

STATE OF WISCONSIN
CIRCUIT COURT
DANE COUNTY
BRANCH 12

DEPARTMENT OF CORRECTIONS,

Petitioner,

v.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION,

Respondent.

Case No. 00-CV-2667

[Decision Nos. 29448-E, 29495-E, 29496-E, 29497-E]

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

NOTICE OF ENTRY OF MEMORANDUM DECISION AND ORDER

To: Department of Corrections
Attention: General Counsel
Post Office Box 7925
Madison, WI 53707-7925

PLEASE TAKE NOTICE that a Memorandum Decision and Order dismissing this matter, of which a true and correct copy is hereto attached, was signed by the court on the 19th day of March, 2001, and duly entered in the Circuit Court for Dane County, Wisconsin, on the 19th day of March, 2001.

Notice of entry of this Memorandum Decision and Order is being given pursuant to Wis. Stat. §§ 806.06(5) and 808.04(1).

Dated this 29th day of March, 2001.

JAMES E. DOYLE
Attorney General

David C. Rice /s/
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STATE OF WISCONSIN
CIRCUIT COURT
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Department of Corrections,

PETITIONER,

vs.

Wisconsin Employment
Relations Commission

RESPONDENT

Case No. 00 CV 2667

MEMORANDUM DECISION AND ORDER

This is an action for judicial review of an order of the Wisconsin Employment Relations Commission (WERC). The Wisconsin State Employees Union (WSEU) is a labor organization which is the authorized collective bargaining representative for employees of the Wisconsin Department of Corrections (DOC) who are within the Security and Public Safety (SPS) bargaining unit. The Wisconsin Association of Professional Corrections Officer (WAPCO) is a labor organization which, in January, 1998, initiated a campaign to replace the WSEU as the representative of the SPS bargaining unit, as contemplated by sec. 111.83, Wis. Stats. Following a campaign for support WAPCO, in October, 1998, filed with the Wisconsin Employment Relations Commission (WERC), a petition seeking an election to determine which organization would be the bargaining representative. That petition was dismissed by the WERC because WAPCO had not demonstrated the degree of employee support required by statute, sec.

111.83(5)(b), Wis. Stats.

The WAPCO organization and member David Frederick filed four complaints with the WERC charging that the DOC and WSEU, in the course of the 1998 campaign, violated the State Employment Labor Relations Act (SELRA), secs. 111.80-111.94, Wis. Stats. The WSEU responded with a complaint that WAPCO had violated SELRA and the matter went to hearing before WERC hearing examiner Colleen A. Burns. On March 24, 1999, examiner Burns issued a recommended decision which concluded that the DOC, but not the WSEU, had violated SELRA. On August 31, 2000, the WERC issued an order affirming in part and reversing in part the recommended decision. The final order concluded that the DOC had violated SELRA but, in essence, limited the remedy imposed. On September 29, 2000, the DOC petitioned for review of the WERC order. The WERC cross-petitioned seeking enforcement of its order and both labor organizations were permitted to intervene in the proceeding.

The WAPCO moved for enforcement of the WERC order, as well as injunctive relief, pending judicial review. Specifically, WAPCO sought injunctive orders directing the WERC to hold a representation election notwithstanding WAPCO's failure to make the required 30% support showing, an order extending the time for WAPCO to present the required showing of employee support and an

order directing the DOC to provide WAPCO a list of names and addresses of bargaining unit employees. On October 19, 2000, the WAPCO's motion to order interim enforcement of the WERC order was granted and the motion for injunctive relief was denied.

On January 25, 2000, the court was advised that the petitioner DOC and the respondent WERC had resolved their differences and wished to dismiss the case. The court was also advised that the intervenor WSEU agrees that the case may be dismissed but further maintains that in so doing it does not thereby waive any contractual or statutory rights it may be entitled to assert on behalf of the employees it represents. The WAPCO, however, has indicated to the court that it opposes dismissal of the action and further now seeks again the injunctive remedies not ordered on an interim basis.

WAPCO seeks to continue this action to which it is an intervenor. The WERC has raised a question as to standing with regard to this request. Looking to WAPCO's Notice of Appearance, Motion to Intervene, Statement of Position and Counter-Petition for Enforcement, the following appears,

WAPCO supports the position of the WERC that the WERC's decision and order which is sought to be reviewed by the Petitioner **should not be reversed or modified, but affirmed in all respects.**

Statement, p.4, para. B(8), emphasis supplied

WAPCO supports the position of the WERC for enforcement of the WERC's Order dated August 31, 2000, pursuant to Wis. Stats., which is sought to be reviewed by the Petitioner **should not be reversed or modified, but affirmed in all respects.**

111.07(7), because DOC has failed and refused to obey that Order.

Statement, p.4, para. C(1), emphasis supplied

The Statement of WAPCO did further request the court to direct the WERC to both conduct an election absent the 30% support showing and also extend the statutory "window period" for obtaining the requisite support, p.4, paras. C(2) and C(3). These requests were arguably within the jurisdiction of the court pursuant to the equitable authority set forth at sec. 111.07(1), Wis. Stats. but each was a request for the modification of the Commission's Order of August 31, 2000. In the proceedings before the WERC, WAPCO had sought both remedies, Recommended Decision, p.81. The waiver of the 30% support was rejected both by the hearing examiner and the Commission. The request for additional time to campaign was recommended by the hearing examiner, Recommended Decision, p.74, Order, para. 7, but rejected by the Commission, WERC Decision, para. L. Thus, the WAPCO Statement explicitly sought affirmance of the August 31, 2000 Order while also asking, in effect, for the substantial modification of that order

which it had been unable to obtain before the WERC.

The question now posed is whether the WAPCO request for remedies, beyond those ordered by the Commission, creates any issue which remains to be resolved at present, when all other parties agree that there has been compliance with the WERC Order and this review proceeding may be ended. The court concludes that the express request of the WAPCO statement the WERC Order of August 31, 2000 be “should not be reversed or modified, but affirmed in all respects” must control the scope of issues to be litigated in this proceeding. The petitioner DOC is the only party who sought reversal or medication of that order and that party has chosen withdraw that request. The legal consequence of the DOC’s dismissal of its petition is that which WAPCO has been achieved, the challenge to the WERC Order has been withdrawn and, in effect, that Order is affirmed. There remains no issue between any party which precludes the dismissal of this proceeding. Further, if the question of equitable relief remained an issue for the court to resolve, it would have been the conclusion of the court that there has not been shown a sufficient basis to justify the invocation of equitable power to grant relief expressly denied by the WERC in this matter.

Therefore, upon motion of the petitioner WERC, and over the objection of the intervenor WAPCO, this matter is hereby DISMISSED.

BY THE COURT this 19th day of March, 2001.

David T. Flanagan /s/
Judge David T. Flanagan

cc: Attorney David C. Whitcomb
Assistant Attorney General David C. Rice
Attorney Sally Stix
Attorney Scott Hassett
Attorney David Vergeront