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UNIFIED SCHOOL DISTRICT  
NO. 1 OF RACINE COUNTY,

Petitioner,

vs.

WISCONSIN EMPLOYMENT  
RELATIONS COMMISSION,

Respondent.

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MEMORANDUM DECISION  
Case No. 144-464

Decision No. 12055-B

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This action was commenced pursuant to ch. 227, Wis. Stats., to review a decision and order of the Wisconsin Employment Relations Commission (WERC). The WERC ruled that the school district had violated its statutory duty to bargain with the Service Employees International Union with respect to the district's decision to subcontract its food service program to a private concern. The order required the district to resume operation of the food service program and to retain or rehire all employees. The Commission's order was affirmed by this court on October 21, 1975, and the judgment provided that the court would retain jurisdiction in the matter:

"To make such further order of judgment in the premises as may be necessary to give full force and effect to the order of the Commission and the enforcement thereof on the evidence in the record or on the taking of such further evidence as appears to the court to be necessary."

The district appealed from the judgment, and the Supreme Court affirmed in Unified S.D. No. 1 of Racine County v. WERC, 81 Wis. 2d 89, 259 N.W. 2d 724 (1977).

The union, the complaining party in the WERC proceedings, was served with the original petition to review the Commission's order, but did not become a party to the case at that time. See sec. 227.16(2), Wis. Stats. The union now has moved to intervene in the action and requests the court to issue a temporary restraining order to prevent the district from implementing the WERC order until a "comprehensive plan" is fashioned and approved by the court. The union claims that this unusual procedure is warranted because "[t]he piecemeal approach of the employer fails to take into consideration the complexity of the WERC's original order and further will work to the detriment of the employees by continuing protracted arguments and continued litigation." The union's motions are opposed by the district.

The general rules of civil procedure, chs. 801-807, Wis. Stats., are applicable to both civil actions and special proceedings, "unless a specific provision of procedure in special proceedings exists." Sec. 801.01(1) and (2), Stats. As indicated earlier, the instant action was commenced under ch. 227, Stats; and sec. 227.16(1)(d) provides as follows with respect to intervention in such proceedings.

"The agency. . .and all parties to the proceeding before it, shall have the right to participate in the proceedings for review.  
The court may permit other interested persons to intervene."  
(Emphasis added.)

The union was a party to the proceedings before the agency, and although it elected not to participate in the action for judicial review, it is doubtful that by so electing it must be considered to have lost all right to participate in judicial proceedings to enforce the order it sought and won. It may be true, as the district asserts, that the union has no legal rights in this entire matter other than those

recognized in the WERC order; but the court has retained jurisdiction in the review proceedings in order to secure enforcement of the order, and it seems to me that a proper exercise of the court's discretion under sec. 227.16(1)(d) would be to permit the union to be heard in such proceedings. The employer will be a participant, as will the WERC; and the union should have no less a right.

I am satisfied, then, that intervention by the union is appropriate under sec. 227.16(1)(d), Stats. That section, however, does not provide any procedures for intervention. Here, the union's attempt to intervene, while not timely and not "accompanied by a pleading" under sec. 803.09, Stats., is, in my view, properly before the court and should be granted.

The union's right to the injunctive relief sought is another matter. The function of a temporary injunction is to maintain the status quo, which has been defined as "the last uncontested status which preceded the pending controversy." See Westinghouse Electric Corp. v. Tree Sawing Mach. Co., 756 F. 2d 806, 808 (7th Cir. 1958). See also Shearer v. Congdon, 25 Wis. 2d 663, 668, 131 N.W. 2d 377 (1964).

The Supreme Court has affirmed this court's judgment, which, in turn, affirmed the order of the WERC. The status quo is not the state of affairs existing before the complaint was filed with the Commission. The rights of the union, the district, and the public have been settled by the WERC, by this court, and by the state's highest court--and the union has prevailed at every step along the way. The terms of the WERC order constitute the undisputed statement of the parties' (and the public's) rights; and it is the enforcement of this order--an order the union fought so hard to secure--that it would now restrain.

It may be that the union fears that the manner in which the WERC order will be enforced or the manner in which the petitioner complies with the order, will not be satisfactory. However, the manner of enforcement is a subject best left, initially at least, to the WERC. This court has maintained jurisdiction to insure that the parties comply with the order of the WERC, but I will not usurp the agency's function of defining and administering its own order.

Unless and until the jurisdiction of this court is properly invoked, the WERC is the proper forum to determine compliance or non-compliance with its orders. Sec. 111.07(7), Stats., provides that if any person fails or neglects to obey such an order, the Commission may petition the circuit court for enforcement, and the Supreme Court has stated that the WERC is the only entity authorized to so petition the court. Wisconsin E.R. Board v. Allis-Chalmers W. Union, 249 Wis. 590, 595, 25 N.W. 2d 425 (1946). Until the Commission makes the initial determination of non-compliance and seeks the assistance of this court for the purpose of enforcement pursuant to ch. 111, Stats., the matter rests with the Commission.

The union's motion for a temporary injunction is denied.

Dated at Madison, Wisconsin, this 22nd day of March, 1978.

BY THE COURT:

William F. Eich /s/  
WILLIAM F. EICH  
CIRCUIT JUDGE