STATE OF WISCONSIN
CIRCUIT COURT
WOOD COUNTY
BRANCH 3

CITY OF MARSHFIELD, acting through
the Marshfield Electric and Water Commission,

Petitioner,

v.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION,

Respondent.

Case No. 00-CV-0117
[Decision Nos. 6739-C and 29736-B]
[NOTE: This document was re-keyed by WERC. Original pagination has been retained.]

NOTICE OF ENTRY OF DECISION

To: Steven C. Zach
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P.O. Box 927
Madison, WI 53701-0927

PLEASE TAKE NOTICE that a Decision affirming the decision of the Wisconsin Employment Relations Commission, of which a true and correct copy is hereto attached, was signed by the court on the 22nd day of February, 2001, and duly entered in the Circuit Court for Wood County, Wisconsin, on the 22nd day of February, 2001.

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

Dated this 26th day of February, 2001.

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David Rice /s/
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STATE OF WISCONSIN
CIRCUIT COURT BRANCH 3
WOOD COUNTY

City of Marshfield, acting through
The Marshfield Electric and Water Commission
Petitioner

v.

Wisconsin Employment Relations Commission
Respondent.

00-CV-117

Decision

The City of Marshfield seeks judicial review of a decision of the Wisconsin Employment Relations Commission (Commission) which ruled that craft employees of the Marshfield Electric and Water Commission (Utility) were appropriately placed in a collective bargaining unit separate from other Utility employees. The Utility contends that §111.70(4)(d) unambiguously prohibits the linemen of the utility to have a craft severance vote after initial certification in order to exclude themselves from an existing collective bargaining unit and to be placed in a bargaining unit separate from other utility employees. Because I conclude that the statute permits a severance vote and that the Commission correctly interpreted §111.70(4)(d), I affirm the Commission.

The scope of review of a decision of an administrative agency is limited to a review of the record.[1] In this case, the Utility is asking the court to find that the Commission incorrectly interpreted §111.70(4)(d) as allowing the exercise of craft severance after certification. The Commission acknowledges in its decision[2], and in its brief[3] that the statute is susceptible to the interpretation proposed by the Utility. However, I concur with the Commission that the most reasonable interpretation is to allow the exercise of craft certification after original certification.

The chief objective of my review is to ascertain the intent of the legislature. Neither the Utility nor the Commission argues that the statute is ambiguous, yet they disagree on the interpretation. That the parties disagree does not demonstrate that

[1] The facts are not disputed and therefore will not be repeated here.
[2] At p. 10
[3] at p. 8

ambiguity exists. *National Amusement Co. v. Department of Revenue*, 41 Wis.2d 261, 267, 163 N.W.2d 625, 628 (1969).

I carefully considered the interpretation urged by the Utility. The Utility argues that the craft employees get one vote at the time the unit is formed and they are not entitled to another vote. While perhaps technically appropriate, it is too restrictive. In other words, once there is an initial certification, the issue is set in marble.

The statutes relating to the severance vote by the craft employees after initial certification are clear and unambiguous on their face. There is nothing in the statute that even implies finality to the original unit determination.

The Commission urges this court to defer and give great weight to the their interpretation of the statute citing several cases previously decided in line with the present interpretation. The Utility correctly distinguishes them from the present proceeding.[4] Nevertheless my interpretation of the statute, without giving deference to the Commission's, is consistent with that of the commission.

Several sections of the statute relating to selection of representatives and determination of bargaining units for collective bargaining my be read together.

> Whenever in a particular case, a question arises concerning representation or appropriate unit, calling for a vote, the commission shall §111.70(4)(d)3
>
> determine the appropriate collective bargaining unit. §111.70(4)(d)2.a.
>
> unless otherwise required under this sub-chapter, avoid fragmentation §111.70(4)(d)2.a.
>
> The fact that an election has been held shall not prevent the holding of another election among the same group of employees…if sufficient reason exists. §111.70(4)(d)5
>
> Municipal employees shall have the right of self-organization, and the right to…bargain collectively through representatives *of their own choosing*…(emphasis supplied) §111.70(2)

[4] I cannot tell whether this is a case of first impression. It seems odd that the issue would not have risen before.

In construing multiple statutes, the court must harmonize them, if possible, and read them together in a way that will give each full force and effect. See *City of Milwaukee v. Kilgore*, 193 Wis.2d 168, 184, 532 N.W.2d 690, 695-96 (1995).

"Whenever" implies that the event may occur on more than one specified occasion. "Whenever" means "at any time, when"[5]. At any time' is not 'a particular point in time'. I do not read this to allow craft employees to come in and out of existing units at their whim, as suggested by the Utility. §111.70(4)(d)5 allows a subsequent election, but only for sufficient reason.[6] The anti-fragmentation clause is not an overriding statement of policy that should prohibit subsequent election. That clause provides guidance to the Commission in the selection of appropriate bargaining units. Another statute gives the employees the right to choose their own representatives. I find that the interpretation of the commission and of this court gives full force and effect to each clause in question.

Any interpretation must protect and promote the interests of the public, the employee, and the employer. What both parties ignored in their briefs, (especially the Commission?), is the rights of municipal employees set forth in §111.70(2). The Utility argues that the more reasonable interpretation must be the one that advances the anti-fragmentation policy.[7] I disagree. I can understand why the Utility wants to retain the relationship with the one, stable bargaining unit that it has for thirty-five years. The existing bargaining unit was very small and now is broken into two even smaller units. But that is not prohibited by the statute. While arguably the utility's position does not ignore the right of employees to choose their own representatives, that position restricts that right without any statutory authority to do so. The right of the employees to determine their own representatives trumps the anti-fragmentation phrase.

I recognize that I have not addressed each argument raised by the parties. Statutory interpretation is a matter best left up to the courts. The fragmentation issue is best left to the Commission. Naturally the court has no experience with piecing together bargaining units, labor relations or any other experience which would qualify it to second

[5] Random House Dictionary, Second Edition, unabridged.

[6] The 'sufficient reason' is within the experience and expertise of the commission and will not be dealt with by this court. I defer to their judgment.

[7] Utility reply brief, p. 6

guess the decision of the commission in that regard. Any other issue not dealt with by this decision is left up to the commission as within its expertise.

BY THE COURT

Edward F. Zappen /s/
Edward F. Zappen, Jr.
Circuit Court Judge
Wood County Circuit Court, Branch 3