

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between
LA CROSSE CITY EMPLOYEES' UNION, LOCAL 180, SEIU

and

CITY OF LA CROSSE

Case 304
No. 59059
MA-11161

Appearances

Davis, Birnbaum, Marcou, Seymour & Colgan, LLP, by **Attorney James G. Birnbaum**, ,
appearing on behalf of the Union.

Mr. Peter B. Kiskan, La Crosse Assistant City Attorney, appearing of behalf of the City.

ARBITRATION AWARD

La Crosse City Employees' Union, Local 180, SEIU, herein the Union, and the City of La Crosse were at all material times parties to a collective bargaining agreement dated January 7, 2000, and covering the period January 1, 2000, through December 31, 2001, which provided for binding arbitration of certain disputes between the parties. On July 13, 2000, the Union filed a petition with the Wisconsin Employment Relations Commission requesting the appointment of a Commission staff member to arbitrate a dispute between it and the City concerning impact bargaining over a number of positions. The undersigned was thereafter appointed as Arbitrator.

On November 16, 2001, the City issued a letter to the Arbitrator raising procedural objections to the arbitration of the dispute. Specifically, the City alleged that the matter was incorrectly filed as a grievance arbitration instead of an interest arbitration, that no grievance had ever been filed and that the matter was untimely according to the parties' grievance procedure. The parties agreed to submit the preliminary issue of procedural arbitrability on briefs. The City submitted its argument on December 13, 2001. The Union submitted its response on January 22, 2002. Additionally, the parties submitted affidavits and a copy of the collective bargaining agreement

ISSUE

The issue preliminarily before the Arbitrator is:

Is the grievance arbitrable?

PERTINENT CONTRACT LANGUAGE

**ARTICLE 2
GRIEVANCE PROCEDURE**

Matters involving the interpretation, application or enforcement of this contract shall constitute a grievance under the provisions set forth below:

Step 1: The employee shall meet with and discuss the grievance with their immediate supervisor, with union representative present, within thirty (30) calendar days, of the date the employee should have known of the grievable matter. If no solution is reached the employee may,

Step 2. Reduce the grievance in detail to writing within seven (7) calendar days following the meeting, using, an "Initiation of Grievance Form" and submit it to the supervisor who will forward it to the Director of Personnel, who, with the Department Head, within ten (10) working days (Monday through Friday, excluding holidays) shall attempt to resolve the grievance and answer the grievance in writing. Within those ten (10) working days, representatives of the Union, the grievant, the Personnel Director, the Department Head and the supervisor shall meet to attempt a resolution of the disputed matter.

Step 3. If a satisfactory solution cannot be reached, the Union may, within thirty (30) calendar days of the grievance meeting, appeal to the Wisconsin Employment Relations Commission who will appoint a neutral arbitrator. The Union shall copy the City on all requests for grievance arbitration, the findings of the arbitrator to be final and binding on the parties hereto.

It is understood that the 30 calendar day requirement to file a grievance in Step #1 above shall be interpreted to mean the next regularly scheduled working day that both the employee and supervisor are present at work.

The parties may by written agreement extend the time limits contained in the grievance procedure.

The arbitrator shall not add to, or subtract from the terms of this agreement.

The City and the Union agree that the decision of the arbitrator shall be final and binding on both parties.

The grievance procedure set forth herein shall be the exclusive complaint of any employee as to any matter involving the interpretation or application of this agreement.

All complaints originating in all City departments shall be handled in the manner outlined above and no deviation therefrom will be permitted. Specifically, employees are prohibited from presenting such complaints, formally or informally to officers of the City of La Crosse not included in this procedure.

Members, stewards, officers/or representatives of the Union are permitted to discuss and/or adjust the grievances between an employee and his/her supervisor during or after regular working hours. In carrying out the above duties the parties shall not interfere with the normal and efficient operation of the department. A person(s) acting in the above capacity shall suffer no loss of pay for said action. A grievance shall be adjusted on an individual basis unless otherwise agreed to by the parties. No members, stewards, officers/or representatives of the Union shall be harassed during the performance of their duties in discussing and adjusting grievances.

POSITIONS OF THE PARTIES

The City

The City argues that the only matters which are subject to grievance arbitration are those which are properly advanced through the contractual grievance procedure. Article 2 of the collective bargaining agreement specifies strict timelines to be followed in advancing a grievance to arbitration, which the Union ignored. In fact, the Union has never filed a written grievance in this matter.

On May 8, 2000, the City Personnel Director informed the Union that due to unsuccessful efforts to negotiate, two positions would not be changed in the contract. The Union was required by contract to submit a grievance within 37 days, which it did not do. The authorities are in accord that where strict timelines for filing grievances are ignored the grievance should be dismissed (citations omitted).

The Union

The Union concedes that the original intent of the petition was to initiate interest arbitration proceedings. The affidavit of the Union President reveals that the parties were stymied in their attempt to negotiate appropriate wage rates for certain new positions in the

bargaining unit and that they agreed that the Union should proceed as it saw fit. The Union determined to initiate interest arbitration proceedings and attempted to do so. It was not the intent of the Union to initiate grievance arbitration proceedings, wherefore the Union desires that the matter be converted to an interest arbitration case.

DISCUSSION

It is clear from the affidavits submitted by both parties that the petition for grievance arbitration was filed in error and that there never was a grievance filed in the case. That being the case, the petition must be dismissed. Article 2 of the collective bargaining agreement makes it clear that a grievance may only be submitted to arbitration after having been reduced to writing and having proceeded through the preliminary steps of the grievance procedure. The Article also prohibits the arbitrator from adding to, or subtracting from, the terms of the agreement. Since the preliminary steps were not followed, therefore, the matter is not procedurally arbitrable.

An additional question raised by the Union's submission is whether under the circumstances the case may proceed as an interest arbitration. I find that it may not. Section 111.70(4)(cm)6., Wisconsin Statutes, sets forth the procedure necessary to advance a case to interest arbitration, which was not followed here. Furthermore, there is to my knowledge no provision in the collective bargaining agreement that gives a grievance arbitrator authority to convert a case to an interest arbitration and proceed accordingly. Absent statutory and contractual authority, I am precluded from doing other than addressing this matter as a grievance arbitration and ruling on it in that posture.

For the foregoing reasons, and based upon the record as a whole, I hereby enter the following

AWARD

Due to the fact that the Union did not file a grievance in this matter or otherwise proceed according to the contractual grievance procedure, the matter is not procedurally arbitrable and the petition is dismissed.

Dated in Fond du Lac, Wisconsin, this 11th day of February, 2003.

John R. Emery /s/

John R. Emery, Arbitrator

JRE/anl

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