

STATE OF WISCONSIN : CIRCUIT COURT : MILWAUKEE COUNTY  
CIVIL DIVISION

In the Matter of the :  
:   
MILWAUKEE DEPUTY SHERIFFS' : Case No. 412-252  
ASSOCIATION, :   
: Decision No. 11557-A  
Petitioner, :   
: FILED  
and :   
: Dec 5 1973  
MILWAUKEE COUNTY, :   
: Francis X. McCormack  
Respondent. :   
:

MEMORANDUM DECISION

This is an action brought in accordance with the provisions of Chapter 298, Wisconsin Statutes, to vacate or modify an arbitration award.

The parties have stipulated to certain facts and exhibits which have been filed with the court. Oral argument was heard by the court on November 5, 1973. Both sides have supplemented said argument with written briefs which have been filed with the court and have been considered.

A lengthy recitation of the facts would serve no useful purpose as they are contained in the stipulation presented to the court by both parties. Basically, the two parties were unable to agree on terms for a collective bargaining agreement for the year 1973. The Association filed a petition for final and binding arbitration, pursuant to Section 111.77(3) of the Wisconsin Statutes. Thereafter the WERC conducted an investigation and determined that an impasse had occurred and issued an order requiring arbitration. Section 111.77, Wisconsin Statutes, provides that there shall be two forms of arbitration in such a case. Form 2 under that section was used here, inasmuch as there was no agreement between the parties to use Form 1.

The petition for final and binding arbitration was filed by the Association with the WERC on December 4, 1972. Thereafter, the WERC then entered an order requiring the parties to submit their final offer in effect as of January 15, 1973. It is at this point that the petitioners contend that the County violated the mandate of Section 111.77 of the Wisconsin Statutes in that Section 111.77(4)(b) provides: "The parties shall submit their final offer in effect at the time that the petition was ... filed." The petitioners contend that by allowing the County to submit an offer as of January 15, 1973, containing a 2-year provision for the contract, that the spirit and intent of the statutory procedures provided by the legislature were violated, and that the arbitrators were, therefore, deprived of jurisdiction to enter any arbitration award because such an order flies in the face of the clear wording of the statute. This principally is the contention of the petitioners, while their argument, in brief, alluded to other factors, some of which are important, principally the theory and legislative intent in enacting Chapter 298 and Chapter 111 of the Wisconsin Statutes. The petitioner further contends that by allowing the County to file an offer on January 15th, containing a 2-year provision, the County received an advantageous position in that the 2-year provision was not negotiated prior to the filing of the petition, and that, therefore, the Association was not treated fairly and that the arbitrator lacked authority to adopt a final offer containing the 2-year provision.

The respondent, Milwaukee County, contends that there is no statutory basis for this court to act because no allegation is made in the petitioner's brief that any of the conditions set forth in Section 298.10 of the Statutes were present in the hearing before the panel of arbitrators. The court rejects this reasoning for the reason that an examination of the stipulation of facts proves otherwise. The court specifically refers to Paragraph 16 of the stipulation. Respondent further argues that the requirements of Section 298.11 of the Statutes have not been met. Section 298.11(2), Wisconsin Statutes, provides that: "The order must modify and correct the award, so as to effect the intent thereof and promote justice between the parties." The court

feels that to promote justice between the parties is an integral part of the statute. In fact, it is the heart of the statute.

The respondent further argues that after the date for the arbitration hearing contemplated in Section 111.77(4)(b) of the Wisconsin Statutes both parties are allowed to file amended offers, and did as the statute permits them to do, each of which differed in substantial material respects from the offers initially filed with the Commission.

While this is admittedly a case of first impression, it is the court's opinion that the legislature, in allowing either side to amend their offer in existence at the time the petition is filed, did not intend that the amended offer contain substantive matter which was not mentioned nor even considered by the parties during negotiation and prior to the filing of the petition. To hold otherwise would create the anomalous situation of allowing a party to collective bargaining to entirely frustrate the requirements of good faith bargaining before the petition is filed, and then, afterward, come forward, under the guise of an "amended offer," with new and highly controversial subject matter about which the other side never had any opportunity to negotiate. This is fundamentally wrong. The court is of the opinion then, and does conclude as a matter of law, that those substantive portions of an amended offer, which affect the substantive rights of the other party and which relate to subject matter not considered in the original offers, cannot be considered by or ordered as part of the final arbitration award.

The legislative intent in setting up this machinery was to provide for meaningful and productive negotiations prior to a reliance on the arbitration machinery as proposed in the statutes. Further, the legislature intended that municipalities, because by law municipal employees do not have the right to strike, would negotiate preliminarily fairly, honestly and in good faith. To allow substantial change under the 5-day rule would make this legislative intent a nullity and would promote litigation and labor strife with governmental municipalities in this state. As here, where the Deputy Sheriffs did not engage in any illegal strikes or work stoppages, the respondent municipality is under an even greater compulsion to deal with them fairly and to engage in good faith collective bargaining ab initio.

Respondent's counsel, in their brief, admit that Mr. Gimbel, counsel for the Association, in his opening remarks objected to the proposal of the County which set forth the proposition for a 2-year contract. This, and the fact that the procedure is statutory, precludes the respondent from arguing that any waiver, as they have argued in their argument and brief, was made by the Association as to the 2-year contract proposal. They further admit that Mr. Gimbel correctly stated that the first time a 2-year contract was suggested by the County was subsequent to the filing by the Association of the petition which instituted the arbitration proceedings. Therefore, in conclusion, the arguments of the respondent that there was a waiver of any procedural defect are rejected by this court. The argument that the stipulated record before the court does not show or contain a single inference that any of the provisions of Section 298.10 or 298.11 of the Statutes are present is likewise rejected.

The petitioner has urged that the court vacate the arbitrator's award and all proceedings in connection therewith or, in the alternative, that the court vacate that portion of the arbitrator's award relating to employment of Deputy Sheriffs for the year 1974. Since this action was not filed until August of this year, and not argued until November and the final brief filed on October 31st of this year, it would appear to this court that a vacation of the arbitrator's total award would be a manifest injustice since the entire year of 1973 has practically expired. However, the court will grant and does grant the alternative relief, and orders vacated that portion of the arbitrator's award relating to the employment of the Deputy Sheriffs for the year 1974, and orders that new negotiations be commenced as soon as practicable for a contract for the year 1974.

Counsel for petitioner is directed to file findings of fact and conclusions of law consistent with this memorandum decision. No costs are awarded.

Dated, at Milwaukee, Wisconsin, this 5th day of December, 1973.

FILED  
Dec 5 1973  
Francis X. McCormack

BY THE COURT  
Robert M. Curley /s/  
Robert M. Curley,  
Circuit Judge