

EVERBRITE ELECTRIC SIGN CO.,

Plaintiff,

vs.

UNITED ELECTRICAL, RADIO AND
MACHINE WORKERS OF AMERICA (UE)
LOCAL 1172, WISCONSIN EMPLOYMENT
RELATIONS COMMISSION and
STANLEY H. MICHELSTETTER,

Defendants.

Case No. 437-115

Decision No. 13440

MEMORANDUM DECISION ON MOTION

In this action the Attorney General's office, on behalf of the defendants, Wisconsin Employment Relations Commission and Stanley H. Michelstetter, has brought a motion on a return of the plaintiff's Order to Show Cause for Summary Judgment as to those two defendants, and asking for dismissal of the action as to those two defendants.

The plaintiff's Order to Show Cause asks why the named defendant, Stanley H. Michelstetter, should not be required to furnish the plaintiff with a copy of the transcript of testimony taken in the arbitration case between the above-named parties on May 1, 1975, with the cost of said transcription allocated to the plaintiff.

The plaintiff's Order to Show Cause and the defendants' motion were argued before the court on February 16, 1976, and thereafter taken under advisement.

Without going into great detail, this action is one commenced by the plaintiff to vacate an award made by the defendant, Stanley A. Michelstetter, who had been appointed an arbitrator between the plaintiff and the defendant, United Electrical, Radio and Machine Workers of America (UE) Local 1127. The plaintiff's motion, as said before, was an Order to Show Cause requiring the defendant, Stanley A. Michelstetter, to furnish his transcribed notes of said arbitration hearing to the plaintiff.

The defendants, Wisconsin Employment Relations Commission and Stanley H. Michelstetter, argue through their counsel that the plaintiff does not state a cause of action to get a transcript from the arbitrator; that sovereign immunity bars jurisdiction over those two defendants; and that the subject matter of jurisdiction of this suit is confined to Dane County pursuant to statute. The court agrees with counsel for the defendants in their contention that judicial review as to whether the arbitrator exceeded his powers requires looking at only two documents: (1) the arbitration agreement so as to determine whether the arbitrator had power to make the award; and (2) the award itself so as to determine whether the arbitrator interpreted the contract. Further, they argue that the plaintiff is not entitled to the arbitrator's tapes or a transcript therefrom for the following five reasons:

"(1) The alpha and omega of arbitration law rests on the consent of the parties, and the union has not consented to production of a transcript from the arbitrator's tapes; (2) arbitrator's are not required to disclose the facts or reasons for their awards, therefore there is no duty to disclose a tape recording containing the basis for such reasons or factual beliefs; (3) arbitrators need not base their decisions on evidence in the record, therefore disclosures from the tapes of what that evidence is will not affect the employer's success on its appeal from that award; (4) an arbitration award will not be vacated because contrary to evidence, or errors in ruling on the evidence therefore disclosure from the tapes of what that evidence is will not affect the employer's success on its appeal from the award; and (5) the scope of judicial review of an award challenged on the ground the arbitrator exceeded

his jurisdiction, as here, is confined to determining whether the arbitrator's award is faithful to the duty to interpret the contract, therefore disclosure from the tapes of what evidence was adduced at the hearing will not affect the employer's success on its appeal."

It does appear in this matter that the Commission's sole jurisdiction was to appoint an arbitrator, and that is a poor reason, if any, why they should be named a defendant in this lawsuit. As to the arbitrator himself, as is pointed out by counsel for the defendants, his award may be more sacred than a jury's verdict. The question does arise if this had been a jury case could the plaintiff sue and name the jurors as party defendant? This court thinks not.

This court is of the view that the Order to Show Cause of the plaintiff requesting a transcript must be denied for no other reason than the plaintiff himself recorded the proceedings. Therefore, this court is of the opinion that the plaintiff is not entitled to have the arbitrator furnish such a transcript to the plaintiff.

Further, the defendants' motion to dismiss, as to the Wisconsin Employment Relations Commission and Stanley H. Michelstetter, is, for the reasons stated above, granted with costs.

Dated, at Milwaukee, Wisconsin, this 24th day of February, 1976.

BY THE COURT

ROBERT M. CURLEY

Robert M. Curley
Circuit Judge