BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

JUSTIN GLODOSKI

AND

CITY OF MADISON

Case ID: 256.0033
Case Type: MA
Award No. 8000

Appearances:

Nicholas E. Fairweather and John M. Chick, Attorneys, Hawks Quindel, 409 East Main Street, P.O. Box 2155, Madison, Wisconsin, appearing on behalf of Justin Glodoski.

Patricia A. Lauten, Attorney, City of Madison, 210 Martin Luther King, Jr. Boulevard, Suite 401, Madison, Wisconsin, appearing on behalf of the City of Madison.

ARBITRATION AWARD

Justin Glodoski, hereinafter referred to as Glodoski, and the City of Madison, hereinafter referred to as the City, are subject to the City's Municipal Employee Handbook, which permits employee grievances over certain matters. The Wisconsin Employment Relations Commission assigned the undersigned to decide a grievance related to a worker's compensation claim. The City objected, arguing that grievance was not arbitrable. The parties filed briefs and reply briefs on the issue of arbitrability, whereupon the record was closed on March 17, 2025. Having considered the evidence, the arguments of the parties, and the record as a whole, the undersigned issues the following Award.

ISSUES

Is the grievance filed by Glodoski arbitrable?

PERTINENT PROVISIONS

City of Madison ordinance § 3.53, Civil Service System, states that:

9) Grievance and Arbitration Procedure for General Municipal Employees.
(a) Grievable Matters. A matter is grievable under this ordinance if it involves members of Compensation Groups 15, 16, 20 ,23, 28, 31, 32, 33, 71, 83 and the general interpretation, application, compliance with, or enforcement of the following:

1. Sections 3.32 and 3.54, MGO;
2. The General Municipal Employee Handbook;
3. Any matter designated as grievable in the Personnel Rules.

Any matter covered under a valid labor contract is excluded from this Ordinance. *Madison General Ordinances* § 3.53(9).

The City of Madison Employee Benefits Handbook for General Municipal Employees (herein, the Handbook) contains the following pertinent provisions:

GRIEVANCE AND ARBITRATION

Employees may file grievances using the following procedure regarding the general interpretation, application, compliance with, or enforcement of City of Madison ordinances §3.32 and §3.54 or this handbook. However, matters covered under the City's Personnel Rules or a valid labor contract shall be subject to the appeals and grievance procedures contained therein, unless otherwise specified.

SENIORITY

Seniority is the employee's total continuous time of service in a permanent position with the City of Madison. Unpaid leaves of absence, in excess of thirty (30) working days in a year, shall not qualify as service. Military leave shall be counted as service time as provided by law. As with all other benefits, regular part-time service shall be counted on a pro-rata basis (except for employees in compensation group 32 at the Library). Employees in LTE positions may accumulate seniority for benefit and job posting purposes, but are not entitled to layoff or recall rights. Seniority and continuous service shall be considered broken and any existing rights to employment shall be considered lost when an employee: 1. Resigns; 2. Is discharged for any justifiable cause; 3. Is absent from duty without authorization for three (3) consecutive days; 4. Fails to respond to recall within seven (7) days of notice.

DISABILITY LEAVE AND LAYOFF

An employee who is injured or otherwise unable to work because of a physical or mental impairment that is not work-related is entitled to a maximum of six (6) months leave of absence without pay subject to the following conditions:

- The employee must not have any available sick leave time.
- The employee must apply for such leave in writing to their department/division head, who will forward such request to the Human Resources Director, or designee, for approval.

> • The employee must submit a treating physician's report directly to Human Resources, including a statement regarding the medical reason(s) for the leave and whether or not the employee is able to work.
> • In order to return to work, the employee must provide notice and submit to the department/division head a treating physician's release for work.
>
> During the period of disability leave of absence, the City will make its normal contribution toward the employee's health insurance premiums. When medically fit to return from disability leave, the City will restore the employee to their original position. Employees can be placed on disability leave status during a covered leave under the Family and Medical Leave Act. In this case, employees do not need to submit additional medical documentation; the City will consider the documentation submitted with the FMLA sufficient for disability leave. Employees are not eligible for holiday pay, paid leave days, or other paid leave accrual during disability leave….

Wis. Admin. Code § DWD 80.03(2): "If the department approves the compromise agreement, an order shall be issued by the department directing payment in accordance with the terms of the compromise agreement. No compromise agreement is valid without an order of the department approving the agreement."

The parties' compromise agreement, entered into on or around April 11, 2024, states, in pertinent part:

> "NOW, THEREFORE, as and for a full, final and binding compromise settlement of all claims arising from any and all alleged injuries to the employee's left shoulder and/ or right shoulder through the date of this agreement and/ or arising from the August 23, 2021 injury date and/ or the November 16, 2022 injury date, whether alleged on a traumatic or occupational basis, including claims under Wis. Stat. [] [] 102.18(1)(bp), 102.22, 102.35(3), 102.43(5), 102.57, and 102.61, all of which claims are expressly denied and disclaimed by the employer;
> IT IS HEREBY AGREED BY THE PARTIES:
> 1. That the City of Madison will in full and final compromise of all claims as set forth above pay the total sum of $150,000."

See City's Exhibit 2, pg. 2.

BACKGROUND

The City is a municipal employer that provides water utilities. Glodoski is an employee of the City of Madison Water Utility. The action that is the subject of this grievance arbitration occurred during Glodoski's employment with the City.

FACTS

On August 23, 2021, Glodoski filed a worker's compensation claim for an injury to his left shoulder. On November 16, 2022, Glodoski filed a worker's compensation claim for an injury to his right shoulder. For each injury, Glodoski was off work for approximately six months for surgery and recovery. Glodoski used his sick and vacation time, and the City paid him for this. Glodoski also received Hartford disability insurance benefits for missed time once he exhausted his vacation and sick leave balances.

After Glodoski filed hearing applications for both injuries and sought disability benefits and medical expenses, the City denied the cause, nature, and extent of Glodoski's work injuries. On or around April 11, 2024, following mediation, Glodoski and the City entered into a compromise agreement. The State Worker's Compensation Division approved the compromise agreement and ordered the City to pay Glodoski. Glodoski asked about his sick and vacation leave, and his seniority status, but the Administrative Law Judge (ALJ) who signed the compromise order informed Glodoski that he could not resolve issues related to leave or seniority in a worker's compensation compromise agreement. Neither the compromise agreement nor the ALJ's order referenced Glodoski's sick leave, vacation leave, or retirement status. The City made the payments to Glodoski on or around April 16, 2024.

On or around August 7, 2024, Glodoski filed a grievance with the City alleging violations of the Madison General Ordinances, the General Municipal Employee Handbook, and/ or the Personnel Rules. He requested that the City restore the vacation and sick leave he took and provide credits toward retirement. The City denied the grievance as non-arbitrable. Glodoski then brought this grievance before the Wisconsin Employment Relations Commission on or around January 22, 2025.

DISCUSSION

There is strong legislative policy favoring arbitration in the municipal collective bargaining context as a means of settling disputes and preventing individual problems from growing into major labor disputes. *See* Wis. Stat. §§ 111.70(3)(a) 5, 111.70(6), *see also Joint School District No. 10 v. Jefferson Ed. Ass'n*, 78 Wis.2d 94 (1977). The question of substantive arbitrability is a threshold issue for the arbitrator. The weight of authority favors having the arbitrator initially decide the issue of substantive arbitrability, even though the decision is subject to de novo review by the courts.

In this case, the City maintains that the matter is not arbitrable because the Worker's Compensation Act's (WCA's) exclusive remedy provision prohibits this claim, taking precedence over Madison ordinances, Personnel Rules, and the Handbook. The City contends that the compromise agreement was the full and final resolution of all claims arising from Glodoski's injuries. The City also argues that if Glodoski's leave and seniority were restored, he would benefit twice, since the lump sum settlement included money for "pay back" of lost time. Lastly, the City contends that it correctly paid Glodoski for the sick time and vacation time he took, and that

because it discharged those requests fully and correctly, there are no grounds for a grievance arising from the City ordinances, Handbook, or Personnel Rules.

Glodoski correctly argues that the WCA's exclusive remedy provision does not preclude this claim. In *Byers v. Labor & Indus. Rev. Comm'n*, the Wisconsin Supreme Court held that the WCA only prohibits further tort claims arising from the work injury, not other types of claims. *See Byers v. Labor & Indus. Rev. Comm'n,* 208 Wis. 2d 388, 401–02, 561 N.W.2d 678, 683 (1997). In *County of La Crosse v. WERC*, the Wisconsin Supreme Court further held that the WCA's exclusive remedy provision did not bar an employee from seeking arbitration under a collective bargaining agreement. *See County of La Crosse* v. WERC, 182 Wis. 2d 15 (1994).

However, the City correctly argues that the compromise agreement was the full and final resolution of all claims arising from Glodoski's injuries. The compromise agreement is titled "Full & Final Compromise," and clearly states:

> "NOW, THEREFORE, *as and for a full, final and binding compromise settlement of all claims arising from any and all alleged injuries to the employee's left shoulder and/or right shoulder through the date of this agreement and/or arising from the August 23, 2021 injury date and/or the November 16, 2022 injury date* [emphasis added], whether alleged on a traumatic or occupational basis, including claims under Wis. Stat. §§102.18(1)(bp), 102.22, 102.35(3), 102.43(5), 102.57, and 102.61, all of which claims are expressly denied and disclaimed by the employer; IT IS HEREBY AGREED BY THE PARTIES: 1. That the City of Madison will *in full and final compromise of all claims as set forth above* [emphasis added] pay the total sum of $150,000."
>
> *See* City's Exhibit 2, pg. 2.

"All claims" includes this grievance, which arose from Glodoski's 2021 and 2022 shoulder injuries. The compromise agreement does not say "a full, final, and binding settlement of workers' compensation claims" or "a full, final, and binding settlement of all claims except those brought under the City of Madison's grievance procedure" – it simply says "all claims."

Glodoski argues that the settlement could not have included these provisions, because the Office of Workers' Compensation Hearings and the Department of Workforce Development lack jurisdiction over issues collateral to workers' compensation, such as fringe benefits. *Theuer v. Labor & Indus. Review Comm'n*, 2001 WI 26, ¶ 25, 242 Wis. 2d 29. Glodoski also argues that the ALJ informed him that he (Glodoski) could not resolve issues related to leave or seniority in a worker's compensation compromise agreement. This may be the case, but if Glodoski had hoped to grieve an issue related to fringe benefits, he should have negotiated to exclude these issues from the compromise settlement, rather than agreeing to settle "all claims" arising from his injuries.

The Wisconsin Court of Appeals has previously held that: "Whether … [a] grievance is arbitrable under the collective bargaining agreement depends upon whether it has already been resolved, since grievances are subject to final and binding arbitration only if they remain "unresolved" …. parties may resolve a grievance by settlement, and they implicitly agree that if a

grievance is settled, it is not arbitrable. *Accord* Frank Elkouri & Edna Asper Elkouri, How Arbitration Works 269–70 (Alan Miles Ruben ed., 6th ed. 2003) (it is to be expected that a mutual settlement of a grievance by the parties ordinarily will be held binding on them insofar as the particular instance is resolved)." *See Madison Tchrs. Inc. v. Madison Metro. Sch. Dist.,* 2004 WI App 54, ¶ 11, 271 Wis. 2d 697, 707–08, 678 N.W.2d 311, 316. The issues involved in this grievance have already been resolved by the parties' April 11, 2024, compromise agreement. Therefore, the grievance is not arbitrable.

I conclude that I do not have the authority to consider this grievance, because the parties' compromise agreement represented the full, final, and binding resolution of all claims arising from Glodoski's 2021 and 2022 shoulder injuries.

On the basis of the above and foregoing, the evidence and the arguments of the parties, the undersigned makes and issues the following:

AWARD

The grievance is not arbitrable.

Issued at the City of Madison, Wisconsin, this 19th day of June 2025.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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Katherine Scott Lisiecki, Arbitrator