

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

RIVER FALLS POLICE DEPARTMENT EMPLOYEES' ASSOCIATION

and

CITY OF RIVER FALLS

Case 39
No. 63710
MA-12686

Appearances:

Thomas A. Bauer, Labor Consultant, Labor Association of Wisconsin, Inc., 206 South Arlington Street, Appleton, Wisconsin 54915, appearing on behalf of the Association.

Weld, Riley, Prenn & Ricci, S.C., by **Attorney Stephen L. Weld and Pamela M. Macal**, 3624 Oakwood Hills Parkway, P.O. Box 1030, Eau Claire, Wisconsin 54702-1030, appearing on behalf of the Employer.

ARBITRATION AWARD

The above-captioned parties, herein "Association" and "Employer" or "City" are signatories to a collective bargaining agreement providing for final and binding arbitration. Pursuant thereto, the parties agreed to have the undersigned serve as Arbitrator in the matter. Hearing was held on January 12, 2005, in River Falls, Wisconsin. The hearing was not transcribed and the parties thereafter filed briefs that were received by February 17, 2005.

Based upon the entire record and arguments of the parties, I issue the following decision and Award.

ISSUES

The Employer poses the following procedural issue:

Did the Union violate Article V, Section 5.4, of the collective bargaining agreement when it, rather than an employee, filed a grievance at Step 1 of the grievance procedure?

The parties stipulated to the following substantive issue:

1. Did the City violate Article XVII of the collective bargaining agreement when it denied Officer Jensen's request for sick leave on Sunday, April 11, 2004, and instead authorized use of compensatory time on that date?
2. If so, what is the appropriate remedy?

DISCUSSION

Officers with the River Falls Police Department work a six-day-on, three-day-off cycle. April 2, 2004 was Officer Bryan M. Jensen's ("Jensen") first day of a six-day work cycle. Upon being notified of his mother's death, Jensen left work. He was granted three hours of sick leave for that day. Jensen also took April 3, 4 and 5, 2004 as bereavement leave. Jensen requested additional bereavement leave for April 6, 7 and 11, 2004. The City approved his request for additional bereavement leave on April 6, 2004, the day of the funeral, and April 7, 2004, the sixth and last day of that work cycle. Pursuant to Article XVII, Jensen's sick leave bank was reduced for his absences on April 6 and 7, 2004. The City denied Jensen's request for bereavement leave for April 11, 2004, the first day of his next six-day work cycle. However, the City granted Jensen compensatory time off for that day. The Association then grieved the City's decision to not grant additional bereavement leave on April 11, 2004.

The threshold issue in this case is whether the grievance is procedurally defective.

The Employer asserts that the Association did not comply with the contractual grievance procedure when it, instead of an employee, presented the grievance at Step 1.

ARTICLE V – EMPLOYER RIGHTS-GRIEVANCE PROCEDURE, Section 5.4 **Procedure:** provides: "Grievances, as defined by Section 5.1, shall be resolved in conformance with the following procedure:

STEP 1 – An EMPLOYEE claiming a violation concerning the interpretation or application of this AGREEMENT shall, within fifteen (15) calendar days after such alleged violation has occurred, present such grievance to the EMPLOYEE'S supervisor as designated by the EMPLOYER.

...

STEP 2 – If appealed, the written grievance shall be presented by the ASSOCIATION and discussed with the EMPLOYER-designated Step 2 representative or the Chief of Police if no one is designated.

...

The grievance procedure contemplates the employees and the Association having access to different stages of the grievance procedure. As pointed out by the Employer, an Employee must initiate the grievance process at Step 1 by “present[ing] such grievance to the employee’s supervisor as designated by the employer.” (Emphasis in the Original). If the grievance is not satisfactorily resolved at Step 1, the Association must process the grievance to Step 2 and beyond. (Emphasis in the Original). (Joint Exhibit No. 1, pp. 3-4). The words “Employee” and “Association” are not used interchangeably in the grievance “procedure.” Id. Rather, an employee must file a Step 1 grievance and the Association must process the remaining steps. Id. Association President Charles Golden testified employees do not have access to Step 2, Step 3, or the arbitration step of the grievance procedure.

It is undisputed that Association President Golden processed the instant grievance as an Association grievance because the decision of the Employer “affected the entire bargaining unit.” However, the Association argues that it did not violate Article V, Section 5.4, Step 1, when it filed the grievance. In this regard, the Association claims that Golden was acting as an “employee” within the meaning of Step 1 when he filed a grievance. For the reasons discussed below, the Arbitrator rejects this claim of the Association.

It is true that Association President Golden is the “employee” who presented the grievance in this case. However, Step 1 requires an “EMPLOYEE” claiming a violation concerning the interpretation or application of the agreement to “present such grievance to the EMPLOYEE’S supervisor as designated by the Employer. (Emphasis added). Thus, the most reasonable interpretation of the term “employee” as used in Step 1 of the grievance procedure is that the parties came to agreement that an aggrieved individual (or grievant) must start the grievance process. If no employee is aggrieved by the City’s action, there can be no grievance.

The Association offered no evidence of past practice or bargaining history that would lead to a different interpretation of the term “employee.”

Jensen was the aggrieved individual herein. The City denied his request for bereavement leave for April 11, 2004. Jensen did not file or participate in the processing of the grievance. (Testimony of Bryan M. Jensen).

The Association argues, however, that Section 5.2 requires the Employer to recognize Officer Golden in his capacity as the Association representative, and, therefore, the grievance must be found to have been properly served in the instant case.

Section 5.2 of the agreement entitled “ASSOCIATION Representatives” states that the “EMPLOYER will recognize a representative (steward) designated by the ASSOCIATION as the grievance representative of the bargaining unit having the duties and responsibilities established by this Article.” (Emphasis added). Insofar as the Association representative has no duties or responsibilities to file a grievance “claiming a violation concerning the interpretation or application of this AGREEMENT” at Step 1, the provision is not applicable to the instant dispute.

The Association also contends that the Employer has raised its procedural objection too late in the process to be allowed by the Arbitrator. However, the City did raise an objection that the grievance “was improperly filed according to the Step 1 procedure of the contract, as it was not presented by an employee” at Step 2 of the grievance procedure. (Joint Exhibit No. 3). This was the first time that the City formally responded to the grievance and early on in the grievance process. The City repeatedly and consistently maintained its objection to the Association filing the grievance at all subsequent steps of the grievance procedure and prior to agreeing to arbitrate the dispute. *Id.* Consequently, the Arbitrator finds that the Employer has raised its procedural objection in a timely manner.

In addition, the Employer has a practice of requiring adherence to the procedural aspects of processing a grievance through the grievance steps. (Joint Exhibit No. 20). As a result, the Association knew, or should have known, of the requirement that an “employee” file a grievance at Step 1 of the grievance procedure.

Based on the above, the Arbitrator finds that the answer to the procedural issue posed by the Employer is YES, the Association violated Article V, Section 5.4, of the collective bargaining agreement when it, rather than an employee, filed a grievance at Step 1 of the grievance procedure. Because the contract’s grievance procedure was not followed, the grievance is procedurally defective and must, therefore, be dismissed. As a result, the Arbitrator is unable to address the substantive issue stipulated to by the parties.

Based on all of the foregoing, it is my

AWARD

That the grievance filed in the instant matter is denied and the matter is dismissed.

Dated at Madison, Wisconsin, this 19th day of April, 2005.

Dennis P. McGilligan /s/

Dennis P. McGilligan, Arbitrator

