

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

THE MARSHFIELD POLICE OFFICER BARGAINING UNIT, Complainant,

vs.

CITY OF MARSHFIELD, Respondent.

Case 163
No. 65456
MP-4214

Decision No. 31590-A

Appearances:

Nicholas Fairweather, Attorney, Cullen, Weston, Pines & Bach, 122 West Washington Avenue, #900, Madison, Wisconsin 53703, appearing on behalf of the Complainant.

James Korom, Attorney, von Briesen & Roper, SC, 411 East Wisconsin Avenue, #700, Milwaukee, Wisconsin 53202, appearing on behalf of the Respondent.

EXAMINER'S ORDER DEFERRING TO GRIEVANCE ARBITRATION

On December 30, 2005, the Complainant (Union) filed with the WERC a complaint alleging that the Respondent (City) had violated Secs. 111.70(3)(a)4 and 5, of the Municipal Employment Relations Act (MERA), by notifying the Union on December 19, 2005, that the Police Union will be required to participate in a DBS Section 105 Plan Service Agreement (Health Reimbursement Arrangement) (HRA) for calendar year 2006.

The WERC appointed the undersigned Marshall L. Gratz to act as Examiner in the matter. The Examiner issued a notice scheduling a hearing in the matter for March 7, 2006.

On February 13, 2006, the City filed its answer denying that its alleged action constituted a prohibited practice, affirmatively alleging that the parties' calendar year 2004 agreement remains in effect in 2006 by reason of an evergreen clause and authorizes the City to continue implementation of the HRA in calendar 2006, moving to defer the complaint to grievance arbitration under the parties' 2004 agreement, and renouncing any technical objections which would prevent a decision on the merits by the arbitrator.

No. 31590-A

Pursuant to notice, the Examiner conducted a pre-hearing conference in the matter on February 23, 2006, during which the Union opposed the motion to defer and the Examiner called upon the Union to submit by e-mail any further statement of position regarding the motion that it wished considered by the Examiner. On February 27, 2006, the Union, by its Attorney, advised the Examiner by e-mail that the Union does not object to deferral "if the Commission maintains jurisdiction for any remedies not available in the arbitration proceeding, including costs and attorney fees," citing, CITY OF PRINCETON, DEC. NO. 31041-B (WERC, 6/05).

Upon consideration of the complaint, the answer and motion to defer (which included a copy of the parties' 2004 Agreement) and the Union's February 27, 2006, statement of position, the Examiner is satisfied: that the issues raised by the complaint are clearly addressed and made subject to final and binding grievance arbitration by the parties' 2004 Agreement; that those issues, while of significance to the instant parties, do not involve important issues of law or policy; that the City has renounced any technical objections which would prevent a decision on the merits by the arbitrator; that there is, therefore, a substantial probability that deferral to arbitration will resolve the merits of the dispute in a manner not repugnant to the underlying purposes of MERA; and that further proceedings regarding the instant complaint should therefore be held in abeyance and deferred pending the results of grievance arbitration regarding those issues.

Now, therefore, the Examiner issues the following

ORDER

1. The processing of the instant complaint is hereby deferred pending the results of grievance arbitration regarding the issues giving rise to the complaint.
2. The instant complaint shall be held in abeyance pending the results of grievance arbitration regarding the issues giving rise to the complaint. Upon a motion by either party, the Examiner will consider whether the arbitration process has resolved the subject matter of the instant complaint in a manner that is not repugnant to the underlying purposes of the Municipal Employment Relations Act.
3. The hearing scheduled for March 7, 2006, is hereby cancelled.

Dated at Shorewood, Wisconsin, this 28th day of February, 2006.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Marshall L. Gratz /s/

Marshall L. Gratz, Examiner

CITY OF MARSHFIELD

MEMORANDUM ACCOMPANYING EXAMINER'S ORDER
DEFERRING TO GRIEVANCE ARBITRATION

The history of the instant proceeding and the pleadings filed to date are described in adequate detail in the preface to the Order.

In BROWN COUNTY, DEC. NO. 19314-B (WERC, 6/83) the Commission discussed the deferral principles which are dispositive here as follows:

The Commission has previously stated that Sec. 111.70(3)(a)4 refusal to bargain allegations will be deferred to the contract grievance arbitration forum in appropriate cases . . . in which the Respondent objects to the Commission exercise of jurisdiction in the matter. Such deferral advances the statutory purpose of encouraging voluntary agreements . . . by not under-cutting the method of dispute resolution agreed upon by the parties in their collective bargaining agreement. Indeed, if the Commission were to indiscriminately hear and decide every claim that a party's alleged deviation from a contractually specified standard is an unlawful unilateral change refusal to bargain, it would undermine the Commission's longstanding policy of ordinarily refusing to exercise its Sec. 111.70(3)(a)5, Stats., jurisdiction absent exhaustion of contractual grievance procedures.

In sum, because Respondent has consistently urged WERC deferral of the disputed claim of unlawful unilateral change in overtime assignment procedures to the contract grievance arbitration procedure and because there is a substantial probability that submission of the merits of that dispute to that arbitral forum will resolve the claim in a manner not repugnant to MERA, deferral is appropriate in this aspect of the case

The Commission has established the following three criteria as necessary to indicate the requisite substantial probability that deferral to arbitration will resolve the merits of the dispute in a manner not repugnant to the underlying purposes of MERA:

- (1) The parties must be willing to arbitrate and renounce technical objections which would prevent a decision on the merits by the arbitrator;
- (2) The collective bargaining agreement must clearly address itself to the dispute; and
- (3) The dispute must not involve important issues of law or policy.

E.G., CENTRAL HIGH SCHOOL OF WESTOSHA, DEC. NO. 29671-A (Mawhinney, 8/99), citing SCHOOL DISTRICT OF CADOTT COMMUNITY, DEC. NO. 27775-C (WERC, 6/94).

Each of those criteria is met in this case.

Accordingly, the further processing of the complaint has been deferred and the complaint will be held in abeyance pending the results of grievance arbitration regarding the issues giving rise to the complaint. Upon a motion by either party, the Examiner will consider whether the arbitration process has resolved the subject matter of the instant complaint in a manner that is not repugnant to the underlying purposes of the Municipal Employment Relations Act. SEE, E.G., ROCK COUNTY, DEC. NO. 29970-B (WERC, 7/23/01). The Union will have an opportunity, in connection with the consideration of such a motion, to present arguments based on the CITY OF PRINCETON, supra, case referenced in its February 27, 2006, statement of position.

Dated at Shorewood, Wisconsin this 28th day of February, 2006.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Marshall L. Gratz /s/

Marshall L. Gratz, Examiner

