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SHEBOYGAN COUNTY,

Petitioner,

MEMORANDUM DECISION

vs.

Case No. 163-032

WISCONSIN EMPLOYMENT  
RELATIONS COMMISSION,

Respondent.

Decision No. 15380-B

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The petitioner, Sheboygan County, commenced this proceeding on May 8, 1978, to review an order of the Wisconsin Employment Relations Commission (WERC). The WERC found that the County had violated sec. 111.70(3)(a)4, Stats., by refusing to sign a collective bargaining agreement with the union representing its employees. The agreement contained items previously agreed upon by the parties, and, in addition, certain other items which had been submitted to arbitration under the Municipal Employment Relations Act (secs. 111.70-.77, Stats.), and which were resolved in the Union's favor. The WERC ordered the County to sign the agreement.

The County contends that the WERC erred in submitting to arbitration only those matters which were disputed. It argues that the total final offers of each party (i.e. the entire contract) should have been submitted to the arbitrator. The County also contends that the arbitration award constitutes the agreement between the parties, and that it is not required to sign a separate collective bargaining agreement.

The statute under which the arbitration was undertaken, sec. 111.77(4)(b), Stats., provides:

"The commission shall appoint an investigator to determine the nature of the impasse. The commission's investigator shall advise the commission in writing, transmitting copies of such advice to the parties of each issue which is known to be in dispute. Such advice shall also set forth the final offer of each party. . . at the time that the investigation is closed. . . . The arbitrator shall select the final offer of one of the parties and shall issue an award incorporating that offer without modification."

The Commission rules that this statute requires submission only of disputed items, not the entire contract (which included certain items previously agreed upon). This interpretation appears reasonable and consistent with the purpose of the statute, which is to facilitate the resolution of disputed matters. See Manitowoc v. Manitowoc Police Department, 70 Wis.2d 1006, 236 N.W.2d 231 (1975).

Moreover, while the court is not bound by the agency's interpretation of a statute, that interpretation carries persuasive power in court. Milwaukee v. WERC, 71 Wis.2d 709, 239 N.W.2d 63 (1976). This is especially true in areas within the agency's expertise; and, it has been recognized that the application of the Municipal Employment Relations Act is an area of the law requiring expertise. Milwaukee v. WERC, 43 Wis.2d 596, 168 N.W.2d 809 (1969). Finally, sec. 227.20(10), Stats., states that, upon review, due weight shall be accorded the experience, technical competence and specialized knowledge of the agency involved. Under all of the circumstances, I find that the WERC's interpretation is correct, and that only disputed matters were to be submitted to the arbitrator.

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Once the arbitration award is granted, the parties are still required to sign a collective bargaining agreement. The award does not contain the entire contract, but only the resolution of the issues in dispute. After the arbitration was completed, the County implemented the items previously agreed upon and the items resolved by arbitration. However, it refused to sign a contract containing both items. The Union filed a prohibited practices complaint with the WERC on February 28, 1977. The hearing examiner found that the County violated sec. 111.70(3)(a)4, Stats., which provides that:

"It is a prohibited practice for a municipal employer . . . 4. To refuse to bargain collectively. . . .The violation shall include. . .the refusal to execute a collective bargaining agreement previously agreed upon."

The County was ordered to sign the agreement, which it refused to do based upon its contention that the award constitutes the agreement between the parties. Since the award contains only part of the collective bargaining agreement, it is incomplete. The award must be incorporated into a final contract between the parties, and the County must sign such a contract. If the County wanted to contest the arbitration award, it should have commenced an action under ch. 298, Stats., which allows a party to bring a proceeding to vacate, modify or correct the award. Sec. 298.13, Stats. The County is estopped from asserting that some items previously agreed upon are now in dispute, as it did not identify such items when the arbitration was commenced. The County has a duty to sign an agreement which incorporate issues previously agreed upon and those resolved by arbitration.

The order of the WERC is hereby affirmed. Counsel for the Commission may prepare an appropriate order for my signature.

Dated at Madison, Wisconsin, this 3rd day of December, 1979.

BY THE COURT:

William Eich /s/  
WILLIAM EICH  
CIRCUIT JUDGE

cc: Alexander Hopp  
David C. Rice-Asst. A.G.  
Richard V. Graylow