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STATE OF WISCONSIN

CIRCUIT COURT
Branch 11

DANE COUNTY
JUL 6 1977

STOUGHTON TRAILERS, INC.,)	WISCONSIN EMPLOYMENT
)	RELATIONS COMMISSION
Plaintiff,)	
)	
-v-)	DECISION
)	
WISCONSIN EMPLOYMENT)	
RELATIONS COMM.,)	Case No. 83 CV 1977
Defendant.)	
)	Decision No. 18796-C
)	

This case concerns the enforceability of an arbitration award. The Arbitrator, James Lynch, issued an award in a dispute between Teamsters Local No. 695 (hereinafter the Union) and Stoughton Trailers, Inc. (the Petitioner). The dispute involved a grievance by the Union which alleged that the Petitioner had violated certain sections of a Labor Agreement. The grievance arose when the Petitioner hired new employees into classifications from which other employees were still on layoff. Following a hearing, Arbitrator Lynch issued an award which required the Petitioner to rehire five former employees. The Petitioner refused to recall the employees and claimed that the Arbitrator had exceeded his authority in issuing the award. The Union filed a complaint with the Wisconsin Employment Relations Commission and a hearing examiner of the Commission ordered enforcement of the award. The Petitioner appealed to the WERC, and the Commission affirmed the hearing examiner. Although the Petitioner has recalled three of the five employees, the Petitioner is now asking this court to overturn the arbitration award. Specifically, the Petitioner argues that the Arbitrator's award does not reflect a rational interpretation of the Agreement and even if the Arbitrator

reading of the Agreement is not irrational, the Arbitrator awarded inconsistent relief and dispensed his own brand of industrial justice.

The court has delayed rendering a decision in this case upon the parties' hopes for settlement. However, the parties have been unable to settle the matter and have asked the court to issue a decision.

The threshold question for the court is the standard or scope of review. The United States and Wisconsin Supreme Courts have stated the applicable standard in several ways. In United Steelworkers of America v. Enterprise Wheel and Car Corporation, 363 U.S. 593, 597 (1960) the United States Supreme Court stated that an arbitration award

"is legitimate only so long as it draws its essence from the collective bargaining agreement. When the arbitrator's word manifest an infidelity to this obligation, courts have no choice but to refuse enforcement of the award."

The court further stated that

"(a) mere ambiguity in the opinion accompanying an award, which permits the inference that the arbitrator may have exceeded his authority, is not a reason for refusing to enforce the award. Arbitrators have no obligation to the court to give their reasons for an award." id at 598

The Seventh Circuit has also recognized that its review is "severely circumscribed" and has held that "a reviewing court should not disturb the award so long as the interpretation was not arbitrary" Mogge v. District 8, International Association of Machinists et al, 454 F. 2d 510, 513 (1971) and "can in some rational manner be derived from the agreement." Amoco Oil Co. v. Oil Chemical and Atomic Workers International Union et al, 548 F 2d 1288, 1294 (1977). In Denhart v. Waukesha Brewing Co., Inc., 17 Wis. 2d 44, 115 N.W. 2d 490 (1962), the Wisconsin Supreme

Court adopted the Federal Court's characterization of the court's limited reviewing function as enunciated in United Steelworkers of America v. Enterprise Wheel. That court has further held that an arbitrator's award is presumptively valid and will be disturbed only where invalidity is shown by clear and convincing evidence, E.g. In the Matter of the Arbitration Between West Salem Education Association & Robert M. Fortney et al, 108 Wis. 2d 167, 172 321 N.W. 2d 225 (1982) or is based upon a perverse misconstruction of the contract, Oshkosh v. Union Local 796 - A et al, 99 Wis. 2d 95, 107 299 N.W. 2d 210 (1980).

With the very limited scope of review in mind, this court cannot find by clear and convincing evidence that the Arbitrator's interpretation of the Agreement was invalid or based upon a perverse misconstruction of the Agreement. Consistent with standards as stated by the Federal Courts, this court cannot hold that the arbitration award did not draw its essence from the collective bargaining agreement or that the Arbitrator's interpretation was arbitrary, capricious or irrational. While this court or another arbitrator may have interpreted the Agreement differently, this court's function is not to replace its interpretation for that which the parties bargained for. Consequently, the parties are bound by the Arbitrator's construction of the Agreement.

The Petitioner also challenges the propriety of the Arbitrator's remedy and suggests that it is inconsistent with his apparent construction of the Agreement. However,

"(w)hen an arbitrator is commissioned to interpret and apply the collective bargaining agreement, he is to bring his informed judgment to bear in order to reach a fair solution of a 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, 363 U.S. @ 597 (emphasis added).

Implicit in Enterprise Wheel is that in order to refuse to enforce an award a court must find that "the arbitrator did not premise his award on his construction of the contract" id. at 598. This court is unable to make such a finding. The petitioner complains that in ordering the rehire of two employees, Roehl and Hartel, the Arbitrator "skipped over" several positions to which, to the Arbitrator's construction of the Agreement, they could have been rehired. However, this court understands the Arbitrator's interpretation of the Agreement to require that in the event there is not work available in a former employee's original job classification, then that employee would be entitled to a position in any other available work which he is capable of performing. Both Roehl and Hartel were originally working in job classifications that subsequently were unavailable. Therefore, the Arbitrator determined that there were positions available in other classifications which, in the Arbitrator's judgment, Roehl and Hartel were capable of performing. Had the Arbitrator "skipped over" available positions in these laid off employees' original classifications, then perhaps this court could find that the Arbitrator's remedy was not based on his construction of the Agreement. However, the record does not indicate such a situation. The fact that the Arbitrator "skipped over" other alternate classification positions is not inconsistent with the Arbitrator's construction of the Agreement and as such the Arbitrator is not required to provide the court with reasons for his actions. Furthermore, the Arbitrator's judgment of which positions the former employees were capable of performing is clearly within the Arbitrator's role and it is beyond the role of this court to second

guess that judgment.

Based on the foregoing reasons this court must enforce the award of Arbitrator Lynch.

The Union has requested attorney fees. This court finds that the Union has waived any claim for attorney fees. Furthermore, recovery of fees is not available in this context where the Petitioner's refusal to comply with the award was not in bad faith.

The attorney for the Union shall draft and file the appropriate order.

Dated this 27th day of June, 1984.

BY THE COURT:

A handwritten signature in cursive script, appearing to read "D. Moeser", written over a horizontal line.

Daniel R. Moeser, Judge
Circuit Court Branch 11