

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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LOCAL UNION 323, WCCME, AFSCME, AFL-CIO, :

Complainant, :

vs. :

CITY OF ADAMS, :

Respondent. :

Case IV  
No. 19728 MP-533  
Decision No. 14082-A

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Appearances:

Mr. Darold Lowe, District Representative, WCCME, AFSCME, AFL-CIO,  
appearing on behalf of the Complainant.  
Mr. Jay Paddock, Chairman, Bargaining Committee, appearing on  
behalf of the Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

A complaint of prohibited practices having been filed with the Wisconsin Employment Relations Commission in the above-entitled matter; and the Commission having appointed Dennis P. McGilligan, a member of the Commission's staff, to act as Examiner and to make and issue Findings of Fact, Conclusions of Law and Order as provided in Section 111.07(5) of the Wisconsin Statutes; and hearing on said complaint having been held at Adams, Wisconsin, on December 2, 1975, before the Examiner, and the Examiner 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 Local Union 323, WCCME, AFSCME, AFL-CIO, hereinafter referred to as the Complainant or Union, is a labor organization having offices at Madison, Wisconsin, and is recognized by the City of Adams as the representative of all employees of the City of Adams Water and Sewer Departments, City Dump and the Street Department for the purposes of collective bargaining on questions of wages, hours and working conditions.
2. That City of Adams, hereinafter referred to as the Respondent, is a Municipal Employer and operates a Water and Sewer Department, City Dump and Street Department.
3. That the Complainant and Respondent, at all times material herein, were signators to a collective bargaining agreement effective January 1, 1975 covering wages, hours and conditions of employment of the employees in the aforesaid unit; and that said agreement contained the following provision:

"ARTICLE XIX - WAGE AND SALARY SCHEDULE

19.01 Effective January 1, 1975, the following wage and salary schedule shall be paid:

<u>Street Dept.</u>		<u>Sewer and Water Dept.</u>	
Crew Leader	\$4.20	Sewer Plant Operator	\$4.20
Equipment Operator	\$4.15	Equipment Operator	\$4.15
Laborer	\$4.10	Sanit. Fill Operator	\$4.10

19.02 Employees shall be paid every other Friday. The paycheck shall indicate rate of pay, hours worked, overtime worked and deductions made.";

and that said agreement provided for the final and binding resolution of disputes concerning its interpretation or application only by mutual agreement of the parties, and in the alternative, permitted the moving party to file a prohibited practice complaint with the Commission to obtain adjudication of the grievance.

4. That on January 1, 1975, and thereafter through March 28, 1975, Vernon Christiansen was employed by the City of Adams as operator of the Sewage Treatment Plant and co-operator of the Water Department, and was a member of the bargaining unit represented by the Union; that the above collective bargaining agreement was executed by the parties on May 19, 1975 and, as noted above, provided for retroactive wage adjustments for bargaining unit employees back to January 1, 1975; that all bargaining unit employees except Vernon Christiansen received retroactive pay back to January 1, 1975.

5. That by letter dated July 21, 1975, the Complainant submitted Vernon Christiansen's grievance for retroactive pay to Jay Paddock, Chairman of the City Council Bargaining Committee; that by letter dated August 4, 1975, Chairman Paddock, on behalf of the Respondent, denied grievant's claim; that by letter dated August 6, 1975, the Complainant requested a meeting to attempt to resolve the above matter; that subsequently the Complainant and the Respondent met without success in an attempt to resolve the matter; that by letter dated August 22, 1975, the Complainant herein took the position that the Respondent withheld \$395.74 in wages from Vernon Christiansen in violation of the collective bargaining agreement between the Respondent and the Union; that by letter dated September 1, 1975, Chairman Paddock, for the Respondent, denied said claim; that by letter dated September 3, 1975, the Complainant requested that the Respondent proceed to arbitration on the above matter; that by letter dated October 16, 1975, the Complainant, based on the Employer's lack of response to the September 3 letter, renewed its request for arbitration or in the alternative advised that the Union would file a prohibited practice; that, on October 22, 1975, Chairman Paddock, by telephone, made an offer to the Union to settle the dispute; that by letter dated October 23, 1975, the Complainant rejected the Employer's attempt to settle the matter and indicated the Union would file a complaint; that, by failing to acquiesce to the Complainant's request to proceed to final and binding arbitration in the matter, the Respondent effectively denied the Union's request for same; that the Respondent did not indicate at hearing that it was willing to proceed to arbitration on the matter; and that the grievance procedure contained in the collective bargaining agreement was exhausted.

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

#### CONCLUSIONS OF LAW

1. That the Complainant exhausted the grievance procedure established by the collective bargaining agreement between Complainant and Respondent; and that the Complainant made a request of the Respondent to proceed to arbitration on the Christiansen grievance which was denied by Respondent's failure to acquiesce to said request, thus permitting the Complainant, according to the terms of the aforementioned collective agreement, to file a prohibited practice complaint with the Commission to obtain adjudication of the grievance; that therefore, the Examiner will assert the jurisdiction of the Wisconsin Employment Relations Commission to determine the merits of said grievance.

2. That the Respondent, City of Adams, has failed to pay Vernon Christiansen retroactive wages due him in violation of the terms of the collective bargaining agreement existing between said Respondent and Complainant, Local Union 323, WCCME, AFSCME, AFL-CIO and in so failing to pay the above wages has committed a prohibited practice within the meaning of Section 111.70(3)(a)5 of the Municipal Employment Relations Act.

Based upon the above and foregoing Findings of Fact and Conclusions of Law, the Examiner makes and enters the following

ORDER

1. That the Respondent, City of Adams, shall immediately make Vernon Christiansen whole in the amount of \$395.74 retroactive pay, less normal deductions for the period from January 1, 1975 through March 28, 1975, as required by Article XIX of the collective bargaining agreement.

2. That the Respondent, City of Adams, notify the Wisconsin Employment Relations Commission in writing within twenty (20) days following the date of this Order as to what steps it has taken to comply herewith.

Dated at Madison, Wisconsin this *3/24* day of March, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

*Dennis P. McGilligan*  
Dennis P. McGilligan, Examiner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

The complaint alleges that the Respondent violated the 1975 collective bargaining agreement between the Respondent and the Complainant, by denying the grievant, Vernon Christiansen, retroactive pay from January 1, 1975, through March 28, 1975. The Examiner held a hearing on December 2, 1975. Both parties made oral argument at the close of the hearing. The transcript was issued on December 24, 1975.

POSITION OF THE COMPLAINANT:

On October 24, 1975, Complainant filed a complaint with the Commission alleging:

- "8. That Mr. Vernon Christiansen has been denied such retroactive pay to which he is entitled in accordance with the terms of the collective bargaining agreement.
9. That the retroactive wages to which Mr. Vernon Christiansen is entitled are in the amount of \$395.74.
10. That the denial of such wages is a violation of the terms of the collective bargaining Agreement."

Complainant points out that Vernon Christiansen was an employe of the City of Adams in the bargaining unit represented by the Union from January 1, 1975 through March 28, 1975. Complainant states that it executed a collective bargaining agreement on May 19, 1975 with the Respondent effective for the period January 1, 1975 through December 31, 1975. Complainant argues said agreement provided for wage adjustments for bargaining unit employes retroactive to January 1, 1975. Complainant maintains that all bargaining unit employes except Vernon Christiansen received such pay. Complainant argues that the City of Adams violated the terms of the collective bargaining agreement by failing to pay Christiansen the retroactive pay he was entitled to. As a result, Complainant maintains that the Respondent violated the Municipal Employment Relations Act. Complainant asks that the Respondent be ordered to cease such actions and pay Vernon Christiansen the retroactive wages he is entitled to in the amount of \$395.74 less normal deductions for the period of time in question.

POSITION OF THE RESPONDENT:

Respondent did not file an answer to the above complaint. Respondent initially argues that the Union failed to file a formal grievance on the matter and follow the grievance procedure as set out in the labor contract.

Respondent also argues that it did not violate the collective bargaining agreement by failing to pay Vernon Christiansen retroactive pay.

Respondent would have the Examiner deny and dismiss the complaint.

JURISDICTION OF THE COMMISSION.

The collective bargaining agreement between the parties provides for final and binding resolution of disputes concerning its interpretation or application only by mutual agreement of the parties, and in the

alternative permits the moving party to file a prohibited practice complaint with the Commission to obtain adjudication of the grievance. At the hearing the Respondent maintained that the Complainant did not file a formal grievance on the matter or follow the grievance procedure contained in the collective bargaining agreement. Although the Complainant did not file the grievance and process it in strict compliance with the grievance procedure set out in the labor contract, the record indicates that both parties treated Vernon Christiansen's claim for retroactive wages as a grievance and handled it as such through all their correspondence and attempts to resolve the matter. Since the Respondent raised no objection concerning the Complainant's processing of said grievance prior to the hearing date, and based on the above, the Examiner finds that the Complainant substantially complied with the aforementioned grievance procedure.

As noted above, the contract contained a procedure for final and binding arbitration by mutual consent of the parties. The Complainant made several requests of the Respondent to proceed to arbitration but received no reply. Nor did the Respondent indicate at hearing that it was willing to proceed to arbitration in the matter. By failing to acquiesce to the Complainant's request for arbitration, the Respondent permitted the Complainant, in accordance with the terms of the collective bargaining agreement, to file a prohibited practice complaint with the Commission to obtain adjudication of the grievance.

Based on all of the above, the Examiner finds that the Complainant exhausted the grievance procedure contained in the collective bargaining agreement, and, based on the refusal of the Respondent to proceed to arbitration, filed a prohibited practice complaint with the Commission according to the terms of said agreement. Therefore, the undersigned has asserted the jurisdiction of the Commission to determine the merits of said grievance.

#### SUBSTANTIVE ISSUE:

As noted above, the primary issue herein is whether the Respondent breached its collective bargaining agreement with the Complainant when it failed to pay Vernon Christiansen retroactive pay back to January 1, 1975.

Respondent argues that it did not violate the collective bargaining agreement by failing to pay Vernon Christiansen retroactive pay. Respondent basically contends that Vernon Christiansen was not an employee on May 19, 1975 when the Union and the Employer executed the collective bargaining agreement, and that there was no agreement in effect while said employee worked for the City of Adams.

However, the record indicates that Vernon Christiansen was an employee of the City of Adams in the bargaining unit represented by the Union from January 1, 1975 through March 28, 1975. Although the Union and the Employer herein executed the 1975 collective bargaining agreement on May 19, 1975, the parties agreed to payment of retroactive wage adjustments effective January 1, 1975 as per Article XIX of said agreement. As a result, Vernon Christiansen is entitled to retroactive pay for the period he was an employee of the City of Adams, a member of the aforementioned bargaining unit and covered by the parties' collective bargaining agreement from January 1, 1975 through March 28, 1975.

In support thereto, it should be noted that if the parties had intended to leave any employees out of the retroactive pay provided in the aforementioned collective bargaining agreement it should have been reflected in their actions and (or) agreement. Absent any evidence to the contrary, it is reasonable to construe that retroactive pay extends to all employees of the bargaining unit during the period in question, including Vernon Christiansen.

Based on the above, the undersigned finds that the Respondent acted improperly by failing to pay Vernon Christiansen retroactive pay in conformance with the terms of the contract, and therefore, the Respondent did violate the collective bargaining agreement and commit a prohibited practice. Therefore, the Examiner directs the Respondent to pay Vernon Christiansen the sum of \$395.74, less normal deductions, as requested by the Complainant.

Dated at Madison, Wisconsin this 31<sup>st</sup> day of March, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Dennis P. McGilligan  
Dennis P. McGilligan, Examiner