

CITY OF MADISON,

PETITIONER,

vs.

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION,

RESPONDENT.

MEMORANDUM

DECISION

Case No. 155-194

Decision No. 15095

This is a proceeding under sec. 111.07(8) and ch. 227, Stats., to review a decision and order of the Wisconsin Employment Relations Commission, dated December 13, 1976, which determined that the petitioner had committed prohibited practices within the meaning of the Municipal Employment Relations Act, sec. 111.70(3)(a) 4 and 1, Stats., by changing the application of its residence ordinance without bargaining over such change with the Madison Professional Police Officers Association (MPPOA). The Commission ordered the City to offer to reinstate five police officers who had been discharged under the residency ordinance, to make those officers whole for any loss of pay or benefits, and to bargain collectively with the MPPOA with respect to the application of the residency ordinance.

The Commission has moved to dismiss this proceeding on the ground of mootness because the City has complied in all respects with the Commission's order and because the City has furthermore entered into a labor agreement with the MPPOA "which eliminated any cognizable dispute between the parties." (Respondent's Brief, p. 18). These allegations find support in the affidavit of Steve Gilfoy, President of MPPOA, which has been submitted to the Court. That affidavit recited the following provisions of the 1977 collective bargaining agreement between the City and the MPPOA which relate to the application of the residency ordinance (Madison City Ordinance Sec. 3.27):

- "A. Employees shall comply with the residency requirement as set forth in City Ordinance Sec. 3.27. The interpretation of Sec. 3.27 shall be made by the City Attorney.
- B. The Employer's application of City Ordinance Sec. 3.27 for members of the Association shall be the same as applied to all other City employees. Any moderation to City Ordinance Sec. 3.27 shall be applied to employees represented by the Association.
- C. Employees in violation of section A. of this paragraph as of December 26, 1976, shall be given until July 1, 1977 to comply. Extensions of time for compliance beyond July 1, 1977 may be granted by the Mayor."
(1977 Collective Bargaining Agreement, p. 28.)

The City, on the other hand, opposes the motion to dismiss for mootness because public policy favors compliance with Commission orders pending appeal and because various legal issues are asserted to remain for determination. These issues include:

". . .the Commission's view of what constitutes compliance with Order (sic) eligibility requirements, its overall finding of the prohibited practice and the lack of evidence in support thereof. . . ." Petitioner's Reply Brief, p. 1;

or, in other words:

". . .the finding of the prohibited practice, . . .the finding of what constitutes compliance with the residency requirement, and. . .the Commission's interpretation of what constitutes proper residence for voter registration. . ." Ibid, pp. 6-7.

A moot case has been defined as:

". . .one which seeks to determine an abstract question which does not rest upon existing facts or rights, or which seeks a judgment in a pretended controversy when in reality there is none, . . .or a judgment upon some matter which when rendered for any cause cannot have any practical legal effect upon the existing controversy." Wisconsin E.R. Board v. Allis-Chalmers W. Union, 252 Wis. 436, 440-441 (1948)

"Generally, if a question becomes moot through a change in circumstances, it will not be determined by a reviewing court." State v. Seymour, 24 Wis. 2d 258, 261 (1964). However, a reviewing court will retain jurisdiction over such cases if the issue presented is of great public importance or is likely to arise frequently. Joint School Dist. No. 8 v. Wis. E.R. Board, 37 Wis. 2d 483, 496 (1967).

In its petition for review, the City asks that the Commission's findings be reversed and its decision vacated. It appears to the Court, however, that certain developments since the Commission's decision several years ago, most notably the 1977 collective bargaining agreement, supra, would render any such Court action of little or no practical significance. Nevertheless, the Court will retain jurisdiction over this case and decide the issues raised if the questions involved are of great public importance or are likely to arise frequently. The Court will proceed to examine those issues which the City asserts remain for consideration, supra, to see if they qualify under this general exception to the rule of mootness.

One issue which the petitioner contends remains for consideration is the Commission's "interpretation of what constitutes proper residence for voter eligibility." (Petitioner's Reply Brief, p. 7). The City argues that the Commission's finding on this matter "gave a meaning to the voter registration law which was not legal nor proper." Ibid, p. 2. Generally speaking, questions as to the proper construction of the voter registration statutes would probably be of sufficient public importance to qualify as exceptions to the general rule of mootness. It is the Court's opinion, however, that no such issue is raised in this case because the Commission did not in fact make any determination that the discharged police officers were properly registered to vote. The Commission's observation that these employees did comply with their supervisors' suggestions that they would need to register to vote in Madison in order to avoid discharge in no way amounts to a declaration by the Commission that these employees were legally registered to vote.

A second issue which the City contends remains for consideration is the Commission's "finding of what constitutes compliance with the residency requirement." (Petitioner's Reply Brief, p. 7). In this respect, the City argues that the Commission's decision "should be reversed on the ground that none of the individuals were in compliance with the City's residence ordinance as a matter of law and that therefore the Commission abused this discretion in holding to the contrary." Petitioner's Brief, p. 17 (emphasis added). The Court does not read the Commission's decision as implicitly finding that the employers were in fact in compliance with the City's residence ordinance; instead, the Commission merely found that these officers were "deemed to reside in Madison" by their supervisors in the police department. Commission Decision, Finding No. 26. Because this second "issue" does not in fact appear to be raised by the Commission's decision, it cannot operate to qualify this case as an exception to the rule for moot cases.

The final issue posed by the City is the lack of evidence in support of the Commission's finding of a prohibited practice. Petitioner's Reply Brief, p. 1. Whether or not an agency's findings of fact are supported by substantial evidence is neither a question of public character nor a legal issue of great significance. This issue does not serve to disqualify this proceeding as a moot case.

Because a ruling on the merits of this case could have little or no practical effect on the parties involved and because none of the issues called to the Court's attention by the petitioner operate to qualify this case as an exception to the general rule of mootness, the Court grants the Respondent's motion to dismiss.

Dated this 2 day of July, 1979.

BY THE COURT:

Michael B. Torphy, Jr. /s/
Michael B. Torphy, Jr., Judge
Circuit Court, Br. 2.