

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

TEAMSTERS LOCAL 563,	:	
	:	
Complainant,	:	
	:	Case X
vs.	:	No. 15211 MP-107
	:	Decision No. 10716-C
CITY OF NEENAH,	:	
	:	
Respondent.	:	
	:	

SUPPLEMENTAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

Wisconsin Employment Relations Commission having, on October 13, 1972, issued an Order Affirming Examiner's Findings of Fact, Amending Examiner's Conclusions of Law and Reversing Examiner's Order 1/ in the above entitled matter, wherein it remanded an arbitration proceeding to Arbitrator John T. Coughlin for further hearing for the purpose of issuing a final and definite arbitration award as to whether the Respondent herein terminated the employment of Robert Robbins on December 31, 1970 for "just cause" pursuant to the collective bargaining agreement in effect between the Complainant and Respondent; and the parties, on December 4, 1972, having agreed to waive further hearing before said Arbitrator and having requested said Arbitrator to issue an award in conformity with the Commission's order based on the evidence presented at the hearing conducted by him and the evidence taken at the hearing before the Examiner and all briefs filed by the parties; and Arbitrator Coughlin having issued said arbitration award on January 18, 1973; and the Complainant having, on February 13, 1973, filed an amended complaint herein wherein it alleged that the Respondent has refused to comply with said arbitration award in violation of Section 111.70(3)(a)5 of the Municipal Employment Relations Act, which amended complaint was answered by the Respondent on March 8, 1973; and the Complainant and Respondent, on May 10, 1973, having agreed to waive further hearing on the amended complaint and having requested the Commission to determine the issues raised by the pleadings based on the entire record including any additional arguments filed by the parties; and the Commission having reviewed the entire record and being fully advised in the premises, makes and issues the following:

SUPPLEMENTAL FINDINGS OF FACT

1. That, pursuant to an order of the Wisconsin Employment Relations Commission and subsequent stipulation entered into between the Complainant and Respondent, Arbitrator John T. Coughlin issued an arbitration award on January 18, 1973, which is set out in Appendix A and incorporated by reference herein, wherein he found that the Respondent violated Article 11 of its collective bargaining agreement existing

1/ City of Neenah, (10716-B) 10/72.

between the Respondent and the Complainant by discharging Robert Robbins without "just cause" and wherein the Arbitrator ordered the Respondent to immediately offer Robert Robbins full and complete reinstatement, without any loss of rights or benefits, to his former or a substantially equivalent position, and to make him whole by paying him an amount of money equal to that which he would have earned had he not been so discharged, less any amount he earned or received while discharged that he otherwise would not have earned or received; that the Respondent since on or about January 18, 1973, has failed and has refused to comply with said award.

Based on the above and foregoing Supplemental Findings of Fact, the Commission makes the following

SUPPLEMENTAL CONCLUSIONS OF LAW

1. That the arbitration award issued by Arbitrator John T. Coughlin on January 18, 1973 was based upon his interpretation and application of the collective bargaining agreement existing between the Complainant and Respondent which interpretation and application was within Arbitrator Coughlin's authority conferred by Article 15 of said agreement; that said arbitration award was not issued in excess of said Arbitrator's powers or jurisdiction; and therefore said award was, and is, a final and binding arbitration award within the meaning of Sec. 111.70(3)(a)5 of the Municipal Employment Relations Act.

2. That the Respondent, by failing and refusing to accept the arbitration award issued by Arbitrator Coughlin, has committed, and is committing, a prohibited practice within the meaning of Section 111.70(3)(a)5 of the Municipal Employment Relations Act.

Based on the above and foregoing Supplemental Findings of Fact and Supplemental Conclusions of Law, the Commission makes the following

SUPPLEMENTAL ORDER

IT IS ORDERED that the City of Neenah, its officers and agents shall immediately:

1. Cease and desist from refusing to comply with the arbitration award issued by Arbitrator John T. Coughlin on January 18, 1973.

2. Take the following affirmative action which the Commission finds will effectuate the policies of the Municipal Employment Relations Act:

a. Comply with the arbitration award issued by Arbitrator John T. Coughlin on January 18, 1973 by immediately offering Robert Robbins full and complete reinstatement without any loss of rights or benefits to his former or a substantially equivalent position and make said Robert Robbins whole by paying him an amount of money equal to that which he would have earned had he not been so discharged less any amount that he earned or received while discharged that he otherwise would not have earned or received.

b. Notify the Wisconsin Employment Relations Commission in writing within ten (10) days

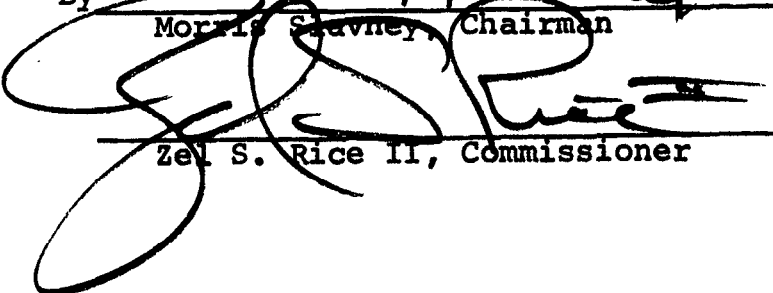
of receipt of this order as to what steps
it has taken to comply herewith.

Given under our hands and seal at the
City of Madison, Wisconsin, this 25th
day of October, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Zel S. Rice II, Commissioner

MEMORANDUM ACCOMPANYING
SUPPLEMENTAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

Pursuant to a request of the Complainant, for the appointment of an Arbitrator for the purpose of rendering a final and binding arbitration award in a dispute over the interpretation and application of the terms of a labor agreement existing between them, and the concurrence in such request by the Respondent, the Commission on January 21, 1971 appointed John T. Coughlin, a member of its staff, as the Arbitrator. 2/ After a hearing and receipt of written arguments, Arbitrator Coughlin issued an arbitration award dated December 9, 1971, wherein he found that the Respondent had violated Robert Robbins' right to procedural due process as guaranteed by the 14th Amendment of the United States Constitution and by so doing unjustly discharged Robert Robbins thereby violating Section 11 of the collective bargaining agreement existing between the parties and ordered the Respondent to take certain affirmative actions, including reinstatement and compliance with the procedural due process rights found to have been violated.

The Respondent failed and refused to comply with that award and the Complainant filed the original complaint herein, wherein it was alleged that by such action the Respondent had violated Section 111.70(3)(a)5 of the Municipal Employment Relations Act (MERA). On May 23, 1972, Examiner Marvin L. Schurke of the Commission's staff issued Findings of Fact, Conclusions of Law and Order wherein he concluded that the arbitration award issued by Arbitrator Coughlin on December 9, 1971 was in excess of the power conferred on the Arbitrator under the terms of the labor agreement and that therefore the Respondent had not violated Section 111.70(3)(a)5 as alleged and dismissed the complaint. 3/ The Complainant filed a Petition for Review with the Commission, and after receipt of written arguments, the Commission issued an Order Affirming the Examiner's Findings of Fact, Amending Examiner's Conclusions of Law, and Reversing Examiner's Order, 4/ wherein the Commission found that Arbitrator Coughlin, in issuing his award of December 9, 1971 exceeded his jurisdiction in determining whether Robert Robbins was denied Constitutional due process by the Respondent, and concluded that the Arbitrator failed to issue a final and binding award with respect to the issue presented to him in said arbitration proceeding. The Commission remanded the arbitration proceeding to Arbitrator Coughlin for the purpose of issuing a final and definite award to determine the issue initially presented to the Arbitrator, namely whether the Respondent terminated the employment of Robert Robbins on December 31, 1970 for "just cause". Pursuant to that order, the parties waived the right to further hearing and requested Arbitrator Coughlin to issue an arbitration award based on the evidence presented at the hearing before him, the evidence presented at the hearing before Examiner Schurke, and all written arguments presented, including any additional arguments either party desired to make.

2/ City of Neenah (10126) 1/71.

3/ City of Neenah (10716-A) 5/72.

4/ City of Neenah (10716-B) 10/72.

On January 18, 1973, Arbitrator Coughlin issued the arbitration award set out in Appendix A of the Findings of Fact above. It is undisputed that since on or about January 18, 1973 the Respondent has refused to comply with said award and on February 13, 1973 the Complainant filed an amended complaint alleging that the Respondent has violated Section 111.70(3)(a)5 of MERA by that refusal. The Respondent contends that its refusal to comply is not in violation of Section 111.70(3)(a)5 because "the Arbitrator ignored the right of the City to legislate as to its employees, and that such legislation was not part of the labor agreement but is part of management's right and a condition of employment, and . . . that the Arbitrator acted arbitrarily and exceeded his power."

STANDARD FOR REVIEW

Under the Statutes administered by the Wisconsin Employment Relations Commission, the Commission has no plenary power to review labor arbitration awards. Section 298.09 of the Wisconsin Arbitration Act provides for court review of arbitration awards and Section 298.10 sets out the standard for review to be utilized by the courts in reviewing arbitration awards covered by that act. 5/

However, the Commission does have authority, pursuant to Sections 111.06(1)(f), 111.06(1)(g), 111.06(2)(c), and 111.06(2)(d) of the Wisconsin Employment Peace Act, Sections 111.70(3)(a)5 and 111.70(3)(b)4 of the Municipal Employment Relations Act, and Sections 111.84(1)(e) and 111.84(2)(d) of the State Employees Labor Relations Act, to enforce the terms of a labor arbitration award where one party to an agreement to arbitrate has refused to abide by an award. In enforcement proceedings the Commission has indicated that it will not enforce arbitration awards which are contrary to the standards for court review set out in Section 298.10. 6/ That section sets out, in relevant part, the following grounds as being sufficient to warrant the vacation of an arbitration award by a court:

- "(a) Where the award was procured by corruption, fraud or undue means;
- (b) Where there was evident partiality or corruption on the part of the arbitrators, or either of them;
- (c) Where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence perti-

5/ This presumably includes labor arbitration awards issued by arbitrators who have been appointed by the WERC. Section 298.01 states that ". . . the provisions of this chapter shall not apply to contracts between employers and employees or between employers and associations of employees except as provided in Section 111.10 of the Statutes". However, Section 111.10 of the Statutes provides for the appointment of arbitrators in labor disputes by the WERC and states that "[p]roceedings in any such arbitration shall be as provided in Chapter 298."

6/ H. Froebel and Son (7804) 11/66; Research Products Corporation (10223-A) 12/71. See also our prior Decision and Memorandum in this case, City of Neenah (10716-B) 6/72.

ment and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced;

- (d) Where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final and definite award upon the subject matter submitted was not made."

ENFORCEABILITY OF THE AWARD

None of these enumerated grounds would appear to apply to the arbitration award issued by Arbitrator Coughlin on January 18, 1973. In our prior decision, the Commission found that the Arbitrator had exceeded his jurisdiction in determining whether Robert Robbins had been denied Constitutional due process and that he did not issue a final and binding award with respect to the issue presented, both of which findings would constitute grounds for vacation of an award under Section 298.10(1)(d). In his award of January 18, 1973, Arbitrator Coughlin has obviated both of these grounds and issued a final and definitive award on the issue presented to him.

In his award of January 18, 1973, Arbitrator Coughlin concluded that the Respondent did not have "just cause" to discharge Robert Robbins because of his failure to comply with the unilaterally composed residency requirement. This award, unlike the award of December 9, 1971, was not based on the Arbitrator's interpretation of the Constitutional rights of the grievant, and employed a remedy which constituted a final and binding disposition of the issue presented to him. The rationale employed indicated that the conclusions reached were based on the Arbitrator's interpretation and application of the "just cause" provision of the collective bargaining agreement rather than matters outside the agreement. The Arbitrator viewed the residency requirement as being in its nature a unilaterally established "work rule" which, under a contractual standard of "just cause", cannot serve as the basis for disciplinary action of an employe unless the employer can show that the rule is reasonably related to his job.

In its brief the Respondent places considerable reliance on the fact that the residency requirement was established in the form of a duly enacted ordinance in support of its argument that the Arbitrator exceeded his authority. This argument is fallacious because it misconstrues the effect of the award. The Arbitrator did not rule, and in the Commission's view he lacked the final authority to rule, that the ordinance in question was unconstitutional or otherwise invalid. The Arbitrator's discussion of the question contained footnote 2 in his award of December 9, 1971, indicated that he entertained some doubt about the constitutionality of the ordinance, but he specifically avoided a decision on that question. His first award, which was found to be unenforceable by the Commission, was based on his conclusion that the grievant had been denied his 14th Amendment right to procedural due process in the enforcement of the ordinance. His award on January 18, 1973, disregarded all constitutional questions and found that, regardless of the constitutionality of the ordinance or the manner of its enforcement, it provided an insufficient basis for the discharge of an employe under a "just cause" standard.

The question of the interpretation of the collective bargaining agreement is a question for the Arbitrator. It is his construction which was bargained for by the parties, and so far as the Arbitrator's

award concerns construction of the collective bargaining agreement, the Commission has no business overruling the Arbitrator because their interpretation of the collective bargaining agreement might be different from his. 7/

Dated at Madison, Wisconsin, this 25th day of October, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Zel S. Rice II, Commissioner

7/ Steel Workers v. Enterprise Wheel and Car Corp. 363 U.S. 593 (1960); Wisconsin Axle Division (1467) 11/47.