STATE OF WISCONSIN
CIRCUIT COURT
WAUKESHA COUNTY

Kathy Hoffman, Bob Baranowski,
Scott Hexom, Mary Ellen Heus,
Jeffrey Schultz,

Petitioners,

v.

Wisconsin Employment Relations
Commission,

Respondent.

Decision
Case No. 99 CV 1814
[Decision No. 29665-A]
[NOTE: This document was re-keyed by WERC. Original pagination has been retained.]

The Petitioners seek certiorari review of a decision rendered by the Wisconsin Employment Relations Commission (WERC). The WERC held that the New Berlin Public School District and the New Berlin Education Association entered into two separate and valid contracts for the 1997-99 and 1999-01 school years. This Court finds that the two contracts were presented to the members of the New Berlin Education Association in a manner which prevented the members from making an independent decision on the two contracts, contrary to the plain meaning of the language found in Wis. Stat. §§ 111.70(4)(cm)8m.b. and 111.70(4)(cn). Since it is a violation of MERA to ratify two separate collective bargaining agreements with a single inseparable vote, the WERC's holding that the District and NBEA have valid 1997-1999 and 1999-2001 agreements is reversed

BACKGROUND

The pertinent facts are not in dispute. Initially, the New Berlin Public School District

(District) and the New Berlin Education Association (NBEA) unsuccessfully sought to reach agreement on a successor to their July 1, 1995 - June 30, 1997 collective bargaining agreement. In August of 1998 the District and NBEA succeeded in reaching a tentative agreement. The members of the NBEA voted on and ratified the tentative agreement on August 25, 1998. In early September, the NBEA declared the agreement null and void because, on its face, the agreement was for a term in excess of two years.

The District and NBEA returned to bargaining and the parties reached another tentative agreement in late September. On October 1, 1998, the NBEA members ratified the second agreement. The ballot[1] on which the members of NBEA voted was worded so that individual members could only vote on the 1998-99 agreement and the 1999-01 agreement together as one package The agreements could not be voted on individually.

The Petitioners then sought a declaratory ruling from the Wisconsin Employment Relations Commission (WERC) that the contracts violated the plain meaning of the statute. The Petitioners argued that the Municipal Employment Relations Act (MERA) clearly required that collective bargaining agreements for school district professional employees be limited to two years. Petitioners argued that the agreement ratified on October 1, 1998 was effectually for three years. The NBEA members had to accept or reject the entire contract package. The members did not posses the ability to separate the 1998-99 portion of the tentative agreement from the 1999-

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[1] **The October 1, 1998 Ballot reads:**

YES, I VOTE TO RATIFY THE 1998-99 PORTION OF THE 1997-98 (sic) MASTER AGREEMENT WITH THE NEW BERLIN BOARD OF EDUCATION, AND THE 1999-2001 MASTER AGREEMENT WITH THE NEW BERLIN BOARD OF EDUCATION.

NO, I VOTE NOT TO RATIFY THE 1998-99 PORTION OF THE 1997-98 (sic) MASTER AGREEMENT WITH THE NEW BERLIN BOARD OF EDUCATION, AND THE 1999-2001 MASTER AGREEMENT WITH THE NEW BERLIN BOARD OF EDUCATION.

01 portion and in fact, the tentative agreement itself contained many inseparable references to the period 1998-2001.

The District in defending the validity of the contracts argued that the parties had bargained for two separate agreements, the remaining 1997-99 agreement and the 1999-2001 agreement. According to the District, there was nothing in the MERA which prohibited the parties from bargaining for two contracts at the same time or which granted the employees the right to consider the ratification of only one contract at a time. In the District's estimation, the MERA left such matters to the parties in their efforts to creatively and voluntarily reach agreements.

Ruling in favor of the District, the WERC concluded that Wis Stats. §§ 111.70(4)(cm)8m.b.[2] and 111.70(4)(cn)[3] allowed the District and NBEA to enter into the collective bargaining agreements for the 1997-99 and 1999-01. It examined the record and determined that the parties had been attempting to bargain a successor agreement for almost a year and one-half and had already gone for more than a year without a contract. Had the parties settled only on the 1997-99 agreement in the fall of 1998, the two would have returned to the bargaining process again in the spring of 1999. Concluding that both parties understood that they were reaching and did in fact reach agreement on 2 two year contracts in the fall of 1998, the

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[2]b. Except for the initial collective bargaining agreement between the parties, every collective bargaining agreement covering municipal employes who are school district professional employes shall be for a term of 2 years expiring on June 30 of the odd-numbered year. An initial collective bargaining agreement between parties covering municipal employes who are school district professional employes shall be for a term ending on June 30 following the effective date of the agreement if that date is in an odd-numbered year, or otherwise on June 30 of the following year.

[3](cn) Term of professional school employe agreement. Except for the initial collective bargaining agreement between the parties, every collective bargaining agreement covering municipal employes who are school district professional employes shall be for a term of 2 years expiring on June 30 of the odd-numbered year. An initial collective bargaining agreement between the parties covering municipal employes who are school district professional employes shall be for a term ending on June 30 following the effective date of the agreement**,** if that date is an odd-numbered year, or otherwise on June 30 of the following year.

WERC reasoned that the MERA did not intend for the parties to be involved in perpetual bargaining and certainly "allowed the parties to use good sense in considering the option of also settling a 1999-01 contract."

The WERC supported its ruling by pointing to the existence of two signed two year contracts and to the text of the tentative agreement that made reference to the 1999-2001 Master Agreement. The fact that there is only one tentative agreement covering two contracts did not persuade the WERC. It simply reflected the reality that the 1997-98 school year had already passed and that the substantive provisions of the agreement dealt with school years 1998-99, 1999-00, and 2000-01.

In addressing the procedure by which the contracts were ratified by the members of the NBEA, the WERC noted that the ballots were consistent with the existence of 2 two year contracts. The fact that the ballot explicitly stated that 2 two year contracts were being presented to the voters for their consideration was sufficient to conform with the plain meaning of the statute

Despite the Petitioners assertion that they did not have two valid contracts because there needed to be two separate ratification votes, the WERC was unpersuaded because the Petitioners were unable to cite to any MERA provision or MERA precedent that required such a conclusion. The WERC noted the logic of the Petitioners argument, but the WERC ruled in favor of the view that labor peace and the collective bargaining process are best served by allowing the parties freedom to: "(1) conclude that they wish to require ratification of both agreements if either agreement is to be binding; and (2) structure their own ratification process as each sees fit."

STANDARD OF REVIEW

The Commission's factual findings must be upheld if there is credible and substantial evidence in the record upon which a reasonable person could rely to make the same findings. See *Princess House, Inc. v. DILHR,* 111 Wis. 2d 46, 54 (1983). Once the facts are established, however, the application of those facts to the statute or legal standard is a question of law. *See Minuteman, Inc. v. Alexander,* 147 Wis. 2d 842, 853 (1989). Choosing the appropriate legal standard to apply is a question of law, one which this Court usually reviews de novo. *See State v. Keith,* 216 Wis. 2d 61, 69 (Ct. App. 1997). This Court will, however, defer to an agency's legal determinations under certain circumstances, depending on the level of expertise the agency has acquired in the area. *See Barron Elec. Coop. v. PSC,* 212 Wis.2d 752, 760-64 (Ct. App. 1997). Our Supreme Court has identified three distinct levels of deference granted to agency decisions: great weight deference, due weight deference, and de novo review. *See UFE Inc. v. LIRC,* 201 Wis. 2d 274, 282 (1996). Which level is appropriate depends on the comparative institutional capabilities and qualifications of the court and the administrative agency. *See Cty. of Sawyer v. Dept. of Workforce Development,* 231 Wis. 2d 534, 539 (Ct. App. 1999). A de novo standard of review is only applicable when the issue before the agency is clearly one of first impression. *See id.*

This Court concludes that this is an issue of first impression and requires interpreting a statutory and regulatory scheme entirely independent from the WERC. The Commission has no experience in interpreting whether the process of ratifying a collective bargaining agreement is sufficient to fulfill the requirements of the statute. This Court therefore will conduct a de novo review.

DISCUSSION

The interpretation of a statute is a question of law. In construing any statute, the court first looks to the language of the statute. *See Appointment of Interpreter in State v. Le,* 184 Wis. 2d 860, 863 (1994). A statute is ambiguous if it may be construed in different ways by reasonably well-informed persons. *See LaCrosse Footwear, Inc. v. LIRC,* 147 Wis. 2d 419, 423 (1988). If a statute is unambiguous, the use of judicial rules of interpretation and construction is not allowed. The words must be given their obvious and intended meaning. *See State Historical Society if Wis. v. Village of Maple Bluff,* 112 Wis. 2d 246, 253-3 (1983).

The language at issue is found twice in Wis. Stat. § 111.70. It states that every collective bargaining agreement covering school district professional employees "shall be for a term of 2 years." In *City of Brookfield v. WERC,* 153 Wis. 2d 238 (Ct. App. 1989), the Court of Appeals interpreted a similar section of the statute covering municipal firefighters. The Court held that a 3 year collective bargaining agreement for municipal fire-fighters under Wis. Stat. § 111.70 was clear and unambiguous. "The term of a collective bargaining agreement may not exceed three years. Reasonable minds could not differ as to the thrust of the language." *See id.* at 241. The only difference between the Court's interpretation of the section of the statute covering municipal firefighters and the section covering school district professional employees is the length of the collective bargaining agreement. The section interpreted in City of Brookfield requires a three year agreement while the section in question in the present case requires a two year agreement. Since the Court of Appeals found the language referring to the duration of collective bargaining agreements for municipal firefighters to be clear and unambiguous, this Court finds that the section of the statute at issue in the present case is also clearly unambiguous.

Given the plain and obvious meaning of the statute, this Court holds that the WERC misapplied the statute to the facts and incorrectly found that a valid contract exists between the District and the NBEA. Even though the bargaining process which took place between the District and the NBEA is in harmony with the plain and obvious meaning of the statute, the end result is not. There is nothing within Wis. Stat. § 111.70 which prohibits the two parties from bargaining for two separate contracts at the same time. The record includes the 1997-1999 and 1999-2001 collective bargaining agreements signed by both the District and NBEA. There is also sufficient evidence to conclude that the parties understood that they were reaching and did in fact reach agreement on 2 two year contracts. Both parties were acting reasonably in coming to a tentative agreement on the two separate contracts.

The fatal flaw with the collective bargaining agreement is in the way it was ratified. The 2 two year agreements were presented to the voters, allowing for only one vote. The WERC addressed this issue by stating that the ballots were consistent with 2 two year contracts because the ballots explicitly stated that 2 two year contracts were being presented to the voters for ratification. However, an examination of the ballot presented to the voters shows that they were clearly prohibited from voting on the individual contracts. It was all or nothing. The voters were informed by the language of the ballot that two contracts existed, but the practical effect was that there was one vote on one contract. The language of the ballot had the unfortunate effect of giving the voters a choice of accepting or rejecting a three year contract. The WERC did not address the implications of not allowing the voters to vote separately on each agreement. While the initial collective bargaining agreements may have been for 2 two year contracts, the way the contracts were presented to the voters created a three year contract, thus violating the plain

meaning of the statute

Logic forces this Court to regard the language of the ballot as effectively violating the statute by giving the parties the ability to negotiate a collective bargaining agreement for a term longer than 2 years. If the WERC's decision is allowed to stand, there is nothing preventing the District and the NBEA from negotiating a collective bargaining agreement for the next several two year terms and allowing the voters to ratify the agreement in one vote. This would clearly detract from the purpose of the statute to assure the regular occurrence of the bargaining process. While the parties in this process may not have intended to violate or bypass the plain meaning of the statute, the effective result of what was done, by placing two separate contracts on one ballot with one yes or no vote, is to make meaningless the purpose and thrust of the statute.

The WERC'S decision cannot be affirmed even if this Court were to give great weight to the WERC's legal conclusions. Under that standard of review, this Court must uphold the WERC's interpretation if it is reasonable and not contrary to the clear meaning of the statute. In its application of the law to the facts, the WERC unreasonably interpreted the statute as allowing two separate collective bargaining agreements to be ratified by a single inseparable vote. Since this is contrary to the clear meaning of the statute, the WERC's holding, even under the great weight standards is erroneous.

This Court is mindful of the effect this ruling will have on the numerous individuals who have made career choices based upon the ratified collective bargaining agreements. The Court understands the difficulty it may place upon these individuals, however, this does not change the fact that the statute was violated. With those individuals in mind, the statutory defect can be remedied by simply allowing the voters a choice to accept or reject each original and individual

contract.

Therefore, since it is a violation of MERA to ratify two separate collective bargaining agreements with a single inseparable vote, the WERC's holding that the District and NBEA have valid 1997-1999 and 1999-2001 agreements is reversed.

DATED THIS 13 day of April, 2000.

BY THE COURT:

Kathryn W. Foster /s/
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