

STANLEY-BOYD AREA SCHOOLS
AND THE BOARD OF EDUCATION OF
STANLEY-BOYD AREA SCHOOLS,

Petitioners,

DECISION ON REVIEW

vs.

WISCONSIN EMPLOYMENT RELATIONS
COMMISSION,

Decision No. 12504-C

Respondent.

Frank Reith, a member of the Stanley-Boyd Education Association (SBEA) and a teacher in the District was nonrenewed by the Board for the 1973-1974 school year. All procedural provisions of statute and the labor agreement between the parties relative to nonrenewal were complied with. Following nonrenewal Reith filed a complaint with the W.E.R.C. alleging that the District violated Sec. 111.70(3)(a)5, stats. and also interfered with his protected rights as a municipal employe in violation of Sec. 111.70(3)(a)1, stats. The Examiner dismissed the count under Sec. 111.70(3)(a)5, stats. on motion of the District. The complaint was amended to additionally allege a violation of Sec. 111.70(3)(a)3, stats. After an extended hearing (producing some 460 pages of transcript exclusive of exhibits, findings, etc.) the Examiner made the ultimate finding of fact (Finding 27) that Reith's nonrenewal was based in whole or in part on his activities in behalf of the SBEA and concluded that the District violated Sec. 111.70(3)(a)1, 3, stats., and ordered among other things that Reith be reinstated with back pay.

The District and Board petitioned the Commission for review of the Examiner's Findings, Conclusions, Order and Accompanying Memorandum. The Commission found that the petition was not timely filed, (Sec. 111.07(5) stats.) and that it was without jurisdiction to review the Examiner's Findings, etc., and ordered on April 6, 1976 pursuant to Sec. 111.07(5) stats the adoption of the Examiner's Findings, etc., as its Findings, Conclusions, Order and Accompanying Memorandum.

This action was then commenced by the District and the Board to review the W.E.R.C.'s findings, etc., pursuant to Sec. 111.70(4)(a), 111.07(8), and Chapter 227 stats. The W.E.R.C. counterpetitioned for confirmation and enforcement of the W.E.R.C.'s order pursuant to Sec. 111.07(7) stats.

At the outset the Attorney General argues that the limit of court review provided for in Sec. 111.07(7) stats. applies to this entire matter since the defendant, W.E.R.C., counterpetitioned for enforcement of its order. This section of the statutes provides that on petition for enforcement the findings of fact made by the Commission, if supported by credible evidence, are conclusive upon the court. See also W.E.R.C. v. Evansville, 69 Wis. 2d 140. Sec. 227.20(1)(d) stats., however, provides that a review is confined to the record and that the court may reverse or modify if the findings, etc., are unsupported by substantial evidence in view of the entire record as submitted (or other reasons enumerated in the statutes). Petitioners, if the Attorney General is correct, are not afforded the broader review parameters of Sec. 227.20(1)(d) stats. merely because the W.E.R.C. counterpetitioned for enforcement of its order. Sec. 111.07(7) stats. contemplates court review even where no ch. 227 review is sought since the Commission must file its record in the proceedings and cause notice thereof to be given. In the absence of any ch. 227 review, and on petition for enforcement by the Commission of its order, the reviewing court must determine whether there is any credible evidence to support the findings of the Commission, and its role is not merely to rubber-stamp the findings, conclusion, etc., and enter an order or judgment of enforcement. It would

be strange indeed if the scope of review would become more narrow than would otherwise be afforded merely because the Commission counterpetitioned for enforcement under Sec. 111.07(7) stats. after the Board had petitioned initially for review under ch. 227. I can only conclude that the leopard spots cannot be changed by counterpetition for enforcement, and that the scope of review by the court is that provided by Sec. 227.20(1)(d) stats., and as announced in Copland v. Department of Taxation, 16 Wis. 2d 543.

Thus the inquiry must be whether the Findings, Conclusions and Order of the Commission are unsupported by substantial evidence in view of the entire record. "Substantial evidence" is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, and the phrase "in view of the entire record as submitted" means that the test of reasonableness is to be applied to the evidence as a whole, and not merely to that part which tends to support the agency's findings. Copland v. Department of Taxation supra. Likewise it is settled that the weight of evidence and credibility of witnesses are for the agency and not the reviewing court. Hilboldt v. Wis. R.E. Brokers' Board, 28 Wis. 2d 474, St. Francis Hospital v. W.E.R.C., 8 Wis. 2d 308, and if there is more than one inference that can reasonably be drawn the finding of the agency is conclusive on the court. Pabst v. Department of Taxation, 19 Wis. 2d 313; International Union v. W.E.R.C., 258 Wis. 481.

The brief of Reith suggests that the petitioners are asking the court in this proceeding to again assess the credibility of the witnesses which has already been determined by the agency and are conclusive on the court. Reith misreads the position of petitioners. They do not quarrel with the general principles of law applicable to this type of case, but they say accepting credibility issues as determined by the agency, the agency's findings are unsupported by substantial evidence in view of the entire record because those findings, especially the ultimate finding No. 27, is based upon mere conjecture and speculation, and not upon inferences that could be drawn from facts as found.

This Court has read the entire record submitted. After doing so its first impression was that indeed finding No. 27 (nonrenewal based upon SBEA activities) was based upon conjecture since there was ample evidence that the nonrenewal was warranted by Reith's shortcomings as a teacher and his attitude toward those in authority above him; and, further, that the findings relating to SBEA participation of Reith (Findings 17, 19, 20, 21, 23, 24, 25, 26) were insufficient to support the ultimate finding that this 15-member board was motivated in its nonrenewal by Reith's activities in the SBEA and in negotiating for the '72-'73 master contract, or put another way, that the negotiating team of the Board headed for a time by Samplawski because of differences with and resentment toward Reith because of his union activities urged upon the Board as a whole its resentment which in turn became the Board's resentment and which ultimately resulted in the nonrenewal.

This first impression vanished completely upon reading the case of Muskego-Norway C.S.J.S.D.No. 9 v. W.E.R.C., 35 Wis. 2d 540. From the facts reported in that case it was extremely difficult for this Court to agree with the majority's opinion, but considering the facts reported there in the light of those found in the case before me I must agree that they are stronger here for concluding as the agency did than they were in the Muskego case. From the findings made the Commission could draw the inference that the nonrenewal was motivated in part by Reith's activities in behalf of the SBEA, and taking the record as a whole and within the scope of review prescribed, I must conclude that the findings of fact, the inferences drawn, as well as the conclusions of the agency are not unsupported by substantial evidence in view of the entire record submitted, and the order of the Commission must be affirmed.

Reith also urges that this Court is without jurisdiction to review the matter since no timely motion to review was made as provided for by Sec. 111.07(5) stats. This issue becomes moot in view of the determination made on the merits. Suffice to say, this Court cannot read into Chapter 227 stats. any requirement that a timely motion for review must be made as a condition precedent to bringing a petition to review under Sec. 227.20(1)(d) stats.

In view of the determination herein made, the counterpetition for enforcement must be granted. The Attorney General will prepare a judgment and decree and present to the Court for signature.

Dated this 27th day of October, 1976.

BY THE COURT:

Robert F. Pfiffner /s/
Circuit Judge