

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

SAWYER COUNTY HIGHWAY DEPARTMENT
EMPLOYEES LOCAL #1213, AFSCME, AFL-CIO,

Complainant,

vs.

SAWYER COUNTY HIGHWAY COMMITTEE,

Respondent.

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Case XI
No. 19067 MP-459
Decision No. 13604-A
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Appearances:

Mr. Richard C. Erickson, Business Representative, appearing on behalf of the Complainant.

Mr. Charles Ackerman, appearing on behalf of the Municipal Employer.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDERS

Sawyer County Highway Department Employees Local No. 1213, AFSCME, AFL-CIO, having filed a complaint with the Wisconsin Employment Relations Commission, hereinafter the Commission, alleging that Sawyer County Highway Committee has committed a prohibited practice within the meaning of Section 111.70(3)(a)5 of the Municipal Employment Relations Act (MERA); and the Commission having appointed Sherwood Malamud, a member of its staff, to act as Examiner and make and issue Findings of Fact, Conclusions of Law and Orders pursuant to Section 111.07(5) of the Wisconsin Employment Peace Act, as made applicable to municipal employment by Section 111.70(4)(b) of MERA; and hearing on said complaint having been held at Hayward, Wisconsin, on June 23, 1975; and the period allotted for submission of briefs having expired on September 18, 1975; and the Examiner having considered the evidence and arguments of the parties, and being fully advised in the premises, makes and issues the following Findings of Fact, Conclusions of Law and Orders.

FINDINGS OF FACT

1. That Sawyer County Highway Department Employees Local No. 1213, AFSCME, AFL-CIO, hereinafter Complainant, is a labor organization as that term is defined in Section 111.70(1)(j) of the Wisconsin Statutes, and has been, at all times material hereto, the exclusive bargaining representative of employees employed in the Sawyer County Highway Department, and that its principal representative is Mr. Richard C. Erickson.

2. That Sawyer County Highway Committee, hereinafter Respondent, is a municipal employer as that term is defined in Section 111.70(1)(a) of the Wisconsin Statutes, and that said Highway Committee is charged with the management, supervision and control of the Sawyer County Highway Department. That at all times material hereto, Mr. Robert Swanson was the Highway Commissioner and Mr. Charles Ackerman was the labor negotiator and representative of Respondent in labor relations matters.

3. That at all times material hereto, Complainant and Respondent were parties to a collective bargaining agreement effective from January 1, 1974 through December 31, 1974, covering wages, hours and conditions of employment of said highway department employees, and

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that said agreement contains a four step grievance procedure, the final step of which culminates in final and binding arbitration; and wherein a grievance is defined as follows:

"ARTICLE VI GRIEVANCE PROCEDURE

Section 1 A grievance is a complaint, dispute or controversy in which it is claimed that the collective bargaining agreement has been violated, and which involves either a dispute to the facts involved or a question concerning the meaning, interpretation, scope or application of this Agreement or both."

and said agreement further contains the following provisions material hereto:

"ARTICLE IV SENIORITY

. . . .

Section 2 Seniority rights shall begin with the date of original appointment and shall not be diminished [sic] by temporary layoffs due to shortage of work, lack of funds, authorized leaves of absence, or any other contingency beyond the control of the parties to this Agreement.

. . . .

Section 3 All employees shall be classified in the various job classifications of the Sawyer County Highway Department. All job vacancies and new positions should be posted on the shop bulletin boards at least [sic] ten (10) days prior to the filling of such vacancies or new positions, for the job.

. . . .

ARTICLE V DISMISSALS

Section 1 The Committee agrees that it will act in good faith in the dismissal of any employee. Should the Union present a grievance in connection with the dismissal of any employee within 10 days of such dismissal, to the Committee, the dismissal shall be reviewed under the terms of the Grievance Procedure as specified in Article VI.

. . . .

ARTICLE XXIII

Section 1 This Agreement, when agreed on between the Union and Sawyer County Highway Committee, shall be effective as of January 1, 1974, and shall remain in full force and effect until December 31, 1974, and shall automatically renew itself from year to year thereafter until such time that either party desiring to alter, amend, or otherwise change this Agreement serves written notice upon the other not later than August 1, of the current year or the first day of August in any year thereafter. Only amendments or changes that are stated in the written notice or notices may be subject to renegotiations.

Section 2 It is further agreed that the request for wage increases and fringe benefits which substantially effect the employer's budgeting shall be made by August 1st of any year. Such changes agreed to shall not be effective prior to the beginning of the next contract year."

4. That on or about April 4, 1975, 1/ Complainant and Respondent reached agreement on a wage schedule for the 1975 calendar year for employees employed in the Highway Department; that tentative agreement was reached on a working draft of a collective bargaining agreement which the Sawyer County Board has refused to ratify; and that Articles IV, V, VI and XXIII of the 1974 collective bargaining agreement were not opened or discussed by the parties during their negotiations nor was any issue raised concerning the language contained in said Articles of the 1974 agreement.

5. That on January 21 Complainant filed a grievance concerning the demotion of Frank Metcalf from Patrolman to Patrolman helper; that said demotion occurred during January, 1975 and was administered to Metcalf for his alleged failure to properly remove snow and ice during a plowing assignment.

6. That on January 27 and February 17 Complainant's representative Erickson wrote Respondent asking for a meeting on the Metcalf grievance; on February 7 and March 3 Swanson, Respondent's Highway Commissioner responded to Erickson's request for a meeting by stating Respondent's decision to delay a meeting on the Metcalf grievance until Respondent's labor negotiator, Ackerman had recovered from his illness.

7. That on April 4, during a negotiation session between the parties, Complainant again requested Respondent to discuss the Metcalf grievance; that Respondent refused to discuss and process the Metcalf grievance, and that as of the date of hearing Respondent continues to refuse to process the Metcalf grievance through the grievance procedure.

8. That the Metcalf grievance states a claim which on its face is governed by the terms of the parties' collective bargaining agreement.

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

CONCLUSIONS OF LAW

1. That as a result of the operation of Article XXIII of the parties' 1974 collective bargaining agreement all articles not "opened" for negotiations for a 1975 agreement and specifically Articles IV, V and VI of said agreement were in effect for the calendar year 1975.

2. That the Metcalf grievance arose in January, 1975 at a time when the grievance procedure contained in the 1974 agreement continued in effect.

3. That the Metcalf grievance states a claim which on its face is governed by the terms of the collective bargaining agreement which continued in effect as a result of the operation of Article XXIII of said agreement, and that Respondent by its refusal to process the Metcalf grievance through the contractually established grievance procedure has committed and is committing a prohibited practice within the meaning of Section 111.70(3)(a)5 of the Municipal Employment Relations Act.

1/ Unless specified otherwise, all dates refer to 1975.

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

ORDERS

IT IS ORDERED that Sawyer County Highway Committee, its officers and agents, shall immediately:

1. Cease and desist from refusing to submit the Metcalf grievance to arbitration.
2. Take the following action which the Examiner finds will effectuate the policies of Section 111.70 of the Wisconsin Statutes:
 - (a) Comply with the arbitration provisions of the 1974 collective bargaining agreement continued and in effect for calendar year 1975.
 - (b) Upon request of the Sawyer County Highway Department Employees Local No. 1213 AFSCME, AFL-CIO, participate in the selection of an arbitrator.
 - (c) Participate in the arbitration proceeding on the Metcalf grievance and on all issues related thereto before the arbitrator so appointed.
 - (d) Notify the Wisconsin Employment Relations Commission in writing within twenty (20) days of the date of this Order what action has been taken to comply herewith.

Dated at Madison, Wisconsin this 2nd day of January, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Sherwood Malamud
Sherwood Malamud, Examiner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDERS

Complainant alleges that Respondent refused to process the Metcalf grievance through the contractually established grievance procedure. Respondent claims the 1974 agreement was terminated and no agreement was in effect at the time the grievance arose, therefore, it asserts it is not required to process Metcalf's grievance. Respondent's assertion of the non-existence of a contract at the time the grievance arose is reflected in paragraph 7 of the Complainant's complaint. Respondent chose not to file an answer, and it did not present any witnesses or evidence at the hearing.

The gravamen of this case concerns the continuation of a grievance procedure at the time the Metcalf grievance arose in January, 1975. Article XXIII, Section 1 of the 1974 agreement, the duration clause, provides for automatic renewal of the Agreement unless either party serves notice of its desire to alter, amend or otherwise change the agreement. Then Article XXIII, Section 1 states that:

"Only amendments or changes that are stated in the written notice or notices may be subject to negotiations."

It is a well accepted principal of contract interpretation that the words contained in a collective bargaining agreement should be given their plain meaning. 2/ Article XXIII states that only those provisions or items for negotiations contained in a written notice shall be subject for negotiations; all other provisions of the agreement not opened for discussion by either party through the written notice shall continue in full force and effect for one year. Article XXIII itself was not opened for 1975 negotiations. 3/ Furthermore, it is apparent that Articles IV, V and VI of the 1974 agreement, as well, were not opened for negotiations for a 1975 agreement. On that basis, the Examiner concluded that Articles IV, V and VI continued in full force and effect for calendar year 1975.

In light of the Examiner's conclusion that Article VI was in effect at the time the grievance arose in January, 1975, it remains for the Examiner to determine if the Metcalf grievance states a claim which on its face is governed by the collective bargaining agreement. 4/

A grievance is defined in Article VI of the agreement as a "complaint, dispute or controversy in which it is claimed that the collective bargaining agreement has been violated . . ." Furthermore, Metcalf filed his grievance protesting his disciplinary demotion from Patrolman to Patrolman helper for his alleged failure to properly clear ice and snow from the County's roads. The subject contained in Article IV is seniority and the subject of Article V is seniority. Thus Metcalf's grievance states a claim which on its face is governed by the terms of the agreement. The disposition of the grievance is for an arbitrator.

2/ Elkouri and Elkouri, How Arbitration Works, 2nd Ed. BNA, 1973 at p. 303-304.

3/ Transcript p. 9.

4/ Costburg Joint School District No. 14 (11196-A, B) 11/72, 12/74; aff'd Sheboygan Circuit Court 6/74.

The parties have not processed the Metcalf grievance through any step of the grievance procedure. However, the Examiner has directed the parties to arbitration, and his order permits the arbitrator selected to direct the parties through their grievance procedure prior to the arbitration hearing on the Metcalf grievance.

Dated at Madison, Wisconsin this 2nd day of January, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Sherwood Malamud
Sherwood Malamud, Examiner