

STATE OF WISCONSIN
CIRCUIT COURT
JEFFERSON COUNTY

Jefferson County,
Plaintiff

vs.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION
Defendant

Case #92-CV-380
Decision No. 26845-B

DECISION

The Court concludes that the Commission's finding of a violation of Section 111.70(3)(a)4 must be affirmed. It is therefore unnecessary to consider the issues of violation of Sections 111.70(3)(a) 1 and 111.70(3)(a)3.

The Commission's finding is fully supported by its earlier decisions in Wisconsin Rapids, Dec No 19084-C (WERC 3-85) and Webster Dec. No 21312-B(WERC 9-85). In Wisconsin Rapids, the Commission held that an employer must grant union employees all raises historically granted under its existing compensation plan, during the period between certification and the first collective bargaining agreement, unless the determination to grant such raises involves "substantial employer discretion". In so holding, the Commission adopted the dynamic status quo approach, as being superior to the static status quo approach espoused by the employer. The compensation plan in Wisconsin Rapids provided automatic increases without consideration of job performance.

Webster involved a compensation plan similar to that involved herein, under which the prescribed increases were conditioned upon an employer determination of satisfactory job performance. The Commission rejected the employer's contention similar to the Petitioner's position herein, that the determination of job performance met the "substantial employer discretion" test of Wisconsin Rapids. The Commission reasoned that determination of job performance of individual employees was merely a necessary step in implementing the existing compensation plan. It concluded that the exercise of employer discretion had taken place when the employer established the compensation plan in the first instance.

The Commission's decision herein is not only supported, but is compelled, by its earlier decisions in Wisconsin Rapids and Webster. Because of the Commission's experience and expertise in collective bargaining generally and in the particular area under consideration herein specifically, the court concludes that its decision is entitled to the most favorable standard of review, "great weight" or "rational basis", under Sauk County v. WERC 165 Wis.2d, 406. Under this standard, it must be concluded that there is a "rational basis" for the Commission's finding of a violation of Section 111.70(3)(a)4, based on its application of the dynamic status quo doctrine. The Commission's

decision is therefore affirmed. Counsel for the commission is requested to submit a Judgment in accordance with this decision.

Dated at Waukesha, WI this 17th day of August, 1993.

BY THE COURT:

/s/ Willis J. Zick
Willis J. Zick
Circuit Court Judge