

STATE OF WISCONSIN

CIRCUIT COURT

DANE COUNTY

CITY OF SUN PRAIRIE,

Petitioner,

v.

WISCONSIN EMPLOYMENT RELATIONS
COMMISSION,

Respondent,

DRIVERS, SALESMEN, WAREHOUSEMEN,
MILK PROCESSORS, CANNERY, DAIRY
EMPLOYEES AND HELPERS UNION
LOCAL NO. 695,

RULING ON MOTION TO
STAY PROCEEDINGS

Case No. 129-276

Intervenor Respondent.

BEFORE HON. RICHARD W. BARDWELL, CIRCUIT JUDGE

This matter arises on an order to show cause signed by the Court on February 3, 1970, directing the WERC and Union Local No. 695 (an affiliate of the National Teamster's Union) to show cause why an order should not be issued staying a previous order entered by the WERC and particularly that part of its order which directed fact finding to proceed under the direction of Professor Nathan P. Feinsinger. The Court's ex parte order temporarily stayed the fact finder from proceeding in this matter.

The matter was argued orally before the Court on February 6, 1970, and the Court has now been favored with copious and learned briefs by all parties. We have read the briefs of counsel over the weekend and given the matter serious consideration. In our judgment it is apparent that the merits of this dispute are controlled by the recent case of Medford v. Local 446 (1968) 42 Wis. 2d. 581. Certainly a rather cogent argument may be advanced to the effect that an affiliate of a national union which has nothing whatever to do with law enforcement should not be permitted to represent municipal police officers for bargaining purposes. Unfortunately from the petitioner's standpoint, that very issue was put to rest in Medford where the court stated as follows at p. 585:

"The primary issue on this appeal can be stated as follows: Do the employee members of the police force of the city of Medford have a right to designate a labor union with national affiliation as their representative for conferring and negotiating with the city of Medford Police and Fire Commission for changes or improvements in wages, hours or working conditions?"

In unanimously answering the above query affirmatively, our high court relied on the earlier case of Greenfield v. Local 1127 (1967), 35 Wis. 2d. 175, and Whitefish Bay v. WERB (1967), 34 Wis. 2d. 432.

In our judgment it would be presumptuous for this court to seek to overrule the Supreme Court, particularly where application is made for a stay order, which is tantamount to a temporary injunction. Under such circumstances to prevail the petitioner has the clear duty to convince the Court of the probability that his position will prevail, and further, that irreparable or at least very substantial harm will result to the petitioner if the stay order is not granted.

In our view, because the Medford case, supra, appears to control the merits of the present dispute, petitioner's probability of success is not very great. In addition, we are not convinced that the fact finding procedure ordered by the WERB under the statute can cause any irreparable or substantial harm to the city of Sun Prairie. We cannot pre-suppose that the fact finder will do anything but obtain the facts. That being the case, how is it possible that the mere establishment of certain facts can in any way adversely affect the city, especially when it is pointed out that the city is in no way legally bound by the fact finder's determination. In Jt. School Dist. No. 8 v. WERB, 37 Wis. 2d. 483, a case appealed from this court, the Supreme Court stated as follows at p. 495: "The force of the fact-finding procedure is public opinion, and the legislative process thrives upon such enlightenment in a democracy."

It is apparent from the foregoing that our high court feels that the legislature approves of the fact-finding process and so indicated when it enacted sec. 111.70 (4) (e).

Counsel for petitioner in his brief raises certain other peripheral issues which we have considered but in our judgment are not substantial enough to warrant the imposition by this court of its equity powers. Consequently, the motion for stay must be denied and the WERB directed to inform its fact finder to resume the fact-finding procedure forthwith.

Dated February 16, 1970.

BY THE COURT:

Richard W. Bardwell /s/
Circuit Judge

STATE OF WISCONSIN

CIRCUIT COURT

DANE COUNTY

CITY OF SUN PRAIRIE,

Petitioner,

v.

ORDER DENYING

WISCONSIN EMPLOYMENT RELATIONS
COMMISSION,

STAY

Respondent, .

DRIVERS, SALESMEN, WAREHOUSEMEN,
MILK PROCESSORS, CANNERY, DAIRY
EMPLOYEES AND HELPERS UNION
LOCAL NO. 695,

Case No. 129-276

Intervenor Respondent.

BEFORE HON. RICHARD W. BARDWELL, CIRCUIT JUDGE

Petitioner's motion for an order staying enforcement of an order of the WERC entered in this matter, including that part of the order directing fact finding to be commenced by Professor Nathan P. Feinsinger, having come on before the Court to be heard on February 6, 1970; and the Court having considered the oral argument, the briefs of counsel and the records and files herein;

IT IS HEREBY ORDERED that the show cause proceeding be dismissed and that the WERC be directed to advise its fact finder, Nathan P. Feinsinger, to commence the requisite fact-finding procedure forthwith.

Dated February 16, 1970.

BY THE COURT:

Richard W. Bardwell /s/
Circuit Judge