

MANITOWOC COUNTY HIGHWAY DEPARTMENT
EMPLOYEES LOCAL 986, AFSCME, AFL-CIO,

Complainant,

vs.

MANITOWOC COUNTY,

Respondent.

Case XXXIV
No. 17567 MP-319
Decision No. 12422-A

Mr. Michael J. Wilson, District Representative, Manitowoc County Highway Department Employees Local 986, AFSCME, AFL-CIO, for the Complainant.

Mr. Richard E. Garrow, Corporation Counsel, Manitowoc County, for the Respondent.

Complaint of prohibited practices having been filed with the Wisconsin Employment Relations Commission in the above-entitled matter; and the Commission having appointed Stanley H. Michelstetter II, 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 February 12, 1974, 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.

1. That Manitowoc County Highway Department Employees Local 986, AFSCME, AFL-CIO, hereinafter referred to as the Complainant, is a labor organization having offices at 811 Huron Street, Manitowoc, Wisconsin.

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3. That at all times material herein, the Respondent has recognized the Complainant as the exclusive bargaining representative of certain of its employees; 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 employees which agreement is dated November 28, 1973 and was in effect at all times material herein; and that Articles III and V of said agreement provide as follows:

"ARTICLE III - MANAGEMENT RIGHTS RESERVED

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

Manitowoc County shall have the sole right to contract for any work it chooses and to direct its employees to perform such work wherever located subject only to the restrictions imposed by this agreement and the Wisconsin Statutes. But in the event the Employer desires to subcontract any work which will result in the layoff of any county employees, said matter shall first be reviewed with the Union.

Unless otherwise herein provided, the Employer shall have the explicit right to determine the specific hours of employment and the length of work week and to make such changes in the details of employment of the various employees as it from time to time deems necessary for the effective operation of its department.

The Employer agrees that all amenities and practices now in effect but not specifically referred to in this agreement shall continue for the duration of this agreement.

. . .

ARTICLE V - GRIEVANCE PROCEDURE

Should any differences arise between the Employer and the Union as to the meaning and application of this agreement, or as to any question relating to wages, hours, and working conditions, or failure to negotiate in good faith, they shall be settled under the provisions of this article.

- (a) The aggrieved employee, the Union Committee and/or the Union representative shall present the grievance to the department head.

- (b) If a satisfactory settlement is not reached as outlined in Section (a) within one week, the Union Committee and/or the Union representative shall present the grievance to the appropriate committee. Such a meeting as outlined in this section shall be held within one week of receipt of written request from the other party.
- (c) If a satisfactory settlement is not reached as outlined in Section (b), either party may request the other to submit the grievance to arbitration. One arbitrator to be chosen by the Employer, one by the Union, and a third arbitrator to be chosen by the first two. The Board of Arbitration shall, by a majority vote, make a decision on the grievance, which shall be final and binding on both parties.
- (d) Each party shall bear the cost of its chosen arbitrator and the party whom the arbitrators' decision is rendered against shall bear the entire cost of the third arbitrator."

4. That at all material times previous to December 20, 1973, Respondent's Highway Department operated its fixed plow trucks with two men; but, that on December 20, 1973 and thereafter Respondent operated such trucks with one man.

5. That Complainant by its authorized agents filed a grievance on December 20, 1973 with respect to the change referred to in paragraph 4 above; and that Complainant has requested, but that Respondent has refused and continues to refuse, to process such grievance to arbitration.

6. That all disputes with respect to the above-mentioned grievance involve the interpretation and/or application of the above-mentioned collective bargaining agreement.

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, Manitowoc County Highway Department Employees Local 986, AFSCME, AFL-CIO, and Respondent, Manitowoc County, concerning the number of employees operating a fixed plow truck 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, by refusing to proceed to arbitration upon the request of the Complainant, with respect to the afore-mentioned grievance 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, its officers and agents shall immediately:

1. Cease and desist from refusing to submit the grievance concerning the number of employees to operate a fixed plow truck 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 concerning the number of employees to operate a fixed plow truck, 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 Milwaukee, Wisconsin, this 21st day of February, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stanley H. Michelstetter II
Stanley H. Michelstetter II
Examiner

MEMORANDUM ACCOMPANYING
FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Respondent's Position

Respondent recognized and took no exception to the decision of Examiner Malamud in Manitowoc County (Park Lawn Home), 12047-A 10/73 wherein he set forth the applicable principles with respect to the duty to arbitrate. However, Respondent distinguishes that case on the basis that Section 111.07(3) requires that Complainant prove by a clear and satisfactory preponderance of the evidence that Respondent violated Section 111.70(3)(a)5. Since the Commission will not determine the merits of the controversy with respect to whether or not the underlying change is a management right and therefore not arbitrable, the Municipal Employer's position must be assumed. Therefore, there is no duty to arbitrate.

Discussion

Such position cannot be sustained. Pursuant to Section 111.70(3)(a)5, the Commission enforces a collective bargaining agreement to arbitrate, as well as other collective bargaining agreements or parts thereof. Since arbitration herein is a method of resolving disputes with respect to the meaning or application of the collective bargaining agreement, the Complainant meets its Section 111.07(3) burden of proof by showing that there exists a collective bargaining agreement between the parties providing for final and binding arbitration, that there presently exists issues arguably involving differing interpretations of such agreement (including its arbitration clause), and that the Respondent refuses to arbitrate such issues. ^{1/} No showing need be made that its position is correct. Therefore, Respondent has shown by a clear and satisfactory preponderance of the evidence that there exists a dispute involving the interpretation of Article III and Article V of the instant agreement and that Respondent refuses to arbitrate same, all

^{1/} Compare Fred Rueping Leather Company (10986) 5/72 and Baush Machine Tool Company (11287) 9/72.

in violation of Section 111.70(3)(a)5 of the Wisconsin Municipal
Employment Relations Act.

Dated at Milwaukee, Wisconsin, this 21st day of February, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stanley H. Michelstetter II
Stanley H. Michelstetter II
Examiner