

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MARVIN J. SLATER, PRESIDENT, LACROSSE  
CITY EMPLOYEE'S UNION, LOCAL 180,  
AFL-CIO,

Complainant,

vs.

CITY OF LACROSSE HIGHWAY DEPARTMENT,  
SUPERINTENDENT AMBROSE R. MARCO AND  
PERSONNEL DIRECTOR JEROME RUSCH,

Respondents.

Case XVI  
No. 20661 MP-642  
Decision No. 14791-A

Appearances:

Johns, Flaherty & Gillette, S.C., by Mr. James G. Birnbaum,  
appearing on behalf of the Complainant.

Mr. Jerome Rusch, Director of Personnel, appearing on behalf  
of the Respondents.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The above-named Complainant having on July 14, 1976, filed a complaint with the Wisconsin Employment Relations Commission alleging that the above-named Respondents committed a prohibited practice within the meaning of the Municipal Employment Relations Act, (MERA), and the Commission having appointed Peter G. Davis, 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 111.07(5) of the Wisconsin Statutes; and a hearing on said complaint having been held before the Examiner in LaCrosse, Wisconsin on August 17, 1976; and the Examiner having considered the evidence and arguments of counsel makes and files the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. That the LaCrosse City Employee's Union, Local 180, AFL-CIO, is a labor organization functioning as the exclusive collective bargaining representative of certain individuals employed by the City of LaCrosse; and that Marvin J. Slater, herein Complainant, is President of said labor organization.

2. That the City of LaCrosse, herein Respondent, is a Municipal Employer employing Ambrose R. Marco, herein Respondent Marco, as Superintendent of the Highway Department, and Jerome Rusch, herein Respondent Rusch, as Director of Personnel.

3. That at all times material herein Complainant and Respondent were parties to a collective bargaining agreement covering the wages, hours, and conditions of employment of the employees represented by the Complainant and that said agreement contained the following provisions:

"ARTICLE II

GRIEVANCE PROCEDURE

Matters involving the interpretation, application or enforcement of this contract shall constitute a grievance under the provisions set forth below:

No. 14791-A

- . . .
1. Discuss the grievance with his immediate supervisor. If no solution is reached he may
  2. Reduce the grievance in detail to writing using an 'Initiation of Grievance Form' and submit it to his supervisor who will note his comments and forward it to the Director of Personnel who with the Department Head will within five (5) days (Saturdays, Sundays & Holidays excluded) attempt to solve the grievance.
  3. If a satisfactory solution cannot be reached the grievant may within seven (7) days appeal to the City Employment Relations Commission.

The City Employment Relations Commission is composed of five members, one each from the Board of Public Works, the Auditorium Board, the Board of Health, the Board of Park Commissioners, and the Board of Police and Fire Commissioners and is designed to be an impartial disinterested board of final appeal.

Notwithstanding other provisions of this subsection, the Board of Public Works representative is designated to be the Deputy City Attorney. Each of the aforementioned boards shall elect one of their members to be its representative of the Employment Relations Commission, but in no case shall an alderman or department head serving on any board be elected to such Commission. After the passage of this resolution each board shall as soon as practical thereafter elect its member to the Commission and the Commission shall meet and designate its chairman and thereafter make rules for the conduct of its business. The City Clerk shall be the secretary to the Employment Relations Commission.

4. The Commission shall within thirty-one (31) calendar days hold hearings and do any and all things necessary to gather the necessary facts and make a decision.

At any stage in the grievance procedure, employees may be represented by persons of their choice. This may be a union or other organizational representative, or any other person.

All decisions of the Employment Relations Commission shall be in writing, and shall be transmitted to the employee as soon as possible after the decision is rendered. All such decisions shall be arrived at with due dispatch. Matters involving additional funds are subject to approval by the Common Council.

It is anticipated that most grievances will be satisfactorily solved below the department head level.

All grievances originating in all City Departments shall be handled in the manner outlined above and no deviation therefrom will be permitted. Specifically, employees are prohibited from presenting such grievances, formally or informally, to officers of the City of La Crosse not included in this procedure.

. . .

## ARTICLE VI

### SICK LEAVE

The accumulated sick leave may be used for any bonafide [sic] illness or injury excepting those compensated for under the Wisconsin Compensation Act, and except as to injuries or illnesses incurred by employees engaged in any outside employment or business while so engaged in any outside employment or business. Accumulated sick leave may be used by any employee in the event there is a death in the immediate family of the employee; immediate family being defined as spouse, children, brother, sister or parents. Parents in the preceding sentence shall be interpreted as parents of the employee and/or his/her spouse. Employees shall be permitted up to three (3) days of accumulated sick leave for absence because of death of those above defined.

All sicknesses or injuries of over three (3) days duration must be verified by a physician's certificate. This certificate must state the kind or nature of the illness or injury and that the employee has been incapacitated for work for said period of absence. The City reserves the right of reasonable independent medical examination at City's expense. Such medical examination shall be at the request of the Department Head or governing board.

Sick leave pay shall be based on the rate of pay of employee's regular classification.

Employees may use up to two (2) days of accumulated sick leave credits for personal business provided, however, that the employee shall notify his supervisor at least 24 hours prior to the time off requested. Such credit shall be deducted in a like amount from sick leave accumulation. Employees who have not accumulated sick leave shall not be entitled to such time off.

. . .

## ARTICLE XIII

### RESERVATION OF RIGHTS

Except as otherwise specifically provided herein, the management of the City of La Crosse and the direction of the work force, including but not limited to the right to hire, to discipline or discharge for proper cause, to decide initial job qualifications, to lay off for lack of work or funds, to abolish positions, to make reasonable rules and regulations governing conduct and safety, to determine the schedule of work, to sub-contract work, together with the right to determine the methods, processes and manner of performing work, are vested exclusively in Management.

New rules or changes in rules shall be posted in each department five (5) calendar days prior to their effective date unless an emergency requires a more rapid implementation of rule."

4. That on February 11, 1976, Ronald J. Amundsen, an employee of Respondent's Highway Department, filed a grievance which stated:

"Before work started I asked A. Marco if I could take off of work to go to the dentist. The appointment was at 10:30 A.M. and I told him it could last till noon. He said okay. I told Richard Smith that if I got out early I would be back as soon as possible! It was 11:31A.M. [sic] when I walked into the office and asked Marco if someone was around to take me out to the job. He said I could wait till after dinner to go back to work. I said, 'Do you want me to do something around here?' He said no, you wait till after dinner. I asked if I got paid for this. He said no, because I said it could be noon before I got back. On Thursday morning he called me into his office and threatened to send me home if I didn't change my time card. I feel if it was anyone else, there would have been no problem. I didn't want to abuse a half day sick leave for a one hour appointment. I also understand that Mr. Marco will not pay sick leave to go to the dentist. One time I asked for a Personnal [sic] Business day and Mr. Marco gave me a rough time about it. Another time he refused to let me take one and I had to take time off the following day to take care of my Personnal [sic] Business."

that said grievance requested one half hour pay as a remedy for Respondent Marco's action; that pursuant to Article II of the parties' bargaining agreement, Respondent Marco answered said grievance by denying the relief requested; and that on February 17, 1976, Amundsen indicated to the Respondent that he wished to proceed to the next step of the grievance procedure.

5. That on March 24, 1976, Roger D. Rommel and Francis Merfeld, employees of Respondent's Highway Department, filed identical grievances in response to the warning letter which each individual had received; that said grievances stated:

"Previous to the time our so called 'joy riding' we were repairing, straightening and rethreading the bolts of White-Way on Causwaye. We finished this job at approximately 3:20. Seeing it was only 25 minutes to check in time we took it upon ourselves to look for posts that need [sic] straightening as 25 minutes would not have been enough time to go to the shop and go out on another job. We straightened one at 8th and Redfield Street."

that said grievances requested that the warning letters be withdrawn; that pursuant to Article II of the parties' bargaining agreement Respondent Marco answered said grievances by denying the relief requested; and that both Rommel and Merfeld indicated to the Respondent that they wished to proceed to the next step of the grievance procedure.

6. That on April 18, 1976, the Complainant wrote Respondent Rusch indicating Local 180's desire to proceed to a hearing before the City Employment Relations Commission on the Amundsen, Rommel, and Merfeld grievances pursuant to Article II (3) of the grievance procedure; that said request was repeated in June 16, 1976. letters from the Complainant to Respondent Rusch; and that on June 22, 1974, Respondent Rusch sent a letter to Complainant indicating that it was Respondent's belief that none of the grievances raised issues involving the interpretation, application or enforcement of the bargaining agreement and thus that the contractual grievance procedure was not the means by which the three grievants could protest the action taken against them.

7. That Respondent has refused to process the Amundsen, Rommel and Merfeld grievances as required by Article II (3) of the parties' 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 grievances of Ronald J. Amundsen, Roger Rommel and Francis Merfeld raise claims which on their face are covered by the terms of the parties' collective bargaining agreement.
2. That the City of LaCrosse has violated and continues to violate the terms of Article II of the collective bargaining agreement existing between it and the LaCrosse City Employee's Union, Local 180, AFL-CIO by refusing to process the Amundsen, Rommel and Merfeld grievances and thus has committed and continues to commit 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 Examiner makes the following

ORDER

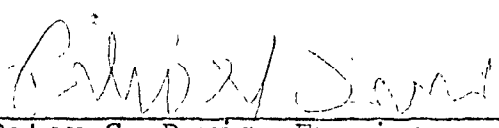
That the City of LaCrosse, its officers and agents shall immediately:

1. Cease and desist from refusing to process the Amundsen, Rommel, and Merfeld grievances.
2. Take the following affirmative action which the Examiner finds will effectuate the policies of Section 111.70 of the Municipal Employment Relations Act.
  - (a) Comply with the grievance provisions of the collective bargaining agreement existing between it and the LaCrosse City Employee's Union, Local 180, AFL-CIO, with respect to the Amundsen, Rommel and Merfeld grievances.
  - (b) Notify the LaCrosse City Employee's Union, Local 180, AFL-CIO that it will process the grievance and participate in a hearing before the City Employment Relations Commission.
  - (c) Notify the Wisconsin Employment Relations Commission in writing within twenty (20) days from the date of this Order as to what steps it has taken to comply herewith.

Dated at Madison, Wisconsin this 18th day of January, 1977.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Peter G. Davis, Examiner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

Section 111.70(3)(a)5 of the Municipal Employment Relations Act makes it a prohibited practice for a municipal employer "to violate any collective bargaining agreement agreed upon by the parties . . . ." When interpreting said provision with respect to questions of procedural and substantive arbitrability, the Commission has followed the federal substantive law set forth in the Trilogy cases 1/ and John Wiley and Sons, Inc. vs. Livingston, 376 U.S. 543, 55 LRRM, 2769 (1964). Thus in actions seeking enforcement of arbitration provisions contained in collective bargaining agreements, the Commission will interpret said clauses expansively and restrict itself to a determination of whether the party seeking arbitration makes a claim which, on its face, is covered by the bargaining agreement. 2/ The Commission's practice in this area is based upon the belief that it is a desirable policy to require that parties fully utilize their own voluntarily agreed upon contractual methods of grievance resolution. Inasmuch as this policy is equally applicable in the instant action to enforce the provisions of a contractual grievance procedure, the Examiner concludes that the same legal standard noted above should be applied. Thus, in the instant case the Examiner will interpret the provisions of the grievance procedure expansively and will restrict himself to a determination of whether the party seeking to process the grievance raises a claim which, on its face, is covered by the bargaining agreement.

Article II of the parties' bargaining agreement defines a "grievance" as "matters involving the interpretation, application or enforcement of the contract . . . ." The Respondent's refusal to proceed to a hearing before the City Employment Relations Commission is premised upon its belief that the three grievances do not raise issues which require the "interpretation, application or enforcement" of the collective bargaining agreement. The record reveals that the Amundsen grievance, while not specifically alleging the violation of a contractual provision, raises an issue with respect to the use of sick leave under Article VI of the bargaining agreement. The Rommel and Merfeld grievances, while again not specifically alleging the violation of a contractual provision, clearly indicate the grievants belief that the Respondent lacked just cause to discipline them within the meaning of Article XIII of the bargaining agreement. Therefore, the Examiner must conclude that all three grievances raise issues which on their face are covered by the collective bargaining agreement, and thus, that said grievances should be processed pursuant to the terms of Article II of the collective bargaining agreement.

Dated at Madison, Wisconsin this 18th day of January, 1977.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Peter G. Davis  
Peter G. Davis, Examiner

- 
- 1/ Steelworkers vs. American Mfg. Co., 353 U.S. 564 (1960); Steelworkers vs. Warrior and Gulf Navigation Co., 353 U.S. 574 (1970); Steelworkers vs. Enterprise Wheel & Car Corp., 363 U.S. 593 (1960).
- 2/ Oostburg Joint School Dist., (11196-A) 11/72; Monona Grove Joint School Dist., (11614-A) 7/73; Weyerhaeuser Joint School Dist., (12984) 8/74; Portage Joint School Dist. No. 1, (14372-A) 8/76; Spooner Joint School Dist. No. 1, (14416-A) 9/76.