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STATE OF WISCONSIN
CIRCUIT COURT BRANCH I
WAUPACA COUNTY

LOCAL 1756, AFSCME, AFL-CIO,
Petitioner,

vs.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION and WAUPACA COUNTY,
Respondents.

Case No. 91 CV 00034
Decision No. 24764-B

DECISION

This labor dispute is brought before this Court on a Petition for Review of a Wisconsin Employment Relations Commission Order of January 4, 1991 affirming the Commission's Order of July 1, 1988. Petitioner, seeks review of that portion of the order dismissing its assertions that Waupaca County, in implementing an indefinite layoff of all Highway Department bargaining unit employees, violated Sec. 111.70(3)(a), Wis. Stats.

STANDARD OF REVIEW

In a judicial review of the decision of an administrative agency, the agency's conclusions of law are entitled to deference provided there is a rational basis for them. If the agency's view is reasonable, it will be sustained, even though an alternative view is also reasonable. Milwaukee County v. ILHR Dept., 80 Wis. 2d 445, 455-56, 259 N.W.2d 118 (1977). The facts of this case are undisputed. The basis of the Commission's ruling is its construction of the collective bargaining agreement and its application to the facts. These are questions of law. Board of Education, Brown Deer Schools v. WERC, 86 Wis. 2d 201, 210, 271

> 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 lay off the requisite number of employees consistent with the collective bargaining agreement.

The Commission's conclusion that the agreement permits a unilateral general layoff patently ignores both the interplay between Sections 2.01(E) and 14.03 and the clear nexus between the first and second sentences of Section 14.03. Such an interpretation renders Section 14.03 meaningless and disregards its bargaining history.

In Journal/Sentinel, Inc. v. Pleva, 155 Wis.2d 704, 456 N.W.2d 359(1990), our Supreme Court reiterated that the "cornerstone of contract construction is to ascertain the true intentions of the parties as expressed by the contractual language" and that "an agreement should be given a reasonable meaning so that no part of the contract is surplusage." The Commission dismisses Section 14.03 as "not controlling in this matter," apparently viewing the "others legitimate reasons" of Sec. 2.01(E) as overriding any other contract provisions meant to define or limit that broadly-stated layoff right. WERC Dec. No. 24764-B at 12.

It is clear to this Court that the plain language of Section 14.03 directs the parties to negotiate an agreement regarding any proposed reduction in the work day/week and that, failing this, the County must lay off the "requisite number of employees" consistent with the agreement. Here, "requisite number" means approximately 20% of the employees, the equivalent of the four-day work week proposed by the County. Any other interpretation of this section would force the Union to agree to the County's proposal or face a reasonable approach is to harmonize these sections so as to give effect to both. They are not mutually exclusive, independent provisions but must be read together since they apply to the same fact situation. Streiff v. American Family Mutual Insurance Company, 118 Wis.2d 602, 348 N.W.2d 505 (1984). Applying the Commission's construction would defeat the Union's stated purpose in proposing the additional Section 14.03 language: 1) to prevent unilateral implementation of a reduced work day/week; and 2) to require implementation of a partial layoff instead if agreement cannot be reached.

Based on the foregoing, this Court finds that Waupaca County violated the parties' collective bargaining agreement, specifically Section 14.03 which governs a reduction in employees' work day/week. The Commission's construction of the agreement ignores the clear language of Section 14.03, its bargaining history, and the guiding principles of contract construction. The County's breach constitutes a violation of Sections 111.70(3)(a)1 and 5, Wis. Stats.

RETALIATION CLAIM

The Union contends that the indefinite general layoff of all bargaining unit employees was a retaliatory response to the employees' refusal to accept the four-day work week and, therefore, interfered with the employees' rights guaranteed by Section 111.70(2), Wis. Stats. The Commission determined that the general layoff was not a retaliation but an appropriate measure under the circumstances.

On January 13, 1987, the County Highway Commissioner advised the Union's representative, Cindy Fenton, that the County anticipated a reduction to a four-day work week. On January 16,While the Court acknowledges the County's concerns due to the mild winter, its imposition of a general layoff represents a decision disproportionate to the four-day week upon which it had insisted up to that time. The County made the decision to reduce the work week, attempted to unilaterally implement it, demanded that the employees accept it, delivered an ultimatum which threatened a general layoff, and finally implemented the general layoff when the employees exercised their contractual rights in rejecting the proposal. It is unclear to this Court how the County made the leap from a four,-day work week to an indefinite layoff of all employees. The logical alternative, consistent with Section 14.03 of the collective bargaining agreement, is a layoff of 20% of the least senior employees. Yet, the County flatly rejected that alternative which was dictated by Section 14.03 language

drafted by the County and which correlated to the four-day week it so forcefully demanded.

The mild winter, of 1986-87 precipitated the County's discussion of a reduced work week. Whether there actually was a lack of work at the time when the County decided to reduce the work week is not the issue. Given the County's perception that action must be taken and its determination that a four-day week was an appropriate and effective means to address the problem, there is no justification for a general layoff. The County framed the issue when it delivered its ultimatum to the Union and gave as its only reason for the general layoff the employees' refusal to accept the four-day week. The County only later, after the complaint in this matter was filed, attempted to justify the layoff as necessary to prevent a "financial disaster." Yet, its unwavering position prior

assertion of their contractual rights. As such, it constitutes a violation of Section **111.70(2),** Wis. Stats., since it interfered with employee's rights guaranteed under that section.

Based on the foregoing, this Court finds that the Commission's decision regarding the indefinite layoff is not supported by substantial evidence of record and hereby remands the matter to the Commission for enforcement of appropriate measures consistent with this opinion and the purposes of the statute.

Dated at Appleton, Wisconsin this 30th day of January, 1992.

BY THE COURT:

/s/ James T. Bayorgeon
JUDGE JAMES T. BAYORGEON, CIRCUIT JUDGE BR.I
OUTAGAMIE COUNTY, WISCONSIN

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