

COURT OF APPEALS DECISION
DATED AND RELEASED
JANUARY 4, 1991

STATE OF WISCONSIN
IN COURT OF APPEALS
DISTRICT III

NORTHWEST UNITED EDUCATORS,
Petitioner-Appellant,

vs.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION,
Respondent.

No. 90-1632-FT
Decision No. 24259-C

APPEAL from a judgment of the circuit court for Barron county:
JAMES C. EATON, Judge. - Affirmed.

Before Cane, P.J., LaRocque and Myse, JJ.

PER CURIAM. Northwest United Educators, on behalf of Anita Zalewski, appeals a judgment affirming a Wisconsin Employment Relations Commission decision dismissing her action against the Hayward school district. 1/ Zalewski argues that she was terminated without just cause from her teaching position. WERC determined that because Zalewski was a temporary employee hired for a limited time, the district had "just cause" for terminating her employment when the permanent position was filled. Because the commission's interpretation of the contract is reasonable, we affirm its decision and the trial court's judgment.

Zalewski was hired by the Hayward school district upon the unexpected resignation of a teacher. She was offered a position with the understanding that the position was temporary, and that the district intended to search for a teacher to fill the position permanently. Zalewski was one of the candidates considered to fill the permanent position. Another person was hired for the position, and the teacher's union brought this action on behalf of Zalewski alleging that she was terminated without just cause. The union maintains that because the district chose to retain Zalewski for over thirty days, she became a bargaining unit employee and thus was guaranteed full contractual rights including those related to job security. She therefore could not be terminated without just cause, which traditionally has meant misconduct.

The commission's interpretation of a contract should be upheld by courts if it is reasonable, even though another interpretation might be equally reasonable. West Bend Educ. Ass'n v. WERC, 121 Wis.2d 1, 13, 357 N.W.2d 534, 540 (1984). Applying proper deference to the commission's decision, we conclude that the contract is unambiguous and supports the commission's decision.

Furthermore, even if the contract were ambiguous, sufficient evidence supports the commission's resolution of the ambiguous terms.

The contract provides:

Temporary: A teacher who is employed for a limited specific period of time to fill a temporary need, but not to replace another teacher shall be entitled to all rights and benefits under this agreement after 30 days of continuous employment . . .

In order to effectuate the words "temporary" and "limited," the commission concluded that just cause for discharging a temporary employee was satisfied when a permanent replacement was found. This is a reasonable construction of the contract. To give all of the rights and benefits of a permanent teacher to one who is employed for a limited time to fill a temporary need, ignores the words "temporary" and "limited." These words plainly limit the duration of employment, and it would be inconsistent to afford a temporary employee for a limited time the right to maintain that position unless misconduct is shown.

The temporary nature of Zalewski's contract was not modified simply because the benefits of a permanent employee were extended to a temporary employee. The contract provided temporary employees with "all rights and benefits under this agreement" after thirty days. The union argues that some of the rights and benefits granted are those relating to job security. We see no inherent inconsistency in the two provisions. Temporary employees have job security protection. Once their position ceases to exist because there is no longer a temporary need for their services, they are terminated without regard to their conduct or- performance. The contract is not reasonably susceptible to an interpretation that the "all rights and benefits" clause nullifies the "temporary" and "limited" nature of the employment.

Even if the contract were susceptible to more than one interpretation, the commission's interpretation must be upheld because it is reasonable. West Bend Educ. Ass'n, 121 Wis.2d at 13, 357 N.W.2d at 540. The commission determined that the parties' past practices demonstrated that the selection of a permanent employee was intended to constitute just cause for replacing a temporary employee. Past practice of the parties is crucial to interpreting ambiguous contract language. Cutler-Hammer, Inc. V. Industrial Comm'n, 13 Wis.2d 618, 632, 109 N.W.2d 468, 475 (1961). The union filed no complaints or grievances in the past when temporary teachers were discharged upon selection of permanent employees.

The union presented testimony that it intended to protect employees in Zalewski's position. The commission examined the witness's testimony and concluded that it did not "shed any particular light on the issue of whether the District has just cause to terminate a temporary employee once it hires a permanent employee to fill the vacancy." The commission ultimately concluded that there was no bargaining history testimony that was persuasive in resolving this issue. Because it is the commission's function to determine the parties' intent, it was justified in relying on their past performance rather than the union's witness.

By the Court.--Judgment affirmed.

Publication in the official reports is not recommended.

Endnotes

1/ This is an expedited appeal under Rule 809.17.