
STATE OF WISCONSIN
CIRCUIT COURT BRANCH 5
EAU CLAIRE COUNTY

EAU CLAIRE COUNTY,

Plaintiff,

-vs-

GENERAL TEAMSTERS UNION
LOCAL NO. 662,

and

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION,

Defendants.

PLAINTIFF'S NOTICE OF ENTRY OF JUDGMENT

Case No. 97CV407

[Decision No. 29131-C]

[NOTE: This document was re-keyed by WERC. Original pagination has been retained.]

TO: Atty. Kristine Aubin
Previant Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C.
P.O. Box 12993, Milwaukee, WI 53212

Asst. Atty. Gen. John D. Niemisto
P.O. Box 7857, Madison, WI 53707-7857

PLEASE TAKE NOTICE that judgment in this action was entered on October 1, 1998. A
copy of the judgment is attached.

Dated at Eau Claire, Wisconsin this 6th day of October, 1998.

EAU CLAIRE COUNTY CORPORATION COUNSEL:
Attorney for Plaintiff Eau Claire County

Keith R. Zehms /s/

Keith R. Zehms, Corporation Counsel
Courthouse, 721 Oxford Avenue
Eau Claire, WI 54703
(715) 839-4836

State Bar No. 1003778

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FINDINGS OF FACT
CONCLUSIONS OF LAW
JUDGMENT AND ORDER

FINDINGS OF FACT

The facts are stipulated between the parties and are so found as follows:

1. The plaintiff, Eau Claire County (hereinafter 'County'), is a quasi-municipal corporation duly organized under the laws of Wisconsin, with its principal offices located in the County courthouse, 721 Oxford Avenue, Eau Claire, Wisconsin, 54703.

2. The defendant, General Teamsters Union Local No. 662 (hereinafter 'Teamsters'), is a union affiliated with Wisconsin Teamsters Joint Council No. 39, Central States Drivers Council and is the exclusive bargaining agent for non-supervisory deputy sheriffs in the Eau Claire County Sheriff's Department. Teamsters maintains its principal offices at 119 West Madison Street, Eau Claire, Wisconsin, 54702-0086.

3. The defendant, Wisconsin Employment Relations Commissioner (hereinafter 'WERC'), is an agency of the state of Wisconsin responsible for administering and enforcing the Municipal Employment Relations Act under the Collective Bargaining Agreement between the County and the Teamsters Local No. 662. Appointing a staff member as arbitrator is the final step of the grievance process.

4. Michael Thomas is the Business Agent for the General Teamsters Union Local No. 662.

5. The Collective Bargaining Agreement between the County and the Teamsters, negotiated per Wis. Stat. §111.70, includes at Article 4 the disciplinary procedure which requires just cause for discharge. It also sets forth the procedure and time frame within which written appeals from discharge are to be handled. Article 5 incorporates four steps in the grievance process ending with arbitration as the fourth step.

6. In 1994, the County established a civil service system under Wis. Stat. §59.07(20), codified at Chapter 3.51 of the County Code. The civil service ordinance has remained in force and effect continuously since that time.

7. John R. Rizzo was employed as a deputy sheriff in the Eau Claire County Sheriff's Department from February 18, 1977 to November 5, 1996 when he was terminated by Sheriff Hewitt. The termination was based on the Findings of Fact and Decision dated November 4, 1996, issued by the Committee on Personnel acting as the Civil Service Commissioner under Wis. Stat. §59.07(20)(b), which provided:

"A law enforcement employee of the county may not be suspended, demoted, dismissed or suspended and demoted by the civil service commission or by the board, based either on its own investigation or on charges filed by the sheriff, unless the commission or board determines whether there is just cause, as described in this paragraph, to sustain the charges. In making its determination, the commission or the board shall apply the following standards, to the extent applicable:

1. *Whether the employee could reasonably be expected to have had knowledge of the probable consequences of his or her alleged conduct.*

2. *Whether the rule or order that the employee allegedly violated is reasonable.*

3. *Whether the sheriff, before filing a charge against the employee, made a reasonable effort to discover whether the employee did in fact violate a rule or order.*

4. *Whether the effort described under subd.3. was fair and objective.*

5. *Whether the sheriff discovered substantial evidence that the employee violated the rule or order as described in the charges filed against the employee.*

6. *Whether the sheriff is applying the rule or order fairly and without discrimination to the employee.*

7. *Whether the proposed discipline reasonably relates to the seriousness of the alleged violation and to the employ's record of service with the sheriff's department."*

8. John R. Rizzo was notified, in an October 11, 1996 letter from the sheriff, that the sheriff had requested a hearing before the Committee on Personnel and the Sheriff would recommend that Rizzo's employment be terminated.

9. The date and time of the hearing was confirmed by Personnel Committee Chairperson, Barry Robinson in an October 11, 1996 letter to John R. Rizzo.

10. In a letter dated October 28, 1996 from Teamsters Secretary-Treasurer James J. Newell, the Teamsters confirmed their appearance at the October 30, 1996 hearing.

11. The Disciplinary Proceedings were held on October 30, 1996, beginning at 1:15 p.m. and ending at 7:32 p.m. Keith R. Zehms, Corporation Counsel, appeared on behalf of Eau Claire County and James Newell, General Teamsters Local 662 appeared on behalf of John Rizzo. Six witnesses testified and all were sworn. Witnesses were examined on direct

and cross examination, and all testimony was transcribed. Objections were allowed and ruled on by the Presiding Officer. Twenty-three (23) exhibits were received into evidence.

12. In a November 5, 1996 letter from the County, John R. Rizzo and Teamsters were notified of his statutory appeal rights to circuit court.

13. No appeal to circuit court was ever taken.

14. On November 15, 1996, John R. Rizzo filed a grievance with the sheriff and personnel director for being "*discharged without just cause*" as required by the Collective Bargaining Agreement.

15. On November 18, 1996, Sheriff Hewitt denied the grievance.

16. In a November 29, 1996 letter, the County informed John R. Rizzo and Teamsters that "*the Union or Grievant cannot go through the statutory hearing under Section 59.07(20)(b), Stats. and then if not happy with the result proceed with the grievance to arbitration.*" The County continued to rely on the City of Janesville case as referenced in a prior February 7, 1996 letter to Teamsters and concluded the grievance was not arbitrable.

17. The Committee on Personnel never met to consider the grievance.

18. On February 11, 1997, Teamsters filed a complaint with the WERC, Case 192 No. 54897 MP-3269, alleging the County had committed prohibitive practices within the meaning of the Municipal Employment Relations Act by refusing to arbitrate the grievance appealing John R. Rizzo's discharge.

19. The WERC is interested in its capacity as the agency responsible for administering and enforcing municipal employment relations in the state of Wisconsin and more specifically since a WERC staff arbitrator is required under Article 6 of the Collective Bargaining Agreement between the County and Teamsters and as the agency having jurisdiction of the prohibitive practices complaint filed by Teamsters.

20. Teamsters Local 662 is interested in its capacity as a party to the Collective Bargaining Agreement and as Collective Bargaining Representative for non-supervisory deputy sheriffs in the Eau Claire County Sheriff's Department.

The Court further finds that Article 6, Section 6.04 of the collective bargaining agreement provides in relevant part, ...“The arbitrator shall take such evidence as, in his judgment, is appropriate for the disposition of the dispute.... The arbitrator shall proceed, in accordance with this Article, to determine the merits of the dispute submitted to arbitration.”

ISSUE

Is a deputy sheriff's sole and exclusive remedy, following an adverse decision of the Committee on Personnel acting as the Civil Service Commission, review by the circuit court pursuant to Wis. Stat. §59.21(8)(b)(6)?

CONCLUSION OF LAW AND JUDGMENT

Under the statutory scheme, the Committee on Personnel, acting as the Civil Service Commission, is the finder of fact. Once the matter is submitted to arbitration, the arbitrator becomes the fact finder. A trial de novo to an arbitrator nullifies and renders meaningless the findings of fact, and thus, the hearing before the Commission. Accordingly, such provisions are not capable of harmonization with the statutory scheme. Therefore, the arbitration provision is invalid and a permanent injunction is appropriate.

The provisions of statute and the collective bargaining agreement must be harmonized whenever possible. Glendale Professional Policeman's Association vs. Glendale, 83 Wis.2d 90 (1978) “The law of Wisconsin favors agreements to resolve municipal labor disputes by final and binding arbitration.” 108 Wis.2d 167, 172, 321 N.W.2d 224 (1982) quoting Oshkosh vs. Union Local 796-A, 99 Wis.2d 95, 102-103, 299 N.W.2d 210 (1980).

The defendant argues that the provisions are not in conflict because arbitration merely provides the employee the option of either an appeal to circuit court or binding arbitration. However, an “appeal” and “binding arbitration” are incompatible alternatives. An appeal is the review of a decision made by another decision-maker. With an appeal, conclusions of law may be subject to de novo review or afforded some degree of difference. An appeal to the circuit court may result in the matter being remanded back for further fact-finding by the Commission. The court does not conduct an evidentiary hearing itself, Wis. Stat. §59.21(8)(b)(6). On the other hand, with the arbitration provisions of the collective bargaining agreement, the findings of fact are irrelevant providing for a de novo review by the arbitrator. This makes the process before the Commission a nullity.

Under 1993 Senate Bill 66 – Substituted Amendment 1, there would have been an option to appeal either to an arbitrator or the court. However, in each case, there was not do novo review of the facts. Both the court and the arbitrator could remand the matter back to the Commission or Board for further factual finding. However, neither the court nor the arbitrator could substitute its own independent judgment of the findings of fact.

Senate Amendment 1 to 1993 Senate Bill 66 was not adopted as part of the final legislation. What the defendant seeks is for the court to adopt what the legislature has rejected and add the provision for independent de novo fact finding by the arbitrator. Since the arbitration provisions of the collective bargaining agreement would abrogate the authority specifically delegated to the Commission as a fact finder, then the collective bargaining agreement and the statute cannot be harmonized without nullifying the other. Accordingly, the irreconcilable conflict between the arbitration provisions of the collective bargaining agreement and the statutes renders the arbitration provisions of the collective bargaining

agreement invalid and void. This decision is consistent with City of Janesville vs. WERC, 193 Wis.2d 492, 535 N.W.2d 34 (Ct. App. 1995).

THEREFORE IT IS ORDERED, the Wisconsin Employment Relations Commission is hereby enjoined from holding any proceedings on prohibited practices complaint Case 192 No. 54897 MP-3269 pending before it, filed by General Teamsters Union Local No. 662, regarding the Eau Claire County Sheriff's Department and Deputy John R. Rizzo.

Dated this 1 day of October, 1998.

BY THE COURT:

Paul J. Lenz /s/

Paul J. Lenz

Circuit Court Judge, Branch 5

Copies: Attorney Keith R. Zehms
Attorney Kristine Aubin
Attorney John D. Niemisto