

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH VII

BROWN COUNTY

NATHANIEL WHALEY,

RECEIVED

Petitioner,

MAY 14 1997

DECISION ON WAIVER
OF FEES/COSTS

v.

PERSONNEL COMMISSION

WISCONSIN PERSONNEL COMMISSION,

Case No. 97 CV 462

Respondent.

The above-named petitioner petitioned the Court for judicial review of an adverse decision of the Wisconsin Personnel Commission. The petition for judicial review was filed on April 10, 1997, and was assigned to this Branch of the Circuit Court. It was necessary to research certain legal issues to determine whether the Court would approve the petition for waiver of fees and costs submitted along with an affidavit of indigency to the Court by the petitioner.

Although the petitioner is indigent and unable to pay the filing or service fees, that fact alone does not end the Court's inquiry. Courts may refuse to waive costs and fees when an affidavit of indigency is submitted if it is determined that the affidavit does not set out a claim upon which relief can be granted. State ex rel. Rilla v. Dodge County Circuit Court, 76 Wis. 2d 429, 433 (1977). Determining whether a claim for relief has been stated is a question of law. State ex rel. Richards v. Dane County Circuit Court, 165 Wis. 2d 551, 554 (Ct. App. 1991). The Court concludes that the petitioner has not stated a claim for relief, and therefore a waiver of the fees and costs is denied.

The petitioner, Nathaniel Whaley, is a prisoner at the Green Bay Correctional Institution. He seeks review in the form of certiorari of a decision of the Wisconsin Personnel Commission dismissing his employment discrimination suit. Petitioner worked in the Correctional Institution for Green Bay Textiles as part of the Badger State Industries Private Sector/Prison Industries Enhancement Program between July 29, 1996 and November 7, 1996. According to the petition, his decision to voluntarily terminate his employment with Badger Industries was due to racial discrimination in the work place. He filed a complaint with the Department of Corrections on November 19, 1996, which petition was dismissed. He then appealed the decision to the Wisconsin Personnel Commission. His suit was dismissed by the Personnel Commission on the grounds that it did not have jurisdiction over the matter because petitioner was not an "employee" under the Wisconsin Fair Employment Act (WFEA). Petitioner contends that, because he is paid the minimum wage rate and is required to pay taxes, he is an employee covered by the WFEA. After the decision of the Personnel Commission, petitioner could petition for rehearing or petition the Circuit Court for judicial review. He has petitioned for certiorari.

The Personnel Commission dismissed petitioner's complaint based on its conclusion that petitioner was not an "employee" as defined in the WFEA, and therefore the Commission did not have jurisdiction. The Court must give weight to the interpretation of a statute by the agency charged with its application, but its interpretation is not binding on the Court. Miller Brewing Co. v. Dept. of Industry, Labor & Human Relations, 103 Wis. 2d 496 (Ct. App. 1981).

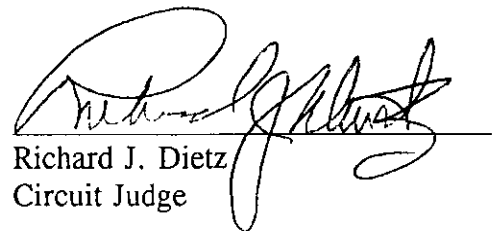
It appears to a reasonable certainty that the Personnel Commission was correct in its conclusion that petitioner is not an employee as defined by statute. Both the WFEA and Title VII of the Civil Rights Act of 1964 use the same standard in determining whether a person is an employee. Moore v. Labor & Industry Review Comm., 175 Wis. 2d 561 (Ct. App. 1993). A party is not an employee under Title VII in circumstances such as described by the petitioner in his petition because the relationship of the petitioner to the prison authority is that of inmate, rather than employee. Williams v. Meese, 926 F. 2d 994, 997 (10th Cir. 1991). Similarly, petitioner's relationship with Badger Industries arises out of his status as an inmate and not an employee.

Since petitioner has not stated a claim, defense or appeal upon which the Court may grant relief, filing and service fees must be paid, and,

IT IS HEREBY ORDERED, that the petition for waiver of costs and fees is hereby denied.

Dated this 13th day of May, 1997.

BY THE COURT:


Richard J. Dietz
Circuit Judge

cc. Mr. Nathaniel Whaley, Green Bay Correctional Institution
Wisconsin Personnel Commission ✓