IN COURT OF APPEALS OF WISCONSIN
DISTRICT II

CITY OF SHEBOYGAN,

Petitioner-Respondent,

v.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION,

Respondent-Appellant,

LOCAL 483, INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, AFL-CIO,

Co-Appellant.

CERTIFICATION

No. 84-764

Decision No. 19421-A

Before Scott, C.J., Brown, P.J., and Nettesheim, J.

Pursuant to sec. 809.61, Stats., this court certifies the appeal in this case to the Wisconsin Supreme Court for its review and determination.

ISSUE

Whether sec. 111.77(4)(b), Stats., permits amendment of a final offer after a petition for arbitration has been filed but before the close of the Wisconsin Employment Relations Commission's investigation when the

amendment relates to an issue which was not the subject of collective bargaining negotiations prior to the filing of the petition.

FACTS

The City of Sheboygan and Local 483, International Association of Firefighters, entered into collective bargaining negotiations in the fall of 1980. On December 17, 1980, the union filed a petition with the Wisconsin Employment Relations Commission (WERC) to initiate final and binding arbitration, alleging that the parties had reached an impasse in their negotiations. WERC appointed an investigator to determine whether an impasse existed. In an attempt to mediate the dispute, the investigator met with the parties on February 3, 1981 and March 19, 1981. At the February 3 meeting, the union, for the first time, proposed that it be allowed to install and maintain bulletin boards in the fire stations. The city made a counter-offer which the union rejected. At the March 19 meeting, the union submitted its final offer, including the bulletin board proposal.

The city filed a petition with WERC on March 30, 1981, requesting a declaratory ruling. The petition for

arbitration was still pending, and WERC's investigation was not yet closed. WERC concluded that sec. 111.77(4)(b), Stats., permits amendment of a final offer after a petition for arbitration is filed and before the close of WERC's investigation, even if the amendment includes proposals which were not negotiated before the filing of the petition. The city sought judicial review, and by an order entered on March 19, 1984, WERC's declaratory ruling was reversed. Both WERC and the union appeal.

DISCUSSION

Upon reaching an impasse, either party to collective bargaining negotiations may petition WERC to initiate compulsory, final, and binding arbitration. Sec. 111.77(3), Stats. If it is determined that an impasse has been reached, WERC will issue an order requiring arbitration. Id. Section 111.77(4)(b) establishes the procedure:

> 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 as it is known to the investigator at the

> time that the investigation is closed. Neither party may amend its final offer thereafter, except with the written agreement of the other party. The arbitrator shall select the final offer of one of the parties and shall issue an award incorporating that offer without modification. [Emphasis added.]

WERC and the union argue that sec. 111.77(4)(b), Stats., permits amendment of a final offer after the petition for arbitration is filed but before the close of the investigation, even though a new issue is injected into the negotiations. By the language of the statute, they argue, amendments of final offers are prohibited only after the close of WERC's investigation. It is their position that until the investigation is closed, collective bargaining negotiations continue, even after the petition for arbitration is filed. Furthermore, they argue that this interpretation fulfills the goal of encouraging voluntary settlements through collective bargaining. See sec. 111.70(6), Stats.

We are inclined to agree with the position of WERC and the union. The plain language of the statute appears to allow amendment of final offers without restriction until the investigation closes. The initial inquiry on any

question of statutory construction is to the plain meaning of the statute. State Historical Society v. Village of Maple Bluff, 112 Wis.2d 246, 252, 332 N.W.2d 792, 795 (1983). Resort to rules of interpretation and construction is not permitted if the statute is unambiguous. Id. at 252-53, 332 N.W.2d at 795.

Furthermore, we find WERC's interpretation of sec. 111.77(4)(b), Stats., to be reasonable. Great weight is to be accorded the interpretation of a statute by an administrative agency charged with the duty to apply the statute. State v. Labor & Industry Review Commission, 113 Wis.2d 107, 109, 334 N.W.2d 279, 280 (Ct. App. 1983). In addition, while we are not bound by an agency's conclusion on a question of law, we will sustain the agency's legal conclusion if it is reasonable even though an alternative view may be equally reasonable. See Evans Brothers Co. v. Labor & Industry Review Commission, 113 Wis.2d 221, 225, 335 N.W.2d 886, 888 (Ct. App. 1983). Given these standards of review, this court would reverse the circuit court.

The City of Sheboygan, however, persuasively argues that the logic and rationale of the supreme court in Milwaukee Deputy Sheriffs' Association v. Milwaukee County,

64 Wis.2d 651, 221 N.W.2d 673 (1974), applies. In that case, the supreme court addressed the issue presently before this court but construed the predecessor statute to the present sec. 111.77(4)(b), Stats. Former sec. 111.77(4)(b), Stats. (1973), is similar to the present statute in that it also allowed amendment of a final offer after a petition for arbitration was filed:

> Parties shall submit their final offer in effect at the time that the petition for final and binding arbitration was filed. Either party may amend its final offer within 5 days of the date of the hearing. The arbitrator shall select the final offer of one of the parties and shall issue an award incorporating that offer without modification.

In Milwaukee Deputy Sheriffs' Association, the supreme court held that this statute did not permit amendment of a final offer to include a proposal which was not the subject of collective bargaining negotiations prior to the filing of a petition for arbitration. The court explained:

> If unlimited counter-offers were permitted after the filing of the petition, the date of impasse could never be ascertained. The statute requires, as a jurisdictional prerequisite to compulsory arbitration, that the commission find that the impasse existed at or before the filing of the petition. The impasse can be broken before the

> matter finally goes to arbitration only if one party or the other accepts a final offer. The final offer, although it can be amended and submitted to final arbitration, must, if amended, be germane to the matters subject to negotiations in the prior bargaining sessions.

Id. at 658, 221 N.W.2d at 676. WERC and the union argue that this case does not apply because of the amendment of the statute.

If the logic and rationale of Milwaukee Deputy Sheriffs' Association applies under the present statute, the order of the circuit court must be affirmed. If we accept WERC's position, however, the rationale of the case would be limited to the former statute and the order of the circuit court must be reversed.

We believe that the supreme court is the proper forum in which to determine whether Milwaukee Deputy Sheriffs' Association has continued applicability, given the amendment of the statute. Supreme court review is all the more appropriate because Milwaukee Deputy Sheriffs' Association was decided in part on public policy grounds. We therefore certify this appeal for review and determination by the supreme court.