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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

STATE OF WISCONSIN : CIRCUIT COURT: MILWAUKEE COUNTY
BRANCH 32

HOUSE OF CORRECTION
OFFICERS ASSOCIATION,

Petitioner,

vs.

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION,

Defendant.

Decision No. 19753-B

Case No. 609-864

DECISION ON JUDICIAL
REVIEW OF WISCONSIN
EMPLOYMENT RELATIONS
COMMISSION

NATURE OF THE PROCEEDINGS

This is an action for judicial review pursuant to Chapter 227 Stats., of a decision and order of Wisconsin Employment Relations Commission (Commission) dated February 1, 1983, which dismiss the House of Correction Officers Association (Association) petition for an election for those Milwaukee County employees occupying the classification of Correctional Officers I and II.

FACTS

The petitioner, (Association), represents employees occupying the classification of Correctional Officers I and II. These employees are employed at the House of Correction and have been and continue to be included in a county-wide collective bargaining unit, Milwaukee District Council 48,

American Federation of State, County and Municipal Employees AFL-CIO (AFSCME). AFSCME is the labor organization that is the recognized and certified exclusive collective bargaining representative of the employees in question.

On or about February 1, 1982, the Association filed a petition requesting that the Commission conduct an election among correctional officers employed at the House of Correction for the purpose of determining whether said employees desire to be represented by the Association for purposes of collective bargaining.

The Commission ruled that a collective bargaining unit comprised only of correctional officers is not an appropriate bargaining unit for the purpose of collective bargaining within the meaning of Secs. 111.70(1)(e) and 111.70(4)(d) 2.a. of the Municipal Employees Relations Act. The Commission dismissed the petition in part because of its concern for bargaining stability and anti-fragmentation.

On February 16, 1983, the Association petitioned for a rehearing to present additional evidence and testimony in regards to an interest in being placed in the bargaining unit of the Milwaukee County employees represented by the Milwaukee County Deputy Sheriffs Association. The Commission denied the request for rehearing, finding that the new evidence would provide no additional support for the petition.

ISSUE

Are the Commission's findings supported by substantial evidence and are its conclusions reasonable?

DECISION

The Association contends that the Commission's findings and conclusions should be reversed. The Association claims that the correction officers perform duties unlike other employees in the existing county-wide unit; therefore, do not share a "community of interest" with other employees in that unit.

The development of the "community of interest" criteria and the Commission's concern over undue fragmentation and its application to determine appropriate units is not a matter of first impression for the Commission. The Commission has had extensive experience involving the interpretation of the issues and statutes in question. The Commission's application of the following criteria, community of interest, duties and skills, bargaining history and concern for undue fragmentation of the bargaining unit, is an exercise of its discretion in determining appropriate bargaining units.

The Commission considered and stated in its memorandum that although the correction officers constitute a separate classification of employees, and all worked in one county

department, that these factors were not controlling. The Commission found that other job applications and county-wide bargaining units represent other job classifications that have similar duties and responsibilities such as court security officers, child care supervisors who work at the Children's Home and Detention Home. The Commission also found that the level of education, skill and personal attributes are similar in the above-mentioned job classification. The Commission considered other factors cited by the Association, such as the correction officers' training and the supervision of prisoners. The Commission found that this did not require placing correctional officers in a separate unit. The Commission found that the Court agrees that significant similarities exist between correctional officers and other county security personnel, particularly, with respect to their duties and responsibilities.

The Commission's findings and interpretations of Sec. 111.70(4)(d) 2.a. is supported by the facts. Correction officers have been included in a county-wide bargaining unit since approximately 1965. The record further establishes that they have a similar community of interest with other employees represented by the county-wide bargaining unit.

The Commission's interpretation of the statute in question may be affirmed if it is reasonable and consistent with the purpose of the Statute. Village of Whitefish Bay v.

WERC, 107 Wis. 2d 443 at page 448 (1981). The Court will give great weight to the Commission's expertise in determining proper statutory construction.

The scope of judicial power to review the Commission's decision is established by Sec. 227.20 Stats. Based on that standard of review, the Court can find no grounds for setting aside, modifying or remanding the Commission's finding. The Commission's exercise of discretion is within the range of discretion delegated to it by law.

The finding of the Commission that the Correctional Officers I and II are most appropriately included in the presently-certified county-wide unit is supported by more than substantial evidence in the record. This Court further finds that the Commission's interpretation and application of Secs. 111.70(1)(e) and 111.70(4)(d) 2.a. are reasonable and consistent with the purpose of these statutes.

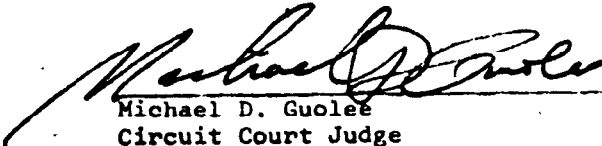
The Commission's denial of a rehearing to allow for presentation of additional evidence was properly decided based upon the Commission's findings in its original decision.

Based on the above, the Court affirms the decision of the Commission in all respects.

The respondent shall prepare an order consistent with this decision and submit it to the Court for signature in accordance with the Rules of the Circuit Court of the First Judicial District.

Dated this 1st day of December, 1983, at
Milwaukee, Wisconsin.

BY THE COURT:



Michael D. Guolee
Circuit Court Judge
Branch 32