

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

DAVID J. SZIBEL,

Complainant,

vs.

VILLAGE OF BUTLER, a municipal
corporation/employer, and
VILLAGE OF BUTLER POLICE
DEPARTMENT,

Respondent.

Case 12
No. 38809 MP-1979
Decision No. 24661-B

Appearances:

Mr. James C. Wood, Attorney at Law, Suite 307, 704 West Wisconsin Avenue,
Milwaukee, Wisconsin 53233, appearing on behalf of the Complainant.
de la Mora & de la Mora, Attorneys at Law, 15255 Watertown Plank Road,
Elm Grove, Wisconsin 53122, by Mr. Hector de la Mora, appearing on
behalf of the Respondent.

ORDER AFFIRMING EXAMINER'S
FINDINGS OF FACT, CONCLUSIONS OF
LAW AND ORDER

Examiner Coleen A. Burns having on October 15, 1987, issued Findings of Fact, Conclusions of Law and Order in the above-entitled matter wherein she concluded that Respondent Village of Butler had not committed a prohibited practice within the meaning of Sec. 111.70(3)(a)5, Stats., by refusing to proceed to arbitration on Complainant's grievance; and Complainant having on October 20, 1987, timely filed a petition with the Commission seeking review of the Examiner's decision pursuant to Sec. 111.07(5), Stats.; and the Commission having, on October 26, 1987, established a briefing schedule; and Complainant having filed no brief and the Respondent having, on November 24, 1987, filed a letter setting forth its position that the Examiner should be affirmed and that the petition for review should be dismissed; and the Commission having reviewed the record, the petition for review, and the Examiner's decision, and being satisfied that the Examiner's Findings of Fact, Conclusions of Law and Order should be affirmed;

NOW THEREFORE, it is

ORDERED 1/

That the Examiner's Findings of Fact, Conclusions of Law and Order are hereby affirmed.

Given under our hands and seal at the City of
Madison, Wisconsin this 14th day of January, 1988.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Stephen Schoenfeld
Stephen Schoenfeld, Chairman

Herman Torosian
Herman Torosian, Commissioner

A. Henry Hempe
A. Henry Hempe, Commissioner

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- 1/ Pursuant to Sec. 227.48(2), Stats., the Commission hereby notifies the parties that a petition for rehearing may be filed with the Commission by following the procedures set forth in Sec. 227.49 and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.53, Stats.

227.49 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025(3)(e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

227.53 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefore personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.49, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.48. If a rehearing is requested under s. 227.49, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 77.59(6)(b), 182.70(6) and 182.71(5)(g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.57 upon which petitioner contends that the decision should be reversed or modified.

. . .

(c) Copies of the petition shall be served, personally or by certified mail, or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon all parties who appeared before the agency in the proceeding in which the order sought to be reviewed was made.

Note: For purposes of the above-noted statutory time-limits, the date of Commission service of this decision is the date it is placed in the mail (in this case the date appearing immediately above the signatures); the date of filing of a rehearing petition is the date of actual receipt by the Commission; and the service date of a judicial review petition is the date of actual receipt by the Court and placement in the mail to the Commission.

VILLAGE OF BUTLER (POLICE DEPARTMENT)

MEMORANDUM ACCOMPANYING ORDER AFFIRMING
EXAMINER'S FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

BACKGROUND

In its complaint, as amended at the hearing, the Complainant alleged that the Respondent committed a prohibited practice in violation of Sec. 111.70(3)(a)5, Stats., by refusing to proceed to arbitration on Complainant's grievance over his suspension. The Respondent in its answer denied committing any prohibited practice.

THE EXAMINER'S DECISION

The Examiner found that the term "party" under Article V, C(4) of the parties' collective bargaining agreement referred to the Union or the Employer and did not apply to individual employees. The Examiner concluded that as the Complainant, an individual employee, was seeking to arbitrate his grievance without the consent or concurrence of the Union, Respondent's refusal to proceed to arbitration on this individual grievance did not violate the agreement and did not violate Sec. 111.70(3)(a)5, Stats. Consequently, the Examiner dismissed the complaint.

THE PETITION FOR REVIEW

The Complainant's Petition for Review takes issue with the Examiner's Finding that where the Union has refused to process an employee's grievance to arbitration, the agreement does not require the Respondent to proceed to arbitration at the request of an individual grievant.

DISCUSSION

In her decision, the Examiner stated:

The language in dispute is contained in Article V, C(4) and states as follows:

(4) If a grievance is not satisfactorily settled in Step No. 3, either party may request that the matter be submitted to arbitration. The party shall request the Wisconsin Employment Relations Commission to name an arbitrator. The arbitrator shall make the decision on the grievance which shall be final and binding on both parties.

Complainant, contrary to Respondent, maintains that the word "party" must be construed to include individual employees, such as Complainant.

The word "party" is not defined in Article V, C(4) nor is it defined in any other provision of Article V. One must conclude, therefore, that the word "party" was intended to be given its common and ordinary meaning. In the context of a collective bargaining agreement, the word "party" commonly and ordinarily means the signatories in the collective bargaining agreement, i.e., the union and the employer. In the present case, the signatories are the Union and the Respondent Village of Butler. The language of Article V, C(4), on its face, is not susceptible to an interpretation which provides individual employees, such as the Complainant, with an independent right to process grievances to arbitration. Rather, the right to process grievances to arbitration is expressly reserved to the Union and the Respondent Village of Butler.

A review of the other provisions of Article V buttresses the conclusion that individual employees, such as the Complainant, do not have an independent right to process grievances to arbitration. Article V of the collective bargaining agreement expressly provides "the employee and/or his or her Association representative" with the right to

process a grievance at Step 1 and Step 2 of the grievance procedure. By substituting the word "party" for the phrase "the employee and/or his or her Association representative", the parties have demonstrated that the right to process a grievance at Step 4 is a different right than that which is available at Step 1 and Step 2 of the grievance procedure.

For the reasons discussed supra, the Examiner is persuaded that Complainant does not have an independent right to arbitrate his grievance. Inasmuch as the Union has refused to process Complainant's grievance to arbitration, Respondent does not have the contractual duty to arbitrate Complainant's grievance. Accordingly, Respondent's refusal to arbitrate Complainant's grievance does not violate Sec. 111.70(3)(a)5.

We concur with the Examiner's analysis of the parties' contract language and have therefore affirmed her decision.

Dated at Madison, Wisconsin this 14th day of January, 1988.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld
Stephen Schoenfeld, Chairman

Herman Torosian
Herman Torosian, Commissioner

A. Henry Hempe
A. Henry Hempe, Commissioner