BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

MANITOWOC HEALTH AND REHABILITATION CENTER
EMPLOYEES UNION, AFSCME LOCAL 1288, AFL-CIO

and

MANITOWOC HEALTH AND REHABILITATION CENTER

Case ID: 433.0000
Case Type: MA

AWARD NO. 7912

Appearances:

Bill Moberly, for the Union.

Scott A. Paulsen, for the Employer.

ARBITRATION AWARD

Manitowoc Health and Rehabilitation Center Employees Union, AFSCME Local 1288, AFL-CIO, and the Manitowoc Health and Rehabilitation Center selected the undersigned to serve as an arbitrator pursuant to the terms of a 2013 – 2016 collective bargaining agreement between the parties. A hearing was held on June 8, 2015, in Manitowoc, Wisconsin. A transcript of the hearing was not prepared.

The Employer filed written argument on July 8, 2015. The Union subsequently asked for the opportunity to file a reply brief. The Employer opposed the request. I denied the request on July 27, 2015, because the parties had agreed at the conclusion of the hearing that there would be no reply briefs.

ISSUE

The parties agreed to the following statement of the issue:

Did the Employer violate the collective bargaining agreement by not paying step increases to employees and, if so, what remedy is appropriate?

DISCUSSION

At hearing and in its written argument, the Employer asserted for the first time that the grievance raising the step payment issue was untimely. It is commonly accepted that a primary purpose of the grievance procedure is discussion of the arguments and defenses each side may have so that the chances of settlement/clarification of the issues is maximized. The grievance procedure in the 2013 – 2016 agreement (Article 12) contains many references to settlement and thus reflects adoption of this primary purpose by this Union and Employer. By failing to raise a timeliness defense during the grievance procedure, the Employer did not honor this primary purpose and thereby lost the right to have me consider the merits of that defense now.

As to the merits of the issue which the parties agreed I should resolve, the Union contends that as part of the 2013 – 2016 agreement, the parties agreed to a wage grid which: (1) established a wage rate for new hires (years one through six thereof); and (2) entitled current employees to the wage rate specified (years seven through ten thereof) when they attained the specified years of employment. The Employer asserts that the wage grid is not part of the 2013 – 2016 agreement and has the limited purpose of establishing wage rates for new hires.

During bargaining over the 2013 – 2016 agreement, there was no discussion of a wage grid and there were no proposals that specifically referenced such a grid. In December 2013, the parties signed the 2013 – 2016 agreement which did not include a wage grid but did state the following:

ARTICLE 33

WAGES

> Employees shall receive a two percent (2%) wage increase the first pay period after January 1, 2014; employees shall receive a one and a half percent (1½%) wage increase the first pay period after January 1, 2015; employees shall receive a half percent (½%) wage increase the first pay period after July 1, 2015; employees shall receive a one percent (1%) wage increase the first pay period after January 1, 2016.

In January 2014, the Union approached the Employer regarding creation of a wage grid similar to a grid that had been included in the expired 2011 – 2013 agreement. The Employer

agreed to update the 2011 – 2013 wage grid, and there was discussion with the Union over wage rates and job classifications to be included.

Union witnesses testified that the wage grid was signed and became part of the 2013 - 2016 agreement which then entitled employees reaching seven to ten years of employment to wage increases over and above those specified in Article 33. However, a Union witness conceded that the Employer told the Union during wage grid discussions that the grid was being updated from the 2011 – 2013 version for the purpose of creating new hire rates. An Employer witness testified that the sole purpose of the wage grid was for the establishment of wage rates for new hires. However, the Employer witness acknowledged that years seven through ten on the grid were not relevant for new hire purposes but contended that those wage rates are present as a starting point for future bargaining.

The record before me does not include a signed version of the grid or a copy of the 2013 – 2016 agreement to which the wage grid is attached. It also is undisputed that, although many employees would have been eligible (in the Union's view) for step increases between the time the grid was created in February 2014 and the November 2014 filing of the instant grievance, no step increases were paid and no previous grievances were filed. Those facts alone cast some doubt on the Union's understanding of the status of the wage grid. In addition, after a collective bargaining agreement has been signed, it would be highly unusual for an employer to agree to provide additional wage increases over and above those already agreed upon. Nonetheless, if the record provided sufficient persuasive evidence of a mutual understanding that years seven through ten of the wage grid entitled employees to step increases, I would reach that conclusion. However, there is not enough such evidence in this record for me to reach that conclusion.

While it may well have been the Union's understanding that it was bargaining a wage grid that provided step increases for certain employees, there is no specific evidence that it ever told the Employer of that intent. There is no evidence that the Union told the Employer that it disagreed with the Employer's understanding when the Employer told the Union that the purpose of the grid was to establish new hire rates. Thus, while the existence of years seven through ten on the grid is consistent with the Union's position in this matter, there ultimately is not enough evidence of a mutual intent to establish step increases for me to sustain the grievance. Therefore, I conclude that the Employer did not violate the collective bargaining agreement by not paying step increases.

Dated at Madison, Wisconsin, this 13th day of August 2015.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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Peter G. Davis, Arbitrator