
Waupaca County,

Petitioner,

-vs-

Wisconsin Employment Relations Commission,

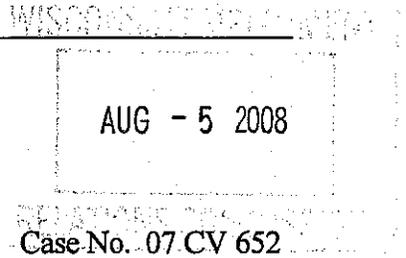
Respondent,

-and-

AFSCME Local 2771,

Interested Party.

Decision No. 32001-B



DECISION & ORDER

Waupaca County ("County") has sought judicial review of a decision of the Wisconsin Employment Relations Commission ("Commission") under the Municipal Employment Relations Act, finding that the County committed a prohibited practice within the meaning of Wis. Stats., §111.70(3)(a)5, by refusing to participate in the grievance procedure set forth in the collective bargaining agreement between the County and AFSCME Local 2771 (the "Union"), with respect to two grievances.

The Union and the County have also each filed motions contending the other party's position is frivolous and seeking fees and costs as sanctions against the other.

The Commission and the Union argue that substantial evidence supports the Commission's finding that the County committed a prohibited practice by failing to process the grievance at Step 3 of the collective bargaining agreement.

The County argues that it could not be found to have committed a prohibited practice by refusing to arbitrate the grievances when the Union never appealed the grievance to arbitration.

This Court must affirm the Commission's findings of fact if they are supported by substantial evidence in the record. The weight and credibility of the evidence is for the Commission to determine not for this Court to evaluate.

The collective bargaining agreement between the County and the Union provides for a four-step grievance procedure. At Step 3, "the Personnel Committee shall meet with the employee and the Union Committee...to discuss the grievance." "The Committee will render a decision in writing...following the grievance conference."

If a settlement is not reached at Step 3, the Union, at Step 4, must notify the Personnel Committee in writing of its interest to submit the grievance to arbitration.

The County argues that it was not required to arbitrate the Union's grievance here because the Union failed to comply with the Step 4 requirement of notifying the Personnel Committee in writing of its intent to submit to arbitration.

While there exists conflicting evidence as to whether the County processed the grievances in accordance with Step 3, there exists substantial evidence in the record supporting the Commission's finding, that "the County did not comply with the Union's request to conduct a contractual Step 3 grievance conference regarding said grievance nor convey to the Union a Step 3 response" (Commission Finding 27).

The record reflects that the Union steward on January 23, 2006, requested a meeting with the Personnel Committee to proceed with Step 3. The County, through its personnel director, responded that the grievance was not grievable and that a County department head does not have authority to reclassify an employee. The County never offered to meet officially for a Step 3 meeting with the Union.

The County Personnel Committee did discuss the grievance on April 10, 2006, but it was not treated as a Step 3 in the process, the Committee indicated it did not recognize it as a grievance.

On April 24, 2006, the Union steward sent an e-mail to the County Personnel Director inquiring when a Step 3 response could be expected, to which the Personnel Director responded by e-mail: "Robin, the Personnel Committee does not recognize the matter as a grievance and therefore did not respond as such."

On May 5, 2006, the Union filed an amended grievance to which the County Personnel Director responded that the amended grievance was "untimely, not arbitrable and not a violation of the contract. Certainly the factual record supports that the Commission's conclusion the County refused to process the grievances in accordance with Step 3. The Commission could reasonably conclude that such action was in violation of the collective bargaining agreement and therefore, the County committed a prohibited practice within the meaning of §111.70(3)(a)5, Stats.

The County has argued that if the Union never requested arbitration then the County could not be "guilty of failing to participate in a process that was never initiated." This argument fails however, due to the County's failure to process the grievance at Step 3.

Step 3 provides as follows:

If the grievance is not resolved at Step 2, the grievance shall be submitted in writing to the Waupaca County Personnel Committee through the personnel office, within ten (10) working days of receipt of the Step 2 answer. The personnel committee shall meet with the employee and the union committee at a mutually agreeable date and time to discuss the grievance. The committee will render a decision in writing no later than its regularly scheduled meeting following the grievance conference.

Step 4 provides as follows:

If a satisfactory settlement is not reached at Step 3, the Union shall notify the chairperson of the personnel committee in writing of the intent to submit the grievance to arbitration within thirty (30) working days of the receipt of the Step 3 response or last date said response was due.

Here the County Personnel Committee never met with the employee or Union Committee to discuss the grievance therefore, there was no date by which the County's written response was due.

Consequently, the Union's time for requesting arbitration never arose.

The Union and the County each seek sanctions against the other pursuant to §802.05(3), Stats. The Court is satisfied neither of the parties' filings was done for an improper purpose.

The County's petition for review and arguments advanced in support, contrary to the allegations of the Union, clearly are not violative of §802.05(2), Stats. The County certainly was entitled to argue the Commission erred in modifying and reversing parts of the decision of the examiner. The County certainly had a right to argue that the Commission may have overturned long-standing precedent in City of St. Francis, Decs. No. 12097-A (1974). While this Court has concluded that the findings of the Commission, that the County committed a prohibited practice by failing to process the two grievances at Step 3 in violation of the collective bargaining agreement is supported by substantial evidence, that does not ipso facto mean the arguments of the County were frivolous and advanced for an improper purpose.

The Union's request for sanctions against the County, contrary to the County's position, is not frivolous. The Union filed its motion, correctly believing that the arguments of the County failed to challenge, that the grievance was not covered by the collective bargained definition of "grievance" and as such were entitled to sanctions against the County. While this Court has reached a differing conclusion having found the County did raise valid issues, albeit failing issues, in its petition for review, the request for sanctions against the Union is wholly and completely unwarranted.

IT IS ORDERED that the decision of the Commission is hereby affirmed.

IT IS FURTHER ORDERED that the requests for sanctions made by the County and the Union are hereby denied.

Dated this 31st day of July, 2008.

BY THE COURT:

Raymond S. Huber, Circuit Court Judge,
Waupaca County, Wisconsin