COURT OF APPEALS
DECISION
DATED AND RELEASED

March 13, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 94-3265

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT II

CITY OF MENASHA, WISCONSIN,

Petitioner-Appellant,

v.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION, ARBITRATOR KAREN MAWHINNEY, KRISTIN ERICKSON and MENASHA CITY EMPLOYEES UNION LOCAL 1035, AFSCME, AFL-CIO,

Respondents-Respondents.

APPEAL from an order of the circuit court for Winnebago County: BRUCE SCHMIDT, Judge. *Affirmed*.

Before Brown, Nettesheim and Snyder, JJ.

PER CURIAM. The City of Menasha has appealed from a trial court order denying a petition for a writ of prohibition or declaratory judgment and remanding the matter to an arbitrator. The action arises from three grievances filed by Kristin Erickson, a former employee of the City, and the

Menasha City Employees Union Local 1035 (the Union). Erickson and the Union sought arbitration of the grievances by an arbitrator appointed by the Wisconsin Employment Relations Commission (WERC) pursuant to a collective bargaining agreement existing between the City and the Union. The City argues that arbitration is barred by principles of claim preclusion and issue preclusion, and because it withdrew any agreement to arbitrate.[1] We agree with the trial court that these arguments must first be addressed by the arbitrator, and we affirm its order denying relief and remanding the matter to the arbitrator.

The grievances filed by Erickson and the Union allege that the City wrongfully requested an updated medical status report while Erickson was on leave from her job with the City after an injury, wrongfully refused to provide her with light duty, and wrongfully discharged her without cause and refused to rehire her. The City contended that the same facts and issues underlying these grievances were previously litigated in a worker's compensation claim filed by Erickson before the Department of Industry, Labor and Human Relations (DILHR), and that arbitration of the grievances was therefore barred by principles of claim and issue preclusion. It also contended that the arbitrator lacked jurisdiction to hear the matter because to the extent that an agreement to arbitrate existed, the City withdrew from the agreement prior to arbitration.

Before the grievances were heard by the arbitrator, the City petitioned the trial court for a writ of prohibition or declaratory judgment determining that the grievances were not arbitrable. In the order which is the subject of this appeal, the trial court denied relief and remanded the matter to the arbitrator, holding that the City's arguments regarding issue and claim preclusion were affirmative defenses which had to first be heard and decided by the arbitrator.[2]

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[1] The Wisconsin Supreme Court has recently replaced the terms "res judicata" and "collateral estoppel" with the terms "claim preclusion" and "issue preclusion." ***Northern States Power Co. v. Bugher***, 189 Wis.2d 541, 550, 525 N.W.2d 723, 727 (1995).

[2] The trial court initially granted the writ of prohibition based on this court's decision in ***County of LaCrosse v. WERC***, 174 Wis.2d 444, 497 N.W.2d 455 (Ct. App. 1993), *rev'd,* 182 Wis.2d 15, 513 N.W.2d 579 (1994). We reversed the trial court's order in ***City of Menasha v. WERC***, No. 93-1221, unpublished slip op. (Wis. Ct. App. April 27, 1994), after

We agree with the trial court's analysis. The City's arguments regarding claim and issue preclusion are defenses to the grievances asserted by Erickson and the Union. If a collective bargaining agreement entitles an employee or union to arbitration of a dispute, the merit of any defenses available to the employer must first be considered in the arbitration proceeding, rather than by the courts. ***Dunphy Boat Corp. v. Wisconsin Employment Relations Bd.***, 267 Wis. 316, 327, 64 N.W.2d 866, 872 (1954).

The City contends that ***Dunphy*** is inapplicable because the provision for grievance arbitration in its collective bargaining agreement was required by law and was therefore not voluntary, and because it withdrew any agreement to arbitrate. It contends that the arbitrator therefore lacks jurisdiction to consider the grievances or defenses.

It is undisputed that the collective bargaining agreement executed by the City and the Union provides for arbitration of grievances. The City cites no law in support of the proposition that it is entitled to unilaterally withdraw from this portion of the agreement. Similarly, it cites no law to support the proposition that because final and binding interest arbitration is mandated by § 111.70(4)(cm)6, STATS., it is not bound by the agreement to arbitrate.

Generally, this court will not consider arguments which are not supported by references to legal authorities. ***State v. Shaffer***, 96 Wis.2d 531, 545-46, 292 N.W.2d 370, 378 (Ct. App. 1980). In any event, since these grievances fall within the broad language of the collective bargaining agreement providing for arbitration of disputes concerning the interpretation or application of the agreement, any argument that the City was entitled to withdraw from the arbitration process must first be presented to the arbitrator.

By the Court.—Order affirmed.

(..continued)
release of the Wisconsin Supreme Court's decision determining that the exclusive remedy provision in the Worker's Compensation Act is not a bar to an employee's right to grieve a refusal to rehire after an injury. ***County of LaCrosse***, 182 Wis.2d at 25, 513 N.W.2d at 582. We remanded the matter to the trial court to permit it to address the arguments currently being raised by the City on appeal.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.