

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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TEAMSTERS UNION LOCAL NO. 695,	:	
	:	
Complainant,	:	
	:	
vs.	:	Case XIX
	:	No. 20330 MP-605
COUNTY OF ADAMS SHERIFF DEPARTMENT,	:	Decision No. 14510-A
	:	
Respondent.	:	
	:	

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Appearances:

Goldberg, Previant and Uelmen, Attorneys at Law, by Mr. David L. Uelmen, appearing on behalf of the Complainant.  
Mr. Charles A. Pollex, District Attorney, appearing on behalf of Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Teamsters Union Local 695, hereinafter Complainant, having filed a complaint on March 29, 1976 with the Wisconsin Employment Relations Commission, hereinafter the Commission, alleging that County of Adams Sheriff Department, hereinafter Respondent, has committed a prohibited practice under the Municipal Employment Relations Act (MERA); and the Commission having appointed Sherwood Malamud, a member of its staff, to act as Examiner to 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)(a) of MERA; and hearing on said complaint having been held at Friendship, Wisconsin on May 19, 1976, and the parties having filed briefs by June 30, 1976; and the Examiner having considered the evidence and arguments of the parties, 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 Complainant is a labor organization, and it is the voluntarily recognized exclusive collective bargaining representative of all employes employed by the above captioned Municipal Employer; that Merle Baker is a business representative of Complainant assigned to service the agreement between Complainant and Respondent; and that Mr. Jerald Meunier is an individual who at all times material hereto was employed as an officer in the Adams County Sheriff's Department.
2. That the Respondent, Adams County Sheriff's Department, is a municipal employer; that the Law Enforcement Committee, hereinafter the Committee, of the Adams County Board of Supervisors is charged with oversight and supervision of said department; that said Committee is comprised of members of the Adams County Board of Supervisors and that its representative for all matters material hereto is the Adams County District Attorney, Charles A. Pollex.

3. That Complainant and Respondent are parties to a collective bargaining agreement which is in effect from January 1, 1976 through December 31, 1976 and which contains the following provisions material hereto:

"ARTICLE IV - GRIEVANCE PROCEDURE

Section 1. A grievance shall be defined as a dispute or disagreement raised by an employee against the employer involving the interpretation or application of the specific provisions of this Agreement. Grievances, as herein defined, shall be processed in the following manner:

Step One. The aggrieved Employee, the Union Committee and/or the Union representative shall present the grievance to the Sheriff.

Step Two. If a satisfactory settlement is not reached as outlined in Step One within one (1) week, the Union Committee and/or the Union representative may present the grievance, in writing, to the County Law Enforcement Committee or its designate. A meeting shall be held within one (1) week of receipt of written request from the other party.

Step Three. If a satisfactory [sic] settlement is not reached as outlined in Step Two, 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.

. . .

ARTICLE XII - CONSTRUCTION OF AGREEMENT

Section 1. The employer agrees that all conditions of employment pertaining to wages, hours of work, and general working conditions shall be maintained at not less than the highest minimum of standards in effect at the time of the signing of this Agreement unless otherwise agreed to in the course of negotiations.

ARTICLE XIII - STUDY COMMITTEE TO MEET

Section 1. During the terms of this Agreement, a committee shall be established to determine the conditions of employment referred to in Article XII, Rules and Regulations to apply to the employees covered under this Agreement and determine the intent of the language of Article V, Section 2, with reference to the application of the terminology of 'adequately manned'. Said committee shall consist of two (2) or more members of the Law Enforcement Committee of the Adams County Board of Supervisors and two (2) or more employees or their agents. This committee shall meet at mutually convenient times during the term of this contract. Until agreement is reached on the above matters, the present conditions shall be maintained."

that, at all times material hereto, the rules and regulations of Adams County Sheriff's Department were in effect, and that said rules and regulations contain the following: a narrative description of the administrative and operational organization of Respondent; the specific job descriptions of the several job classifications in the department; and that Rule 4 of said rules and regulations contains 46 subsections in which is set forth the rules of conduct and work rules for employes of Respondent; that Section 7 of Rule 4 is an exact replication of the grievance procedure set forth in Article IV, Section 1 of the 1976 collective bargaining agreement, set out above; furthermore, Rule 5 provides as follows:

"Rule 5: CHARGES

Any deputy of the department when charged with and found guilty of any of the following offenses may be suspended by the Sheriff according to the Law Enforcement Ordinance:

Section 1: Commission of a felony or misdemeanor under any law or ordinance whatsoever.

Section 2: Intoxication

Section 3: Neglect of duty

Section 4: Absence from duty without leave

Section 5: Conduct unbecoming an officer and detrimental to their service.

Section 6: Incapacity for duty either mental, physical, or educational.

Section 7: Neglect or refusal to pay just debts.

Section 8: Making a false official statement.

Section 9: Willful maltreatment of a prisoner

Section 10: Untruthfulness

Section 11: Accepting a bribe

Section 12: Altering anyones elses time card.

Section 13: Laying off or taking sick leave for other employment.

Section 14: Any other act or commission contrary to good order and discipline or constituting a violation of any of the previous of the rules and regulations of the department."

4. That on February 10, 1976 1/ Respondent telephonically advised Meunier of his discharge, and on February 13 it confirmed its action by letter.

5. That on February 20, Baker, business representative of Complainant, wrote the following letter and thereby filed a grievance concerning Meunier's discharge; said letter stated in material part that:

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1/ Unless otherwise indicated, all dates refer to 1976.

"I am in receipt of your letter dated February 13, 1976 in which you indicate Mr. Meunier has been dismissed. I would like for this to be a formal grievance filed by the Union in behalf of Mr. Meunier.

I do not feel that his dismissal was in conformance with State Statute 59.21 but I will bring that issue up when we meet.

This will also confirm our meeting before the Sheriff's Committee on February 23, 1976 at 1:30 P.M. at the Adams County Sheriff's Department."

6. That on February 24, District Attorney Pollex sent the following letter which in material part states as follows:

"Following a full hearing held before the Law Enforcement Committee of the Adams County Board of Supervisors on February 23, 1976, commencing at 1:30 P.M. in the County Board Room in the Village of Friendship, Wisconsin, it was determined by said Committee that the alledged [sic] misconduct of Officer Meunier result in the following disciplinary action:

1. That Officer Meunier be suspended, without pay for a period of sixty (60) days, commencing February 9, 1976.
2. That Officer Meunier be placed on probation status for a period of one (1) year commencing February 9, 1976.

Please consider this letter as the order of the Law Enforcement Committee. Should Officer Meunier wish to appeal from this order, such action should be commenced by serving written notice of intent to appeal on Mr. Roland Weber, Secretary of the Committee, within ten (10) days of your receipt of this order. Appeal will then be carried out in compliance with Section 59.21 (8)(b)6."

that the February 23 hearing mentioned in the above letter conformed to both the Step 2 of Article IV of the grievance procedure contained in the parties' agreement and the rules and regulations of the Adams County Sheriff's Department as well as to the statutory hearing provided under Chapter 59 of the Wisconsin Statutes.

7. That in response thereto, Baker, on February 26, sent the following letter which in material part states that:

"I am in receipt of your letter dated February 24, 1976 regarding the above matter. On behalf of Mr. Meunier, I wish to appeal the determination of the Committee.

I, therefore, request that the matter be submitted to arbitration and I shall appoint Michael Spencer, Business Representative, Teamsters Union Local No. 695, 1314 N. Stoughton Road, Madison, Wisconsin 53714 as the Union Arbitrator.

As I indicated on February 23, 1976 at the Hearing for Mr. Meunier, I do not believe that the County's procedure has been in compliance with State Statute 59.21 and I do not believe that the discipline metered out to Mr. Meunier is in conformance with our current Collective Bargaining Agreement.

Therefore, kindly submit the name of your appointed arbitrator within one (1) week to Mr. Spencer so that they might proceed with Step 3 of our Grievance Procedure.

If you cannot agree to implementation of the Grievance Procedure as outlined in our Contract, please advise me and I will gladly submit the matter to the W.E.R.C. for their determination."

8. That in response thereto, Pollex sent the following letter which in material part states that:

"At its meeting on March 1, 1976 the Law Enforcement Committee of the Adams County Board of Supervisors considered your letter to me of February 26, 1976. It was the Committee's decision that in matters such as this, involving employee discipline procedures, the grievance procedure set out in the employment agreement is not applicable. Therefore the County will not agree as to the implementation of the grievance procedure in regard to this matter.

I suggest you take whatever steps you deem appropriate."

9. That the dispute between Complainant and Respondent concerning the discharge of Officer Meunier arises out of a claim, which on its face, is covered by the terms of the collective bargaining agreement existing between the parties.

Based on the above and foregoing Findings of Fact, the Examiner makes and files the following

#### CONCLUSIONS OF LAW

1. That the Law Enforcement Committee of the Adams County Board of Supervisors in discharging Officer Meunier acted pursuant to and under the authority of Chapter 59 of the Wisconsin Statutes.

2. That by conducting a hearing on the Meunier grievance, the Law Enforcement Committee of the Adams County Board of Supervisors is not estopped from disputing the arbitrability of the Meunier grievance in the instant proceeding or in an arbitration forum.

3. That the dispute between Complainant and Respondent concerning the discharge of Officer Meunier arises out of a claim which on its face is covered by the parties' collective bargaining agreement; and that Respondent by refusing to proceed to arbitration on Meunier's grievance has committed and is committing a prohibited practice within the meaning of Section 111.70(3)(a)5 of the Municipal Employment Relations Act.

Based on the above and foregoing Findings of Fact and Conclusions of Law, the Examiner makes and files the following

#### ORDER

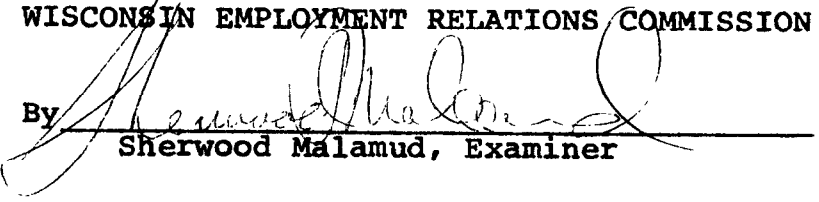
IT IS ORDERED that the Adams County Sheriff's Department, Respondent herein, its oversight committee the Law Enforcement Committee of the Adams County Board of Supervisors and its officers and agents shall immediately:

- A. Cease and desist from refusing to submit the Meunier grievance to arbitration;
- B. Take the following affirmative action which the Examiner finds will effectuate the policies of the Municipal Employment Relations Act:
1. Comply with the arbitration provisions of the 1976 collective bargaining agreement with respect to the Meunier grievance;
  2. Notify Complainant, Teamsters Local 695, that upon request, Respondent will proceed to arbitration the Meunier grievance and on all issues concerning same;
  3. Participate in the arbitration proceeding on the Meunier grievance and on all issues related thereto before the arbitrator so appointed.
  4. 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 16<sup>th</sup> day of November, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Sherwood Malamud, Examiner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

Introduction

Complainant claims that Respondent refuses to arbitrate the grievance concerning the discipline of Meunier. Respondent admits it refused to proceed to arbitration on the Meunier grievance, but it asserts that no disciplinary article appears in the agreement, and therefore, Meunier's grievance is not arbitrable.

Estoppel

Complainant argues that Respondent is estopped from denying the arbitrability of Meunier's grievance. Its argument is based on Respondent's alleged participation in the first and second steps of the grievance procedure.

The Examiner concludes that Complainant is not estopped from asserting its defense of nonarbitrability in the instant proceeding or in an arbitration forum. Complainant argues that Respondent was put on notice that Complainant was filing a grievance and that the February 23 hearing was held pursuant to Step 2 of the grievance procedure.

The Examiner agrees with Complainant that the February 23 hearing substantially complied with Step 2 of the grievance procedure. However, at no time did Respondent concede that the February 23 hearing was anything other than a hearing conducted under Chapter 59 of the Statutes. The Examiner found that the February 23 hearing complied with Step 2 of the grievance procedure and Chapter 59 of the Statutes. In its view, Respondent was not participating in the grievance procedure. Even if one were to assume, arguendo, that Respondent had participated in the first two steps of the grievance procedure, this would not estop Respondent from asserting its nonarbitrability defense in the instant proceeding. If Complainant's theory would be adopted, employers would refuse to discuss grievances in the early steps of the grievance procedure out of fear that they would be estopped from asserting the defense of non-arbitrability before the Commission. Such a policy would only serve to hinder the voluntary settlement of disputes rather than further the policy of labor peace contemplated by the Municipal Employment Relations Act.

The gravamen of this dispute concerns the arbitrability of the Meunier grievance. The agreement does not contain a discipline article. However, the agreement does contain at Article XII a maintenance of standards clause, and Article XIII does establish a study committee:

" . . . to determine the conditions of employment referred to in Article XII, Rules and Regulation, to apply to the employees covered under this Agreement and determine the intent of the language of Article V, Section 2, with reference to the application of the terminology of 'adequately manned.'"

An arbitrator may deem that the rules and regulations are incorporated in the agreement under Article XII, the maintenance of standards clause, or under Article XIII, which is recited above. Rule 5 of said rules and regulations contains the specification of charges and the discipline which may be assessed against an officer found guilty of such charges. Furthermore, Section 7 of Rule 4 restates the grievance procedure provided in Article IV of the agreement. The above recitation of contractual provisions and departmental rules may arguably form the basis for arbitral review of Respondent's disciplinary action.

The test applied in these cases is whether the grievance states a claim which on its face is covered by the collective bargaining agreement. Here, the Examiner finds that the link between the agreement and the departmental rules and regulations and the maintenance of standards clause meets that test. However, it is for the arbitrator to determine if the agreement does in fact provide a basis for review of Respondent's disciplinary action. 2/

Normally, in fashioning a remedy, the Examiner would direct the parties to proceed through all the steps of the grievance procedure. Here, however, the Examiner finds that the February 23 meeting provided Complainant and grievant, Meunier, with the forum for discussion and presentation of evidence contemplated by the agreement. Therefore, the Examiner did not direct the parties through the first two steps of the procedure for the sole purpose of attaining technical compliance with the grievance procedure. Instead, the parties were directed to arbitration.

Dated at Madison, Wisconsin this 16<sup>th</sup> day of November, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Sherwood Malamud, Examiner

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2/ Oostburg Jt. School Dist. #14 (11196-A,B) 12/72, aff'd Sheboygan Co. Cir. Ct. 6/74. See also WERC Municipal Digest published June 1975 under digest entry M865.3.1 for other cases on point.