

JUL 24 1986

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

STATE OF WISCONSIN : CIRCUIT COURT : MILWAUKEE COUNTY
BRANCH 21

WEST END COMMUNITY ASSO-
CIATION (f/k/a WEST SIDE
COMMUNITY CENTER),

Petitioner,

- vs -

Case No. 636-259

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION,

Decision No. 19212-B

Respondent.

HEARING BEFORE THE HONORABLE CLARENCE R. PARRISH
ON APRIL 21, 1986 - DECISION OF THE COURT

APPEARANCES:

DENNIS J. WEDEN, ESQ. appeared on behalf of the
petitioner.

DAVID C. RICE, Assistant Attorney General on behalf
the the respondent.

CAROLINE BENJOYA BARNETT, Court Reporter.

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1 West Side Community Center unlawfully discharged
2 Mark Meiling, in part because of his protected ac-
3 tivities on behalf of Milwaukee District Council
4 48, AFSCME, AFL-CIO. The Commission ordered West
5 Side to reinstate Meiling with back pay and interest.
6 This proceeding, as the court has indicated, was
7 commenced by West Side Community Center.

8 The Commission has counter-petitioned for
9 enforcement of its order pursuant to section 111.07,
10 subdivision 7 of the Wisconsin Statutes.

11 I don't want to be presumptuous, it just
12 about seems that we have a loose stipulation before
13 the court. I'll accept it. Do we have a stipulation
14 here or do you want me to go ahead and rule from what
15 I hear between the attorneys? Your minds are pretty
16 well together.

17 I will rule. Chapter 227 grants subject
18 matter jurisdiction to all circuit courts to review
19 administrative decisions of the types specified in
20 that chapter. Shopper Advertiser, Inc. versus The
21 Department of Revenue, 117 Wis. 2d 223, 334, N.W.
22 115, a 1984 case. Under 227.20 the review shall be
23 conducted by the court without a jury and shall be
24 confined to the record, except that in cases of al-
25 leged irregularities in procedure before the agency--

1 there is no such allegation before this court.

2 The issue before the court is whether
3 there has been substantial evidence not to be equated
4 with preponderance of the evidence that supports
5 the administrative agency's findings with due weight
6 to be given to the experience, technical competence
7 and specialized knowledge of the administrative agency.
8 This court is to review the record. This court is to
9 review the findings of fact and conclusions of law.
10 This court is not to substitute its judgment for the
11 judgment of the agency. This court is required to and
12 must give in making its finding or order, great--strike
13 the word "great," much weight to the administrative
14 agency's special expertise in making its judgment.
15 Nottleson versus IDLHR, 91 Wis. 2d 106, 117, 287 N.W.
16 2d 763, a 1980 case.

17 Here, West Side Community Center, which
18 is not a large corporation, it's not a conglomerate,
19 was somewhat besieged by the interests of the employ-
20 ees to unionize the shop, and out of the efforts to
21 unionize the shop, this whole proceeding revolves.

22 At the election, as has been stated by
23 counsel, the union did not win the election. As has
24 been stated by counsel, Mr. Meiling was laid off.
25 Mr. Meiling was employed at West Side as a rehabilitation

1 aide and was terminated on October 7, 1981. The
2 Board of Directors determined that Mr. Meiling had
3 slandered members of the Board and the Executive
4 Director of West Side. The Wisconsin Employment
5 Relations Commission found that Mr. Meiling was ter-
6 minated both for his conduct and conduct and for
7 his participation in attempting to organize a union
8 at West Side.

9 Now, what is West Side? West Side is a
10 publicly funded neighborhood organization that counsels
11 and assists needy residents who need repair and reno-
12 vation necessary for housing code compliance. West
13 Side is controlled by an eight member Board of Dir-
14 ectors. Mr. Meiling worked there in what is known
15 as the CHIP program. This program gives aid to lower
16 income home owners in repairing their property, as I
17 previously stated. Mr. Meiling's responsibilities
18 vary. They included cost comparison pricing, pre-
19 paring reports on cost comparisons and on the cost
20 of each house repair. It required him to purchase
21 certain materials and tools. Required him to make
22 certain deliveries of materials and tools as well
23 as to various job sites. The work of this agency is
24 not localized in one spot but it is in various spots
25 throughout the city.

1 The Commission found that Mr. Meiling
2 spent some twenty percent of his time delivering
3 tools and materials to job sites, some forty percent
4 of his time purchasing tools and materials, and some
5 forty percent of his time completing paper work, ad-
6 ministrative work in the office as put by petitioner's
7 counsel.

8 It is the position of petitioner's counsel
9 that the proper job title for Mr. Meiling would
10 be that of supervisor. It is the position of the op-
11 posing counsel that the findings by the Commission is
12 proper and correct as the job description of Mr.
13 Meiling required him to do varied and different kinds
14 of work.

15 The Appellate Court and the Supreme Court
16 has admonished the trial court when it sits as a re-
17 view court over administrative agencies, that if in-
18 consistent findings based upon the facts presented may
19 be found and if the finding of the
20 agency is logical, based upon reasonable facts, that
21 finding should prevail, that the court should not
22 substitute its weighing and sifting of the testimony
23 and set aside the finding of the administrative
24 agency for the reason that the court would have found
25 differently on the same set of facts and circumstances.

1 The court compliments the lawyers for
2 the fine work they have done in this case in sub-
3 mitting the briefs they have submitted, and the court
4 is not happy to say that an employee should go around
5 calling people queers and faggots. It should not be
6 done--I hope you're not angry. It doesn't make a
7 good working relationship and that is necessary, as
8 I previously said.

9 The court finds the briefs and the argu-
10 ments of the Attorney General to be most persuasive and
11 the court adopts the briefs of the Attorney General
12 as the opinion of the court and finds that the court
13 must affirm the decision of the administrative agency.
14 But I will leave in it the caveat as to the coopera-
15 tion that I previously put here--leave that in here.
16 I hope I'm not wrong by so doing. There must be
17 cooperation between employer and employee. In adopting
18 briefs of the Attorney General at page 12, under that
19 portion that states substantial evidence supports the
20 Commission's determination, the very first sentence
21 after subparagraph (a), reads, On judicial review--
22 the first line--next line, Administrative Agency's
23 findings of fact are conclusive. The word "is,"
24 that word is substituted by the word "if," not "is."

1 Page 13, first sentence, a court may not
2 make an independent determination of the facts. That
3 is consistent with the court's previous statement, not
4 to substitute its belief upon the same facts for that
5 of the Commission.

6 The court returns this case to the Com-
7 mission to fashion a remedy in this matter that will
8 make it possible for the order of the Commission to
9 be enforceable. This court will not maintain jur-
10 isdiction over this matter as the court has continuous
11 jurisdiction any time the matter is brought before
12 the court from an administrative agency.

13 The court will not set back pay nor
14 conditions upon which Mr. Meiling should return to
15 work. He will leave these matters to the Commission
16 to fashion. Any objection to that procedure Mr.
17 Rice?

18 MR. RICE: No.

19 THE COURT: Any objection to that procedure,
20 sir?

21 MR. WEDEN: Subject to standing objection
22 to your whole decision.

23 THE COURT: Sure, I realize that. In
24 other words, I am simply returning the entire record
25 to the Commission for the Commission to do as the

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