

GENERAL TEAMSTERS
UNION LOCAL NO. 662,

Petitioner.

v.

Case No. 02-CV-278

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION,

Respondent.

Decision No. 24705-D
[NOTE: This document was re-keyed
by WERC. Original pagination has
been retained.]

NOTICE OF ENTRY OF DECISION

To: Naomi Soldon
Jill Hartley
Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C.
P.O. Box 12993
Milwaukee, WI 53212

Laura Amundson
WEAC
P.O. Box 8003
Madison, WI 53708-8003

PLEASE TAKE NOTICE that a Decision affirming the decision of the Wisconsin Employment Relations Commission, of which a true and correct copy is hereto attached, was signed by the court on the 17th day of October, 2002, and duly entered in the Circuit Court for Eau Claire County, Wisconsin, on the 17th day of October, 2002.

Notice of entry of this Decision is being given pursuant to Wis. Stat. §§ 806.06(5) and 808.04(1).

Dated this 23rd day of October, 2002.

JAMES E. DOYLE
Attorney General

David C. Rice /s/
DAVID C. RICE
Assistant Attorney General
State Bar #1014323

Attorneys for Respondent
Wisconsin Employment Relations Commission

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 266-6823

GENERAL TEAMSTERS
UNION LOCAL NO. 662,

Petitioner.

DECISION

vs.

Case No. 02CV278

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION,

Respondent.

General Teamsters Union Local No. 662 (hereinafter Local 662) seeks this Court's review of a decision by the Wisconsin Employment Relations Commission (hereinafter WERC) as to what entity should represent teacher aides and clerical employees of the Stanley-Boyd Area School District (hereinafter District) and further, whether the employees should be represented in one or more collective bargaining units.

The facts of the matter are not greatly disputed. From July 1, 1998 through June 30, 2001, Local 662 represented the aforementioned employees in a single collective bargaining unit with the District. On March 1, 2001, Local 662 contacted the District by letter and inquired whether the District would object to splitting the employees into two units, one comprised of teacher aides (full and part-time) and one consisting of only clerical employees. The District agreed to the division on April 23, 2001. Thereafter, Local 662 sent separate letters to the District proposing negotiations occur for the next year's contract for each group.

On May 1, 2001, Central Wisconsin Uniserv Councils (hereinafter Uniserv) petitioned the WERC for an election seeking to represent all of the teacher aides and clerical staff in a single bargaining unit.

On September 6, 2001, Hearing Examiner John R. Emery conducted a hearing on Uniserv's petition for election.

Local 662 argued the position that Uniserv's petition was inappropriate because the teacher aides and clerical employees had, by agreement, already been divided into two separate bargaining units. The WERC rejected Local 662's position; an election was held; and a majority of the employees opted to have Uniserv represent them in a single bargaining unit.

Local 662 seeks an order from this Court reversing the WERC's decision. The process of judicial review of decisions made administratively is limited. It is not appropriate for a Court to substitute its judgment for that of an agency except in the most unusual instances.

Section 227.57(8) and (10) Stats. sets forth the guidelines for review:

(8) The court shall reverse or remand the case to the agency if it finds that the agency's exercise of discretion is outside the range of discretion delegated to the agency by law, is inconsistent with an agency rule, an officially stated agency policy or a prior agency practice, if deviation therefrom is not explained to the satisfaction of the court by the agency; or is otherwise in violation of a constitutional or statutory provision; but the court shall not substitute its judgment for that of the agency on an issue of discretion.

(10) Upon such review due weight shall be accorded the expertise, technical competence, and specialized knowledge of the agency involved, as well as discretionary authority conferred upon it. The right of the appellant to challenge the constitutionality of any act or of its application to the appellant shall not be foreclosed or impaired by the fact that the appellant has applied for or holds a license, permit or privilege under such act.

Further, § 111.70(4)(d)(2)(a) grants the commission the power "...to determine the appropriate collective bargaining unit for the purpose of collective bargaining...". The section further gives guidance as to what standard should be applied, i.e., avoiding "fragmentation," etc.

Arrowhead United Teachers v. E.R.C., 116 Wis. 2d 580, 593, 342 N.W.2d 709 (1984) citing earlier decisions:

...the construction and interpretation of a statute adopted by the administrative agency changed by the legislature with the duty of applying it is entitled to "great weight" (emphasis added) and that it is "...only when the interpretation by the administrative agency is an irrational one that a reviewing court does not defer to it."

As was further ruled in West Bend Education Association v. WERC, 121 Wis. 2d 1, 13, 357 N.W.2d 534 (1984):

Consequently, we should affirm WERC's conclusions ... if a rational basis exists for them ... if the agency's view of the law is reasonable even though an alternative view is reasonable. (citation omitted).

The Court concluded it should not apply a "balancing test" to the two alternatives.

The arguments made by Local 662 to seek a reversal of the agency's decision are essentially the same arguments it made to the agency. Local 662's position is that there is a disparity of members between the two groups (i.e., there were nineteen teacher aides and six clerical workers), and even though comparable wages and benefits were paid to the employees, the clerical employees should have the right to seek greater wage increases. It was argued to do otherwise would cause the minority interests to be submerged into the interests of the larger group. When all was said and done, WERC had to decide whether the creation of two bargaining units was an inappropriate fragmentation or whether the position of the two groups was disparate enough to warrant separate bargaining units.

After proper consideration, WERC ordered an election which allowed the employees to decide whether Local 662, Uniserv, or neither should represent the employees in collective bargaining negotiations. A substantial majority of the employees voted to have Uniserv represent them.

Local 662's unhappiness with WERC's decision is understandable. After several years of apparently successful representation, it lost a client (or perhaps more accurately, two clients) to a rival organization. Local 662's arguments have merit but so does the decision of the WERC. After applying

the appropriate standard of review, this Court concludes that under its limited power, it cannot overturn the WERC decision. It would be improper to apply a "balancing test" to determine which position is more meritorious.

There has been no showing that WERC improperly exercised its statutory discretion; that its decision is inconsistent with agency "rule, policy or practice..." or that it is "...in violation of a constitutional or statutory provision." Indeed, overturning the WERC decision would be nothing more than the prohibited substitution of this Court's judgment for that of the agency.

Therefore, for the reasons stated herein, the decision by the WERC on January 25, 2002 is hereby affirmed.

Dated this 17th day of October, 2002.

BY THE COURT:

Eric J. Wahl /s/

Eric J. Wahl

Circuit Court Judge, Branch 2

cc: Jill M. Hartley
David C. Rice
Laura J. Amundson