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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

COURT OF APPEALS
DECISION
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OCT 10 1985

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NOTICE
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No. 84-1681

STATE OF WISCONSIN IN COURT OF APPEALS
DISTRICT IV

FILED

OCT 10 1985

CLERK OF COURT OF APPEAL
OF WISCONSIN

STOUGHTON TRAILERS, INC.,

Petitioner-Appellant,

v.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION, DRIVERS, SALESMEN, WAREHOUSEMEN, MILK PROCESSORS, CANNERY, DAIRY EMPLOYEES and HELPERS UNION LOCAL NO. 695, affiliated with the INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN and HELPERS OF AMERICA,

Respondents.

Decision No.
18796-C

APPEAL from a judgment of the circuit court for Dane county: DANIEL R. MOESER, Judge. Affirmed.

Before Dykman, J., Eich, J. and LaRocque, J.

DYKMAN, J. Stoughton Trailers, Inc. appeals from a judgment confirming an arbitration award. The issues on appeal are: (1) whether the arbitrator's findings and conclusions had a rational basis in the collective bargaining agreement; and (2) whether the resulting remedy draws its essence from that contract. Because we conclude that the arbitrator's findings and remedy were rationally drawn from the collective bargaining agreement, we affirm.

FACTS

A labor arbitrator required Stoughton Trailers to rehire five former employees, "bumping" two into new job classifications in which he determined they were capable of working. Stoughton Trailers refused to comply, claiming that the arbitrator had exceeded his authority in making the award. The union filed a complaint with the Wisconsin Employment Relations Commission (WERC), and its hearing examiner ordered the award enforced. WERC affirmed the order.

Stoughton Trailers subsequently recalled four of the five employees ordered reinstated,[1] and appealed the Commission's order. The circuit court affirmed WERC and Stoughton Trailers appeals. Teamsters Local No. 695 has intervened.

STANDARD OF REVIEW

Courts are limited by a very narrow standard of review in arbitration cases. Nicolet HS Dist. v. Nicolet Ed. Ass'n, 118 Wis.2d 707, 712-13, 348 N.W.2d 175, 178 (1984).[2]

> "Great deference is paid to the arbitrator's award as the product of the initial bargain of the parties. ...
>
> "The parties bargain for the judgment of the arbitrator--correct or incorrect--whether that judgment is one of fact or law."
>
> "... We therefore must uphold the arbitrator's decision as long as it is within the bounds of the

> contract language, regardless of whether we might have reached a different result under that language, and does not violate the law." [Citations omitted.]

Id. at 713, 348 N.W.2d at 178. A court may vacate an award where an arbitrator has exceeded his authority by effectively amending the contract or by dispensing his own brand of justice. Id. Sec. 788.10(1)(d), Stats.[3] However, our analysis must begin with the presumption that the arbitrator's award is valid and will be disturbed only where its invalidity is demonstrated by clear and convincing evidence. Whitewater Ed. Ass'n v. Whitewater Sch. Dist., 113 Wis.2d 151, 157, 335 N.W.2d 408, 411 (Ct.App. 1983).

RATIONAL BASIS

The arbitrator determined that laid off employees were entitled to recall "on the basis of their date of hire ... for work in their classification or for such other work as they are capable of performing." He looked to Article IV, Section 1 of the agreement which provides: "The principle of seniority shall be taken into account concerning layoff and recall from layoff; and then will be considered on a classification basis where the factors of skill, demonstrated ability and other pertinent factors regarding performance of available work are relatively equal."

The arbitrator interpreted this section to require recalls into employees' former classifications by seniority when such work is available.

Additionally, however, he interpreted it to also direct seniority comparisons "where ability is not relatively equal ... among exisitng members of the work force...." Because new employees have neither seniority nor demonstrated ability, he concluded that, under the terms of this section, they could not be hired ahead of laid off union employees capable of doing the available work, even if laid off in a different job classification.

Stoughton Trailers argues that the arbitrator ignored Article IV, Section 1 of the agreement, and contends that that provision is explicit and unambiguous, mandating that layoff and recall are governed in the first instance by the job classification of the available work; then by seniority within that classification. It maintains that no bumping between classifications on recall was envisioned by the parties to the agreement, and that there were no past instances of such bumping. WERC contends that the terms of Article IV, Section 1 are ambiguous and warranted the arbitrator's construction.[4]

Stoughton Trailers argues that because, under their interpretation of the contract, laid off employees may only be recalled to job openings in the classification which they occupied prior to layoff, the arbitrator's award does not rationally interpret the contract. An arbitrator's powers are derived soley from the contract and his or her authority is limited by its terms. Nicolet HS Dist. at 713-14, 348 N.W.2d

at 178. The company contends that the contract interpretation from which the arbitrator drew the power to make the award lacks rationality and support in accepted principles of contract construction.

Stoughton Trailers also contends that the arbitrator's finding was irrational, relying wholly upon a perverse misconstruction of Article XXII of the agreement.[5] That provision authorizes temporary or permanent reassignment of employees to different classifications. Stoughton Trailers maintains that the terms of Article XXII reserve the authority to make such transfers to it and limit such transfers to on-the-job situations; not recalls.

We may not undertake independent construction of the parties' collective bargaining agreement. United Steelworkers v. Enterprise Wheel and Car Corp., 363 U.S. 593, 599 (1960). This task is the province of the designated arbitrator, whose interpretation we should not overrule unless there has been a perverse misconstruction of the contract. Whitewater Ed. Assn., supra at 157, 335 N.W.2d at 411.

We conclude that the arbitrator's construction of the agreement was not perverse or irrational. The text of the arbitration award discloses no evidence of a reliance upon Article XXII in his resolution of the merits of the dispute.[6] Instead, far from ignoring Article IV, the arbitrator's discussion of the merits involves an extensive analysis of the meaning and

effects of its terms. The arbitrator's findings were drawn from his interpretation of relevant portions of the collective bargaining agreement which he found ambiguous. Stoughton Trailers has not presented clear and convincing evidence that this interpretation was either irrational or perverse. We conclude that the court did not err in affirming WERC's order.

APPROPRIATE RELIEF

Stoughton Trailers argues that, even if the arbitrator's interpretation of the agreement is rational, the relief directed by the award was not properly drawn from the contract. The arbitrator directed the company to reinstate three employees to their former job classifications, one employee to a lower classification, and another to a higher classification. Stoughton Trailers takes issue with the cross-classification recall of the latter two employees.

We may not review the nature of the relief shaped by the arbitrator, only whether it is appropriate and derives its "essence" from the agreement. Enterprise Wheel, supra at 597. Our reading of the arbitration award shows that the arbitrator drew its substance from Article XXII of the agreement.[7] However, Stoughton Trailers again contends that Article XXII is inapplicable to the resolution of a dispute involving layoffs and recalls and, thus, the arbitrator exceeded his authority under the agreement.[8]

We conclude that, rather than adopting Article XXII verbatim, the arbitrator looked to the provision solely for evidence that movement of employees between classifications was contemplated in the agreement. In so doing, he found authority to reclassify and recall laid off employees before new employees were hired.

The arbitrator's interpretation of the agreement prescribes that, in the event no work is available in a former employee's original job classification, he or she would be entitled to recall for any other work which he or she is capable of performing.[9] This construction is not obviously external to the agreement, but arises from the arbitrator's interpretation of its terms.

Although the relief shaped by the arbitrator might be characterized as innovative, we cannot say that it is inappropriate. The arbitrator found that Stoughton Trailers had violated Article IV, Section 1 of the agreement by hiring new employees to fill positions which laid off employees were capable of filling. When a violation of the agreement arises, the arbitrator is authorized by the parties "to interpret and apply the collective bargaining agreement ... to reach a fair solution of [the] ... problem. This is especially true when it comes to formulating remedies. There the need is for flexibility in meeting a wide variety of situations." Enterprise Wheel at 597. We conclude that the arbitrator has

utilized this grant of flexibility to shape a remedy consistent with his construction of the agreement. It is beyond the role of the courts to second-guess that exercise of judgment for which the parties have bargained. Id. at 599. We find no clear and convincing evidence that the arbitrator exceeded his contractual authority in fashioning relief from the substance of the contract as he interpreted it.

CONCLUSION

The arbitrator resolved this dispute by interpreting the specific language of the parties' collective bargaining agreement. Finding a violation of Article IV, he fashioned a remedy by looking to both Articles IV and XXII of the agreement. Because we conclude the resulting award was not irrationally drawn from the parties' contract, we must affirm its confirmation and enforcement.

By the Court.--Judgment affirmed.

Inclusion in the official reports is not recommended.

APPENDIX

[1] Stoughton Trailers has refused to recall a former janitor to a higher classification Maintenance position, arguing that neither the positions nor the requisite job skills are equivalent. The company did, however, agree to recall one of the former employees to a job classification lower than that in which he was laid off.

[2] Nicolet HS Dist. v. Nicolet Ed. Ass'n, 118 Wis.2d 707, 348 N.W.2d 175 (1984), along with numerous other Wisconsin cases, adopts the analysis of the "Steelworkers' Triology": United Steelworkers v. American Mfg. Co., 363 U.S. 564 (1960); United Steelworkers v. Warrior & Gulf Navigation Co., 363 U.S. 574 (1960); United Steelworkers v. Enterprise Wheel and Car Corp., 363 U.S. 593 (1960). These cases mandate an extraordinarily narrow and deferential standard of review of arbitrators' decisions, based upon the notion that the parties have bargained for the final judgment of an arbitrator, not a court.

[3] Section 788.10, Stats., provides in part:

> (1) [T]he court in and for the county wherein the award was made must make an order vacating the award upon the application of any party to the arbitration:
>
> ....
>
> (d) Where the arbitrators exceeded their powers....

[4] Specifically, the WERC identifies the phrases "taken into account"; "will be considered"; and "relatively equal" as particularly ambiguous terms within the section.

[5] Article XXII of the agreement provides:

> Section 1. When an employee is temporarily transferred from one department to another, he shall retain his present classification. In transferring employees, the Company shall select on a seniority basis or an ability basis.

Section 2. When the Company transfers an employee permanently to another job, then that employee's classification shall be changed to be consistent with the new job. His pay rate will then be calculated at the new classification pay rate schedule.

[6] Article XXII was considered by the arbitrator in shaping appropriate relief. That, however, is a different issue.

[7] See footnote 3 above.

[8] Stoughton Trailers also argues that: (1) the award does not distinguish between temporary and permanent reclassifications on recall; and (2) the award provides no rational explanation of how the arbitrator assigned recall reclassifications. However, we may not address these issues because they are directed at the nature of the remedy itself, and not its source. Enterprise Wheel, 363 U.S. at 597.

[9] The arbitrator had determined that all of the reinstated employees were capable of performing at the job classification to which they were recalled. We have neither the evidence nor the authority to review a determination so clearly within his role as arbitrator.