

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Respondent.

ARTICLE XI

2. Time Limitations - The failure of a party to file or appeal a grievance in a timely fashion as provided herein shall be deemed a waiver of the grievance. A party who fails to receive a reply in a timely fashion shall have the right to automatically proceed to the next step of the grievance procedure. However, these limits may be extended by mutual consent in writing.

3. Names of Union and City Officials - The Union shall provide the City with a list of the members of the grievance committee in writing and further present the City with a list of the local Union officials assigned to various aspects of the grievance process. The City shall also provide the Union with a list of City officials assigned to process grievances.

4. Settlement of Grievance - Any grievance shall be considered settled at the completion of any step in the procedure, if all parties concerned are mutually satisfied. Dissatisfaction is implied in recourse from one step to the next. Silence beyond the time limit for an answer shall be taken as a rejection of the grievance.

5. Steps in Procedure -

Step 1. The grievant, or Union in the event of a policy grievance, shall first present the grievance in writing to the Assistant Chief of the Fire Department in charge of his platoon no later than thirty (30) days from the day of the last cause of such grievance or from the date that the employee knew about the cause of the grievance. During the pendency of the grievance, the employee shall continue to perform his assigned work tasks, except where a safety situation is involved. The grievance shall be presented by the employee and not more than two (2) Union representatives. In the event of a policy grievance (not individual), the employee need not be present. If the grievance is not resolved at this level within three (3) calendar days following its presentation to the Assistant Chief, it shall be presented in writing to the Chief of the Fire Department within five (5) calendar days.

Step 2. The Chief shall, within five (5) calendar days, hold an informal meeting with the employee involved and the representatives of the Union. If the matter is not resolved within three (3) calendar days following this meeting, any grievance, except for suspension and discharge under Section 62.13, Wisconsin Statutes may be submitted to arbitration by either party in accordance with Article XII. Such submission to

arbitration shall be made within ten (10) calendar days following the final decision of the Chief. In the event of a grievance relating to suspension or discharge, it shall be processed pursuant to Article VIII of this Agreement.

ARTICLE XII ARBITRATION

1. Statement of Position - If a satisfactory settlement is not reached in Step 2, the employee and the Union must notify the Chairman of the Finance Committee, the Personnel Director, and the Labor Negotiator in writing within ten (10) days after the date that the decision of the Chief has been given to the aggrieved employee that they intend to process the grievance in arbitration. The party desiring arbitration shall submit to the other a written statement in writing setting forth its position relative to the grievance which has been processed through the steps of the grievance procedure. The submission of this written statement shall also be within the said ten (10) day period.

. . .

4. Arbitrator - Any grievance which cannot be settled through the above procedures may be submitted to an Arbitrator to be selected as follows: The City and the Union shall use their best efforts to select a mutually agreeable Arbitrator. If the City and the Union are unable to agree on an Arbitrator within thirty (30) days, either party may request the Wisconsin Employment Relations Commission to prepare a list of five (5) impartial Arbitrators. The Union and the City shall then alternately strike two (2) parties each on the slate with the party filing the grievance exercising the first and third strikes. The Union and the City shall exercise their strikes within fifteen (15) days following the receipt of the slate from the WERC. The remaining Arbitrator on the slate after the strikes shall then be notified of his appointment as Arbitrator in a joint statement from the City and the Union.

5. Scope of Award - The decision of the Arbitrator shall be limited to the grievance and shall be restricted solely to interpretation of the Agreement and such past practices as are existent in the Department. The Arbitrator shall not modify, add to, or delete from the express terms of this Agreement or past practices. The determination of the Arbitrator shall be final and binding upon the parties.

(4) That on January 26, 1979, the Union filed the following grievance with Respondent:

The promotion of an employee into the classification F4.0 without that employee being first on the eligibility list, is in violation of ARTICLE XIX of the 1978-1979 Article of Agreement between the City of Racine and Local 321 I.A.F.F., AFL-CIO.

That on February 8, 1979, the Union petitioned for arbitration consistent with the relevant terms of the Collective Bargaining Agreement; that on February 12, 1979, the Respondent by Ronald W. Chiapete, Chief of the Racine Fire Department, communicated to the Union that it, the City, "considered the grievance dropped", since, in the Fire Chief's opinion, "Step 2 of ARTICLE XI was not satisfied" on the part of the Union;

(5) That on February 14, 1979, James C. Kozina, Personnel Director for the City of Racine, communicated by letter the following to Alvin R. Smith, Vice-President of the Union:

Dear Mr. Smith:

This letter is to inform you that in accordance with our conversation of February 14, 1979, the City of Racine will not engage in the ultimately striking of arbitrators concerning your alleged grievance regarding the promotional procedure because the City feels that a valid grievance no longer exists.

The City contends that according to ARTICLE XI, Section 5, Step 2, the Fire Chief attempted to arrange for a meeting with the Union in conformance with the Labor Agreement. The Union failed to meet with the Chief and immediately petitioned for arbitration.

Consequently, the City feels that the Union did not comply with the terms of the Agreement, and therefore, valid agreements no longer exist and it has been dropped.

I hope this information suffices for your records.

Respectfully,

James C. Kozina
Personnel Director

(6) That Respondent has not consented to arbitrate the grievance underlying the instant complaint.

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

CONCLUSIONS OF LAW

(1) That Respondent, City of Racine, has violated, and continues to violate the terms of the Collective Bargaining Agreement existing between it and the Complainant by refusing to submit Complainant's grievance to arbitration, and by refusing to arbitrate said grievance has committed and is committing prohibitive practices 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 Respondent, City of Racine, and its agents, shall immediately:

(1) Cease and desist from refusing to submit the aforesaid grievance and issues related thereto to arbitration.

(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 arbitration provisions of the Collective Bargaining Agreement existing between Respondent and the International Association of Firefighters, Local 321, AFL-CIO, with respect to the subject grievance.

(b) Notify the International Association of Firefighters, Local 321, AFL-CIO that Respondent will proceed to arbitration on said grievance on the issues concerning the same.

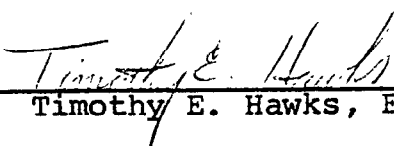
(c) Participate with the International Association of Firefighters, Local 321, AFL-CIO, in the arbitration proceedings before the Arbitrator who resolved the grievance.

(d) 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 23rd day of October, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By



Timothy E. Hawks, Examiner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

The essence of the City's refusal to proceed to arbitration regarding the underlying grievance in this matter, and its defense to the instant Complaint proceeding is the Union's failure to comply with Section 5., Step 2, of ARTICLE XI of the Collective Bargaining Agreement. That provision states as follows:

The Chief shall, within five (5) calendar days, hold an informal meeting with the employee involved with the representatives of the Union. If the matter is not resolved within three (3) calendar days following this meeting, any grievance, except for suspension and discharge under Section 62.13, Wis. Stats., may be submitted to arbitration by either party in accordance with ARTICLE XII. Such submission to arbitration shall be made within ten (10) calendar days following the final decision of the Chief. In the event of the grievance relating to suspension or discharge, it shall be processed pursuant to ARTICLE VIII of this Agreement.

The alleged failure of the Union to comply with the terms of this provision, as well as the ramifications of such failure should it in fact exist, is itself a matter of contractual interpretation susceptible to resolution by the grievance and arbitration procedures of parties established in ARTICLES XI and XII of the Collective Bargaining Agreement between them. Notably, Section 1. of ARTICLE XI states "A grievance shall mean any dispute arising out of this Agreement." A question of the Union's compliance with the grievance procedure is itself a "dispute arising out of this Agreement".

The Wisconsin Employment Relations Commission, in overturning an Examiner's decision in which the Examiner concluded failure to comply with procedural requirements of the grievance procedure of a collective bargaining agreement, was not an unfair labor practice, stated as follows:

The Examiner's conclusion of law that the Respondent did not violate Section 111.70(3)(a)(5) of the Municipal Employment Relations Act by its admitted refusal to proceed to binding arbitration is based on the Complainant's failure to exhaust the underlying steps of the grievance procedure. As the Complainant correctly points out, this conclusion is necessarily bottomed on an interpretation and application of the procedural requirements of the Agreement which, absent special circumstances not present here, should be left to the ultimate forum selected by the parties for interpreting and enforcing the terms of the Agreement - the arbitrator.^{1/}

Here, as in Sauk Prairie, the Employer's defense requires an interpretation of contractual language. Therefore, the undersigned concludes it

1/ Sauk Prairie Education Association (15282-B) 6/78

is not within his jurisdiction to review and apply the contractual provision to the facts raised by the Employer. Accordingly, the undersigned concludes that the Employer has and continues to commit a prohibited practice as defined by Section 111.70(3)(a)(5) of the Municipal Relations Employment Act.

Dated at Madison, Wisconsin this 23rd day of October, 1979.

By

Timothy E. Hawks
Timothy E. Hawks, Arbitrator