

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

TEAMSTERS GENERAL UNION LOCAL 662

and

PIERCE COUNTY

Case 154

No. 70637

MA-15002

(Hoyt Grievance)

Appearances:

Mr. Kyle McCoy, Attorney, Soldon Law Firm, LLC, 6319 29th Avenue NW, Minneapolis, Minnesota, appearing on behalf of Teamsters General Union Local 662.

Mr. Bradley D. Lawrence, Corporation Counsel, Pierce County, 414 W. Main Street, P.O. Box 367, Ellsworth, Wisconsin, appearing on behalf of the Pierce County.

ARBITRATION AWARD

Teamsters General Union Local 662, hereinafter “Union” and Pierce County, hereinafter “County,” jointly requested that the Wisconsin Employment Relations Commission assign the instant dispute to Lauri A. Millot to hear and decide in accordance with the grievance and arbitration procedures contained in the parties' labor agreement. In advance of hearing, the County filed a Motion to Dismiss asserting that:

1. This Motion is made pursuant to Wis. Stats Sec. 227.449(6) and 802.06.
2. The Union failed to timely file Grievance #1-10 for arbitration. More than ten (10) days elapsed between the time of the conference involving the Employer and the Union and the referral of the grievance to the arbitrator. The Union failed to comply with the required timeline set forth in the parties/ collective Bargaining Agreement.

The parties agreed to litigate the procedural issue in advance of hearing. The Union filed a responsive brief on July 11, 2011 and the County filed a reply brief by July 15, 2011.

Accepting all background and facts contained in the pleadings, the undersigned makes and issues the following Award.

RELEVANT CONTRACT LANGUAGE

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ARTICLE 8 – GRIEVANCE PROCEDURE AND ARBITRATION

Section 1. Definition of a Grievance. A grievance shall mean a dispute between the Employer and employee and/or the Union concerning the interpretation or application of the terms of this contract. When a grievable event occurs, the employee shall continue to work unless the event is related to health or safety matters.

Subject Matter. Only one subject and all relevant issues relating thereto shall be covered in any one grievance. A written grievance (Step 2) shall contain the name and position of the grievant, a clear and concise statement of the grievance, the issue involved, the relief sought, the date of the incident or violation took place, the specific signature of the grievant, and the date.

Settlement of a Grievance: Any grievance shall be considered at the completion of any step in the procedure if all parties concerned are mutually satisfied. Dissatisfaction is implied in recourse from one step to another. Settlements shall be reduced to writing and filed. All disputes and grievances which arise by employees and/or their representatives, or the Employer, shall be processed in the following manner and sequence except that Employer or Union Representative grievances shall proceed immediately to the fourth step:

1. The employee originating the grievance shall discuss the matter with the supervisor under whom he/she is working or he/she may submit the grievance to the steward, who shall in the presence of the employee, discuss the matter with the supervisor. This Step 1 shall be initiated within fifteen (15) work days after the employee knew or should

have known of the cause of the grievance. The supervisor shall respond in writing within seven (7) working days.

2. If the issue is not resolved in Step 1 above, the employee shall reduce the grievance to writing and sign same, then the employee or steward shall present the written grievance to the Director within seven (7) work days. The Director shall respond in writing within seven (7) working days.
3. Within seven (7) days from the receipt of the written grievance by the Director, the Steward and the employee submitting the grievance, shall meet with the Administrative Coordinator to discuss and attempt to resolve the grievance. The Administrative Coordinator shall respond in writing within seven (7) working days.
4. Any grievance remaining unsettled after having been processed through Steps I (sic) through 3 shall then be taken up by the Union with the Personnel Committee at their next meeting.
5. If it is impossible to comply with the time limits specified in the procedure because of work schedules, illness, vacations, committee meetings, etc., these limits may be extended by mutual consent.

Section 2. Any grievance not resolved as a result of the above-listed steps, or any violation of this Agreement, is arbitrable and may be submitted to arbitration by either party, as provided in Section 3 of this Agreement.

Section 3. Arbitration. Any grievance or violation which cannot be adjusted by the procedure of Sections 1 or 2 shall be referred by either party hereto within ten (10) days after the conference between the Employer and the Union, as set forth in Section 1 and 2 to an arbitrator. The parties shall attempt to voluntarily agree upon a neutral arbitrator. In the event that they are unable to agree, either party may request the Wisconsin Employment Relations Commission to prepare a list of five (5) impartial arbitrators. The parties shall then alternately strike names

on the slate, with the party filing the grievance exercising the first and third strikes. The parties shall exercise their strikes within fifteen (15) days following the receipt of the slate from the WERC.

The decision of the arbitrator shall be binding upon the parties of such dispute. The expense of the arbitrator shall be divided equally between and paid by the Employer and the Union except that the cost of the WERC filing fee shall be paid by the party requesting arbitration. The decision of the Arbitrator shall be limited to the subject matter of the grievance. The arbitrator shall not have the authority to change, alter or modify any of the terms or provisions of this Agreement.

Section 4. In case of any dispute involving any employee working under this Agreement, where such dispute could be determined by the Employer's records, the Employer will furnish on request to the employee, the Union all such necessary records which are involved in the dispute.

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BACKGROUND AND FACTS

The Grievant was hired by the County on September 25, 2006 as the Drug Court Coordinator. The Grievant was informed on November 17, 2010 that she would be laid off effective December 31, 2010. The Grievant requested the opportunity to "bump" into a social worker position, which the County denied. That denial prompted the filing of this grievance on December 14, 2010.

The County Personnel Committee met on January 17, 2011 and addressed the grievance. Teamster Business Agent Tim Wentz telephoned County Personnel Coordinator Sandra Langer on January 18, 2011 to inquire as to the action taken by the Committee. Langer informed Wentz that the County had denied the grievance.

On January 20, 2011, Wentz sent Langer an e-mail at 10 a.m. which read as follows:

Subject: Linda Hoyt Grievances

Sandy, The Union intends to Arbitrate the grievances filed by Linda Hoyt and would suggest to use Lauri Millot as the arbitrator. If you do

not object I will file for arbitration, if you do object I will request a list of five arbitrators from WERC.

Tim Wentz
Business Agent

Langer responded to Wentz's e-mail as follows:

Tim,

Your e-mail is being forwarded to AC Barkla. We will get back to you as soon as possible to respond to your suggestion for the arbitrator.

I have also talked with County reps regarding your request for additional information on the outcome of the F & P grievance hearing. I hope to have the County's response to your request very soon.

Sandy

County Corporation Counsel Brad Lawrence authored the third e-mail on that date. Lawrence's e-mail read:

Subject: Teamsters arbitration

Tim: I see with respect to the Linda Hoyt grievances that you e-mailed Pierce County Personnel Coordinator Sandy Langer advising her of your intent to take the grievances to arbitration, and inquiring about arbitrators, etc.

Please be advised that, as Corporation Counsel for Pierce County, it is my responsibility to provide the County with representation in grievance arbitration matters. I understand that you may not be familiar with Pierce County management personnel and their specific duties and responsibilities, which is why I believe it important to communicate with you at this time.

In the future, I would respectfully request that when a grievance is moving to the arbitration stage in accordance with Article 8, Section 3 of the Teamsters collective bargaining agreement, that you correspond and communicate directly with me, as legal counsel for Pierce County. I would certainly encourage you to copy in by 'cc' the Personnel

Coordinator and the Administrative Coordinator so that everyone is assured the communication is received and responded to appropriately.

Thank you for your cooperation. Brad.

Wentz responded to Lawrence the following day:

Brad,

My apologies, you are correct in your assumption that I was not aware of the proper procedure of whom to contact in this case. I will make sure that in the future I will address my correspondence to you directly. Should I be contacting you directly involving the initial grievance process, including information requests etc. and the steps leading up to this stage? If you have any other concerns

feel free to contact me at your earliest convenience.

Tim Wentz
Business Agent

Lawrence responded to Wentz on January 26, 2011 clarifying that he was “only referring to when the grievance reaches the arbitration step” and that Wentz should continue with the “normal process” for all non-arbitration matters.

Wentz sent a follow-up e-mail to Lawrence on February 6 pointing out that the County had not responded regarding the County’s choice of an arbitrator and asking whether it had any issues with the arbitrator that the Union had previously recommended. Lawrence responded later that same day indicating the County’s agreement with the recommended arbitrator.

The Union completed and submitted the Wisconsin Employment Relations Commission Request to Initiate Grievance Arbitration form and it was received by the Commission on February 18, 2011.

DISCUSSION

The issue in this case is whether the grievance is procedurally defective. The County challenges timeliness on the basis that the Union failed to comply with the

contractual grievance procedure when it did not timely notify the WERC of its intent to arbitrate the grievance. The Union maintains that the grievance is timely and that it fulfilled its contractual obligation when it provided the County notice of intent to submit the dispute to arbitration on January 20, 2011, which was two days after the previous step.

The parties negotiated specific wording into their agreement and those words must be given meaning. If the meaning of the language is clear and unambiguous, then the parties are bound by those words and it is unnecessary to resort to interpreting their agreement. If the language is not clear and unambiguous, then it is the role of the arbitrator to interpret the language in an effort to ascertain the parties' intent. Elkouri and Elkouri, *How Arbitration Works*, 6TH Ed. (2002) p. 273-276.

The operative language is contained in Article 8, section 3, and states:

Section 3. Arbitration. Any grievance or violation which cannot be adjusted by the procedure of Sections 1 or 2 shall be referred by either party hereto within ten (10) days after the conference between the Employer and the Union, as set forth in Section 1 and 2 to an arbitrator. The parties shall attempt to voluntarily agree upon a neutral arbitrator. In the event that they are unable to agree, either party may request the Wisconsin Employment Relations Commission to prepare a list of five (5) impartial arbitrators. The parties shall then alternately strike names on the slate, with the party filing the grievance exercising the first and third strikes. The parties shall exercise their strikes within fifteen (15) days following the receipt of the slate from the WERC.

I start with the first sentence of Section 3. The Union filed **the** grievance on November 14, 2010, and it was ultimately denied by the Personnel Committee on January 17, 2011. The record does not provide sufficient evidence to establish whether the parties complied with the procedural requirements contained in Section 1 of the Article, but given that there is no challenge to the early processing of the grievance, I must conclude that the parties consented to the process which was followed.

The language next provides that the parties have 10 days from the date of a "conference" within which to "refer...[the grievance] to an arbitrator." In looking to Sections 1 and 2 of the article, there is no reference to a "conference." Instead, in Step 1 there is a "discussion" between the Grievant and the Supervisor; in Step 2 there is a presentation of the grievance to the Director, in Step 3 there is a "meeting" with the Administrative Coordinator, and in Step 4 the matter is "taken up" by the Union to

the Personnel Committee. None of these instances is labeled a “conference,” yet all could be viewed as the conference referred to in Section 3.

Since the parties did not reference a “conference” in the grievance processing language, it is not clear what the onset date is from which the 10 days begin to toll. Given that the last possible forum where the Union could have successfully resolved the grievance in advance of arbitration was when it was before the Personnel Committee, it is possible that this could be the intended “conference,” but since neither the Union nor the Grievant learned that the grievance was denied on January 17, 2011, it is unreasonable to start counting 10 days from when the Union did not even know that the grievance has been denied.

The Union contacted the County on January 18 by telephone and inquired as to the outcome of the grievance at the Personnel Committee meeting. County Personnel Coordinator Sandra Langer informed Business Agent Tim Wentz that the Committee had denied the grievance.

The Union then had 10 days within which to “refer” the grievance to arbitration. This is the crux of this dispute. The County maintains that “refer” in Section 3 means “when a request (i.e. referral) for arbitration is required to be filed with an arbitrator” and further calculates that 31 days expired between when the Personnel Committee met and the Request to Initiate Grievance Arbitration was filed by the Union with the Wisconsin Employment Relations Commission. County brief, p. 2. The Union argues that “refer” requires only that the Union inform the County that it intends to proceed to arbitration.

The Union became aware that the grievance had been denied by the Personnel Committee on January 18. Two days later, it informed Langer that it intended to proceed to arbitration and suggested an arbitrator for the matter. Langer responded to the Union’s e-mail, copied in County Administrative Coordinator Barkla and Corporation Counsel Lawrence and assured Wentz that, “[w]e will get back to you as soon as possible to respond to your suggestion for the arbitrator.” The County did not respond. Rather, the Union was forced to send an e-mail to the County inquiring as to the status of the proposed arbitrator. Lawrence responded with the County’s agreement. This e-mail exchange occurred on Sunday, February 6.

The Union waited 17 days for the County to affirm the suggested arbitrator and that affirmation was the result of a prompt from the business agent. The County was responsible for the interruption in the processing of the grievance to arbitration. Once the County, through two of its agents, accepted the responsibility to respond to the

Union's suggested arbitrator, and thereafter failed to respond, it waived its right to claim a time limit violation. The onus was on the County to respond and the County cannot benefit from its failure to do so. Moreover, the delay was neither excessive nor did it unfairly hinder the County's ability to litigate this case.

AWARD

The grievance is timely.

Dated at Rhinelander, Wisconsin, this 22nd day of September, 2011.

Lauri A. Millot /s/

Lauri A. Millot, Arbitrator