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STATE OF WISCONSIN

CIRCUIT COURT

WISCONSIN EMPLOYMENT  
RELATIONS COMMISSION  
LA CROSSE COUNTY

LA CROSSE NONSUPERVISORY  
POLICEMEN'S ASSOCIATION and  
OFFICER THOMAS PRETASKY,

Petitioners,

MEMORANDUM DECISION

vs

Case No. 83 CV 821

THE WISCONSIN EMPLOYMENT RELATIONS  
COMMISSION AND CITY OF LA CROSSE,  
a municipal corporation, and RAY G.  
LICHTIE, Chief of Police of the  
City of LaCrosse, and LA CROSSE  
POLICE AND FIRE COMMISSION,  
LaCrosse, Wisconsin,

Decision No. 17084-D

Respondents,

This appeal of a ruling of the WERC, is before the court on the issue of the validity of the commission's interpretation of concerted activity under 111.70(2) of the statutes.

The court affirms the ruling of the commission and dismisses the appeal.

The facts in this case are not disputed by either party. The petitioner, Officer Thomas Pretasky, was suspended by the respondent Police Chief for a conversation he had with Officer Sutton.

Sutton was a probationary employee who was not yet a member of the LaCrosse Nonsupervisory Policeman's Association. There was a policy within the department that shifts were established by seniority, with the most junior officers working the third shift. Sutton was assigned by the Chief of Police to work on a secret investigation which required him to work during the first and second shifts.

Pretasky, who was a policeman with seniority over Sutton, and was a member of the association, met Sutton in the locker room and told him that other officers were "irate" because Sutton was working a shift contrary to the rules of seniority. He also told Sutton that he might not be voted into the association.

Sutton told the chief, and Pretasky was suspended for five days.

Pretasky complained to the WERC that his suspension was a prohibited practice under WIS statute 111.70(3)(b)(1) (MERA). The commission found that neither Pretasky or the City had committed any prohibited practices in this matter. Pretasky appealed, and the court remanded to the commission for a further finding as to whether or not Pretasky's conversation with Sutton constituted concerted activity. The Commission found that it was not concerted activity and Pretasky appeals.

The standard to be followed in the review of an interpretation of a statute by the administrative agency charged by the legislature with its enforcement, requires that the interpretation be given great weight and deference and only disregarded when the interpretation is irrational. Arrowhead United Teachers vs WERC 116 W2nd 580 (1984).

In reaching its decision the commission considered the following factors:

- 1) Pretasky could not identify any particular individuals who complained about the shift Sutton was working.
- 2) No one had asked Pretasky to confront Sutton.
- 3) Pretasky did not file a grievance against Sutton even though he believed that Sutton was violating the collective bargaining agreement.
- 4) Pretasky had not read the collective bargaining agreement.

From these factors the commission found, as a matter of fact, that Pretasky's conversation with Sutton was personal, and did not constitute concerted activity.

It is clear that the commission, in its interpretation of 111.70 (2) and (3), requires a showing that conduct be related to a collective bargaining agreement, or the concerns of other workers, to constitute concerted activity. The commission found that the conduct in this case was personal, with little or no relationship to other workers or a collective bargaining agreement, and that the content of the conversation alone was not enough to create concerted activity.

I find that this finding of fact is rational and is based on essentially undisputed evidence. There is no basis for the court to reverse the decision of the commission under the standard of review set out above.

The appeal is dismissed.

Dated this 15<sup>th</sup> day of March 1985.

BY THE COURT:

Kent C. Houck  
Kent C. Houck  
CIRCUIT JUDGE