

STATE OF WISCONSIN  
CIRCUIT COURT  
LANGLADE COUNTY

JEROME FILBRANDT PLUMBING AND HEATING, INC.,  
Petitioner,

vs.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION,  
Respondent.

and

PLUMBERS AND PIPE FITTERS, LOCAL 557,  
Respondent.

File No. 92-CV-311  
Decision No. 27045-C

DECISION

This matter comes on for decision in the circuit court pursuant to Wis. Stats. Secs. 227.52 and 227.53 requesting the Court to review a decision of September 29, 1992 of the Wisconsin Employment Relations Commission (hereinafter referred to WERC). The Court has now reviewed the transcript of the original hearing, all exhibits and briefs. Briefly, in July of 1990, the respondent and union members started negotiating regarding a union contract for plumbers. Negotiations took place for a one-year period until July of 1991. On July 26, 1991, the employer filed a petition for decertification and on September 6, 1991 the union filed a complaint with WERC alleging unfair labor practices. There were several issues presented before the hearing examiner on November 6, 1991 and a decision was granted in March of 1992 wherein the examiner found as fact Number 21 that the delays were due primarily to the unavailability of the employer. More specifically the examiner decided that the negotiation meetings were not close enough to each other, and the cause was primarily that of the employer. The examiner therefore decided that the employer committed bad faith and ordered an additional six months of negotiations and dismissal of the decertification petition. The three-member panel of WERC affirmed the examiner's decision with the exception that they found no bad faith bargaining occurred by either party prior to December 6, 1990. That decision is the issue before the Court.

The petitioner now requests the Court to reverse the ruling of the commission because there was no clear and satisfactory preponderance of the evidence that the employer engaged in bad faith bargaining by the totality of the conduct. Both respondents request the Court to uphold the position of the commission alleging that there was sufficient evidence before the examiner to satisfy the findings of the examiner. The burden of the Court is to review the evidence pursuant to statute and case law guidelines and the Court recognizes and adopts the case law as cited in the briefs. This Court cannot rule on the credibility of the witnesses as that is not a matter for review at this time.

The Court must review the record and without second guessing the rulings that were made determine whether their decision was supported by substantial evidence in the record.

The dispositive issue before the court is whether, there was substantial evidence of bad faith bargaining on behalf of the employer. The court takes into account that this is a small family owned plumbing business with no prior union negotiating experience negotiating with a union business manager who had negotiated only one union contract at that time.

The petitioner argues that this court adopt the position of the dissent in the WERC appeal. In the dissenting opinion Chairperson Hempe states that the delays between Dec. and July were not excessive, that the union did not force the issue of more timely meetings, that ground rules for time were never discussed much less agreed to, and there was no real compelling reason for urgency because there were no employees affected at that time.

The respondents argue that there is sufficient evidence to satisfy the majority decision that there was bad faith relying on the time factor between sessions, the non-prioritizing of this issue by the employer and the filing for decertification. Further it is argued that where there are two conflicting views of the evidence it is for the agency to make the determination which to accept. The case of West Bend Education Ass'n v. WERC, 121 Wis.2d 1, 357 N.W.2d 534 (1984) was cited as authority that the Court should give deference to the Commission in areas of their expertise. The Court has read the case and disagrees that the case requires this Court accept the Commission's findings. The facts in this case are not in dispute, and this Court is satisfied that on these facts bad faith is not shown.

Time is not the only factor because what is timely for General Motors may not be timely for a plumber as the cited cases show. The statutes, case law, and rules of WERC do not help in this case by setting down specific guidelines as to how long the process shall take. On first blush it appears that the process should be completed within the one year period. That is until you read all the contract proposals from both sides which complicates the situation, i.e. language about union stewards, foreman, and so forth which are not consistent with a family plumbing business.

The majority opinion concludes that the main cause of delay was the congested calendar of the employer and an unwillingness to meet more frequently and that was bad faith. This court not only disagrees but is satisfied that there is no substantial evidence for the same. Taking into account the employer's cooperation in rescheduling that was shown, the lack of any timetable, the lack of urgency on both parts, and the mutual agreement as to times that were agreed to this court is satisfied that there is no clear and satisfactory evidence that the employer was bargaining in bad faith. To the contrary, up until June 1991, all evidence presented was that the employer was trying to work with the union negotiator. As the cases indicate one month delay can be bad faith if you are General Motors, six month delays probably are bad faith in any case but, in this fact situation, the time delays are not bad faith. The Court is satisfied that the decision of the Commission must be reversed.

Dated this 14th day of February, 1994.

BY THE COURT

/s/ James P. Jansen  
James P. Jansen  
Circuit Judge