

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

WISCONSIN TRANSPORTATION EMPLOYERS COUNCIL

and

**BRICKLAYERS ALLIED CRAFT WORKERS
DISTRICT COUNCIL OF WISCONSIN**

and

**THE OPERATIVE PLASTERERS' AND CEMENT MASONS'
INTERNATIONAL ASSOCIATION OF LOCAL UNIONS OF WISCONSIN**

Case 2

No. 60269

A-5949

Appearances:

Mr. Jack Walker, Attorney, for the Employers Council

Ms. Sarah E. Siskind and **Ms. Elizabeth Eberle**, Attorneys, for the Bricklayers.

Mr. Richard Saks, Attorney, for the Plasterers.

ARBITRATION AWARD

The Wisconsin Transportation Employers Council, the Bricklayers Allied Craft Workers District Council of Wisconsin and the Operative Plasterers' and Cement Masons' International Association of Local Unions of Wisconsin jointly requested that the Wisconsin Employment Relations Commission assign me to arbitrate a dispute arising under the parties' 2001-2006 contract.

Hearings were held in Madison, Wisconsin on August 29, September 7 and September 26, 2001. The parties agreed that the stenographic transcript of the hearings was the official record. Expedited briefs were filed by October 10, 2001 and I agreed to issue an expedited award.

ISSUES

Under the 2001-2006 contract, to which union should working dues and apprenticeship/education funds be paid when an employee is working outside his home area?

Under the 2001-2006 contract, how are IMI payments to be made?

DISCUSSION

The essential facts of this case are not in dispute.

1. Under the predecessor to the 2001-2006 contract, working dues and apprenticeship/education funds were paid to the union that had geographic jurisdiction over the area in which the work was performed.

2. During the negotiations over the 2001-2006 contract, the Plasterers (the OP) proposed that working dues and apprenticeship/education funds be paid to the union to which the employee belonged without regard to where the work was performed. The Bricklayers (BAC) resisted the OP proposal and Employers Council advised the OP and the BAC that this issue was one for the unions to resolve between them.

3. On November 27, 2000, a tentative agreement was reached on a 2001-2006 contract. The tentative agreement did not include the contract change regarding payment of working dues and apprenticeship/education funds sought by the OP. The tentative agreement was ratified by the OP, BAC, and the Employers Council. The tentative agreement did limit payment of IMI funds to Area B work hours.

4. When the OP prepared an initial draft of the ratified agreement for review by the BAC, the OP included a change in Schedule B that the OP believed would give it the working dues and apprenticeship/education change it had unsuccessfully sought. The BAC did not notice the OP change and the printed 2001-2006 contract includes the Schedule B change.

I conclude that the parties are bound by the terms of the ratified tentative agreement. Because that agreement did not include the working dues and apprenticeship/education funds change sought by the OP, the 2001-2006 contract requires that working dues and apprenticeship/education payments continue to be paid to the union that historically had geographic jurisdiction over the area in which the work is performed.

In reaching this conclusion, I acknowledge the OP contention that the dues/apprenticeship issue continued to be “in dispute” because, although the tentative agreement did not include the change OP sought, the OP continued to seek the change. However, in the final analysis, this OP contention only reflects the reality that a party can always unilaterally continue to pursue a contract change it failed to acquire. Particularly where, as here, the tentative agreement was ratified without any reserved contingency of continued pursuit of an issue, the trilateral intent of the tentative agreement is determinative. Put another way, when the tentative agreement was reached, the parties did not agree that they would continue to bargain over the dues/apprenticeship issue. Thus, OP’s continuing pursuit of change is of no analytical consequence when determining the content of the 2001-2006 agreement. That content is established by the agreement the parties ratified and the ratified agreement did not include the change OP sought.

Therefore, under the 2001-2006 contract, working dues and apprenticeship/education funds shall be paid to the union that historically had geographic jurisdiction over the area in which the work is performed. Under the 2001-2006 contract, IMI payments shall be made for all hours worked in Area B.

Dated at Madison, Wisconsin this 19th day of October, 2001.

Peter G. Davis /s/

Peter G. Davis, Arbitrator

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