

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration of a Dispute Between

CITY OF DE PERE

and

DE PERE PROFESSIONAL FIREFIGHTERS ASSOCIATION, IAFF LOCAL 141

Case ID: 556.0001

Case Type: MA

AWARD NO. 7956

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**Appearances:**

Judith Schmidt-Lehman for the City.

Timothy E. Hawks for the Association.

**ARBITRATION AWARD**

Pursuant to the terms of a 2018-2020 collective bargaining agreement, the De Pere Professional Firefighters Association, IAFF Local 141, requested the Wisconsin Employment Relations Commission assign an arbitrator as to a grievance between the Association and the City of De Pere. I was so assigned.

The City subsequently raised an arbitrability issue, and the parties agreed I had jurisdiction to resolve that issue. The parties thereafter filed a stipulated record and written argument. The record was closed on September 17, 2019.

**ISSUE**

Is the grievance filed by the Association now arbitrable?

**DISCUSSION**

The parties agree the action as to which the Association now seeks a ruling will not occur until 2020. Thus, the City contends the matter is not now arbitrable. The Association counters that it need not wait until 2020 to arbitrate the issue and cites the doctrine of “anticipatory breach.”

In *Jefferson School Dist. No. 10 v. Jefferson Educ. Ass'n*, 78 Wis.2d 94 (1977), the Wisconsin Supreme Court determined that arbitrability disputes are to be resolved by answering the following questions.

1. Is there a construction of the contractual arbitration clause that covers the grievance on its face?
2. If so, is there another provision in the contract that specifically excludes the grievance from the scope of the arbitration clause?

The Court further held that unless it can be concluded with positive assurance that a grievance is excluded from the scope of the contractual arbitration clause, the grievance should be found to be arbitrable.

Here, a “grievance” is contractually defined as “any complaint involving the interpretation, application or alleged violation of the terms of this agreement ... .” The contractual “arbitration clause” broadly states that “Grievances not resolved ... may be appealed ... for arbitration.”

While it can certainly be argued an “alleged violation of the terms of this agreement” will not occur until 2020, it can also reasonably be argued the grievance in question is a “complaint involving the interpretation ... of the terms of this agreement ... .” Thus, answering Question No. 1 above, I conclude there is a construction of the contractual arbitration clause that covers the grievance on its face.

As to Question No. 2 above, the City seeks to equate the identity of the specific contract provision in dispute (Article 12) with a contract provision that specifically excludes the grievance from the scope of the arbitration clause. That City argument is not persuasive. There is no language in Article 12 that excludes disputes over its interpretation from the very general scope of the arbitration clause. Thus, Question No. 2 above is answered in the negative.

In light of the foregoing, I conclude the grievance is arbitrable.

Issued at the City of Madison, Wisconsin, this 1st day of October, 2019.

## **WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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Peter G. Davis, Arbitrator