

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

EAU CLAIRE PRESS COMPANY

and

GENERAL TEAMSTERS UNION, LOCAL 662

Case 16
No. 66774
A-6277

Appearances:

Mr. YingTao Ho, Esq., Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., 1555 North Rivercenter Drive, Suite 202, P.O. Box 12993, Milwaukee, Wisconsin 53212, on behalf of Local 662.

Mr. Stephen L. Weld, Esq., Weld, Riley, Prenn & Ricci, S.C., 3624 Oakwood Hills Parkway, P.O. Box 1030, Eau Claire, WI 54702-1030, on behalf of the Company.

SUPPLEMENTAL AWARD

The parties jointly requested the Undersigned to issue an arbitration award to determine the issue, whether the Company improperly excluded employees from the bargaining unit as temporary employees and if so what would the appropriate remedy be therefor. On May 23, 2007 the Undersigned heard the case at Eau Claire, Wisconsin and post-hearing briefs were received therein by June 26, 2007.

The Undersigned issued her Award in this case on October 8, 2007 which read as follows:

The Company improperly excluded employees from the bargaining unit as temporary employees who worked more than 20 actual hours per week. The Company is therefore ordered to forward Union dues payments to the Union for these employees and to properly deduct and forward Union dues for these employees in accord with this Award in the future.

Jurisdiction of this case was retained concerning the remedy only in footnote 13 of the Award which read as follows:

As the creator and keeper of business and payroll record, the Company is responsible to maintain records showing the actual hours worked by its employees and any notices sent to employees, as required by Article 1, Section 1, either at the time of hire or at the time their status changed to temporary. A lack of accurate records on these points would likely require a conclusion that in fairness the Company should pay dues for employees for whom accurate records cannot be found. I urge the parties to resolve the remedy issue together. However, I will retain jurisdiction of the remedy only herein for 60 days after the date of this Award should the parties have difficulty agreeing on the remedy herein.

Between October 8, 2007 and the end of April 2008, the parties exchanged approximately ten letters, copying the Arbitrator, regarding the remedy. In late March/early April, 2008, the parties jointly requested that the Undersigned reassert jurisdiction of the remedy, which agreement the Undersigned confirmed by her April 17, 2008 letter. Thereafter the parties agreed that no additional hearing was necessary and they submitted their briefs on the remedy herein by May 20, 2008.¹

ARTICLE 3 – UNION SHOP – CHECKOFF AND PROBATION

Section 1. Union Shop. All present employees who are members of the Local Union on the effective date of this Section, or on the date of execution of this Agreement, whichever is the later, shall remain members of the Local Union in good standing as a condition of employment. All present employees who are not members of the Local Union and all employees who are hired hereafter shall become members in good standing of the Local Union as a condition of employment on and after the 31st day following the beginning of their employment or on and after the 31st day following the effective date of this Section, or the date of this Agreement, whichever is the later. This provision shall be made and become effective as of such time as it may be made and become effective under the provisions of the National Labor Relations Act, but no (sic) retroactively.

Section 2. Check Off. The Employer agrees to deduct from the pay of all employees covered by this Agreement the dues, initiation fees and/or uniform assessments of the Local Union having jurisdiction over such employees and agrees to remit to said Local Union all such deductions prior to the end of the month for which the deduction is made. Where laws require written authorization by the employee, the same is to be furnished in the form required.

¹ The Union's brief dated April 29, 2008 was returned to the Union's Attorney by the Postmaster. The Union resent the brief which the Arbitrator received on May 7, 2008.

The Union shall certify to the Employer, in writing each month, a list of its members working for the Employer who have furnished to the Employer the required authorization, together with an itemized statement of dues, initiation fees (full or installment), or uniform assessments owed and to be deducted for such month from the pay of such member, and the Employer shall deduct such amount from the first paycheck following receipt of statement of certification of the members and remit to the Union in one lump sum.

The Employer shall add to the list submitted by the Union, the names of all regular new employees hired since the last list was submitted and delete the names of employees who are no longer employed.

. . .

POSITIONS OF THE PARTIES

Union:

The Union stated that it has not taken the position that the Company is liable for the unpaid back dues. Rather, the Union asserted that the Award requires the Company to “immediately forward to Local 662 all back dues owed, and that it (the Company) could later make efforts to recoup the back dues from employees” (U. Br. p. 1) but that the Company may not condition its forwarding of the full amount of dues owed upon the Union’s signing of an agreement that would authorize the deduction of the forwarded dues from future employee paychecks.

The Union urged that the language of the initial Award is clear and requires the Company to forward dues and initiation fees for employees for whom accurate Company payroll records cannot be found as well as for current and former employees for whom initiation fees and dues were not properly collected because of the Company’s failure to follow Article 3 of the contract. The Union cited three arbitration awards² which it asserted support its argument on the point and stand for the proposition that it is appropriate for the arbitrator to order an employer at fault for failing to deduct the proper amount of dues/fees must “forward” all dues/fees owed to the Union, without regard for whether the employer can recoup the money from its employees and that the employer must then institute collection proceedings against its employees thereafter. AIRFORCE LOGISTICS COMMAND, 90 LA 481 (KOVEN, 1988). The

² CONTRAST SILVA HARVESTING, 88 LA 413 (POOL, 1986); ST. ELIZABETH HEALTH CENTER, 118 LA 37 (FULLMER, 2003); CITY OF EFFINGHAM, 108 LA 1131 (NATHAN, 1997).

Union also asserted that the Company cannot insist, as a condition precedent to “forwarding” all dues owed, that the Union sign an agreement authorizing the Company to deduct or check off the payments made from future employee paychecks.

Because the Company conceded herein by its April 11, 2008 letter “that on or about February 12, 2008 the parties agreed to the full monetary amount of dues that Local 662 would have received, if the Press Company had complied with the CBA in deducting dues on January 1, 2007” (U. Br., p. 2), the Arbitrator should order the Company to immediately forward the full amount of dues to the Union. Furthermore, because the Company caused the delay in payment, the Arbitrator should order the Company to pay interest on the amount due from February 12, 2008 forward to the date the Company actually forwards the dues to the Union pursuant to the Supplemental Award.³

Company:

The Company agreed that, “subsequent to the award, as indicated in my letter (with attachments) of April 11, 2008, the parties have worked their way through a disagreement over both the amount of dues and initiation fees as well as a disagreement regarding the weeks in which employees would be responsible for paying dues” (ER. Br., p. 2).

Thus, the Company conceded that the only issue still disputed by the parties is what the Arbitrator meant in her Award by use of the words “deduct” and “forward.” Specifically, whether the Company itself, not Union members, must pay all delinquent and prospective dues and initiation fees owed to the Union without regard for recoupment or whether the Company can insist that the Union give it “some type of written authorization” for deduction/recoupment before it must forward the past due amounts agreed upon. The Company asserted that it did not believe it would be able to recoup any delinquent or prospective dues and fees without such written authorization.⁴

³ The Union cited no authority for its request for interest. I note that Arbitrator Nathan ordered the employer to pay interest on the dues and fees not properly deducted in the CITY OF EFFINGTON case cited above with no citation or no explanation therefor and that there appeared to be no underlying Union request for interest to be paid in that case.

⁴ The Company did not cite any cases in its May 19, 2008 brief or in any of its prior communication regarding the remedy herein.

DISCUSSION

Several facts must be noted preliminarily in this Award. First, the language of Article 3, Section 1, shows that employees are required to become and remain “members of the Local Union” in good standing as a condition of their employment, at the latest “after the 31st day following the beginning of their employment.” Second, Article 3, Section 2 requires the Company “to deduct from the pay of all employees covered by this Agreement, the dues, initiation fees and/or uniform assessments of the Local Union . . .” and requires all such deductions to be remitted to the Local Union “prior to the end of the month for which the deduction is made.” Article 3, Section 2, goes on to state that monthly, the Union must certify to the Company a list of its members and an itemized statement of dues, fees or uniform assessments to be deducted each month from the pay of those members. In addition, Article 3, Section 2 requires the Company to “add to the list submitted by the Union the names of all regular new employees hired since the last list was submitted” and delete from the list those no longer employed. Furthermore, there is no “hold harmless” provision in the parties’ contract and there is no contractual provision concerning recoupment and no language indicating who is responsible for the payment of dues/fees in arrears due to errors.

The parties have put before me several issues concerning the remedy herein which can be summarized as follows:

- 1) What this Arbitrator meant by words “forward” and “deduct” in her initial Award.
- 2) Whether the Company is responsible to pay past due dues/fees for current employees as well as employees no longer employed for whom dues/fees/assessments were not properly deducted pursuant to the underlying grievance.
- 3) Whether the Company can insist as a condition precedent to forwarding all dues/fees owed, that the Union sign “an agreement authorizing the deductions from future employee paychecks.”
- 4) Whether the Company can recoup the dues/fees it will pay out pursuant to the Award in the underlying grievance.

Regarding issues one and two, I note that at the time the first Award herein issued, the parties had not agreed on any of the specifics of the potential remedy herein if the Union prevailed. This Arbitrator ruled in favor of the Union and that Award ordered the Company to forward to the Union all back dues and fees which the Company should have deducted from current and past employees’ paychecks. Apparently this was unclear. Let me try to clarify my Award as follows.

The Company is solely liable and responsible to pay the full amount of back dues/assessments/fees the parties have now agreed upon. What this means is that if the employees for whom dues/assessments/fees were not properly deducted and sent to the Union prior to the date of this Supplemental Award are still employed by the Company, the Company must pay all back amounts due and send those amounts to the Union as soon as possible after the issuance of this Supplemental Award. The Company is hereby held solely liable and responsible to pay and send to the Union the full amounts due for these employees for this period of time.

Regarding amounts due after the date of this Supplemental Award for employees still employed, the Company must deduct those fees/dues/assessment amounts from future employee paychecks and send those to the Union (in accord with Article 3). If the employees for whom dues/fees/assessments were not properly deducted and sent to the Union prior to this Supplemental Award are no longer employed by the Company or they have left employment at any time on or after the date of the original Award herein, the Company must pay all back amounts due for these employees and send those amounts to the Union as soon as possible after the issuance of this Supplemental Award.

For those who may feel this ruling might work undue hardship on the Company, let me say that it was because the Company misinterpreted and misapplied Article 3 that the improper amount of dues/assessments and initiation fees were sent to the Union. Also, the facts herein failed to show that the Union was responsible for or contributed to the misinterpretation/misapplication of the contract. In addition, no evidence was proffered to show that the affected employees were in any way responsible for the misinterpretation/misapplication of the agreement. Furthermore, it is undisputed that there is relatively frequent employee turnover at the Company so that a number of employees for whom the Company forwarded deducted dues/fees/assessments in error or for whom the Company failed to properly deduct and forward same no longer work for the Company or if they are still employed, they were given incorrect information by the Company which lead them to believe no dues/fees/assessments would be deducted from their pay for work they then agreed to perform. In these circumstances, the Company must be responsible for its errors where, as here, no "hold harmless" language appears in Article 3. See, ST. ELIZABETH HEALTH CENTER, SUPRA at 43.

Regarding issue three, I can find no contractual basis for the Company's insistence upon the Union entering such an agreement as a condition precedent or otherwise. Furthermore, in my view, what the Company has requested would essentially violate Article 3, Section 2. Section 2 allows deductions only of the various amounts due according to the Union's monthly "itemized statement." This language is clear and restrictive and it does not address the proper approach to use when dues/fees/assessments are improperly deducted or other errors are made in the amounts sent to the Union. The fact that the latter subject is not addressed in the contract, that the contract contains no "hold harmless" provision and the fact (found in the prior Award) that it was the Company that improperly applied/interpreted Article 3 causing

the Union's losses herein, there are simply no grounds upon which this Arbitrator can justify an order requiring the Union to agree to authorize deductions of back dues/fees from future employee paychecks. See AIR FORCE LOGISTICS, COMMAND, SUPRA AT 484.

Regarding issue four, it is clear that the Company can attempt to recoup back dues/fees from former and current employees by other legal(extra-contractual) means, if any exist, as it sees fit. But, as stated above, this Arbitrator has no contractual authority and no basis in equity upon which to order the Union to become involved in the recoupment process. In accord with the original Award⁵ herein, the Arbitrator issues the following

SUPPLEMENTAL AWARD⁶

The Company is ordered to pay to the Union all back dues/fees and assessments for employees improperly excluded from the bargaining unit as temporary employees who worked more than 20 actual hours per week through the date of this Supplemental Award.

The Company may not insist, as a condition precedent to paying the Union all back dues, fees and assessments, that the Union sign an agreement authorizing deductions for such arrearages from future employee paychecks.

Beginning on the day after the date of this Supplemental Award, the Company shall forward amounts properly deducted from employee paychecks according to itemized and up-dated statements received from the Union pursuant to Article 3.

The Company is not restricted by this Award from attempting, on its own and outside this contract, to recoup back dues, fees and assessments from current or former employees.

Dated in Oshkosh, Wisconsin this 3rd day of July, 2008.

Sharon A. Gallagher /s/

Sharon A. Gallagher, Arbitrator

⁵ Given the prior parties' difficulties with the remedy in this case, I will retain jurisdiction over the remedy herein for 60 days from the date of this Supplemental Award.

⁶ The Union requested interest be paid on the amounts due. There is no contractual or precedential basis for this request and it is hereby denied. Also, only one case cited by the Union ordered such an interest payment. Arbitrator Nathan did so, apparently based on no requests for same and without any analysis or citation to any precedent. CITY OF EFFINGTON, 108 LA 1131, 1134 (1997).