stat. § 165.85(2)(b)" which does not exist. Mr. Gausman objects to the Proposed Decision on the basis that it cites incorrect law and he is unable to respond fully.

**EXHIBIT
E**

ii. **Regulatory differences between “part-time” and “full-time” law enforcement officers**

The Proposed Decision repeatedly references Mr. Gausman’s “part-time” employment status but cites no relevant sections in the statute or the administrative code which distinguish between “part-time” and “full-time” law enforcement officers.

Indeed, the only source for *any* relevant differentiation between “part-time” and “full-time” law enforcement officers is the cited March 2021 policy from the Board’s Policy & Procedures Manual. (*See* Proposed Decision at 4). As Mr. Gausman already explained in his December 22, 2023, letter to the Board, that is not a lawfully adopted policy. To the extent the Board relies upon that policy, that action exceeds the Board’s powers under state law and is unlawful. (*See* Wis. Stat. § 227.10(2m)). Mr. Gausman objects to the decision insofar as it is based upon an unlawfully adopted policy.

iii. **Training during 2018/19 and 2019/20 fiscal years**

The proposed findings of fact state that Mr. Gausman did not complete law enforcement training during the 2018/19 and 2019/20 fiscal years (*see* Proposed Decision at 2), and the proposed conclusions of law state these proposed facts make him ineligible for law enforcement employment (*see* Proposed Decision at 6). These are incomplete assertions, incorrect, and/or conflict with the record.

Mr. Gausman objects to those findings of fact and conclusions of law which fail to include necessary context, and which conflict with the factual record. Mr. Gausman *was not employed* during the specified times and so was not required to complete any training as a law enforcement officer. This Board has previously acknowledged this, as explained in the hearing in this matter (*see* Tr. 22:19-24). The conclusions of law do not explain why the Board has changed its prior decision that Mr. Gausman was not required to complete training when he was not employed as a law enforcement officer.

Indeed, the hearing record plainly shows that while Mr. Gausman was originally “decertified” in the Fall of 2019 for purportedly failing to complete that mandatory training, he was subsequently reinstated because “he had resigned prior to the end of the state fiscal year.” (Tr. 22:22-24). That is, this Board *already determined* that Mr. Gausman did not need to submit training for those time periods in which he was not a law enforcement officer and re-certified him with full knowledge of this. Mr. Gausman objects to these facts (and the related conclusions of law) as incomplete and misleading and in conflict with the factual record.

iv. **Reliance upon the March 2021 policy change**

Mr. Gausman also objects to the Proposed Decision insofar as it purports to be based on something other than the March 2021 policy change, which is all that LESB cited to when it initially denied Mr. Gausman's request. (*See Ex. 4*). At the hearing, LESB admitted that the *sole* reason for the denial of Mr. Gausman's waiver request was actually the March 2021 policy change. (Tr. 40:21-25). Yet the proposed conclusions of law paragraph 8 states that "the Board properly exercised its discretion to deny Gausman's request for a waiver of training requirements." (Proposed Decision at 7). But the factual record shows that is incorrect. At the hearing, the Board voted to uphold its decision from September 6, 2023, which, as was made clear in the September 7, 2023, denial letter to Mr. Gausman, was *only* based upon the March 2021 policy change. (*See Ex. 4*).

At the hearing when Deputy Chief Metoyer asked the LESB representative "Prior to March 2nd of 2021, would he have qualified?" (Tr. 40:19-20). Dana Vike, responding for LESB said: "He would have because prior to March 2nd, 2021, whether you are part-time or full-time, if you left employment, you had three years to come back into employment." (Tr. 40:21-25). That is, it was made clear that *but for* that March 2021 policy change, Mr. Gausman would remain qualified to work as a law enforcement officer.

As explained in a letter to the Board dated December 22, 2023, and discussed *supra*, the March 2021 policy change was unlawful. The Board cannot simply amend a policy by updating its manual and posting it online. There are notice and comment requirements that must be followed. Public and legislative oversight are required. Posting a manual update on a website is not a substitute for the legally mandated publication requirements in Chapter 227. As the record in this case reflects, but for the March 2021 policy change, Mr. Gausman would not even be here today. Mr. Gausman objects to those parts of the Proposed Decision which indicate otherwise.

On January 25, 2024, an advisory sub-committee of the Board met to review the March 2021 policy change.¹ There was significant support from that Sub-Committee to recommend repealing the March 2021 policy change altogether, although a final recommendation was not made. Nonetheless, there is a clear recognition that this policy is fundamentally flawed in how it is being applied to law enforcement officers like Mr. Gausman. The continued enforcement of this unlawful policy against Mr. Gausman, especially given the board's own sub-committee's reservations about it, raises significant due process of law and equal protection concerns as well, and Mr. Gausman also objects on those grounds.

¹ *See* "LESB Advisory Subcommittee Policy Review Meeting Agenda (1-25-2024)" available at: https://wilenet.widj.gov/sites/default/files/public_files-2024-01/lesb_advisory_subcommittee_policy_review_meeting_1-25-2024_0.pdf

v. **The proposed decision is arbitrary and capricious**

Despite the record making plainly clear that the denial of Mr. Gausman's request was *solely* based upon the March 2021 policy change—the Proposed Decision attempts to claim that the March 2021 policy change is effectively immaterial here because the Board has broad power to exercise discretion under Wis. Admin. Code LES 3.05.

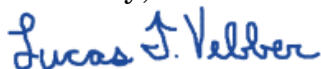
But LES 3.05 simply says “After receiving the recommendations of the director of the bureau, the board will determine waivers of training.” There are no standards in that rule for the Board to apply or to guide their exercise of discretion. To the extent the Board has apparently decided to apply some previously unknown standards which it believes it can do at its discretion (and, as discussed herein, making decisions which conflict with its own prior actions), Mr. Gausman objects to the Proposed Decision as arbitrary and capricious.

Conclusion

At bottom, the Proposed Decision should be set aside and Mr. Gausman's request should instead be granted. It is clear from the record that his request was denied *solely* because of the March 2021 policy change. (*See Ex. 4*). Further, at the hearing itself, LESB made clear that *but for* that policy change, Mr. Gausman would have been allowed to regain employment. (Tr. 40:21-25). To the extent the Proposed Decision now tries to change the narrative and argue the Board is simply exercising discretion regardless of the March 2021 policy (*see Proposed Decision at 6*), that is not supported by the record, and results in an arbitrary and capricious proposed decision which violates Mr. Gausman's rights.

Mr. Gausman has been successful as a law enforcement officer throughout his career without incident. He wishes to continue serving Wisconsin communities as he has done successfully for years, and requests that the Board *not* adopt the Proposed Decision, that it instead grant his request, and that it take steps to remedy the illegally adopted March 2021 policy upon which this entire episode is based.

Sincerely,



Lucas T. Vebber (WI Bar No. 1067543)

Attorney for Noah Gausman



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Lucas@will-law.org | Direct: 414-727-7415

February 26, 2024

Via e-mail only to: murphysm@doj.state.wi.us

Assistant Attorney General S. Michael Murphy
Wisconsin Department of Justice
P.O. Box 7857
Madison, Wisconsin 53707-7857

RE: In The Matter of Noah Gausman
Law Enforcement Standards Board, Case No. LESB-23-0003
Supplemental Objections/Response

Dear AAG Murphy:

Pursuant to your e-mail dated February 22, 2024, I am submitting this supplemental letter on behalf of Mr. Gausman.

The corrected cite to Wis. Stat. § 165.85(3)(b) does not provide the board with the authority to enforce regulations, standards, statements of policy or general orders of general application (including those related to training standards) without first adopting those regulations, standards, statements of policy or general orders of applications through the administrative rulemaking process, as required by Wis. Stat. Ch. 227.

The board cannot simply declare a policy by amending a manual and posting it on their website and then begin enforcing it against individuals like Mr. Gausman, as they have done with their March 2021 policy change, as explained in Mr. Gausman's initial objections letter. *See, e.g.,* Wis. Stat. § 227.10(1) ("Each agency shall promulgate as a rule each statement of general policy and each interpretation of a statute which it specifically adopts to govern its enforcement or administration of that statute. . .").

Mr. Gausman continues to request the board not adopt the Proposed Decision and instead grant his request and certify him for law enforcement employment.

Sincerely,

A handwritten signature in blue ink that reads "Lucas T. Vebber". The signature is written in a cursive, slightly slanted style.

Lucas T. Vebber (WI Bar No. 1067543)
Attorney for Noah Gausman

EXHIBIT
F



STATE OF WISCONSIN
Law Enforcement Standards Board

In the Matter of Noah Gausman

FINAL DECISION AND ORDER
Case No. LESB-23-0003

On September 6, 2023, the State of Wisconsin Law Enforcement Standards Board (“LESB”) denied Noah Gausman’s request for a waiver of requirements to regain law enforcement employment within in a three-year time frame as provided by in the LESB Policy and Procedures Manual.

Gausman filed a written request for a hearing on the Bureau’s decision before the Executive Committee of the Law Enforcement Standards Board (the “Board”) pursuant to Wis. Stat. § 227.42. The hearing was held on November 14, 2023, via Zoom videoconferencing. Assistant Attorney General S. Michael Murphy served as hearing examiner pursuant to Wis. Stat. § 227.46(1) and the Board’s written policies and procedures.

After receiving and deliberating on all the evidence, the Executive Committee voted to affirm the LESB’s September 6, 2023, decision. Pursuant to Wis. Stat. § 227.46(2), the hearing examiner then prepared a proposed written decision containing the findings of fact, conclusions of law, discussion, and a decision.

The proposed decision was served on the parties via e-mail. The parties were given the opportunity, under Wis. Stat. § 227.46(2), to present written objections. The Board considered the written objections that were submitted.

On March 5, 2024, the Board convened and voted to adopt the proposed written decision as the final decision of the Board in this matter.

WHEREFORE, it is ordered that the attached proposed decision is hereby incorporated by reference into this final decision and order and is formally adopted as the final written decision and order of the Board in this matter, in accordance with Wis. Stat. §§ 227.46(2) and 227.47(1).

EXHIBIT
G

NOTICE OF APPEAL RIGHTS

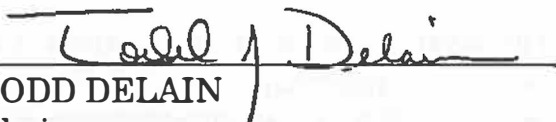
Set out below are the alternative methods by which a person may request review of the Board's final decision and order in this matter. This notice is provided pursuant to Wis. Stat. § 227.48(2).

Any person aggrieved by the Board's final decision and order may petition for rehearing as provided in Wis. Stat. § 227.49. A petition for rehearing must be filed with the Board within 20 days after service of the final decision and order. The petition must specify in detail the grounds for the relief sought and supporting authorities. Rehearing may only be granted for the reasons set out in Wis. Stat. § 227.49(3). A petition for rehearing is not a prerequisite to judicial review under Wis. Stat. §§ 227.52 and 227.53.

Any person aggrieved by the final decision and order has a right to petition for judicial review in circuit court, as provided in Wis. Stat. §§ 227.52 and 227.53. The petition for judicial review must be filed in circuit court and must be served, either in person or by certified mail, on all parties designated as such in the final decision and order. The petition for judicial review must be served and filed within 30 days after service of the final decision and order. If a rehearing is requested as noted in the preceding paragraph, any party seeking judicial review must serve and file a petition for judicial review within 30 days after service of the order disposing of the rehearing application or within 30 days after final disposition by operation of law of the rehearing application. Persons wishing to petition for judicial review are advised to closely examine and strictly comply with all the requirements of Wis. Stat. §§ 227.52 and 227.53.

Dated this 12th of March, 2024.

By:


TODD DELAIN
Chairperson
STATE OF WISCONSIN, LAW
ENFORCEMENT STANDARDS BOARD
17 West Main Street
Post Office Box 7070
Madison, Wisconsin 53707-7070
Telephone: (608) 266-8800



STATE OF WISCONSIN
Law Enforcement Standards Board

In the Matter of Noah Gausman

PROPOSED DECISION
Case No. LESB-23-0003

PRELIMINARY RECITALS

On September 6, 2023, the State of Wisconsin Law Enforcement Standards Board (the "Board") denied Noah Gausman's request for a waiver of training requirements to regain law enforcement employment.

Gausman requested a hearing on the Board's decision pursuant to Wis. Stat. § 227.42. The hearing was held before the Board's Executive Committee on November 14, 2023, via Zoom videoconferencing. Assistant Attorney General S. Michael Murphy served as hearing examiner pursuant to Wis. Stat. § 227.46(1) and the Board's written policies and procedures.

Pursuant to Wis. Stat. § 227.47(1), the parties to this proceeding are certified as follows:

State of Wisconsin
Law Enforcement Standards Board
17 West Main Street, P.O. Box 7070
Madison, WI 53707-7070

Noah Gausman
12878 County Road D
Grantsburg, WI 54840

Training and Standards Bureau
Division of Law Enforcement Services
Wisconsin Department of Justice
17 West Main Street, P.O. Box 7070
Madison, WI 53707-7070

FINDINGS OF FACT

1. Noah Gausman completed law enforcement officer training in May 2014. (Appeal Hearing Exhibits, meeting of board's Executive Committee ("Ex. ___:___").) (Ex. 2.)
2. Mr. Gausman has been employed part-time by law enforcement agencies as follows: Balsam Lake Police Department from May 9, 2015, to June 27, 2019; Frederic Police Department from July 24, 2015, to November 14, 2018; Frederic Police Department December 20, 2020, to July 30, 2021; Star Prairie Police Department from January 1, 2021, to September 1, 2022. (Ex. 2-3.) Hearing Transcript ("Tr. ___"). (Tr. 19:11-17, 23:14-21.)
3. Mr. Gausman has not held full time law enforcement employment in Wisconsin. (See Ex. 2, 4; Tr. 21-22.)
4. Mr. Gausman was not employed as a law enforcement officer for approximately 1.5 years between June 28, 2019, and December 20, 2020, before being hired by the Frederic PD on December 20, 2020, and then the Star Prairie PD on January 1, 2021. (Ex. 2-3; see Tr. 23:5-18.)
5. Mr. Gausman did not complete law enforcement training during the 2018/2019 fiscal year or the 2019/2020 fiscal year. (Tr. 36-38.) He resumed annual training in March 2021. (Tr. 38.)
6. Mr. Gausman was not employed as a law enforcement officer for approximately nine (9) months between September 1, 2022, and May 26, 2023, prior to being hired by the Balsam Lake Water Safety Patrol on May 26, 2023. (Ex. 2-3; Tr. 19:11-15, 23:18-23.) As Mr. Gausman stated in his submissions: "I resigned in good standing from the Star Prairie Police Department on September 1, 2022. I was hired with Balsam Lake Water Safety Patrol on May 26, 2023." (Ex. 3.)
7. The Wisconsin Department of Justice Training and Standards Bureau ("TSB") became aware of Mr. Gausman's training and employment gaps during an audit of officer recertification training. (Ex. 2-3; Tr. 24:3-6, Tr. 36-37.) Balsam Lake Water Safety Patrol was then notified that Mr. Gausman did not qualify for certification as a law enforcement officer. (Tr. 24:16-19.)
8. In August 2023, Gausman requested an extension or wavier of training requirements for recertification. (Tr. 21:7-10; see Ex. 4.)

9. The Board reviewed the request at its September 6, 2023, meeting and denied the request. (Ex. 4; *see* Tr. 21:7-17.)

10. On September 7, 2023, Wisconsin Department of Justice Training and Standards Bureau Compliance Officer Gerald Mullen notified Gausman that on September 6, 2023, the Board denied his request for a waiver. The notification included an explanation that Gausman would need to complete the full 720-hour Law Enforcement Preparatory Training Academy by May 26, 2024, before he is considered for certification as a Law Enforcement Officer by the LESB. (Ex. 4.)

11. Gausman requested a hearing on that Board decision in a September 21, 2023, via email to Steven Wagner, Administrator of the Division of Law Enforcement Services at the Wisconsin Department of Justice. (Ex. 6.)

DISCUSSION

Considering the November 14, 2023, hearing testimony and the exhibits admitted into the record, the Board affirms the September 6, 2023, decision to deny Gausman's request for a waiver of training requirements for recertification.

The Board is charged by statute with the responsibility of certifying and decertifying individuals as qualified to be employed as law enforcement officers, and establishing and enforcing educational and training standards for law enforcement officers in Wisconsin. Wis. Stat. § 165.85(3)(b), (3)(c), (3)(cm), (4)(a); Wis. Admin. Code LES § 6.02.

An officer's certification is terminated when such officer leaves law enforcement employment. Specifically, "upon the termination of employment of any law enforcement. . . officer, that officer's certification shall be terminated until there is received by the bureau from a new employer the verification of employment standards form required by rules of the board. The board shall then determine the amount of training, if any, required of the officer for recertification." Wis. Admin. Code LES § 6.02.

A law enforcement officer who was previously certified and left employment, such as Mr. Gausman, may request recertification without additional training. Wis. Admin. Code LES § 3.05. As relevant here, if the officer left employment, and therefore lost certification, within the past two years, then the Board may, in its discretion, recertify the officer without additional training. Wis. Admin. Code LES § 3.05(2).

Consistent with the Board's authority, the Board maintains a Policy & Procedures Manual ("Manual") that discusses the circumstances under which training may, or may not, be required for recertification. As relevant here, the Manual provides:

A law enforcement or tribal law enforcement officer who holds law enforcement or tribal law enforcement employment for less than one (1) consecutive year full-time prior to termination of employment, has three (3) years from the date they successfully completed preparatory law enforcement officer training, or three (3) years from the date they last held law enforcement employment for at least one (1) consecutive year full-time, to regain employment as a law enforcement or tribal law enforcement officer. Failure to gain or regain employment within the time frames specified will require re-completion of the entire preparatory law enforcement officer training program to regain eligibility for certification as a law enforcement or tribal law enforcement officer.

(Manual at 47.) These standards help ensure that law enforcement officers are sufficiently trained, including by requiring that Wisconsin officers are held to the same training standards as officers transferring to employment in Wisconsin from other states. (Tr. 20-21.) This Manual provision has been in place since March of 2021. (Ex.1; Tr. 20:22-23; 40:16-18.) The Manual containing the policy is publicly published and publicly available, including on the Law Enforcement Standards Board website.¹

Here, Mr. Gausman has never held full time law enforcement employment and has significant employment gaps since his 2014 completion of law enforcement training. He was not employed as a law enforcement officer between May 15, 2014, and May 9, 2015; between June 28, 2019, and December 20, 2020; or between September 1, 2022, and May 26, 2023, for a total of over three years of non-law enforcement employment since he completed training. (Ex. 2; Tr. 19:11-15, 23:18-23.) It is undisputed that he was not employed as a law enforcement officer for approximately nine (9) months between September 1, 2022, and May 26, 2023. (Ex. 2, 5; see Tr. 23:5-23, Tr. 19:11-15.)

¹ <https://wilenet.widj.gov/training-standards-law-enforcement-standards-board-lesb> (last accessed December 21, 2023.)

Additionally, Gausman did not complete mandatory annual recertification training during the 2018/2019 fiscal year or the 2019/2020 fiscal years. That annual training is required to continue to be a certified law enforcement officer in Wisconsin. Wis. Stat. § 165.85(4)(a)7.

Mr. Gausman left law enforcement employment, and therefore became decertified, on September 1, 2022. Mr. Gausman now seeks recertification for the purpose of new employment with the Balsam Lake Water Safety Patrol. (Ex. 2; Tr. 19:11-15, 23:18-23.) However, May 26, 2023, is approximately nine years from Mr. Gausman's law enforcement officer training, and he has never held full time law enforcement employment. These are considerations relevant to the Board's discretion to waive, or not waive, recertification requirements when person who was previously certified seeks new law enforcement employment. Wis. Admin. Code LES § 3.05. In this instance, the Board declined to waive the requirements.

This outcome is particularly appropriate here, where it has been nearly 10 years since Mr. Gausman completed initial training, he has never held full-time law enforcement employment, he has periods of no law enforcement employment since his initial training, and his annual training has periods of lapse. The Board is committed to ensuring that Wisconsin law enforcement officers have proper and current training. Here, that requires that Mr. Gausman complete a Law Enforcement Preparatory Training Academy before recertification as a law enforcement officer.

In Mr. Gausman's submissions, he primarily argues that when he resigned from the Village of Balsam Lake Police Department in 2019, he was told that he had three years to regain employment without re-training, despite his part-time status. (Ex. 3.) He then argues that he was unaware of any change to that practice, as reflected in the Manual, when he resigned from the Star Prairie Police Department on September 1, 2022. (Ex. 3, 5.) At the hearing, he stated that he was unaware that the Manual including updates are published and publicly available. (Tr. 33:14-24.)

However, Wis. Admin. Code LES § 3.05 gives the Board discretion on whether to waive his training requirements upon a request for recertification. The Board here has properly declined to waive the requirement in light of Gausman's training and employment history.

We understand from December 22, 2023, letter from an attorney writing on behalf of Mr. Gausman that Mr. Gausman now argues that the three-year discussion in the Manual, referred to by the TSB in its initial decision, is an unpromulgated rule. We appreciate that view, but the Board relies for its decision on Wis. Admin. Code LES § 3.05, which gives it discretion whether to waive the training requirement in particular cases like Mr. Gausman's. Based on these facts, as discussed above, the Board declines to waive training requirements.

Nonetheless, to Mr. Gausman's point, the current Manual provision has been in place since March 2021 and is publicly available. (Tr. 20:22-23; 40:16-18.) The Manual provision was therefore in place when Mr. Gausman resigned from the Star Prairie Police Department on September 1, 2022. Mr. Gausman's unawareness of the Manual provision when he resigned from part-time employment is not grounds to disturb the Board's decision to decline his request for a waiver of the training requirements.

In sum, the November 14, 2023, hearing evidence does not persuade the Board that the September 6, 2023, decision was incorrect. Mr. Gausman did not show any error or improper exercise of discretion. Accordingly, for the reasons stated in this decision, the Board AFFIRMS the September 6, 2023, decision.

CONCLUSIONS OF LAW

1. Under Wis. Stat. § 165.85(3)(c), the Board may certify persons as being qualified to be law enforcement officers.
2. Under Wis. Stat. § 165.85(3)(cm)2, the Board may decertify a law enforcement officer who fails to comply with a rule, policy, or order of the board relating to curriculum, training or recruitment.
3. Under Wis. Stat. § 165.85(4)(a)7, "no person may continue as a certified law enforcement or tribal law enforcement officer unless that person maintains law enforcement or tribal law enforcement employment and completes annual recertification training. Any officer who is subject to this subdivision shall complete at least 24 hours of recertification training each fiscal year beginning in the fiscal year following the fiscal year in which he or

she is certified as a law enforcement or tribal law enforcement officer by the board.”²

4. Under Wis. Admin. Code LES § 6.02(1), “upon the termination of employment of any law enforcement . . . officer, that officer's certification shall be terminated until there is received by the bureau from a new employer the verification of employment standards form required by rules of the board. The board shall then determine the amount of training, if any, required of the officer for recertification.”

5. Under Wis. Admin. Code LES § 3.05(2), a law enforcement officer who was previously certified within the past two years may, in the Board's discretion, be recertified without additional training. Such officer can request waiver of the training requirements for recertification. Wis. Admin. Code LES § 3.05. The Board may then make a discretionary decision on that request.

6. Mr. Gausman did not complete at least 24 hours of recertification training each fiscal year between 2018 and 2020 and therefore became ineligible to continue as a law enforcement officer.

7. Mr. Gausman left law enforcement employment, and therefore became decertified, on September 1, 2022.

8. On September 6, 2023, the Board properly exercised its discretion to deny Gausman's request for a waiver of training requirements. The Board properly advised Gausman that he is required to complete Law Enforcement Preparatory Training before being considered for certification as a Law Enforcement Officer in Wisconsin.

9. Accordingly, the Board's September 6, 2023, decision is Affirmed.

DECISION

The Board's September 6, 2023, decision is **AFFIRMED**.

² Wis. Stat. § 165.85(4)(a)(7) and (8) contain an exception for a Sheriff that is not relevant here.

NOTICE OF RIGHT TO FILE OBJECTIONS

Any party adversely affected by the attached proposed decision may file objections to it with the Board as provided in Wis. Stat. § 227.46(2). The objections must be submitted in writing and must briefly state the reasons and authorities for each objection. The objections may be accompanied by written argument. The written objections and any accompanying argument must be submitted to Assistant Attorney General S. Michael Murphy, Wisconsin Department of Justice, P.O. Box 7857, Madison, Wisconsin 53707-7857. Objections and arguments may also be submitted via e-mail to murphysm@doj.state.wi.us. All written objections and arguments must be received no later than midnight on February 27, 2024.

At its meeting on March 5, 2024, the Board will consider the proposed decision and any objections that may have been submitted and will thereafter issue a final written decision. The final written decision will be accompanied by a notice of appeal rights setting out the alternative methods by which a person may request administrative or judicial review of that decision.

Dated Tuesday, February 27, 2024.

STATE OF WISCONSIN
LAW ENFORCEMENT STANDARDS BOARD

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