STATE OF WISCONSIN CIRCUIT COURT WAUKESHA COUNTY
BRANCH 12

LOCAL 2494, AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO,

Petitioner,

v.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION,

Respondent.

Case No. 00-CV-2563
[Decision No. 29929-B]
[NOTE: This document was re-keyed by WERC. Original pagination has been retained.]

NOTICE OF ENTRY OF FINAL DECISION

To: Aaron N. Halstead
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Madison, WI 53701-2155

PLEASE TAKE NOTICE that a Final Decision affirming the decision of the Wisconsin Employment Relations Commission, of which a true and correct copy is hereto attached, was signed by the court on the 9th day of July, 2001, and duly entered in the Circuit Court for Milwaukee County, Wisconsin, on the 9th day of July, 2001.

Notice of entry of this Final Decision is being given pursuant to Wis. Stat. §§ 806.06(5) and 808.04(l).

Dated this 11th day of July, 2001.

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DECISION
Case No.: 00-CV-2563

Petitioner, Local 2494, seeks review of Respondent, Wisconsin Employment Relations Commission's, Declaratory Ruling affirming and modifying the decision of an interest arbitrator. This Court must determine whether the arbitrator complied with the mandate of Wis. Stat. § 111.70(4)(cm)6.d, that he "select the final offer of one of the parties … without modification," and whether his final product constituted a "mutual, final and definite award" under Wis. Admin, Code § ERC 32.16(l)(d).

PROCEDURAL AND FACTUAL BACKGROUND

Local 2494 is the exclusive bargaining representative of the public health nurses and community health educators employed by Waukesha County. On December 31, 1998, the collective bargaining agreement between Local 2494 and the County expired. Subsequent bargaining resulted in a meeting of the minds between the County and Local 2494 on all terms of a successor agreement covering January 1, 1999 through December 31, 2001 with the exception of wages. Accordingly, Local 2494 petitioned the Commission to appoint an arbitrator to hear the dispute.

On January 4, 2000, Arbitrator Gil Vernon presided over the interest arbitration. The parties stipulated that the Award was to be for a three year contract term covering January 1, 1999

through December 31, 2001. They also stipulated that the wage increases during that time period were the only issues for the Arbitrator's review. Each party then submitted to the Arbitrator a "final offer" for a successor three-year contract covering the years 1999-2001. According to Wis. Stat. § 111.70(4)(cm)6.d., the Arbitrator is required to "adopt without further modification the final offer of one of the parties on all disputed issues …"

The Union proposed a 6% wage increase across the board effective January 2, 1999 followed by a 4% across the board wage increase effective January 1, 2000 and a 4% across the board wage increase effective December 30, 2000. The County proposed a 3% wage increase across the board effective January 2, 1999 followed by a 2% across the board wage increase effective January 1, 2000, another 2% across the board wage increase effective July 1, 2000, and a 3% across the board wage increase effective December 30, 2000. According to both parties' offers, the wage increase for 2001 would actually take effect on December 30, 2000.

The Arbitrator issued his Award on April 20, 2000 stating, "The final offer of the employer is to be part of the 1999-**2000** collective bargaining agreement." (emphasis added). Local 2494 argued that a two-year contract (1999-2000) was not part of either party's final offer, and therefore the Award violated the statutory requirement that "the arbitrator shall adopt without further modification the final offer of one of the parties on all disputed issues…". On May 2, 2000, Local 2494 filed a petition with the Commission for a declaratory ruling that the Arbitrator's Award violated Wis. Stat. § l11.70(4)(cm)6.d., and requested that the Award be declared null and void.

The Commission issued its Findings of Fact, Conclusions of Law and Declaratory Ruling on November 17, 2000, denying Local 2494's petition and modifying the Award by changing the

Arbitrator's reference from "2000" to "2001" because the Award was, "imperfect in [a] matter of form not affecting the merits of the controversy." Wis. Admin. Code § ERC 32.17(4). The Commission went on to say:

> "Here, it is undisputed that the offers before the Arbitrator were limited to wage increases to be received during the agreed upon terms of the three year contract. The Arbitrator selected the County's wage offer which - like the Union offer - proposed wage increases which only took effect during the 1999-2000 portion of the 1999-2001 contract to which the parties had already agreed. As argued by the County, because the term of the agreement was not before him, the Arbitrator could not - and we conclude did not - elect a County wage offer for two years through his erroneous use of the "1999-2000" dates in the AWARD portion of his decision."

Subsequently, Local 2494 filed a Petition for Review from the Commission's Declaratory Ruling on December 15, 2000 requesting that the Court reverse the Commission's declaratory ruling and enter an order holding the decision of the interest arbitrator to be unlawful unde Wis. Admin. Code § ERC 32.16(d).

ANALYSIS

I. Standard of Review

Despite the Petitioner's position to the contrary, this court must first determine the appropriate standard for review. Judicial review of arbitration awards is very limited. A strong policy favoring collective bargaining agreement dispute resolution through arbitration limits judicial review of arbitration and requires a reluctance on the part of the courts to interfere with an arbitrator's award. The court's main job is to make sure the parties receive the arbitration they bargained for. See, Milwaukee Board of School Directors, v. Milwaukee Teachers' Education Association, 93 Wis. 2d 415, 422 (1980)(citing Milw. Pro. Firefighters Local 215 v. Milwaukee, 78 Wis.2d 1, 21 (1977)). According to the Wisconsin Administrative Code, the

Commission must declare unlawful an arbitration award when the arbitrator "exceeded his or her powers" or when the arbitrator exercises those powers so that a "mutual, final and definite interest arbitration award was not made." Wis. Admin. Code § ERC 32.16(l)(d).

An agency's interpretation of its own rule or regulation receives a different level of deference than an agency's interpretation of a statute. Hillhaven Corp. v. Dept of Health & Family Services, 232 Wis. 2d 4110, 410 n6 (2000). While the interpretations of a regulation and, of a statute are both questions of law, see Franklin v. Housing Auth. of Milwaukee, 155 Wis. 2d 419, 425-26 (Ct. App. 1990), we determine the proper deference for agency statutory interpretations in a different manner. Statutory interpretations by agencies are generally entitled to one of three levels of deference: "great weight," "due weight" or no deference. See, Zignego Co. v. DOR, 211 Wis. 2d 819, 823-24 (Ct. App. 1997).

An agency determination is entitled to "great weight" when the agency has significant experience, technical competence, and specialized knowledge regarding the interpretation of the statue and application of the law. Under the "great weight" standard, the court will accept the Commission's decision provided it is supported by credible and substantial evidence. This Court cannot challenge the agency's discretion even if it would come to a different result on its own. See, Briggs & Stratton Corp. v. ILHR Department, 43 Wis.2d 398, 409, 168 N.W.2d 817 (1969).

In contrast, when agencies interpret their own rules or regulations, the Court generally applies only one level of deference. While this level of deference has been termed "controlling weight," or "great weight," see RTE Corp. v. DILHR, 88 Wis. 2d 283, 290 (1979), it is described using different terminology than that used for the "great weight" deference applied to statutory interpretations. See State v. Busch, 217 Wis. 2d 429, 441 (1998) (holding that an agency's

interpretation of its own regulations "is controlling in determining their meaning unless plainly erroneous or inconsistent with the regulations").

Regardless of the different terminology, the deference accorded agency interpretations of their own rules is similar to the "great weight" level of deference granted agency statutory interpretations because both examine whether the agency interpretation is reasonable and consistent with the meaning or purpose of the regulation or statute. See, Franklin, 155 Wis. 2d at 426. When examining an agency's interpretation of its own administrative regulation, "it is black-letter law that the interpretation [given by the agency] … is entitled to controlling weight unless inconsistent with the language of the regulation or clearly erroneous." See, Nehm v. State Dep't of Agric., Trade & Consumer Protection, 212 Wis. 2d 107, 117 (Ct. App. 1997)(citing Monroe v. Funeral Dirs. & Embalmers Examining Bd., 119 Wis. 2d 385, 390-91 (Ct. App. 1984)).

In the case at bar, the Commission's duty was to review the Arbitrator's decision in light of both Wis. Admin. Code § ERC 32.16(l)(d)[1] and Wis. Stat. §111.70(4)(cm)6.d.[2] Because Wis. Admin. Code § ERC 32.16(l)(d) is the Commission's own rule, and in light of the experience gained by the Commission in interpreting Wis. Stat. § 111.70(4)(cm)6.d., this Court grants the Commission's decision the "controlling weight" or "great weight" level of deference upon review.

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1 "(1) …In determining whether an interest arbitration award was lawfully made, the commission shall find that said award was not lawfully made … (d) Where the arbitrator exceeded his powers, or so imperfectly executed them that a mutual, final and definite interest arbitration award was not made."

2 "… The arbitrator shall adopt without further modification the final offer of one of the parties on

II. The Abritrator Selected the Final Offer of the County in Accordance with Wis. Stat. § 111.70(4)(cm)6.d.

The Arbitrator selected the final offer of the county, resulting in a 3% across the board wage increase effective January 2, 1999, followed by a 2% increase effective January 1, 2000, a 2% increase effective July 1, 2000, and a 3% increase effective December 30, 2000. While the final increase takes effect in 2000, it applies to 2001. Although the Union's proposal contained a different rate schedule, the result was the same.

The fact that the Arbitrator misspoke in the award twice by referencing a "two-year" contract covering "1999-2000," does not make the award null and void. While an arbitrator is required to select the final offer of one of the parties "without modification," such language does not forbid restatement of the offer to comprise a proper, final arbitration award as long as it is not contrary to the intent of the offering party. City of Manitowoc v. Manitowoc Police Dep't, 70 Wis. 2d 1006, 1013 (1975). The Commission's decision to modify the misstatements of the Award to properly reference a three-year contract covering "1999-2001" is not contrary to the intent of the offering party. In fact, it is clearly in accordance with the intent of both parties since both final offers proposed rate increases in 1999 and 2000 which would effect 1999, 2000, and 2001.

Petitioner relies on LaCrosse Professional Police Association v. City of LaCrosse to support its position. However, LaCrosse is factually distinguishable from this case. In LaCrosse, the city requested permission to amend its final offer for a health insurance proposal after one day of arbitration due to a mistake. When the Association objected, the City withdrew the request.

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all disputed issues"

Three days later, the Arbitrator issued an award incorporating the City's final offer contingent on "the City's commitment to honor its promise that there are no significant changes in existing benefits in the health insurance plan and to be governed by the hearing record on this commitment." 212 Wis.2d 90, 94 (Ct. App. 1997). However, the City's final offer actually altered existing provisions contrary to the arbitrator's interpretation based on hearing testimony.

As a result, the Court determined that the arbitrator exceeded his authority by modifying the City's final offer rather than selecting a final offer without modification. Id., at 101. "The arbitrator acknowledged that he was awarding health insurance provisions that clearly differed from the wording of the City's final offer." Id.

In the case at bar, the arbitrator selected the County's final offer without modification. The rate schedule identified in the award mirrored the rate schedule in the County's proposal, which did not contain the year "2001". The only problem was a misstatement or typographical error on the part of the Arbitrator in two specific areas of the Award. Based on the correct references in the rest of the award, the Commission, upon review, declared that the Arbitrator chose the final offer of the County and restated the Award to comprise a proper, final arbitration

award.

III. The Arbitrator's Award is Mutual, Final, and Definite in Accordance with Wis. Admin. Code § ERC 32.16(4)(d).

An arbitration award is mutual, final, and definite when the parties know what was awarded and the award does not naturally lead to new controversies and litigation. See, LaCrosse, 212 Wis.2d at 103-106. See also, Garstka v. Russo, 37 Wis. 2d 146, 150 (1967).

The Arbitrator clearly chose the final offer of the County without modification. Throughout

the Award, the Arbitrator discussed the percent effective increases and the resulting wage rates in 1999, 2000 and 2001. The only potential discussion resulting from the Award is based on two misstatements or typographical errors, which the Commission modified. But for those two inadvertent statements, this petition would not be before this Court.

The Arbitrator's Award was mutual, final and definite. There is no question that it provides a 3% wage rate increase effective January 2, 1999, a 2% increase effective January 1, 2000, a 2% increase effective July 1, 2000, and a 3% increase effective December 30, 2000.

CONCLUSION

The Commission correctly declared the Arbitrator's ruling valid despite the inadvertent misstatements resulting in slight modification. There are several references in the Award to the "three year" contract and specifically to the third year of the contract, "2001" that contravene any reference to a two year (1999-2000) contract. The Award did incorporate the final offer of the County and was mutual, final, and definite.

THEREFORE, this Court affirms the Commission's declaratory ruling modifying the arbitrator's award.

Dated this 9 day of July, 2001.

Kathryn W. Foster /s/

Kathryn W. Foster,
Circuit Court Judge
Branch 12