

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

**STEVENS POINT CITY EMPLOYEES (DPW)
LOCAL 309, AFSCME, AFL-CIO**

and

CITY OF STEVENS POINT

Case 129
No. 62800
MA-12432

(Plaski Sick Leave/Worker's Compensation Grievance)

Appearances:

Houston Parrish, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, P.O. Box 35, Plover, Wisconsin 54467-0035, appearing for the labor organization.

Lisa Jakusz, Personnel Director, City of Stevens Point, 1525 Church Street, Stevens Point, Wisconsin 54481, appearing for the municipal employer.

SUPPLEMENTAL ARBITRATION AWARD

On October 18, 2004, I issued an award in the above-cited matter as follows:

That the grievance is conditionally granted and conditionally denied. I shall retain jurisdiction for the purpose of issuing a final award upon receipt of a copy of the final determination of whether the grievant was entitled to Worker's Compensation for the period July 11-August 28, 2002.

During the summer and early fall of 2005, I was on leave from my employment as a commission arbitrator. During that time, on August 1, city human relations director Lisa Jakusz sent me an email as follows:

I received a copy of the ALJ's determination in Mr. Steve Plaski's worker's compensation appeal. The ALJ (Thomas Landowski) ruled, "Because there is a

legitimate doubt whether applicant sustained a work-related injury to his right elbow on May 31, 2002, the application for hearing is dismissed without (sic) prejudice.”

Based on this determination, the City requests that the above-referenced grievance be denied.

On August 25, 2005, my office received from Ms. Jakusz the determination issued by ALJ Landowski, the concluding paragraph of which reads as follows:

Because there is a legitimate doubt whether applicant sustained a work-related injury to his right elbow on May 31, 2002, the application for hearing is dismissed with prejudice. As for respondents' claim of overpayment, the Administrative Law Judge defers determination at this time because it is unclear from the record what indemnity benefits, if any, respondents paid.

The ALJ also issued the following Interlocutory Order:

The application for hearing is dismissed with prejudice. Jurisdiction is reserved solely for the purpose of determining the amount of the insurance carrier's overpayment claim.

On September 12, 2005, I wrote to union representative Houston Parrish as follows:

While I am still on leave, I have received the ALJ determination and the (Jukusz) email. If you wish to reply to the city's statement, please do so by Sept. 26.

On October 11, 2005, Parrish wrote me as follows:

The union has nothing specific to add in reply to the City's request. The union maintains its position and requests the grievance be upheld.

As I discussed in my award, the collective bargaining agreement provides for only two scenarios – either Plaski was on worker's compensation leave, or on sick leave. If the insurance company's determination to deny worker's compensation was correct, the city was within its contractual rights to place Plaski on sick leave and retroactively deduct 280 hours to cover the payments he had already received; conversely, if that determination was in error, the city's action would have violated the contract.

Administrative Law Judge Landowski's Order and Decision dismissed Plaski's petition for hearing with prejudice, which is tantamount to a determination that the initial denial was correct. Because Plaski was thus not properly covered by worker's compensation, he was by definition on sick leave, enabling the city to take the actions it did under Section 14A.

Accordingly, on the basis of the completed record and the arguments of the parties, it is my

AWARD

That the grievance is denied.

Dated at Madison, Wisconsin this 17th day of October, 2005.

Stuart D. Levitan /s/

Stuart D. Levitan, Arbitrator

