

DISTRICT II
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COURT OF APPEALS OF WISCONSIN

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May 9, 1995

95-0682
Decision No. 27578-E

You are hereby notified that the Court entered the following order:

Campbellsport School District, et al. v. Wisconsin Employment Relations Commission, et al. (L.C. #94-CV-518)

Before Anderson, P.J.

The Campbellsport Education Association (Union) and the Wisconsin Employment Relations Commission have appealed from a trial court judgment reversing an order issued by the Commission. In its order, the Commission determined that final offers from the Union and the Campbellsport School District pertaining to a two-year collective bargaining contract covering the school years 1992-94 were subject to interest arbitration.

The trial court reversed the Commission's order and remanded the matter to the Commission to determine which portions of the final offers previously submitted by the District and Union were applicable to the 1992-93 portion of the two-year contract package. The trial court ruled that the portions applicable to 1992-93 were to be determined by the interest arbitrator under the provisions of the Municipal Employment Relations Act, ch. 111.70, STATS., which were in effect prior to the adoption of 1993 Wis. Act 16, which modified the provisions of ch. 111.70 providing for interest arbitration of teacher contracts. It further held that the 1993-94 portions of the offers were to be returned to the parties for further negotiations under the new law.

The Union subsequently moved the trial court to stay implementation of its judgment and order and thus to stay the issuance of an arbitrator's award for the 1992-93 school year. The trial court denied the motion.

The Union has now moved this court for relief pending appeal. The District has filed a response in opposition to the request.

When presented for a motion for relief pending appeal in a case where the trial court has already denied relief, this court must review the trial court's decision under an erroneous exercise of discretion standard. State v. Gudenschwager, No. 95-0221, slip op. at 6 (Wis. March 22, 1995). The trial court's decision will be sustained if the trial court: (1) examined the relevant facts; (2) applied a proper standard of law; and (3) using a demonstrated rational process, reached a conclusion that a reasonable judge could reach. *Id.* at 7.

A stay pending appeal is appropriate when the moving party: (1) makes a strong showing that it is likely to succeed on the merits of an appeal; (2) shows that, unless a stay is granted, it will suffer irreparable harm; (3) shows that no substantial harm will come to other interested parties; and (4) shows that a stay will do no harm to the public interest. *Id.* These factors are not prerequisites but are interrelated considerations that must be balanced together. *Id.* The probability of success that must be shown is inversely proportional to the amount of irreparable injury the movant will suffer absent the stay. *Id.* at 8. More of one factor thus excuses less of the other, although the movant is always required to demonstrate more than the mere possibility of success on the merits. *Id.*

The trial court failed to address the legal standards applicable to stays pending appeal and failed to set forth any reasons for its decision to deny the Union's motion. When a trial court fails to set forth reasons for a discretionary decision, this court may examine the record to determine whether facts exist to support the trial court's decision, Hedtcke v. Sentry Ins. Co., 109 Wis.2d 461, 471, 326 N.W.2d 727, 732 (1982), or may disregard the trial court's decision. See Argonaut Ins. Co., v. LIRC, 132 Wis.2d 385, 391-92, 392 N.W.2d 837, 839 (Ct. App. 1986).

Even if the Union's motion is reviewed de novo in this court, relief pending appeal is denied. While setting forth the standards applicable to stays pending appeal, the Union has provided no discussion of the merits of the issue it intends to raise on appeal. It merely points out that it has already prevailed before the Commission, and contends that, since the Commission has expertise in the area of collective bargaining, the trial court should have deferred to the commission's decision.

The Union provides no discussion of the specific issue or issues to be raised on appeal. In addition, while contending that the trial court should have deferred to the Commission, it provides no discussion of the law regarding deference to administrative agency decisions and fails to demonstrate that the particular issue being raised here involves an area in which deference should be accorded. In the absence of any meaningful discussion of the issue or issues to be raised on appeal, this court cannot conclude that the Union has shown anything more than a mere possibility of success on appeal.

This court is also not persuaded that the union will suffer substantial or irreparable injury absent a stay. As pointed out by the District, the parties and trial court all agree that eventually the interest arbitrator should decide the 1992-93 dispute. While the Union argues that the arbitrator might reach a different result when considering a one-year package as opposed to a two-year package, this argument is purely speculative. Most importantly, it is undisputed by the parties that if the Union ultimately prevails on appeal, wages and benefits under the contracts can be recalculated and retroactively adjusted.

Because the criteria for granting a stay pending appeal are unsatisfied, the Union's motion is denied.

Upon the foregoing reasons,

IT IS ORDERED that the motion for relief pending appeal is denied.

Marilyn L. Graves
Clerk of Court of Appeals