

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH II

BROWN COUNTY,

Plaintiff,

Case No: 05 CV 2139
[No related WERC decision]

v.

WISCONSIN EMPLOYMENT AUTHENTICATED COPY
RELATIONS COMMISSION, FILED

DECISION

Defendant.

NOV 30 2006

BROWN COUNTY,

PAUL G. JANQUART
CLERK OF COURTS
BROWN COUNTY, WI

Petitioner,

Case No: 06 CV 1322
[Decision No. 31476-C]

v.

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION,

DECISION

Respondent.

Brown County (County) in both of the above captioned files asserts that it has the sole authority to determine an employee's fitness for duty pursuant to §50.065(5m) Wis. Stats. This Court is called upon to determine by way of Declaratory Judgment in 05CV2139 and by way of Petition for Review of Administrative Decision in 06 CV 1322 whether that proposition is correct. For the reasons set forth below, the Court finds that the County's belief that §50.065(5m) compelled it to discharge Joachim Vetter without first complying with its contractual obligations to Vetter and his Union is misplaced.

This Court will rely on pertinent facts developed in both files interchangeably for purposes of analyzing these asserted claims. The parties are essentially the same in both cases. They were represented by

attorneys in both cases and had a full opportunity to develop the necessary facts.

DISCUSSION

05CV2139 case

At paragraph 1 of the Declaratory Judgment action, the County asks this Court to declare its statutory and Constitutional right to protect vulnerable, mentally ill children. There is no dispute that the County is vested with those rights. The Wisconsin Employment Relations Commission (WERC) and AFSCME Local 1901 (Union) on behalf of its member, Joachim Vetter (Vetter) contend that the collective bargaining agreement and Chapter 111 WS must be considered in exercising those statutory and Constitutional rights.

The County asserts that because Vetter had been convicted of a "non-serious" crime (Disorderly Conduct) which allegedly caused injury to a vulnerable adult that it was obligated to terminate Vetter's employment as a matter of law.

§50.065(5m) reads in its entirety:

"Notwithstanding s. 111.335, the department may refuse to license, certify or register, or issue a certificate of approval to, a caregiver and an entity may refuse to employ or contract with a caregiver or to permit a nonclient resident to reside at the entity, if the caregiver or nonclient resident has been convicted of an offense that is not a serious crime, but that is, in the estimation of the department or entity, substantially related to the care of a client."

The statutory scheme requires the "entity" in this case the County to make a determination that the non-serious crime is substantially related to the care of clients to whom the care giver would provide services. The County met with Vetter after it discovered that he had been convicted of Disorderly Conduct. Vetter acknowledged that the

conduct had occurred. He further advised the County that he believed that the victim of the crime (his wife) suffered from a mental illness. The County did not conduct any formal hearing in the matter but terminated his employment and notified the State Certification officials of its action. There is no indication that the County adhered to all of the grievance provisions in its collective bargaining agreement with the Union prior to its termination of Vetter.

It is axiomatic that a governmental entity possesses all of the authorities conferred upon it by statute. It is also well understood that a governmental entity can contract away some of the autonomy given to it by statute.

§111.70 creates a statutory scheme for relationships between municipalities and their employees. The County is a municipal employer within the statutory definitions of §111.70. The County has the statutory authority to enter into contracts with unions that represent the County's employees. Such a contract exists between the County and the Union in this case. (See the signed contract for the years 2000-2002 in 06CV1322) That contract provides for a grievance procedure applicable to the termination of a Union employee. (See pages 20 and 21 of the contract) Specifically the County contractually agreed that any unresolved dispute on a grievance would be the subject of an arbitral decision to be rendered by the WERC.

The record discloses that the County resisted the arbitral process in reliance on its belief that the contractual language did not apply in those instances where §50.065(5m) was involved.

Courts are obligated to read statutes in such a way as to give them validity. Here we have a statute that permits the County to consider the termination of an employee for conduct related to employment (§50.065(5m)) and another that creates a review procedure involving collective bargaining agreements (§111.70 et seq.) between the County and the Union.

These separate statutes can be harmonized. The contract which is subject to the review jurisdiction of the WERC afforded Vetter an opportunity to challenge the County's assertion that his conduct was sufficient, "just cause" for his disciplinary termination. The County had a right to consider the conviction for disorderly conduct to be substantially related to Vetter's employment to create the contractual "just cause" for disciplinary termination. The County took the position that it was not obligated to follow the grievance procedure because the collective bargaining agreement was in "hiatus". The County's position changed. It ultimately asserted that it and it alone could make the decision on whether Vetter was fit for duty. Therefore the County decided that it was under no contractual obligation to arbitrate this dispute. The County then concluded that the WERC did not have any authority to review this matter in any fashion.

The County must be bound by its agreement with the Union. That agreement provided that the WERC would ultimately be vested with the authority to hear and resolve the contractual dispute. This Court declines to relieve the County of its contractual obligations. Accordingly this Court declares that the WERC had the authority to hear the matter regarding the Union's prohibited practice complaint.

06CV1322

The Petition for Review raises several issues for this Court's consideration. One of them is related to the WERC's subject matter jurisdiction. In this regard the County relies on §50.065(5m). For the reasons set forth above, that reliance is misplaced.

Nowhere in its brief does the County advance any arguments to support the allegations raised in paragraphs 4, 5, and 6 of the petition. The County appears to exclusively rely on its belief that it was permitted to take whatever action it thought appropriate without consideration of

the collective bargaining agreement. This Court is satisfied however that even had the County challenged the decision on other grounds that this Court would still affirm the decision of the WERC.

Vetter had an otherwise good work record. He cooperated with the County in its investigation of this matter. The County told Vetter that if his license was reinstated that they would do what they could to rehire him. The Department of Licensing has declined to revoke Vetter's certificate.


The County makes no argument that these findings are inaccurate; that they are unreasonable under the circumstances; and that they form the basis for an inappropriate decision. Therefore this Court will not upset those findings.

The County does not challenge that the WERC's order in this matter is inappropriate but for the argument that the WERC lacks jurisdiction to enter an order based on §50.065(5m). This Court has already determined that the County's reliance on that statute is unfounded.

Accordingly this Court concludes that the WERC's findings, conclusions and Order are based on a reasonable interpretation of the facts and the law applicable to those facts. The WERC's order is affirmed.

Dated at Green Bay, Wisconsin, this 30th day of November, 2006.

BY THE COURT:


Mark A. Warpinski
Circuit Court Judge, Branch II