
SHERIFF BRENT H. OLESON
AND JUNEAU COUNTY,

MEMORANDUM DECISION

Plaintiffs,

v.

Case No. 06CV100

WISCONSIN PROFESSIONAL POLICE
ASSOCIATION, INC.,

Defendants.

FACTUAL BACKGROUND

Plaintiffs (hereinafter, the “sheriff” and “county”) commenced this action for a declaratory judgment. The sheriff and the county ask the court to declare that certain decisions by the sheriff concerning the duties to be performed by two sheriff deputies (from detectives to jailor) amounted to an exercise of the sheriff’s constitutional powers. They contend that they need not participate in any arbitration or grievance procedure initiated by the two deputies pursuant to the collective bargaining agreement (hereinafter “CBA”) between the county and the defendant, Wisconsin Professional Police Association, Inc. (hereinafter, the “union”).

The union moves for a stay of this action and for an order directing the county to participate in arbitration in connection with grievances filed by the two deputies. The union contends that the only questions presented are whether the sheriff’s changing of the deputies’ duties amounted to a demotion or other discipline and, if so, was it supported by just cause, both questions covered by the CBA. The union contends that arbitration will be more efficient since if the change in duties is determined not to have been disciplinary, or disciplinary with just cause, there will be no need for the court to determine the constitutional issue raised by the county and the sheriff.

The county and the sheriff contend that the sheriff's assertion of his constitutional powers is beyond the scope of the CBA and arbitration clauses contained therein, and, therefore, it will ultimately be more efficient and in the interest of judicial economy for the court to hear and decide the case. Since the issue involved is one of constitutional law, the county argues, it belongs in this court. This is so, the county argues, because an arbitrator is less competent than a circuit court to decide constitutional questions. Moreover, they contend, the extent of the sheriff's constitutional authority should not be determined by arbitration under a contract to which the sheriff is not a party.

For his part, the sheriff echoes the county, contending he is not bound by the CBA because he did not sign it and therefore he should have his rights determined by the court. He contends that if arbitration is allowed to proceed he will be deprived of a remedy.

DECISION

The union's motion for a stay and for an order to the county to arbitrate is GRANTED.

DISCUSSION

Sheriff bound by CBA. In Brown Cty Sheriff's Dept. v. Employees Ass'n, 194 Wis 2d 265 (1995) the Brown county sheriff argued, as the county and the sheriff argue here, that he should not be bound to the arbitration agreement because he was not a party to the collective bargaining agreement. Id., at 275. The court rejected the sheriff's argument, concluding that when it comes to terms of employment and suspension, demotion, and dismissal of deputy sheriffs, the county could properly enter into a collective bargaining agreement concerning such matters so long as any restrictions on the sheriff's authority which resulted were the same as legislatively authorized by s.59.21(8)(b), Stats. See Id., pp 275-276. Neither the county nor the sheriff in this case points to anything in the CBA which would distinguish it from the situation which existed in Brown Cty Sheriff's Dept v. Employees Ass'n. Accordingly, and based on the

Supreme Court's holding in Brown County Sheriff's Dept v. Employees Ass'n, the sheriff is bound to the terms and conditions of the CBA.

Section 788.02, Wis. Stats. applies here. The statute which applies here provides as follows:

788.02 stay of action to permit arbitration.

If any suit or proceeding be brought upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit and proceeding is referable to arbitration under such an agreement, shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement, providing the applicant for the stay is not in default in proceeding with such arbitration.

Of course, in this action the county and sheriff, on one hand, and WPPA, on the other, frame the issue differently. Each accuses the other of placing the cart before the horse.

Based on the pleadings and matters filed to date, whether the assignment of the two deputies to the jail amounts to discipline or demotion is at least one of the issues in this case. There exists no serious doubt that this issue is one covered by the arbitration provisions of the CBA. That is, the court is satisfied that the issue of whether the assignment of two detectives to jail duties amounts to discipline or demotion is referable to arbitration under the CBA (see CBA marked exhibit D p. 20-ARTICLE XIII- discipline/discharge and pp. 21-22, Section 14.03; see also s.788.02, Stats. above).

The issue as stated by the sheriff is "the scope of his constitutional authority in relation to assignment of jail duties to [the two deputies]." ¹ However, under these circumstances --- two issues, one arbitrable, one arguably not --- the court "may in the interest of judicial economy, stay all proceedings before it pending a final determination of the issues submitted to arbitration."

Madison Beauty Supply, LTD v. Helene Curtis, Inc. 167 Wis. 2d 237, 241 (Ct. App. 1992). That is, if there are two issues, one arbitrable and one arguably not, the court in its discretion can stay

litigation of the issue *not* subject to arbitration so long as it serves the interests of judicial economy to do so.

Arbitration of the issue as framed by the WPPA in this case makes sense from a judicial economy standpoint for a number of reasons. Experienced WERC arbitrators are as able to develop a factual record and draw reasonable conclusions as the circuit court, particularly with respect to work place and labor issues. In the court's experience, WERC arbitrators, ALJ's, etc. are often enough called upon to make detailed findings and conclusions on such subtle and complex issues as management decisions alleged to be pretextual or carried out with unlawful motivation. The court's conclusion in this regard is bolstered by the fact that arbitration is favored in the law and that doubts are to be resolved in favor of arbitration.

The county and the sheriff argue to the effect that an order to arbitrate necessarily deprives the sheriff of a remedy, that arbitration means the sheriff loses his argument that the assignment of the two detectives to jail duty lies within the scope of the sheriff's constitutional authority. The court disagrees. The reality is that the sheriff unquestionably will be able to fully participate in the arbitration proceedings even though he is not a party to the CBA. This action for declaratory judgment is not dismissed, it will be stayed. The issues to be arbitrated are whether the assignments amounted to discipline or demotion. As the Supreme Court ruled in Heitkemper v. Wirsing, 194 Wis. 2d 182 (1995) "...the power to demote, ...may be regulated by...the collective bargaining agreement." Id. at 202. This court is bound by the conclusion in Heitkemper. The sheriff's power to demote is not constitutionally protected and, here, the assignment to the jail, alleged to be a demotion is arbitrable.

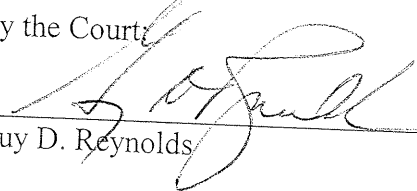
The parties last submission for the court's consideration in this matter is the case of State of Wisconsin ex rel Milwaukee County Personnel Review Board v. Clarke, 2006 WI App 196 (ordered published 9-27-06). The court has read this case. Clearly, the case is distinguishable

¹ See pp. 2-3 of the sheriff's brief in opposition to motion to stay dated 06/27/06.

from the case at hand in a number of important respects. Principally, the court in Clarke dealt with three issues not involved here namely mootness, standing to sue, and the law of mandamus. There are some factual similarities between Clarke and the case at hand in that the Clarke case involved a demotion (a deputy was stripped of his rank of sergeant). And, the case addresses the limits of the sheriff's authority to impose demotion when there are already disciplinary proceedings pending before the personal review board. See, Id., ¶28. Read broadly, the Clarke case appears to hold that the sheriff's constitutional authority does not trump lawful orders by the personal review board acting within its statutory authority. And, the Clarke case may arguably be an example of another reported case pointing up the need for clarification of the scope of the constitutional authority of Wisconsin Sheriff's. Having said this, this court finds nothing in the Clarke case which would change the conclusions this court reaches in this case.

This action is stayed. The county is ordered to arbitrate.

Dated at Baraboo this _____ day of December, 2006.

By the Court


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