COURT OF APPEALS
DECISION
DATED AND RELEASED

September 19, 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. 94-3279

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

RICHARD J. CALLAWAY, II,

Plaintiff-Appellant,

v.

TEAMSTERS UNION LOCAL 695,
and CITY OF MADISON
d/b/a MADISON METRO BUS COMPANY,

Defendants-Respondents.

APPEAL from an order of the circuit court for Dane County: WILLIAM D. JOHNSTON, Judge. *Affirmed*.

Before Eich, C.J., Vergeront, J., and Paul J. Gartzke, Reserve Judge.

PER CURIAM. Richard Callaway appeals from an order dismissing his petition for an order to arbitrate. Callaway argues that he has both a contractual right and a constitutional right to have his employment grievance submitted to arbitration. We disagree and affirm the order dismissing the petition.

Callaway was a bus driver for the City of Madison, Madison Metro Bus Company. On October 17, 1993, he transferred at his own request from a full-time position to a part-time position. About five months later, Callaway notified Madison Metro that he wanted to return to work full-time. Madison Metro agreed to the full-time transfer subject to the approval of the Union, Teamsters Local 695. The Union did not approve, contending that the contract did not permit Callaway to return to the full-time position.

Callaway filed a timely grievance with his supervisor. As provided by contract, the Joint Employer and Union Grievance Committee heard the grievance. The committee concluded Callaway did not have a contractual right to the transfer. Callaway's request that his grievance proceed to arbitration was rejected.

Callaway petitioned the trial court for an order directing the City and the Union to arbitrate his grievance pursuant to § 788.03, STATS. The City and the Union filed a joint motion to dismiss the petition. The trial court held the contract gave the City and the Union, but not the employee, the authority to request arbitration. The trial court further held Callaway had no property right in his employment with the City which entitled him to an impartial tribunal to interpret the contract.

Callaway first argues his grievance should have been submitted to arbitration on the basis of his employment contract with Madison Metro. The construction of a contract is a question of law which we review *de novo*. ***Tempelis v. Aetna Casualty & Sur. Co.***, 169 Wis.2d 1, 9, 485 N.W.2d 217, 220 (1992). The contract provides: "If [the] grievance is not satisfactorily settled at [the Joint Employer and Union Grievance Committee meeting], then upon written request within ten (10) days of the Union or the Employer, such grievance shall be submitted to arbitration as hereinafter provided."

Callaway bases his argument on his interpretation of the word "of" in the contract; he contends that "of" does not mean "by," it means "to." Thus, he argues, the request for arbitration must be made "to" the City or the Union by the employee, not "by" the City or the Union. We disagree.

We conclude a request for arbitration must be made by the City or the Union. An individual employee may not make a request for arbitration. To read "of" as meaning "to" is unreasonable because the City and the Union would be unable to request arbitration. Arbitration could never occur unless the employee wanted it. The Union would be unable to serve as a "gatekeeper," assuring that only sound claims proceed to arbitration. Because we conclude the request for arbitration must be made by the City or the Union, Callaway has no right under this contract to request arbitration.

Callaway next argues he has a constitutional right to submit his grievance to arbitration. He contends that he has a property right in his employment with the City, requiring due process to attend its deprivation.

Even if we assume for purposes of decision that Callaway has a property interest in his employment, Callaway was not deprived of a property interest. We agree with the Union that

> Callaway does not claim the City removed him from the part-time job he held at the time the grievance arose. Rather, Callaway seeks to return to a full-time position which he voluntarily left. Even where a property interest in a public sector position [has] been found to exist, that interest has never extended to a claim for a position which an employee prospectively sought nor has it applied to a request to return to a position voluntarily left. In such cases, the public employer has not deprived the employee of anything, let alone an explicit enforceable property interest.

Because Callaway was not deprived of a property interest, his claim that he had a constitutional right to have the dispute arbitrated is without merit.

By the Court.—Order affirmed.

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