

STATE OF WISCONSIN
CIRCUIT COURT - BRANCH 2
LA CROSSE COUNTY

COUNTY OF LA CROSSE, Petitioner,

vs.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION, Respondent.

File No. 90-CV-761
Decision No. 26370-B

DECISION AND ORDER

FACTS

Petitioner is before this Court for review of a final order by the Wisconsin Employment Relations Commission holding that the exclusive remedy provision of the Worker's Compensation Act does not bar an employee awarded workers' compensation benefits from seeking to enforce provisions of a collective bargaining agreement concerning the termination of the employee.

In August 1987, Helen Lewis, an employee at Lakeview Health Center was injured in the course of employment. As a result of her injury she became partially disabled and was awarded workers' compensation benefits. In February 1989, Lewis' employer, the County of La Crosse, terminated Lewis from her employment.

The present action was commenced September 28, 1990 to review WERC's decision under the Municipal Employment Relations Act. WERC, in its final order, decided that La Crosse County, by its actions of refusing to proceed to final and binding arbitration of the grievance concerning the termination and/or disability layoff of Helen Lewis, committed a prohibited practice within the meaning of Sec. 111.70(3)(a)(5). Stats.

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ISSUE

Whether the Worker's Compensation Act precludes Local 1403 from seeking to enforce provisions of a collective bargaining agreement in effect between the County of La Crosse and Local 1403 regarding the disability lay-off of Helen Lewis due to a work related injury.

DISCUSSION

Scope of Review

The Worker's Compensation Act contains an exclusivity provision, Sec. 102.03(2), Stats., which reads in part: "Where (the) conditions (in sub. (1)) exist the right to the recovery under this chapter shall be the exclusive remedy against the employer." The act provides a remedy for employees not rehired after an injury in the course of employment. Section 102.35(3) reads in relevant part:

Any employer who without reasonable cause refuses to rehire an employee who is injured in the course of employment, where suitable employment is available within the employee's physical and mental limitations has exclusive liability to pay to the employee the wages lost during the period of such refusal. not exceeding one year's refusal.

The meaning of a statute is a question of law which is decided independently of the commission's determination. *Rev. Dept. vs EAA Aviation Foundation*, 143 Wis. 2d 681, 684, 422 N.W. 2d 458 (Ct. App. 1988). Deference to the agency is not appropriate where the Court is as competent as is the agency to construe a statute. *Schachtner vs DILHR*,

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144 Wis. 2d 1, 4. 422 N.W. 2d 906 (Ct. App. 1988). Because WERC's interpretation of Chapter 102 does not depend on the exercise of a particular administrative expertise, this Court is as competent as is WERC to construe the statute.

ANALYSIS

Local 1403, in its brief argues that the exclusive remedy provision of the Worker's Compensation Act was enacted only to limit the employer's common-law tort liability. The Union points to the legislative history behind the act and argues that workers compensation legislation was an early effort at personal injury tort reform.

In *Schachtner vs DILHR*, 144 Wis. 2d at 7, however, the court of Appeals agreed with a leading authority that the exclusivity provision of the Worker's Compensation Act has a broad reach:

The exclusiveness rule relieves the employer not only of common-law tort liability, but also of statutory liability under all state and federal statutes, as well as of liability in contract and in admiralty, for an injury covered by the compensation act. 2A A Larson, Worker's Compensation Law, Section 65.30 (1987).

The *Schachtner* Court discussed the legislative intent behind the exclusivity provision of the Worker's Compensation Act:

The Worker's Compensation Act represents a delicate balancing of the interests represented in our industrial society. *Jenkins vs Sabourin*, 104 Wis. 2d 309, 322, 311 N.W. 2d 600 (1981). The exclusivity provision was an integral part of the political compromise reached. The employers accepted a fixed liability regardless

of fault in return for immunity from suits from employees. This exclusivity provision has been part of the Worker's Compensation Act since its creation. *Mulder vs Acme-Cleveland Corporation* 95 Wis. 2d 173, 181-82, 290 N.W. 2d 276 (1980).

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Id. at 6.

The Court of Appeals recently reconsidered the exclusivity provision of the Worker's Compensation Act in the case of *Norris vs DILHR*, 155 Wis. 2d 337, 455 N.W. 2d 665 (1990). In *Norris*, the Court considered the relationship between the Worker's Compensation Act and the Wisconsin Fair Employment Act with respect to a job related injury. The Court declined to overrule *Schachtner*. Id at 341. In *Norris*, the Court held that "the Worker's Compensation Act expressly provides 'the right to recovery of compensation under the Chapter shall be the exclusive remedy against the employer'" Id.

The *Norris* Court concluded:

(t)hat to the extent that coverage of employers' acts overlaps, under both Acts, the Worker's Compensation Act provides the exclusive remedy. To hold otherwise would give precedence to an Act which does not contain an exclusivity provision over an Act that does. The legislature is unlikely to have intended such a result.

Id.

Local 1403 insists in its brief that *Schachtner* and *Norris* were wrongly decided. It urges this Court to construe the exclusivity provision of Sec. 102.03(2) in a manner which is inconsistent with the recent Court of Appeals decisions. This Court cannot and will not change a law after its construction by a higher Court.

(I)t is the legislature alone that can change a law after its construction by the Court. And, when the legislature acquiesces or refuses to change the law, the courts are henceforth constrained not to alter their construction. Having determined legislative interest, they have fulfilled their function, which is not to decide what the law ought to be, but rather to construe and apply the law as the legislative had enacted it.

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Lampada vs State Sand and Gravel Company, 58 Wis. 2d 315, 320, 206 N.W. 2d 138 (1973).

The injury in the case at bar arose incidental to, and only as a result of, Lewis' performance of an integral part of her job or an employee of the County of La Crosse. Such an injury is the precise sort for which the worker's compensation system operates to provide prompt and assured recovery and as to which the exclusivity provision should operate to provide immunity. *Henning vs General*

Motors Assembly Div., 143 Wis. 2d 1, 21, 419 N.W. 2d 551 (1988). As such, the injury suffered by Lewis is covered by the Worker's Compensation Act and her arbitration action is barred.

The County of La Crosse has not committed a prohibited practice and the County of La Crosse is not required to proceed to final and binding arbitration of this grievance. The exclusive remedy of the employee in this situation is covered by the Worker's Compensation Act and not by the arbitration laws under the collective bargaining agreement.

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ORDER

Accordingly for the above stated reasons, it is hereby ordered that the derision of WERC is reversed.

Dated this 14th day of May, 1991.

BY THE COURT:

/s/ Michael J. Mulroy
MICHAEL J. MULROY, CIRCUIT JUDGE
CIRCUIT COURT, BRANCH 2

MJM/dj