

STATE OF WISCONSIN : IN CIRCUIT COURT : DANE COUNTY

#138-154

COUNTY WORK EXPERIENCE
PROJECT WORKERS, LOCAL
UNION NUMBER 1,

*

Decision No. 11411-B

Petitioner,

-vs-

*

MEMORANDUM

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION,

*

OPINION

Respondent.

Petitioner seeks a reversal of the order of the Wisconsin Employment Relations Commission which dismissed a petition for a collective bargaining unit representation election of all employees of the Milwaukee County Work Experience and Training Project Division, and asks that the case be remanded with directions to conduct such an election. The issues are: (1) whether petitioner is entitled to judicial review of an order of the Commission which dismissed its petition for election, (2) whether the Commission may properly determine that welfare recipients employed by the county for a limited period as unskilled laborers at the Federal Minimum Wage for the purpose of training them in basic work habits so they may seek gainful employment elsewhere, are not to be included in any existing bargaining unit or in a separate unit.

1. The Attorney General avers that the petitioner is not entitled to judicial review of the order dismissing the petition for election by the following rationale:

ss 111.70(4)(d)(3) specifically provides that findings of the Commission upon which a Certification is based may be reviewed under Chap. 227, Stats., but dismissal of an election petition is a pre-certification action not within the sub-section and therefore not reviewable.

The conclusion of the Attorney General is a non sequitur and is contrary to the right of due process of law. ss 227.15 provides that administrative decisions which directly affect the legal rights, duties, or privileges of any person shall be subject to judicial review as provided in the chapter. To qualify as a "decision" within the meaning of the statute there must be a final order entered at the end of a contested proceeding which is based on findings of fact. Universal Org. of M.F.S. & A.P. v. WERC (1968), 42 Wis. 2d 315, 320, 166 NW 2d 239. The order of the Commission was final, for not only was the petition dismissed, but a determination was made that the positions in issue are not to be included in any existing bargaining unit or in a separate unit. Clearly this decision was more than a ministerial, interim, or preliminary activity. Cf. Bakery Sales Driver Union Local No. 344 v. WERC (1955), Milwaukee County Circuit Court, Case No. 258-085.

The order in this case was the result of a contested hearing conducted in accordance with the requirements of Wis. Adm. Code Section ERB 11.05-11.07, during which a record was compiled, contentions of the various parties were controverted, and findings were made. The legal rights, duties, and privileges of the workers under ss 111.70(2) and 111.70(4)(5) were directly affected by the order.

2. The dismissal of the petition for election was based on the conclusion of the Commission that:

"The positions in issue are not to be included in any existing bargaining unit or in a separate unit since they do not possess sufficient interests in common with employees in any existing unit, primarily on the basis that they are temporarily employed in 'make-work' positions * * *." Memorandum Accompanying Order of Dismissal, Milwaukee County, Decision No. 11411.

The function of the Milwaukee County Work Experience and Training Project Division is to provide unemployed welfare recipients training in basic work habits through County employment to assist them in becoming regularly employed elsewhere. Employment positions in the Project are filled by persons found by the Department of Public Welfare to be eligible for general assistance who are referred to the Project administrators for placement. If the person rejects an offer of employment in the Project, he may be declared ineligible for general assistance.

Project Workers are paid the Federal Minimum wage in lieu of welfare payments, and are assigned to various departments of the County where they "assist" regular employees by accomplishing generally unskilled tasks which would not otherwise be performed. Employment continues until Project Workers obtain employment elsewhere, are discharged for misconduct, or are terminated due to having received the maximum benefits allowed under the Project, which is designed to ordinarily be six months of participation.

District Council #48, AFSCME, AFL-CIO, the sole bargaining unit for regular employees of Milwaukee County, intervened claiming to be the exclusive bargaining representative of the Project Workers. In fact, shortly after the Project began District Council #48 compromised the exclusivity of its bargaining contract by participating in a joint advisory committee composed of five members of the regular bargaining team of District Council #48 and five appointees of the County Executive. This committee determined wages, hours, working conditions, grievance and termination procedures for the project which have remained virtually unchanged, and which are dissimilar to those of the regular County employees. District Council #48 has performed few of the organizing and service functions for Project Workers that are normally associated with union representation.

In fields in which an agency has particular expertise, the Court should not substitute its judgment for the agency's application of a particular statute to the found facts if a rational basis exists in law for the interpretation. Pabst v. Dept. of Taxation (1963), 19 Wis. 2d 313, 323, 120 NW 2d 77. Application of municipal employment law is one of the areas requiring expertise. Milwaukee v WERC (1968), 43 Wis. 2d 596, 601, 168 NW 2d 809. The ultimate test is whether WERC's determination is without reason or is inconsistent with the purpose of ss 111.70, or is unconstitutional.

In creating ss 111.70 the Wisconsin legislature expressed its desire to make collective bargaining units available for as many municipal employees as is consistent with sound municipal government. Milwaukee v. WERC, supra, 601.

ss 111.70(4)(d) provides:

"2.a. The commission shall determine the appropriate bargaining unit for the purpose of collective bargaining and shall whenever possible avoid fragmentation by maintaining as few units as practicable in keeping with the size of the total municipal work force. In making such a determination, the commission may decide whether, in a particular case, the employees in the same or several departments, divisions, institutions, crafts, professions, or other occupational groupings constitute a unit * * *."

There is no statutory right of welfare recipients to be included in an existing or separate collective bargaining unit. The Wisconsin Employment Relations Commission determined that Project Workers do not possess sufficient interests in common with employees in any existing unit, and are not entitled to representation by a separate collective bargaining unit because of the inherent temporary nature of their employment. The decision of Milwaukee County to "make work" for welfare recipients in order that by improving their work habits the welfare recipients will become employable is in keeping with "sound municipal government." The conclusion of the Commission seems to be consistent with that theory of "sound municipal government."

It has been the policy of the Commission to exclude temporary workers from participation in bargaining unit elections. International Union, Allied Industrial Workers of America, AFL-CIO, Local 153 & Casey Lincoln-Mercury, (1957) Wis. Employment Relations Board, Decision No. 4538. This policy is aligned with that of the NLRB with respect to temporary employment incidental to education. General Electric Co. (1954), 109 NLRB No. 104, 34 LRRM 1434.

The Order of the Commission dismissing the Petition for Election was not without reason or inconsistent with the purposes of ss 111.70 of the Wisconsin Statutes.

IT IS THE ORDER OF THE COURT that the Order of the Wisconsin Employment Relations Commission of November 10, 1972, dismissing the Petition for Election be affirmed.

Counsel for the Wisconsin Employment Relations Commission may draft the appropriate Judgment, submitting same to opposing counsel 10 days before presenting it to the Court for signature.

Dated: June 26, 1973.

BY THE COURT:

Norris Maloney /s/

NORRIS MALONEY, CIRCUIT JUDGE