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December 8, 1999

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[Decision No. 29123-F]

[NOTE: This document was re-keyed by WERC. Original pagination has been retained.]

You are hereby notified that the court has entered the following opinion and order:

99-0704

Local 1925-B, AFSCME, AFL-CIO v. Wisconsin
Employment Relations Commission, Walworth County

Before Nettesheim, Anderson and Snyder, JJ.

Local 1925-B, AFSCME, AFL-CIO (hereinafter, AFSCME) appeals from an order confirming a decision and order of the Wisconsin Employment Relations Commission (WERC) and dismissing AFSCME's petition for judicial review. On appeal, AFSCME raises two challenges to the underlying WERC decision. However, we

summarily affirm the order of the circuit court because AFSCME lacked standing to challenge that decision. *See* RULE 809.21, STATS.

Whether an entity is an aggrieved party is a question of law. *See State Public Intervenor v. DNR*, 184 Wis.2d 407, 415, 515 N.W.2d 897, 901 (1994). We apply a two-part test for determining whether a party is aggrieved and thus has standing under §§ 227.52 and 227.53(1), STATS. *See Town of Delavan v. City of Delavan*, 160 Wis.2d 403, 410, 466 N.W.2d 227, 230 (Ct. App. 1991). However, we need only look to the first prong: the petitioner must demonstrate that it sustained an injury due to an agency decision; that injury must not be hypothetical or conjectural, but must be an injury in fact. *See id.* at 411, 466 N.W.2d at 230. We are unpersuaded that AFSCME suffered such an injury here.

The only difference between the examiner's decision and WERC's decision is that the latter contained a dissent and modified one and omitted two paragraphs from the examiner's decision. AFSCME contends that "instead of being a strong decision ... the Commission's Decision constitutes a divided and weak precedent, one which virtually invites further employment relations confrontations and disputes." However, as our supreme court has pointed out, a person is "aggrieved by a judgment whenever it operates on his rights of property or bears directly on his interest." *Town of Greenfield v. Joint County Sch. Comm.*, 271 Wis. 442, 447, 73 N.W.2d 580, 583 (1955). That the original decision would or might have been a stronger precedent cannot be said to bear directly upon AFSCME's interest. Further, any effect of the changes or of the dissent is entirely

speculative. *See Delavan*, 160 Wis.2d at 411, 466 N.W.2d at 230. We cannot say, therefore, that AFSCME had standing to challenge WERC's decision.¹

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily affirmed, pursuant to
RULE 809.21, STATS.

Marilyn L. Graves
Clerk of Court of Appeals

¹ In the course of its standing argument, AFSCME also alludes to having been denied an impartial decision maker and due process of law. It further contends that WERC's actions undermined "the integrity of the proceeding ... and ... the rule of law." These contentions, however, are AFSCME's contentions on the merits and presuppose that it has standing to raise them. Holding that AFSCME had no standing, we need not address these concerns.