

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
WISCONSIN PROFESSIONAL POLICE ASSOCIATION/LEER DIVISION

For Final and Binding Arbitration Involving Law Enforcement
Personnel in the Employ of

CITY OF LA CROSSE

Case 252
No. 50105
MIA-1846

Decision No. 28069-B

APPEARANCES

Cullen, Weston, Pines & Bach, Attorneys at Law, by **Mr. Gordon E. McQuillen**,
20 North Carroll Street, Madison, Wisconsin, 53703, on behalf of the Association.

Weld, Riley, Prenn & Ricci, S.C., Attorneys at Law, by **Mr. Stephen L. Weld**, 4330 Golf
Terrace, Suite 205, PO Box 1030, Eau Claire, Wisconsin, 54702-1030, on behalf of the
City.

ORDER DENYING REQUEST FOR NEW PANEL OF ARBITRATORS

Pursuant to Sec. 111.77, Stats., Arbitrator David B. Johnson was appointed as
interest arbitrator in the above matter by the Wisconsin Employment Relations Commission
on July 12, 1994. On May 24, 1995, Arbitrator Johnson issued an award which selected the
City of LaCrosse's final offer for the parties' 1994-1995 contract. The LaCrosse
Professional Police Association then sought to vacate or modify the award.

On June 25, 1996, LaCrosse County Circuit Court Judge Steven Luse Abbott issued
an order vacating the Johnson award. The City appealed the Abbott order to the Court of
Appeals.

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On September 27, 1996, while the appeal was pending, the Association asked that the Commission provide the parties with a new panel of arbitrators. By letter dated December 17, 1996, the Commission advised the parties that the request for a new panel was denied because of the pending judicial proceedings regarding the Johnson award.

On June 5, 1997, the Court of Appeals issued a decision affirming the Abbott order. The City filed an appeal with the Wisconsin Supreme Court but the Court elected not to take jurisdiction over the matter.

With assistance from Commission mediator Thomas Yaeger, the parties then engaged in an effort to voluntarily resolve the dispute. That effort proved unsuccessful, and the parties then filed written argument with the Commission as to the merits of the Association request for a new panel, the last of which was received November 10, 1997.

Having considered the matter, and being fully advised in the premises, the Commission makes and issues the following

ORDER

The Association's request for a new panel of arbitrators is denied.

Given under our hands and seal at the City of Madison, Wisconsin, this 2nd day of December 1997.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/
James R. Meier, Chairperson

A. Henry Hempe /s/
Henry Hempe, Commissioner

Paul A. Hahn /s/
Paul A. Hahn, Commissioner

City of LaCrosse

**MEMORANDUM ACCOMPANYING ORDER DENYING
REQUEST FOR NEW PANEL OF ARBITRATORS**

The Association argues it is appropriate for the Commission to provide the parties with a new panel of arbitrators because:

1. In the first hearing, Johnson improperly admitted evidence regarding the meaning of the City's final offer. That improper knowledge cannot be erased from Johnson's mind in a second proceeding.

2. When a second award is issued, the loser will understandably believe the prior litigation played a role in the outcome of the case.

3. Johnson's error caused the need for additional proceedings and he will thus be unjustly enriched if the parties have to pay additional monies for his services.

4. Returning the parties to the status quo which existed before the error was committed is a reasonable course of action.

5. There is no definitive precedent as to what should occur when an award is vacated but the Court does not specifically remand the matter to the existing arbitrator or to a new arbitrator. While it can be argued that the parties should return to the Court for clarification, the Commission should resolve the matter and thus save the parties further delay and expense.

6. A new panel does not prejudice the rights of either party and thus puts the parties on "the equal footing contemplated by MERA."

The City contends the dispute continues to be before Johnson and that the Commission lacks jurisdiction to provide a new panel. It argues Abbott did not direct that a new arbitrator be provided or that the matter be remanded to the Commission for further action. Under such circumstances, in the context of *GALLAGHER V. SCHERNECKER*, 60 Wis.2d 143 (1973), it is presumed that the matter returns to the original arbitrator for further proceedings.

The City also argues that Johnson's continued service will produce a more expeditious and less costly award than would be true if a new arbitrator was selected.

Should the Commission erroneously conclude that it has jurisdiction to remove the matter from Johnson's jurisdiction, the City asserts the arbitration process should begin again with the submission of new final offers and selection of a new arbitrator. By beginning again, the chances of the parties voluntarily settling the dispute would be greatly enhanced.

We think it clear that our role is limited to determining the meaning of Judge Abbott's order. That order stated:

IT IS ORDERED pursuant to Section 788.10(1)(d) Wis. Stats., the arbitration award signed May 24, 1995, is hereby vacated. The Court declines to modify the award pursuant to 758.11(1) Wis. Stats., (sic) because neither of the three grounds applies.

In GALLAGHER, the Court noted at 149 that:

"Ordinarily, where the award is vacated because of honest mistakes on the part of the arbitrator, a rehearing before the same arbitrator will be directed by the court"

The Court went on to comment that although substitution of a new arbitrator was within the discretion of trial court, such an exercise of discretion was within the court's discretion ". . . where clearly required by the facts of the case," Judge Abbott's order does not explicitly state what should occur now that the award has been vacated. Nonetheless, from the teachings of GALLAGHER and the facts of the case as recited in the opinion accompanying Judge Abbott's order, we think it reasonably clear that the Abbott order returns the dispute to Arbitrator Johnson. Thus, while we are sensitive to the concerns raised by the Association herein, 1/ we reject the Association request for a new arbitration panel because it is not what Judge Abbott ordered.

Given under our hands and seal at the City of Madison, Wisconsin, this 2nd day of December 1997.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/
James R. Meier, Chairperson

A. Henry Hempe /s/
Henry Hempe, Commissioner

Paul A. Hahn /s/
Paul A. Hahn, Commissioner

ENDNOTES

1/ The Association and the City have raised practical advantages and disadvantages to Arbitrator Johnson's continued participation in the case. Should Arbitrator Johnson choose to consider those matters and determine that the parties' best interests are served by his withdrawal from the case, he is of course free to take such action. Under such circumstances, we would then provide the parties with another panel of arbitrators and the matter would proceed based on the existing offers.

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