

RECEIVED

JUL 25 1986

STATE OF WISCONSIN : CIRCUIT COURT OF WISCONSIN
WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

BROWN COUNTY,

Petitioner,

and

LLOYD BRAZEAU,

Co-Petitioner,

DECISION

Case No. 85-CV-2381

-vs-

WISCONSIN EMPLOYMENT RELATIONS
COMMISSION, WISCONSIN COUNCIL 40,
AFSCME, AFL-CIO, TONI CAGLE,
BRUCE CHAPMAN, JEAN ELLIOT, DARLENE
FUNK, MIMA LORBERBLATT-TESKE, JOHN
NANNEY, KATHY PALMER, GEORGE PRONOLD,
STEVE RICE, JULIE SOWERS, DOUG STANGEL,
NANCY VERRIER, and MARK ZIMONICK,

Decision No. 20857-C

Respondents.

HONORABLE CHARLES D. HEATH

Circuit Judge

February 10, 1986

Rhonda R. Menor

Registered Professional Reporter

Circuit Court Branch I

Marinette, Wisconsin 54143

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES:

KENNETH BUKOWSKI, Corporation Counsel, appears on behalf
of Brown County.

MARK WARPINSKI, Attorney at Law, appears on behalf of Lloyd
Brazeau.

DAVID RICE and PETER DAVIS, Assistant Attorneys General,
appear on behalf of the Wisconsin Employment Relations
Commission.

RICHARD GRAYLOW, Attorney at Law, appears on behalf of
Wisconsin Council 40, AFSCME, AFL-CIO, Toni Cagle, Bruce
Chapman, Jean Elliot, Darlene Funk, Mima Lorberblatt-Teske,
John Nanney, Kathy Palmer, George Pronold, Steve Rice,
Julie Sowers, Doug Stangel, Nancy Verrier and Mark Zimonick.

1 THE COURT: We have all talked a lot
2 about the Racine case, which is 81 Wis. 2d 89, and that
3 kind of sets forth the test that has to be considered in
4 deciding whether or not the matter is the subject of mandatory
5 bargaining.

6 At page 95 of Racine the Supreme Court
7 cites from the Municipal Employment Relations Act and states
8 that, "It requires municipal employers to bargain with
9 respect to wages, hours and conditions of employment.
10 At the same time, it provides that bargaining is not required
11 on subjects reserved to management," and it recognizes
12 the difficulty in arriving at the line or trying to distinguish
13 between those two and says, "Drawing the line or making
14 the distinction is not easy." Then it goes back at page
15 102 to establishing the primary relationship test. "The
16 question is whether a particular decision is primarily
17 related to the wages, hours and conditions of employment
18 of the employees, or whether it is primarily related to
19 the formulation or management of public policy."

20 Now, I think this Court in review is,
21 as Mr. Graylow pointed out, confined to the record set
22 forth before the Wisconsin Employment Relations Commission.
23 For that reason I am not going to consider the contract,
24 the existence of which was made known to the Court for
25 the first time this afternoon after opening arguments or

1 the arguments commenced.

2 I think also the Court in reviewing
3 the findings of the Commission cannot substitute its own
4 opinion on what the law ought to be but must give great
5 deference to the decision of the Commission.

6 Now I have read carefully the briefs,
7 re-read some of them, gone through the record, and I don't
8 think there's any argument that the County was, or any
9 dispute of fact, that the County was in a time crunch here.
10 Their lease at the Abbey expired June 30th. They got a
11 15-day extension. They were running around looking for
12 a place to go. I think the County had arrived at a decision
13 to change from an institutional setting to a residential,
14 to go from a facility that was licensed for 26 beds to
15 something smaller, and, after exploring other areas, had
16 gone to the Mason Street facility because they couldn't
17 find anything else. That left for decision one thing,
18 to subcontract or not to subcontract. The only thing that
19 was left to decide really or the only other factor impacting
20 on that decision is dollars. I can't fault the County
21 for wanting to save money, but there is sufficient evidence
22 in the record for the hearing examiner and the Commission
23 to make the findings that they did, that this was a matter
24 that ultimately was one of just dollars and cents, one
25 primarily affecting wages and hours. I think there is

Rhonda R. Menor
Registered Professional Reporter
Circuit Court Branch I
Marinette, Wisconsin 54143

1 enough in the record too that that conclusion or finding
2 could be made not looking solely at the minutes of the
3 advisory committee of the youth home. Although it is interest-
4 ing that in their Exhibit Number Two, the minutes, the
5 final page of the minutes dated May 17, 1983, union negotiating
6 was given as a cause of why the County can't operate as
7 cheaply as a private contract. The County certainly is
8 free to abandon the youth home completely or to cut it
9 down to whatever size it wants to. That's a management
10 rights decision. They chose not to do that. They decided
11 that they wanted to go with non-union personnel instead
12 of union personnel. And I think there's enough in the
13 record to support the finding that it was done strictly
14 for dollars and cents. I would not say that the decision
15 of the Commission and the hearing examiner or its analysis
16 was fractured as it was argued in the briefs, but boiling
17 it down into its simplest terms, it amounted to dollars
18 and cents, using non-union personnel to do a function in
19 a different place, smaller setting, where you had union
20 personnel doing it before.

21 I am mindful of the arguments you make
22 in your brief, Mr. Warpinski, of the constitutional impact
23 on this and the right of free contract and so forth. I
24 think the parties that might be aggrieved by this decision
25 have an adequate remedy. They can seek their recourse. But

Rhonda R. Menor
Registered Professional Reporter
Circuit Court Branch I
Marinette, Wisconsin 54143

1 I don't think that's a sufficient basis for the Court to
2 reverse the findings and the order of the Commission.

3 For all of those reasons the order
4 of the Commission is affirmed.

5 * * * * *

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Rhonda R. Menor
Registered Professional Reporter
Circuit Court Branch I
Marinette, Wisconsin 54143

1 STATE OF WISCONSIN)
2 EIGHTH ADMINISTRATIVE DISTRICT) ss

3 I, the undersigned Official Court
4 Reporter for the Circuit Court Branch I, Marinette County,
5 Wisconsin, do hereby certify that the foregoing is a true
6 and correct transcript of my stenographic notes taken upon
7 the decision in the aforementioned action.

8 Dated this 17th day of February, 1986.

9
10 Rhonda R. Menor

11 Rhonda R. Menor, CSR/RPR
12 Official Court Reporter

13
14
15
16
17
18
19
20
21
22
23
24
25

Rhonda R. Menor
Registered Professional Reporter
Circuit Court Branch I
Marinette, Wisconsin 54143