

BEFORE THE ARBITRATOR

 :
 In the Matter of the Arbitration :
 of a Dispute Between :
 :
 EAU CLAIRE COUNTY :
 :
 and : Case 162
 : No. 41513
 : MA-5397
 EAU CLAIRE COUNTY HIGHWAY :
 DEPARTMENT EMPLOYEES LOCAL 254, :
 AFSCME, AFL-CIO :
 :

Appearances:

Mr. Jack Bernfeld, Staff Representative, on behalf of the Union.
Mr. Keith R. Zehms, Corporation Counsel, on behalf of the County.

ARBITRATION AWARD

The above-entitled parties, herein the County and Union, are privy to a collective bargaining agreement providing for final and binding arbitration before Wisconsin Employment Relations Commission staff arbitrator. Pursuant thereto, I heard this matter on February 22, 1989 in Eau Claire, Wisconsin. The hearing was transcribed and both parties filed briefs which were received by April 26, 1989.

Based upon the entire record, I issue the following Award.

ISSUES:

Since the parties were unable to jointly agree upon the issue, I have framed it as follows:

Did the County have just cause to suspend grievant Kermit Adank for five (5) days and, if not, what is the appropriate remedy?.

DISCUSSION:

Highway patrolman Adank is responsible for taking down signs on the state's right of way - designated strips of public lands that abut the roadways - when he cruises state highways. Adank on October 25, 1988 1/ took down about seven (7) road side political campaign signs of Jacquelyn Lahn, a Republican candidate for the state. In fact, those signs were legally placed outside the right of way and therefore should not have been taken down. Furthermore, Adank that day did not remove the roadside signs of Lahn's Democratic opponent, Mark Lewis 2/, who Adank personally and openly supported. Believing that Adank's actions in taking down only some of the signs were politically motivated, the County suspended him for five (5) days.

In support of Adank's grievance, the Union asserts that the County's policies regarding the removal of highway signs are "inconsistent and selective" and that "discipline cannot be imposed for failure to follow it"; that the rule's futility became evident when the County abandoned it on October 26, after Adank removed the disputed signs; that the County "engaged in a cloak and dagger operation" to prove Adank's guilt; and that, in any event, the discipline levied against him was too harsh.

1/ All dates hereinafter refer to 1988.

2/ At least two (2) of Lewis' signs were illegally located within the state's right of way, as their location had been carefully checked the day before by one of Lahn's campaign supporters and County Highway Commissioner Thomas Walther.

In response, the County maintains that Adank deliberately removed Lahn's signs because he supported her opponent and that it therefore had just cause to suspend him for engaging in such political activities.

This case turns upon intent: whether Adank's removal of Lahn's signs and his leaving up of Lewis' signs was politically motivated or, instead, merely the result of a good faith error as claimed by Adank. If the former he deserved to be disciplined; if the latter, he was not.

Asked why he did not also remove Lewis' signs on October 25, Odank ventured "I must have overlooked them." Given the fact that Lewis' signs were illegally located within the state's right of way and that Lahn's signs were outside it and that Adank's eagle eye easily spotted the latter, this claim on its face is inherently implausible.

Any doubt about that is removed by the following revealing exchange at the hearing between Adank and his questioners:

"Q: Okay. You supported Mark Lewis in the campaign, didn't you?

A: No I didn't support him.

Q: So you had a sign in your yard saying Lewis for Assembly, but you didn't support him?

A: Well, yeah, I had a sign up.

Q: Okay. And did you, in fact, attend any type of political function for Mark Lewis?

A: Yeah. We was over at his house one Saturday afternoon and had different coffees and that. That's the only thing."

. . .

"Q: Now, you said before you didn't support Lewis in the campaign. What did you mean by that?

Pointing to the County's representatives and leaning forward in his chair, Adank exclaimed:

A: I didn't give him no money! When you support a candidate, you give them money like the rich Republicans do!"

Commenting on this exchange, the County maintains: "It must have really bothered (Adank) to have seen all the signs the rich Republicans kept putting up."

The record thus establishes that Adank deliberately and knowingly removed Lahn's signs in order to help Lewis' campaign efforts. The City therefore had just cause to discipline him for such impermissible political activity. 3/

In reaching this conclusion, I find no merit in the Union's claims that Adank should not be disciplined because of alleged uncertainty regarding the County's sign removal policy. Adank here knew exactly what he was doing since:

(1) he and all other employees were briefed on the County's sign removal policy at a September 16 safety meeting; and (2) he had earlier been warned in 1986 by Highway Commissioner Walther over the very same thing. There also is no merit to the Union's claim that the suspension levied was too harsh, as Adank tried to coverup what he did and since such dirty political campaign tricks are serious business warranting a serious penalty.

3/ The fact that the County's sign removal policy changed immediately after October 25 does not obviate the fact that Adank violated the prior policy.

In light of the above, it is my

AWARD

That the County had just cause to discipline grievant Kermit Adank; hence, his grievance is denied.

Dated at Madison, Wisconsin this 27th day of June, 1989.

By _____
Amedeo Greco, Arbitrator