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MILWAUKEE DISTRICT COUNCIL 48,  
AMERICAN FEDERATION OF STATE,  
COUNTY AND MUNICIPAL EMPLOYEES,  
AFL-CIO,

Petitioners,

Case No. 503-953

vs.

WISCONSIN EMPLOYMENT RELATIONS  
COMMISSION,

Respondent.

Decision No. 17302

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DECISION

Petitioner commenced this proceeding on October 26, 1979, under Chapter 227 Wis. Stats. to review a declaratory ruling of the Wisconsin Employment Relations Commission (Commission) dated September 28, 1979. The petition for review was filed with the Commission for the purpose of resolving an impasse existing between the parties in their negotiations for a collective bargaining agreement. Following a hearing, the Commission on May 18, 1979, issued a declaratory ruling wherein it concluded that certain proposals contained in the final offer of petitioner's Local 366 related to permissive subjects of bargaining while other proposals contained mandatory subjects of bargaining. The parties resumed negotiations and again reached an impasse, whereupon the Commission investigator called for final offers for the purpose of mediation-arbitration.

The question to be resolved is whether the Commission was correct in its conclusion that "contemplated" changes or additions to job descriptions and the decision by the employer to implement new or changed duties fairly within the scope of the job involved are mandatory subjects of bargaining. The Commission decided adversely to the plaintiff in its determination that these subjects were permissive rather than mandatory subjects of bargaining.

The Commission's declaratory ruling as to whether a proposal constitutes a mandatory subject of bargaining should be affirmed by the Court if it in fact does constitute a rational application of the so-called primary relationship test. In Beloit Education Association v. WERC, 73 Wis. 2d 43, 242 N.W. 2d 231, the Court noted that the general rule is that great weight must be given if any rational basis will sustain the practical application of a statute adopted by the agency charged with its enforcement.

If only one reasonable inference can be drawn from the evidence, the drawing of that inference is a question of law, and the Court is not bound by the determination of the Commission. If, however, different inferences can reasonably be drawn from the evidence, then a question of fact is presented and the inference actually drawn by the Commission is conclusive. See Milwaukee Transformer v. Industrial Commission, 22 Wis. 2d 502.

The Commission has indeed narrowly confined its ruling and avoided any danger of the union's argument with respect to non-mandatory subjects of bargaining. The Commission's ruling should be affirmed since it constitutes a rational application of the so-called primary relationship test. The Commission was correct in its conclusion that the proposal as written related to notice of "intended" changes or additions.

An order in conformity with this decision should be presented for signature within 14 days of today's date.

Dated at Milwaukee, Wisconsin, this 21st day of January, 1981.

BY THE COURT:

Louis J. Ceci /s/

Louis J. Ceci

Circuit Judge