

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

DRIVERS, SALESMEN, WAREHOUSEMEN,
MILK PROCESSORS, CANNERY, DAIRY
EMPLOYEES AND HELPERS UNION LOCAL NO.
695 affiliated with the INTERNATIONAL
BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA,

Complainant,

vs.

CITY OF ST. FRANCIS,

Respondent.

Case XX
No. 18506 MP-406
Decision No. 13182-B

Appearances:

Goldberg, Previant & Uelmen, Attorneys at Law, by Mr. Thomas J. Kennedy, appearing on behalf of the Complainant.

Mr. Harwood H. Staats, City Attorney, appearing on behalf of the Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Local No. 695 filed a complaint with the Wisconsin Employment Relations Commission on November 19, 1974, alleging that the City of St. Francis had committed prohibited practices within the meaning of Section 111.70(3)(a)5 of the Municipal Employment Relations Act; and the Commission having appointed Herman Torosian, a member of its staff, to act as Examiner and to make and issue Findings of Fact, Conclusions of Law and Orders as provided in Section 111.70(4)(a) of the Municipal Employment Relations Act and Section 111.07(5) of the Wisconsin Employment Peace Act; and a hearing on said complaint having been held at St. Francis, Wisconsin, on December 13, 1974, by the Examiner, and prior to any further action by the Examiner, the Commission, on April 23, 1975, having set aside the appointment of Examiner and transferred the instant case to the Commission; 1/ and the Commission having considered the evidence and arguments, 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 Drivers, Salesmen, Warehousemen, Milk Processors, Cannery, Dairy Employees and Helpers Union Local No. 695, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, hereinafter referred to as Complainant, is a labor organization having its principal office at 1314 North Stoughton Road, Madison, Wisconsin 53714.

2. That the City of St. Francis, hereinafter referred to as Respondent, is a municipal employer having its office at City Hall, 4235 South Nicholson Avenue, St. Francis, Wisconsin 53207.

1/ Mr. Torosian became a member of the Commission on January 4, 1975.

3. That on or about March 1, 1973, Complainant and Respondent entered into a collective bargaining agreement, covering law enforcement personnel in the employ of the Respondent, effective January 1, 1973 to December 31, 1974, which contained among its provisions the following material herein:

"ARTICLE I - INTENT AND PURPOSE

Section 1. It is the intent that the following agreement shall be an implementation of the provisions of Section 111.70 of the Wisconsin Statutes, consistent with the legislative authority which devolves upon the City of St. Francis, the statutes and, insofar as applicable, the rules and regulations relating to or promulgated by the St. Francis Common Council.

Section 2. Both of the parties to this agreement are desirous of reaching an amicable understanding with respect to the employer-employee relationship which exists between them and to enter into an agreement covering rates of pay, hours of work and conditions of employment.

ARTICLE II - RECOGNITION

Section 1. The municipal employer recognizes TEAMSTERS UNION LOCAL #695 as the exclusive bargaining representative of all employees of the St. Francis Police Department who have chosen the Union to represent them for the purpose of negotiating in relation of wages, hours and conditions of employment.

. . .

ARTICLE IV - GRIEVANCE PROCEDURE

Section 1. Any grievance or misunderstanding which may arise between the Employer and an Employee (or Employees) or the Employer and the Union, shall be handled in the following manner. All grievances shall be in writing at all steps.

STEP ONE: The aggrieved Employee shall submit his grievance in writing to the Shift Commander of his shift.

STEP TWO: If a satisfactory settlement is not reached within one (1) week, the aggrieved employee, the Union Committee/Union Steward shall present the grievance to the Chief of Police.

STEP THREE: If a satisfactory settlement is not reached as outlined in STEP TWO, within two (2) weeks the Union Committee and/or Union Steward shall present the grievance, in writing, to the City Council, or its designate. A meeting shall be held within two (2) weeks of receipt of written request from the other party.

STEP FOUR: If a satisfactory settlement is not reached as outlined in STEP THREE, either party may request that the matter be submitted to arbitration, one arbitrator to be chosen by the Employer, one by the Union, and a third to be chosen by the first two, and he shall be the Chairman of the Board. If the two cannot agree on the selection of a third, the parties shall request the Wisconsin Employment Relations Commission to name the third member. The Board of Arbitration shall, by a majority vote, make the decision on the grievance, which shall be final and binding on both parties.

Section 2. The Time limits mentioned above may be extended by mutual consent of the parties involved.

Section 3. Costs: Each party shall bear the costs of its chosen arbitrator. The cost of the third arbitrator and any other expenses shall be shared equally by the parties."

4. That on June 15, 1973, Sergeant Wayne O. Cameron and Patrolman Lee Heidemann, two members of the bargaining unit represented by Complainant, 2/ filed with Respondent, a written grievance which on its face is covered by the terms of the then existing collective bargaining agreement between the parties, which in material part provides as follows:

"Subject: Grievance against Residency Ordinance # 324.

To: Gerald G. Barrett
Chief of Police
St. Francis Police Department

Dear Sir;

In accordance with Article IV, Section 1, of the present agreement between the City of St. Francis and the members of the St. Francis Police Department, this grievance is being filed.

The undersigned Officers herewith request an indefinite extension of Ordinance # 324 on the basis that it violates the terms of the previous, as well as the present contract between the City of St. Francis and members of the St. Francis Police Department. Furthermore, it has been impossible to find adequate housing within the City of St. Francis and it would pose a personal hardship at this time."

5. That in response to the above-mentioned grievance, Mr. James G. McManus, chairman of the bargaining committee of the Respondent, directed a letter to Mr. Blumenberg, the bargaining representative of Complainant, which in material part provides as follows:

"This refers to the letters of Sgt. Wayne Cameron and Patrolman Lee Heideman, [sic] dated June 15, regarding their request for an indefinite extension of residency in the City of St. Francis.

In a letter dated May 30, 1973, Glen Van Keuren, Assistant Secretary Treasurer Local 695, wrote a letter to the City of St. Francis requesting a meeting to review this matter. At a meeting held on June 14, 1973, the City Council, meeting as a committee of the whole, advised you the City intends to enforce ordinance #324.

The City disagrees with the letter of Sgt. Cameron and Patrolman Heideman [sic] wherein they state ordinance #324 is a violation of present and previous contracts.

The City maintains this is not a valid grievance and insists that Officers Cameron and Heideman [sic] should abide by the city ordinances of the City of St. Francis and move immediately into the City of St. Francis. Their request for a further extension is denied.

This letter is being addressed to you because you are the bargaining representative for these men."

2/ In a companion case issued today, City of St. Francis Dec. No. 13177-A the Commission determined Sergeants employed in the City of St. Francis Police Department to be employes, and not supervisors, within the meaning of Section 111.70(1)(b) of the Municipal Employment Relations Act.

6. That on August 6, 1973, Complainant filed a complaint 3/ with the Wisconsin Employment Relations Commission, alleging that Respondent had committed prohibited practices by refusing to proceed to arbitration, on the above-mentioned grievance, pursuant to the collective bargaining agreement between the parties; that following a hearing on said complaint, Examiner Sherwood Malamud issued his Findings of Fact, Conclusions of Law and Order on April 5, 1974 wherein said Examiner concluded that the Respondent was under no obligation to proceed to arbitration on said grievance since the Complainant had made no demand on the Respondent to proceed to arbitration; and that, therefore, the Respondent had not committed any prohibited practices in the matter and that thereupon said Examiner dismissed the complaint; and that on October 23, 1974, the Commission affirmed the Examiner's Findings of Fact, Conclusions of Law and Order.

7. That on April 10, 1974, Glen Van Keuren, Business Representative of Complainant, directed a letter to Henry Scholz, City Administrator of Respondent, which in material part provides as follows:

"I am in receipt of Examiner Malamud's decision dismissing the Union's complaint in the above-entitled matter on the ground that the Union failed to demand that the City of St. Francis proceed to arbitration. Examiner Malamud sensed a willingness on the part of the City to arbitrate this matter once the Union had made the necessary demand. We hope he is correct. Therefore, on behalf of Teamsters Local 695, the recognized bargaining agent for the grievance, I am hereby renewing our earlier written demand upon the City dated October 3, 1973 to proceed forthwith to arbitration on the Heidemann - Cameron grievance.

In accordance with Article IV, Section 1 step four, the Union designates Mr. Elmer Vandre, Business Representative, Teamsters Union Local 695, 1314 North Stoughton Road, Madison, Wisconsin 53714, phone 244-6207 as its arbitrator.

Please contact him in order that we may proceed without undue delay."

8. That in response to said April 10 letter, McManus sent the following letter, dated May 10, 1974 to Van Keuren:

"The City Bargaining Committee and our City Attorney reviewed your letter of April 10, 1974 regarding the Heidemann-Cameron grievance, and the letter of Wayne Cameron and Lee Heidemann dated June 15, 1973.

In your letter you stated 'I am hereby re-newing [sic] earlier written demand upon the City dated October 3, 1973 to proceed forth-with [sic] to arbitration on the Heidemann-Cameron grievance.'

We reviewed Wayne Cameron's and Lee Heidemann's original letter of grievance dated June 15, 1973. They stated 'request an extension of Ordinance #324 on the basis that it violates the terms of the previous as well as the present contract between the City of St. Francis and members of the St. Francis Police Dept.'

3/ City of St. Francis, XVIII (12097-A, B).

The City has maintained no ordinance or contract has been violated in this dispute. We, therefore, request you specifically outline the violations by the City you wish to arbitrate.

The attached article indicates Wayne Cameron has now established residency in the City of St. Francis and would not be a party to the grievance."

9. That upon receipt of McManus' May 10 letter, Van Keuren referred same to Complainant's Counsel, Thomas J. Kennedy, for reply; that Attorney Kennedy, by letter dated May 23, 1974 to McManus stated the Union's position in material part as follows:

"It is the Union's position that Ordinance No. 324, An Ordinance Requiring St. Francis Residency For Employees And Appointees, expressly violates the City's labor agreement with Teamsters Union Local 695 in at least two respects. First, the City enacted its residency ordinance without collective bargaining with representatives of Teamsters Union Local 695; this failure to bargain with the Union constitutes a violation of Article II.

. . .

Thus, the City had both a statutory and a contractual obligation to negotiate with Union representatives concerning the proposed residency ordinance. The Union never acquiesced in the enactment of this ordinance having filed a grievance in 1971 protesting the unilateral change in employment conditions. This grievance was denied by the St. Francis Common Council on the ground that it was premature. Now that officers Cameron and Heidemann are threatened with discharge for noncompliance with the residency ordinance, we believe this grievance is ripe for resolution.

Moreover, the residency ordinance also violates Article IV of the collective bargaining agreement. Section 324.03 of the ordinance provides for dismissal of an employee 'without recourse'. Such language is clearly in conflict with Article IV which sets forth a multi-step grievance procedure culminating in arbitration for 'any grievance or misunderstanding'. We believe an employee's discharge certainly falls within such broad language as 'any grievance or misunderstanding'.

Furthermore, the enactment and implementation of the residency ordinance constitutes rule-making which affects the conditions of employment of employees including those employees represented by Teamsters Union Local 695. Such rules must be reasonable and be supported by ample justification particularly so where the rules also affect employees' personal lives. It is the Union's position that this residency ordinance sets forth a rule which is unreasonable and may be challenged before an arbitrator.

. . .

In sum, it is the Union's position that needless, costly, and time-consuming litigation can be avoided by placing this dispute before an arbitrator pursuant to Article IV, Section 1. Both parties can there present their respective positions and the arbitrator can make his determination. By the terms of the labor agreement, the arbitrator's decision will be final and binding on both parties."

10. That in response the following letter dated June 14, 1974 by Respondent over the signature of Harwood H. Staats, City Attorney, was sent to Attorney Kennedy:

"In re: Heidemann - Cameron Grievance

Dear Mr. Kennedy:

Mr. McManus has referred to me your letter of May 23, 1974.

Please be advised that our position remains as heretofore stated to you in our letter of May 10, 1974."

11. That Van Keuren's letter of April 10, and Attorney Kennedy's letter of May 23, 1974, constituted a demand on the part of Complainant requesting the Respondent to proceed to arbitration on the grievance; and that Respondent, by its June 14, 1974 letter, has refused and continues to refuse to proceed to arbitration on the grievance as requested by the Complainant.

On the basis of the above and foregoing Findings of Fact, the Commission makes the following

CONCLUSIONS OF LAW

1. That the factual basis for the instant complaint is sufficiently different from the factual basis resulting in the decision rendered in Case XVIII, in that the Complainant, Drivers, Salesmen, Warehousemen, Milk Processors, Cannery, Dairy Employees and Helpers Union Local No. 695 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, in that following the decision rendered in said case, has demanded that the Respondent, City of St. Francis, proceed to arbitration, and therefore the prior decision is not controlling as to the issues involved in the instant matter and does not constitute res judicata as to the instant complaint proceeding.

2. That the dispute between Complainant, Drivers, Salesmen, Warehousemen, Milk Processors, Cannery, Dairy Employees and Helpers Union Local No. 695, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and Respondent, City of St. Francis, concerning the Wayne O. Cameron and Lee Heidemann grievance arises out of a claim which, on its face, is covered by the terms of Articles II and IV of the 1973-74 collective bargaining agreement between the parties.

3. That Respondent, City of St. Francis, by its refusal to proceed to arbitration on the Cameron and Heidemann grievance, has violated, and is violating, the terms of the 1973-74 collective bargaining agreement between Complainant, Drivers, Salesmen, Warehousemen, Milk Processors, Cannery, Dairy Employees and Helpers Union Local No. 695 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and Respondent, City of St. Francis, and by such refusal has committed, and is committing, a prohibited practice within the meaning of Section 111.70(3)(a)5 of the Municipal Employment Relations Act.

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

ORDER

IT IS ORDERED that the City of St. Francis, its officers and agents, shall immediately:

1. Cease and desist from refusing to submit the aforesaid grievance concerning Sergeant Wayne O. Cameron and Patrolman Lee Heidemann and issues related thereto to arbitration.
2. Immediately take the following affirmative action which the Commission finds will effectuate the policies of Section 111.70 of the Wisconsin Statutes:
 - (a) Comply with the arbitration provisions of the 1973-74 collective bargaining agreement existing between the parties with respect to the aforesaid grievance and all issues concerning same..
 - (b) Notify Drivers, Salesmen, Warehousemen, Milk Processors, Cannery, Dairy Employees and Helpers Union Local No. 695 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America that Respondent will proceed to arbitration on said grievance and on all issues concerning same and inform said labor organization of the name of the Respondent's appointee to the arbitration board.
 - (c) Participate with Drivers, Salesmen, Warehousemen, Milk Processors, Cannery, Dairy Employees and Helpers Union Local No. 695 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America in the arbitration proceeding before the arbitration board selected in the manner set forth in Article IV (Grievance Procedure) of the parties' 1973-74 collective bargaining agreement, to resolve said grievance.
 - (d) Notify the Wisconsin Employment Relations Commission in writing within twenty (20) days from receipt of a copy of this Order as to what steps it has taken to comply herewith.

Given under our hands and seal at the
City of Madison, Wisconsin this 30th
day of April, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney
Morris Slavney, Chairman

Herman Torosian
Herman Torosian, Commissioner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

The Complainant alleges that the Respondent committed a prohibited practice within the meaning of Section 111.70(3)(a)5 of the Municipal Employment Relations Act, by refusing to submit a grievance to arbitration as required in the collective bargaining agreement, existing between the parties. The Respondent contends it did not violate the collective bargaining agreement by its refusal to arbitrate since (1) there exists procedural defects in the filing of the grievance, as set forth in the grievance procedure, (2) the issue of the grievance is moot with respect to at least one of the grievants, Sgt. Cameron, (3) Sergeant Cameron is a supervisor and thus not a proper member of the bargaining unit and not a proper grievant, and (4) a prior decision on a complaint filed by the Complainant against the Respondent constitutes res judicata as to the instant complaint (City of St. Francis, Dec. Nos. 12097-A and 12097-D).

We shall discuss the various defenses of the Respondent as follows: (1) res judicata (2) supervisory status (3) mootness and (4) alleged procedural defects.

The res judicata doctrine raised herein, requires exact identity of parties, issues and causes of action. Between the instant case and the prior case, there exists all of the identities listed above, except the identity of cause of action. A cause of action consists of the pleading of the ultimate facts necessary to establish a remedy under a particular legal theory.

In the prior case involving the same parties, the Commission held that the Respondent had not committed a prohibited practice by refusing to proceed to arbitration over the Cameron and Heidemann grievance since the Complainant had not requested the Respondent to proceed to arbitration. Following the issuance of that decision, the Complainant made a demand for Respondent to proceed to arbitration, but Respondent refused. Therefore, there is present in the instant proceeding an ultimate fact which was not present in the prior matter. Therefore, the instant case states a different cause of action than the prior case and there exists no res judicata of the issues herein.

Respondent contends that Sergeant Cameron is a supervisor, and as such is not properly a member of the bargaining unit, thereby precluding him from being a proper grievant. In a companion case issued this day, City of St. Francis, Decision No. 13177-A, the Commission in an Order Clarifying Bargaining Unit determined that Sergeants in the employ of the Respondent in its Police Department are not supervisors within the meaning of Section 111.70(1)(o)1 of the Municipal Employment Relations Act, and, therefore, are appropriate members of the bargaining unit. Thus, this contention of Respondent is without merit.


With regard to the Respondent's contention that the grievance is moot and there are procedural defenses to arbitration, the Commission has held that where a party makes a claim which on its face is covered by collective bargaining agreement and subject to the grievance procedure therein, then the Commission shall make no determination as to the procedural claims or defenses, but shall leave such issues to the

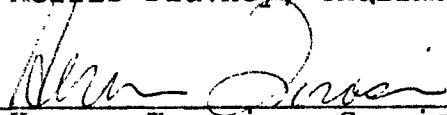
arbitrator for determination. 4/ In the instant case, Complainant alleges a violation of Article II of the collective bargaining agreement by Respondent's unilateral action in establishing a residency requirement without first bargaining with the Union, and Article IV which provides "any grievance or misunderstanding" may be submitted to arbitration. It is noted that the grievance procedure herein does not define a grievance as a dispute involving the interpretation and application of the terms of the collective bargaining agreement, but rather provides that any grievance or misunderstanding may be processed under the procedure established by Article IV of the agreement, a procedure which concludes with final and binding arbitration. Thus, the grievance herein states a claim, which on its face, is governed by the collective bargaining agreement, and, therefore the procedural defenses raised by the Respondent are issues for the arbitrator's determination and should the arbitrator determine that the procedural defenses are without merit, he has the jurisdiction to determine the merits of the grievance.

Dated at Madsion, Wisconsin this 30th day of April, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Herman Torosian, Commissioner

4/ Seaman-Andwall Corp., Dec. No. 5910, (1/62) and City of Green Bay Joint School District No. 1, Dec. No. 11021-A (11/72), setting forth the same policy as is found in John Wiley & Sons, Inc. v. Livingston, 376 U.S. 543, 55 LRRM 2769 (1964) wherein the U.S. Supreme Court declared the following:

"Once it is determined, as we have, that the parties are obligated to submit the subject matter of a dispute to arbitration, 'procedural' questions which grow out of the dispute and bear on its final disposition should be left to the arbitrator."