STATE OF WISCONSIN
IN COURT OF APPEALS
DISTRICT IV

LOCAL 1756, AFSCME, AFL-CIO,
Petitioner-Respondent,

vs.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION,
Respondent-Appellant,

WAUPACA COUNTY,
Respondent.

No. 92-1261
Decision No. 24764-B

APPEAL from a judgment of the circuit court for Waupaca county:
JAMES T. BAYORGEON, Judge. *Affirmed.*

Before Eich, C.J., Sundby and Nettesheim, JJ.

EICH, C.J. AFSCME Local 1756, the union representing Waupaca County Highway Department employees, complained to the Wisconsin Employment Relations Commission that (among other things) the county engaged in a prohibited practice under sec. 111.70(3)(a), Stats., when it implemented a general layoff of all bargaining unit employees for an indefinite period during the winter of 1987. 1/

The commission, one member dissenting, ruled that the county did not violate the agreement in implementing the general layoff. The circuit court reversed, concluding that the commission's interpretation of the layoff provisions of the agreement was unreasonable, and the commission appeals.

We, of course, review the commission's decision, not the circuit court's. Public Serv. Corp. v. Public Serv. Comm'n, 156 Wis.2d 611, 616, 457 N.W.2d 502, 504 (Ct. App. 1990). Doing so, we conclude that the trial court was correct in ruling that the commission unreasonably interpreted the agreement, and we affirm the judgment.

The facts are undisputed. The seventy or so highway department employees have been represented by the union for several years. During the winter of 1986-87, unusually mild weather conditions in the Waupaca area caused a significant drop in county revenues, resulting largely from increased expenditures for brush cutting and a loss of expected income from contract snow removal work. In an effort to meet the problem, the county decided to reduce the hours worked by highway department employees and informed the union that it intended to indefinitely reduce the work week for all bargaining unit employees from five days to four. Invoking the provisions of paragraph

14.03 of the collective bargaining agreement, which provides generally that before reducing work hours, the county must seek the union's agreement and, failing that, must follow the sections of the agreement providing for seniority-based layoffs, the union demanded to meet with the county.

When the parties met to discuss the matter a few days later, the union proposed two alternatives: (a) a reduced work week for a specific period of time, rather than for an indefinite period, or (b) a layoff of the least senior employees in the unit. The county rejected both proposals and informed the union that if it did not accept the reduced work week, all employees would be placed on indefinite layoff. As might be expected, no agreement was reached at the meeting, and a few days later the union wrote to the county rejecting its ultimatum.

As promised, the county then laid off all members of the bargaining unit and the union responded by notifying the county that such a layoff constituted a prohibited practice under the collective bargaining unit and various subsections of sec. 111.70(3), Stats. 2/ When the dispute could not be resolved, the union complained to the WERC.

A hearing examiner concluded that, under the circumstances of the case, the county's imposition of a general layoff was not a prohibited practice, and the commission confirmed the examiner's decision. As indicated, the circuit court reversed and the commission appeals.

The issue is one involving the interpretation of two provisions of the parties' collective bargaining agreement. Generally, when we review the decisions of administrative agencies, we will pay a degree of deference to the particular agency's technical expertise in the field that is the subject of our inquiry. Accordingly, we have recognized that the WERC's interpretation of a collective bargaining agreement should be upheld "if it is reasonable, even though an alternative view may be equally reasonable." County of La Crosse v. WERC, 174 Wis.2d 444, 452-53, 497 N.W.2d 455, 458 (Ct. App. 1993).

That deference is not unlimited, however, for there are certain guidelines governing the interpretation of contracts which must also be considered. For example, we are obligated to construe contracts "to give a reasonable meaning to each of [their] provisions, and [to avoid] a construction that would render any ... provisions meaningless, inexplicable, or mere surplusage Arnold v. Shawano County Agric. Socy, 106 Wis.2d 464, 473-74, 317 N.W.2d 161, 166 (Ct. App. 1981). We thus "reject constructions resulting in surplusage or unfair or unreasonable results. Wausau Joint Venture v. Redevelopment Auth., 118 Wis-2d 50, 58, 347 N.W.2d 604, 608 (Ct. App. 1984). Nor can we or will we rewrite the parties' contract. Levy v. Levy, 130 Wis.2d 523, 531, 388 N.W.2d 170, 173 (1986). Where, as we believe is the case here, the terms of a contract are plain and unambiguous, "we will construe it as it stands." Borchardt v. Wilk, 156 Wis.2d 420, 427, 456 N.W.2d 653, 656 (Ct. App. 1990). With these rules in mind, we consider the provisions of Waupaca County's collective bargaining with AFSCME, and whether the commission's construction and interpretation of those provisions is reasonable.

Paragraph 14.03 of the collective bargaining agreement governs reduction of employee work hours. It provides that:

> Should there be any necessity to reduce the number of hours of work per day and/or per week, the Highway Committee shall meet with the Bargaining Committee of the Union to work out a mutually satisfactory solution to the matter. In the event a satisfactory solution cannot be worked out, then the Employer shall layoff [sic] the requisite number of employees consistent with the collective bargaining agreement." 3/

Considering this paragraph in light of paragraph 2.01(E), which is entitled "Management Rights" and provides that the county has the right to "layoff [sic] employees because of lack of work or other legitimate reasons," the commission concluded that the latter provision controls and that because there was a "legitimate reason" for the general layoff -- the

county's revenue shortfall -- it could impose the general layoff after the union rejected its proposal to implement a reduced work week.

The commission argues that such an interpretation is reasonable -- that because the county eventually decided on a general layoff, as opposed to a work-hour reduction as it originally proposed, it proceeded properly under the authority granted it by paragraph 2.10(E), and paragraph 14.03 is not implicated. According to the commission, paragraph 14.03 is not wholly supplanted but retains its vitality and "is still meaningful under the situation for which it clearly was intended: a reduction in the work week to be effected by a comparable percentage layoff of the least senior employes, if there is no agreement between the County and Union to do otherwise.' It does not argue or explain the point further.

If, as the commission suggests, the county can proceed under the first sentence of paragraph 14.03 and propose a work-week reduction to the union and then, upon rejection of the proposal, proceed forthwith to impose a general layoff', the second sentence -- which gives the union the important right to replace the proposed work hour reduction with an equivalent seniority-based layoff -- would indeed be negated.

The two sentences of paragraph 14.03 are plain in their meaning and are mutually dependent. The first requires that, should the county decide to pursue a work-week reduction, it must meet with the union and attempt to bargain a "mutually satisfactory" solution to the problem. If the parties cannot reach an agreement, the second sentence dictates that the county must then seek to achieve its work reduction goals by "lay[ing] off the requisite number of employees" in a manner "consistent with the collective bargaining agreement."

The county, facing a fiscal problem, apparently concluded that it could meet that problem with an across-the-board work-hour reduction for the highway department employees and so notified the union. Under the plain language of paragraph 14.03 it was required to meet with the union to seek its agreement on the proposal and, failing that, the county was required to achieve its expenditure reduction goals through layoffs grounded on seniority. If, having proceeded through the first step, the county could ignore the second and instead proceed to a general layoff, it would write the second sentence out of the paragraph. We agree with the comments of dissenting Commissioner Torosian, who said:

> [O]nce the County decides to implement a reduced four day week in order to realize savings, it must negotiate such an agreement with the Union or, if agreement cannot be reached, lay off only the requisite number of employes that would equate a four day week. In other words, once the County chooses to proceed under its Article 14.03 option, then [it is] a matter of determining the type of partial layoff that will be employed, i.e., a four day week or an approximate layoff of 20% of the employes. To interpret the agreement otherwise would turn Article 14.03 into worthless language under which the Union must either go along with the County's decision to implement a four day week or else face a layoff of the entire work force.

We agree. And we note that such an interpretation is consistent with the parties' bargaining history. In contract negotiations during 1980-81, the union, complaining about the county's implementation of a four-day work week in an effort to reduce costs during the preceding year, proposed that any such future reductions be accomplished by layoff. In response, the parties negotiated paragraph 14.03, which was added to the contract that year.

The commission's interpretation of the contract would allow the county to negate the proportional layoff provisions of paragraph 14.03 of the collective bargaining agreement by imposing a general layoff any time the union, as it has a right to do under the paragraph, declines to accede to a work week reduction. In our opinion, such an interpretation contravenes both the plain language of sec. 14.03 and its bargaining history and is thus an unreasonable interpretation which must be rejected, County of La Crosse, 174 Wis.2d at 453, 497 N.W.2d at 458, and we reject it.

By the Court.--Judgment affirmed.

Not recommended for publication in the official reports.

ENDNOTES

1/The union also contended that the layoff was imposed in retaliation for the union's attempts to enforce its rights under the contract, and the commission rejected that claim as well. Because we hold that the commission erroneously rejected the union's prohibited practice claim, we deem it unnecessary to consider the retaliation claim.

2/ Specifically, the union claimed that the county's action violated secs. 111.70(3)(a) 1, 4, and 5, Stats., declaring it to be a prohibited practice to coerce municipal employees in the exercise of their collective bargaining rights, to refuse to bargain collectively, and to violate any provision of a collective bargaining agreement. As indicated, we decide this appeal on the latter issue.

3/ It is undisputed that pursuant to sec. 8.12 of the.collective bargaining agreement that in the event of a layoff, the least senior employees will be laid off first.