STATE OF WISCONSIN
CIRCUIT COURT
MILWAUKEE COUNTY

GERHARDT J. STEINKE,
Petitioner,

vs.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION,
Respondent.

Case No. 93 CV 000 - 019
Decision No. 26459-G

MEMORANDUM DECISION

A. BACKGROUND

This is an action for judicial review under Chapter 227, Wis. Stats., commenced pro se by petitioner Gerhardt Steinke on January 4, 1993. Mr. Steinke seeks review of the respondent Wisconsin Employment Relations Commission's (WERC) December 2, 1992 decision and order affirming the findings of fact, conclusions of law and order issued by hearing examiner Jane B. Buffet on May 13, 1992.

The fundamental issue in the proceedings below was whether either of the respondents, the Milwaukee Area Vocational Technical and Adult Education District (MATC) , and Local 212, American Federation of Teachers (the Union) , "had committed prohibited practices within the meaning of the Municipal Employment Relations Act (MERA) by the manner in which they responded to Complainant Gerhardt Steinke's inquiries regarding a settlement agreement" (WERC decision and order of December 2, 1992 at 1) . Because the court finds that Mr. Steinke has failed to meet his burden of proof, because the WERC decision and order is supported by ample credible and substantial evidence in the record and because the WERC decision and order is not contrary to any established law, WERC's decision and order is affirmed in its entirety.

B. STANDARD OF REVIEW

Section 227.57(6), Stats., establishes the standards for reviewing issues of fact. Under the "substantial evidence test," WERC's findings of fact must be supported by substantial evidence in the record; the court may not substitute its judgment for that of the

commission as to the weight of the evidence; and the court must affirm the decision, even if it is against the great weight or clear preponderance of the evidence, as long as a reasonable person could reach the same conclusion based on evidence in the entire record. Robertson Transport Co. v. PSC, 39 Wis.2d 653, 658-59 (1968).

It has been held that:

> Substantial evidence is not equated with preponderance of the evidence. There may be cases where two conflicting views may each be sustained by substantial evidence. In such a case it is for the agency to determine which view of the evidence it wishes to accept...

Id. at 658. Substantial evidence is "relevant evidence [that] a reasonable mind might accept as adequate to support a conclusion." Bucyrus-Erie Co. v. DILHR, 90 Wis.2d 408, 418 (1979).

In reviewing conclusions of law, although the court is not bound by WERC's interpretations, some deference should be given to its specialized knowledge and expertise. The court will hesitate to substitute its judgment for that of WERC on a question of law if a rational basis exists for the decision and it does not conflict with established law. Id. at 417.

The court is well aware of the fact that Mr. Steinke is prosecuting this action pro se. The court is also familiar with the rule of liberal construction of pleadings and arguments regarding pro se litigants set forth in the case of bin-Rilla v. Israel, 113 Wis.2d 514, 520-21 (1983). These facts, however, do not permit the court to modify the procedural and substantive rules of law applicable to an action for judicial review.

Mr. Steinke, as petitioner, bears the burden of establishing some basis, pursuant to Sec. 227.57(1)-(6), Stats., for the court to vacate, modify, or remand this action. Racine Education Ass'n v. Commissioner of Insurance, 158 Wis.2d 175, 182 (Ct. App. 1990) ("The burden of proof in a proceeding to review an agency decision is on the party seeking to overturn the action"). Absent a showing of some statutory basis for taking such action, the court "shall affirm the agency's action." Section 227.57(2), Stats.

C. DISCUSSION

Based on a liberal construction of Mr. Steinke's petition for review, the court finds it raises three issues:

(1) Was it reasonable for WERC to determine that hearing examiner Jane Buffet was not biased against Mr. Steinke?

(2) Was it reasonable for WERC to determine that hearing examiner Buffet fairly and reasonably limited Mr. Steinke's complaint to a definitive issue? and

(3) Was it reasonable for WERC to conclude that MATC and the Union did not engage in prohibited practices under MERA?

Although the ultimate issue in this case was a narrow one, the record reveals the parties spent a great deal of time and effort in determining just what issues were to be decided by the hearing examiner. Ms. Buffet's statement of the nature of the proceedings before her is instructive:

> On February 28, 1989, Complainant [Mr. Steinke] was a teacher employed by MATC. On that day a Settlement Agreement was executed by Complainant, the Union and MATC. The Agreement provided that Complainant would discontinue his classroom assignments and have a special assignment for the remainder of the semester. It provided that he could have a medical leave of absence during the 1989-90 academic year. On February 27, 1990 Complainant filed a complaint with the Wisconsin Employment Relations Commission.
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> The exact nature of the unlawful conduct being alleged by complainant was unclear in the original complaint. In an attempt to clarify said complaint, extensive hearing was held on September 11, 1990. Subsequently, on March 20, 1991, the Examiner issued an order which, among other things, clarified the complaint in the following manner:
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> In summary, what remains of the amended complaint is an implied allegation that after signing of the Settlement Agreement, MATC and the Federation did not respond to inquiries regarding the Settlement Agreement, and I conclude that proceedings in this matter should go forward on that allegation. (footnotes omitted)

(WERC's decision and order at 4, quoting the "background section" of the hearing examiner's preliminary statement.)

1. Hearing Examiner Bias

The evidence in the record overwhelmingly supports WERC's conclusion that Ms. Buffet was not biased against Mr. Steinke. As the Union succinctly noted in its reply brief, on the second day of proceedings before the hearing examiner, Mr. Steinke submitted a "substituted complaint" that raised different issues from his original complaint and which appeared to contradict the claims raised in his first complaint. For example, in the complaint Mr. Steinke appeared to challenge the validity of the Settlement Agreement, but in the substituted complaint he appeared to be claiming that while it was valid, it was not being complied with.

The records reveals the hearing examiner did "bend over backwards" to assist Mr. Steinke in formulating a valid complaint. After numerous and lengthy colloquies with Mr. Steinke, in an attempt to ascertain his position, Ms. Buffet issued a series of orders defining the fundamental issue which is stated above. It should be noted that between March 20, 1991 and September 6, 1991, Mr. Steinke did not object to the hearing examiner's formulation of the issues. Even a cursory examination of Mr. Steinke's pleadings, letters and arguments reveals that, at times, it is difficult to understand exactly what arguments he is making and what type of relief he seeks.

The law presumes that hearing examiners are impartial individuals "capable of judging a particular controversy on the basis of its own circumstances." Withrow v. Larkin, 421 U.S. 35, 55 (1975); accord, State ex rel. DeLuca v. Common Council, 72 Wis.2d 672, 686 (1975). WERC concluded that as hearing examiner, Ms. Buffet "showed great patience and sensitivity to the difficulties which confront a layperson such as [Mr. Steinke] when litigating a prohibited practice proceeding" (WERC decision at 10) . The court agrees. The record contains overwhelming evidence showing that Ms. Buffet was not biased against Mr. Steinke. Further, Mr. Steinke's conclusory accusations of bias, not supported by any citation to evidence or authority, are an insufficient basis for the court to find that any bias did exist. In this case, there was no bias.

2. Limitation of the issues

Not only did Ms. Buffet have authority to limit the issues before her, but the record reveals that Mr. Steinke did not object to her definition of the issues at the March 20, 1991 hearing, and that he did not object to her formulation of the issues when she made her issues statement at the September 6, 1991 hearing - more than five months later. Only after Ms. Buffet made her decision, that was adverse to Mr. Steinke's position, did he object.

The record reveals that Mr. Steinke had ample time to set forth definitive issues, but that he was unable to. A simple review of the record shows that he did appear to have great difficulty in formulating a legal position, and that instead of simply dismissing his complaint and/or amended complaint, the hearing examiner did provide him with meaningful assistance to formulate a complaint that would have provided him with relief had he prevailed. WERC found what the hearing examiner did was proper under the circumstances and not contrary to any established procedure or law. The court concurs. Ms. Buffet made the best of a difficult situation by framing the dispositive issues for Mr. Steinke. She did so in a fair and impartial manner. Mr. Steinke has failed to cite any evidence or authority to the contrary.

3. Prohibited Practices under MERA

Hearing examiner Buffet found that neither MATC nor the Union had violated the Wisconsin Municipal Employers Relations Act, Secs. 111.70 - 111.77, Stats. This finding was affirmed by WERC's decision and order. The fundamental dispute was whether MATC and/or the Union had failed to give proper replies to Mr. Steinke's requests for information about the terms and conditions of the Settlement Agreement. WERC's decision affirming the hearing examiner noted that meaningful responses, both oral and written, to Mr. Steinke's inquires had been timely made and that the manner in which these entities responded to Mr. Steinke's inquiries did not involve any prohibited practices under MERA (WERC decision at 4-7 & 10). The evidence in the record overwhelmingly supports the WERC conclusion that no prohibited practices were engaged in by either the Union or MATC.

4. Mr. Steinke's Pro Se Status

On September 16, 1993, the court issued a memorandum decision with respect to a briefing schedule and Mr. Steinke's motion for a stay of proceedings pending arbitration. Part of that decision bears repeating:

> Mr. Steinke has stated in a September 9, 1993 facsimile transmission to the court that he does not want to file an initial brief. He claims that: "MY 1/4/93 PETITION WAS QUITE CLEAR. I SEE NO NEED TO REPEAT."
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> Mr. Steinke has misconstrued his burden of proof. It is his burden to establish that the agency's decision was incorrect. "The burden in a ch. 227 review proceeding is on the party seeking to overturn the agency action, not on the agency to justify its action." City of La Crosse v. DNR, 120 Wis.2d 168, 178 (Ct. App. 1984). Mr. Steinke,'s petition is not "quite clear" and standing alone is clearly insufficient to support his contentions of error on the part of the respondent. Accordingly, if Mr. Steinke fails to submit a brief addressing the substantive issues in accordance with the court's briefing schedule, the respondent and/or intervenor may file a motion to dismiss in lieu of filing a reply brief.

Despite the court's guidance, Mr. Steinke chose not to submit a brief dealing with the substantive issues involved in the proceedings below.

Instead of submitting a brief that made citations to the record, relevant authorities, and that contained a showing as to why the WERC decision was erroneous, Mr. Steinke has submitted a brief that relies on conclusions, innuendo, obscenities and unwarranted attacks on the character of the other litigants, their counsel and the court. Contrary to Mr. Steinke's belief, appearing pro se is not a license to repeatedly use obscenities like "TOTAL BULLSHIT" instead of making a cogent, logical, legal argument (e.g. Steinke brief of December 8, 1993 at 1-2 & 8-10). Mr. Steinke's repeated accusations of conspiracies, coverups and attacks on the other parties' counsel are improper, deal with matters outside of the record, and provide no basis upon which this court could vacate or modify the WERC decision. Such behavior is clearly inappropriate, and Mr. Steinke is admonished that such conduct has no place in administrative or court proceedings.

Notwithstanding Mr. Steinke's repeated and unwarranted attacks on the opposing parties, their counsel and the court, because of his pro se status the court has given him the benefit of the doubt and issued a decision discussing the merits. Because he failed to file any substantive materials related to his petition, in accordance with the court's briefing schedule, the court could

have simply dismissed this case without setting forth its opinion of the merits. Racine Education Ass'n v. Commissioner of Insurance, 158 Wis.2d 175, 182 (Ct. App. 1990). However, in the interests of justice the court believes a decision on the merits, and on procedural grounds, best serves all involved in this matter.

D. CONCLUSION

Because Mr. Steinke failed to meet his burden of proof by failing to show any grounds for modifying or setting aside the WERC decision, because the WERC decision is supported by credible and substantial evidence, and because the WERC decision is not contrary to any established law, the WERC decision and order is affirmed.

Counsel for WERC shall draw an order consistent with this opinion and submit it under the five day rule.

Dated at Milwaukee, Wisconsin this 24th day of March, 1994.

BY THE COURT

/s/ Louise M. Tesmer
Hon. Louise M. Tesmer
Circuit Judge, Branch 40
Civil Division