

STATE OF WISCONSIN
CIRCUIT COURT
MILWAUKEE COUNTY
BRANCH 26

MILWAUKEE CISTRICK COUNCIL 48,
AFSCME, AFL-CIO, and its affiliated
LOCAL 1486,

Petitioner,

v.

WISCONSIN EMPLOYMENT RELATIONS
COMMISSION,

Respondent.

Case No. 00-CV-007694

[Decision No. 29933-B]

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

DECISION AND ORDER

Petitioner Milwaukee District Council 48, AFSCME, AFL-CIO, Local 1486 (AFSCME) appeals from a decision of Respondent Wisconsin Employment Relations Commission (WERC) declining to appoint an investigator upon AFSCME's filing of an interest arbitration petition. Because AFSCME no longer represents the individuals affected by the collective bargaining that led to the arbitration petition, the case is moot. WERC's motion to dismiss is granted, and AFSCME's petition for review is therefore dismissed.

BACKGROUND

On March 2, 2000, AFSCME filed an interest arbitration petition with WERC. The cover letter accompanying the petition stated, "[i]t is our intent to continue negotiations on a regular basis unless an impasse is reached." See Record, Ex. 1.

Impasse is a prerequisite for proceeding under an interest arbitration petition. See § 111.70(4)(cm)6.a, Stats. WERC determined that AFSCME's own cover letter indicated that impasses did not yet exist, and dismissed the petition on June 27, 2000. See Record, Ex. 8.

AFSCME petitioned for a rehearing, but because the petition was filed one day late, it was dismissed. See Record, Ex. 11. AFSCME then petitioned for judicial review. AFSCME argued that the cover letter sentence had been explained; that it was not a statement indicating impasse had not been reached, but should instead have been read as indicating AFSCME's willingness to continue despite the existing impasse until WERC investigated the situation.

Meanwhile, members of the bargaining unit for whom AFSCME had filed the interest arbitration petition filed a petition for decertification election. AFSCME then disclaimed interest in representing this bargaining unit. See Affidavit of Thomas Yaeger, ¶¶ 7-8. Because AFSCME no longer represents the employees on whose behalf the interest arbitration petition was filed, WERC filed a motion to dismiss this action for mootness.

DECISION

A case is moot if it has no practical effect upon an existing controversy. See Schwarzbauer v. Menasha, 33 Wis. 2d 61, 63 (1966). If a case becomes moot during the pendency of an action, the reviewing court will not determine the merits unless

exceptional or compelling circumstances exist. See Racine v. J-T Enterprises of America, Inc., 64 Wis.2d 691 (1974). The circumstances in which a reviewing court will determine a moot issue are as follows: (1) the issue is of great public importance, (2) the constitutionality of a statute is involved, or (3) the issue is likely to arise again and a court decision would alleviate uncertainty. See State v. Gray, 225 Wis.2d 39, 66 (1998).

Here, since AFSCME no longer represents the bargaining unit on whose behalf the interest arbitration petition was filed, the case has no practical effect upon an existing controversy and is moot. AFSCME does not dispute this, but argues that the case should be heard under the first and third exceptions listed above. AFSCME contends that the issue of great public importance is whether WERC follows its own policies. Under AFSCME's view of events, WERC violated its usual policy by not appointing an investigator when AFSCME's interest arbitration petition was filed. AFSCME argues that the investigator, not WERC's reading of AFSCME's cover letter, should have determined whether impasse existed. AFSCME also argues that the issue is likely to arise again.

This Court disagrees with both of AFSCME's arguments. WERC notes that its policy since 1986 has been that an appointed investigator determines whether impasse exists. However, this case represents the first time since 1986 that a cover letter has belied the interest arbitration petition. This case does not present the type global policy issue that is contemplated by the exception to deciding a moot case. It is also

unlikely to recur, as most cover letters will not even arguably contradict their accompanying petitions. This is evident in the fact that this case is the first of its kind since the WERC policy was instituted. Because the action is moot, this Court declines to address the merits of the petition for judicial review of WERC's decision.

ORDER

Based upon the foregoing and for the reason stated, IT IS ORDERED that WERC's motion to dismiss the action for mootness is GRANTED, and AFSCME'S petition for judicial review is therefore DISMISSED.

BY THE COURT:

Michael P. Sullivan /s/

Judge Michael P. Sullivan
Circuit Court, Branch 26
Case NO. 00-CV-007694

April 2, 2001