

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

 LOCAL 222, UNITED NURSING HOME &
 HOSPITAL EMPLOYEES' FEDERATION,

Complainant,

vs.

MANITOWOC COUNTY (PARK LAWN HOME),

Respondent.

:
 :
 :
 : Case XXII
 : No. 16993 MP-259
 : Decision No. 12047-A
 :
 :
 :

Appearances:

Mr. Kenneth C. Islo, Business Manager, Local 222, for the
 Complainant.
Mr. Richard E. Garrow, Corporation Counsel, Manitowoc County,
 for the Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Complaint of prohibited practices having been filed with the Wisconsin Employment Relations Commission in the above entitled matter; and the Commission having appointed Sherwood Malamud, a member of the Commission's staff, to act as Examiner and to make and issue findings of fact, conclusions of law and orders as provided in Section 111.70 of the Wisconsin Municipal Employment Relations Act; and a hearing on such complaint having been held at Manitowoc, Wisconsin, on September 20, 1973, before the Examiner, and the Examiner having considered the evidence and arguments of counsel and being fully advised in the premises, makes and files the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. That Local 222, United Nursing Home & Hospital Employees' Federation, hereinafter referred to as the Complainant, is a labor organization having offices at 14395 West Capitol Drive, Brookfield, Wisconsin.
2. That Manitowoc County (Park Lawn Home), hereinafter referred to as the Respondent, is a municipal employer within the meaning of the Municipal Employment Relations Act.
3. That at all times material herein, the Respondent has recognized the Complainant as the exclusive bargaining representative of certain of its employes; that in said relationship the Respondent and the Complainant have been parties to a collective bargaining agreement covering the wages, hours and working conditions of such employes which agreement is dated March 20, 1973 and was in effect at all times material herein; that Articles II, III, IV, Section 1 and Article V of said agreement provide as follows:

"ARTICLE II
Grievance Procedure

Should any differences arise between the Employer and the Union as to the meaning and application of this agreement, they shall be settled under the provisions of this article.

Section 1. The aggrieved employee, the Union Committee and/or the Union representative shall present the grievance to the Superintendent of Park Lawn Home.

Section 2. If a satisfactory settlement is not reached as outlined in Section 1 within one week, the Union Committee and/or the Union representative shall present the grievance to the Personnel Committee of the Manitowoc County Board of Supervisors. Such a meeting as outlined in this section shall be held within one week of receipt of written request from the other party.

Section 3. If a satisfactory settlement is not reached as outlined in Section 2, either party may request the other to submit the grievance to arbitration.

Section 4. Authorized Union Stewards shall have the authority to gather pertinent facts and to assist employees in the processing of grievances on regular duty status. They must ask for, and receive, permission from their immediate supervisors before leaving their post.

ARTICLE III Arbitration

Section 1. Grievances not settled in the grievance procedure may be appealed to arbitration provided:

- (a) Written notice of a request for such arbitration is given to the Personnel Committee within ten days of receipt of the Personnel Committee's last answer.
- (b) The issue involves the interpretation or application of a specific provision of the agreement.

Section 2. The following issue is specifically defined as being non-arbitrable:

- (a) The right of the Personnel Committee to adopt policies and take action in accordance with those rights set out in the Management Rights clause.

Section 3. Upon receipt of written notice of a request for arbitration, the Personnel Committee and the Union shall each appoint a member of the arbitration board and shall notify the other of the name of its appointee to the board within five days of receipt of the written appeal. These representatives shall meet in an attempt to select an impartial third party to act as chairman of the arbitration board. Failing to do so they shall, within fifteen days of the appeal, request the Wisconsin Employment Relations Commission

to submit a panel of three (3) arbitrators. The Personnel Committee and Union representatives shall determine by lot the order of elimination, and thereafter each shall, in that order, alternately strike a name from the list until one name remains, who will become the chairman of the arbitration board.

Section 4. The arbitration board shall meet with the representatives of both parties, hear evidence, and give an opinion within thirty days after the close of the hearing.

Section 5. Each party shall be responsible for the expenses of its representatives and witnesses in this hearing. The fees and expenses of the chairman of the arbitration board shall be shared equally by the parties.

Section 6. Grievances involving the same act or same issue may be consolidated in one proceeding, provided the grievances have been processed through the grievance procedure by the time the parties meet to select an impartial third party.

Section 7. It is understood that the function of the arbitration board shall be to interpret and apply specific terms of this agreement. This board shall have no power to advise on salary adjustments, except the improper application thereof, nor to add to, subtract from, modify or amend any terms of this agreement.

Section 8. The arbitration board may rescind, confirm or modify disciplinary action, including action resulting in loss of pay to the employee involved, but may not exceed the provisions of this agreement relating to wages and other conditions of employment. It may also order the employee involved not to lose his pay for time spent in arbitration, if it finds for the employee. The decision of the arbitration board shall be final and binding upon the parties.

ARTICLE IV Management Rights

Section 1. Unless otherwise provided, the management of the work and the direction of the working forces, including the right to hire, promote, demote, suspend, or discharge all for proper cause, and the right to relieve employees from duty because of the lack of work or other legitimate reason is vested exclusively in the Employer. If any action taken by the Employer is proven not to be justified, the employee shall receive all wages and benefits due him for such period of time involved in the matter.

. . ."

4. That on April 19, 1973, Respondent discharged an employe covered by the above collective bargaining agreement, i.e., Marilyn Wazny, hereinafter referred to as the grievant; that on April 27 a grievance was filed with the Respondent, and after denial of the grievance, the Business Manager of Complainant, Mr. Roger Jacobson, on May 14,

1973 made a written demand on Respondent's Counsel that the grievance be submitted to arbitration.

5. That on June 25, 1973 Richard E. Garrow, Corporation Counsel of Respondent, acting on behalf of Respondent, advised Complainant that the grievance was not arbitrable and therefore Respondent refused to proceed to arbitration.

6. That the dispute between the Complainant and Respondent with respect to the discharge of the grievant concerns the application and interpretation of the collective bargaining agreement existing between the parties.

Upon the basis of the above and foregoing Findings of Fact, the Examiner makes the following

CONCLUSIONS OF LAW

1. That the dispute between Complainant Local 222, United Nursing Home & Hospital Employees' Federation, and Respondent, Manitowoc County (Park Lawn Home), concerning the discharge of Marilyn Wazny, which Complainant claims was not justified in violation of the collective bargaining agreement, arises out of a claim, which on its face, is covered by the terms of the collective bargaining agreement existing between the parties.

2. That the Respondent, Manitowoc County (Park Lawn Home) by refusing to proceed to arbitration upon the request of the Complainant, with respect to the discharge of Marilyn Wazny has violated the arbitration provision of the aforesaid collective bargaining agreement existing between it and the Complainant, and therefore in that regard Respondent committed and is committing a prohibited practice within the meaning of 111.70(3)(a)(5) of the Wisconsin Municipal Employment Relations Act.

Upon the basis of the above and foregoing Findings of Fact and Conclusions of Law, the Examiner makes the following

ORDER

IT IS ORDERED that Manitowoc County (Park Lawn Home), its officers and agents shall immediately:

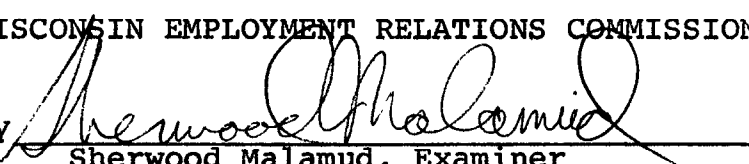
1. Cease and desist from refusing to submit the grievance over the discharge of Marilyn Wazny to arbitration.
2. Take the following affirmative action which the Examiner finds will effectuate the policies of the Wisconsin Municipal Employment Relations Act:
 - a. Comply with the arbitration provisions of the collective bargaining agreement existing between it and the Complainant with respect to the grievance over the discharge of Marilyn Wazny, and all issues concerning same.
 - b. Notify the Complainant that it will proceed to arbitration on said grievance, and all issues concerning same.

- c. Participate with the Complainant in the selection of an arbitrator to determine a dispute over said grievance, and all issues concerning same.
- d. Participate in the arbitration proceeding, before the arbitrator so selected, and on said grievance and all other issues concerning same.
- e. Notify the Wisconsin Employment Relations Commission in writing within twenty (20) days from receipt of a copy of this Order as to what action it has taken to comply herewith.

Dated at Madison, Wisconsin, this 12th day of October, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Sherwood Malamud, Examiner

MEMORANDUM ACCOMPANYING
FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

At the outset of the hearing, Respondent challenged the jurisdiction of the Wisconsin Employment Relations Commission in this matter. It was the position of Respondent that the Union was in the wrong forum (page 3 - transcript). Section 111.70(3)(a) of the Wisconsin Statutes states:

"It is a prohibited practice for a municipal employer individually or in concert with others:

- (5) To violate any collective bargaining agreement previously agreed upon by the parties with respect to wages, hours and conditions of employment affecting municipal employes, including an agreement to arbitrate, questions arising as to the meaning or application of the terms of a collective bargaining agreement or to accept the terms of such arbitration award, where previously the parties have agreed to accept such award as final and binding upon them."

Therefore the violation of a collective bargaining agreement is a prohibited practice under the Municipal Employment Relations Act (hereinafter referred to as MERA). Section 111.70(4) cloaks the Commission with the following authority:

"The Commission shall be governed by the following provisions relating to bargaining in municipal employment in addition to other powers and duties provided in this subchapter:

- (a) Prevention of Prohibited Practices. Section 111.07 shall govern procedure in all cases involving prohibited practices under this subchapter except that wherever the term 'unfair labor practices' appears in Section 111.07 the term 'prohibited practices' shall be substituted."

Section 111.07 establishes the procedures under which the Commission conducts hearings and proceedings on unfair labor practices (prohibited practices). It is apparent, that the statutes provide, that a party claiming that a collective bargaining agreement has been violated may file his complaint with the Wisconsin Employment Relations Commission.

In actions to enforce agreements to arbitrate, the Wisconsin Employment Relations Commission proceeds in accordance with the oft cited policy below:

". . . we shall give arbitration provisions in collective bargaining agreements their fullest meaning, and we shall confine our function in such cases to ascertaining whether the party seeking arbitration is making a claim which on its face is governed by the contract. We will resolve doubts in favor of coverage. Seaman-Andwall Corporation, (5910) 1/62 at p. 19." 1/

1/ For a concise review of the principle cases on point see Oostburg Joint School District No. 14, (11196-A) 10/72.

Article IV, Section 1 provides that a discharge must be justified. Article III, Section 2, however, contains a definition of non-arbitrable issues, a definition which arguably covers the instant grievance. Nonetheless, the contract, on its face, covers the grievance. It is for the arbitrator to interpret the collective bargaining agreement and apply its terms to the grievance. 2/

Dated at Madison, Wisconsin, this 12th day of October, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By



Sherwood Malamud, Examiner

2/ Dunphy Boat Corporation vs. WERB, 267 Wis. 316, 34 LRRM 2321 (1954).