BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between	
GENERAL TEAMSTERS UNION LOCAL 662	
and	Case 163 No. 41981 MA-5517
CHIPPEWA COUNTY	

Appearances:
Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., Attorneys at Law, by Mr. William S. Kowalsky, appearing on behalf of the Union.
Mulcahy & Wherry, S.C., Attorneys at Law, by Mr. Joel L. Aberg, appearing on behalf of the County.

ARBITRATION AWARD

General Teamsters Union Local 662, hereinafter referred to as the Union, and Chippewa County, hereinafter referred to as the County, are parties to a collective bargaining agreement which provides for the final and binding arbitration of disputes arising thereunder. The Union made a request, with the concurrence of the County, that the Wisconsin Employment Relations Commission designate a member of its staff to act as an arbitrator to hear and decide a grievance over the meaning and application of the terms of the agreement. The undersigned was so designated. Hearing was held in Chippewa Falls on June 6, 1989. The hearing was not transcribed and the County filed a post-hearing brief on June 28, 1989. The Union did not file a brief.

BACKGROUND

The grievant has been employed in the County's District Attorney's office for the last thirteen years as a legal secretary. The grievant suffered very intense job stress in 1988 and in May, 1988 entered the hospital with chest pains. Subsequent tests revealed that the grievant had an acute duodenal ulcer and chronic anxiety disorder. The grievant returned to work for a short time and in early June, 1988, with the concurrence of her doctor, Dr. Maniquiz, she requested time away from her position because of stress. The grievant then received treatment from Dr. Bieter at the Center for Pain and Stress Management. On or about October 1, 1988, Dr. Bieter indicated that the grievant could return to work for four hours a day. The County did not have any part-time work in the District Attorney's office and so the grievant remained off work.

By a letter dated December 28, 1988, Dr. Bieter gave the grievant permission to return to full-time work. On December 30, 1988, the County by its legal counsel acknowledged Dr. Bieter's release but requested a written authorization or a release to return to work from each of her treating physicians. The grievant submitted a release from Dr. Maniquiz dated January 2, 1989 indicating she could return to work on January 3, 1989. On or about January 5, 1989, the grievant filed a worker's compensation claim for an injury alleged to have occured on June 9, 1987 indicating that the accumulative effect of stress at work caused her to be unable to perform her job. By a letter dated January 6, 1989, the County requested written statements from all doctors who recently treated the grievant concerning any work restrictions that might be applicable to her. On January 9, 1989, the grievant by her attorney agreed to provide releases so the County could get this information directly from the grievant's physicians. The releases were forwarded to the County by a letter dated January 16, 1989. By a letter dated February 3, 1989, from Dr. Maniquiz, the only restriction placed on the grievant for work was not do any heavy lifting over 50 pounds. The grievant was returned to full-time employment on February 13, 1989. The grievant filed the instant grievance alleging that the County violated the agreement by not returning her to work on January 3, 1989.

ISSUE

The parties were unable to agree on a statement of the issue. The Union stated the issue thus:

> Did the County violate the collective bargaining agreement when it denied the grievant the right to return to work on January 3, 1989?
>
> If so, what is the remedy?

The County's statement of the issue is:

> Whether the County violated Article 17, Sections 1 and 2 and the non-discrimination clause when the County requested further medical information before assigning work duties to

the grievant?

If so, what is the appropriate remedy?

The undersigned frames the issue as follows:

Did the County violate the parties' collective bargaining agreement by its failure to return the grievant to full-time employment prior to February 13, 1989?

If so, what is the appropriate remedy?

PERTINENT CONTRACTUAL PROVISIONS

NON-DISCRIMINATION

Equal Rights Guarantee. Chippewa County and the Union agree to provide equal opportunities for all qualified and qualifiable persons without regard to race, creed, color, sex, national origin or ancestry, age, religion, handicap, arrest or conviction record, physical condition, developmental disability, sexual orientation, marital status or political affiliation (except to members of the Communist party who advocate the overthrow of the United States Government), or any other non-merit factors, except where age, sex, or physical requirements constitute a bona fide occupational qualification.

. . .

ARTICLE 17

WORK WEEK, HOURS OF WORKING AND OVERTIME

Section 1. Work Week. The work week, for the purpose of this Contract and fair labor standards action, will consist of seven (7) consecutive calendar days starting at 12:00 A.M. on Sunday and ending at 11:59 P.M. on the next following Saturday of each calendar week. A pay period shall be the two (2) consecutive work weeks, upon the conclusion of which payroll is completed.

Section 2. Hours of Work. There shall be eight (8) hours of work for the full time employees with work hours determined by the Department Head. Standard hours, lunch periods and breaks affecting an entire Union group or major sub-group therein may be changed permanently by mutual agreement.

UNION'S POSITION 1/

The Union contends that the grievant was off work from June 1988 due to a work related injury, i.e., severe job stress. It submits that the grievant was given a release by her family doctor as well as by Dr. Bieter, who had treated her for stress, to return to work on January 3, 1989, so she had all the proper releases. The Union claims that there was no reason why the County would not accept these opinions and return the grievant to work. The Union notes that there was no evidence that the County disputed the doctors' opinions and the grievant should have been returned to work on January 3, 1989. It asks that the grievant be made whole for the period January 3 - February 13, 1989.

COUNTY'S POSITION

The County contends that Article 17, Sections 1 and 2 are wholly irrelevant to the issue in this case and no evidence was presented to show how the "work week" or "hours of work" were part of the grievance and the assertion of a violation of this Article should be disregarded. With respect to the equal rights clause, the County also argues that no evidence was offered to show a violation of this provision. It maintains that the County was properly apprehensive about returning the grievant to a position likely to cause her stress to reappear and aggravate her claimed job stress related illness.

The County insists that Article 5, Leave of Absence is the most relevant provision of the agreement to the instant matter. It claims that the grievant was on a de facto leave of absence due to illness. It points out that the County ordinance provides that employes on leave should give one month notice of their intent to return to work, a requirement with which the grievant did not comply. It insists that this requirement allows the County an opportunity

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1/ From the Union's opening statement.

to evaluate the employe's medical condition so as not to hazard a reinjury and allows time to reassign employes who replaced an absentee while on leave. The County submits that it acted in accordance with these principles as the grievant had not worked for six months and expected to return to work with less than five days notice. It takes the position that prior to this notice, there was no evidence that the grievant could ever return to work and she claimed she was totally disabled due to job related stress. The County believes it did not violate the agreement and requests that the grievance be denied.

DISCUSSION

A review of the parties' collective bargaining agreement reveals no express provision on the return to employment for an employe who has been on an open-ended leave of absence due to an illness or compensable injury. Article 17, Sections 1 and 2 referred to in the grievance are silent with respect to a return from a leave of absence. Also, the Non-Discrimination clause contains no express provision on a return to employment but may generally infer that the County cannot act arbitrarily and capriciously in refusing to return an employe to work. Inasmuch as the agreement is silent with respect to a return to work for an employe on a leave due to illness, the general rule applicable in this case is whether the County abused its discretion in not reinstating the grievant on January 3, 1989. 2/

The evidence presented in this matter indicates that the grievant went off work allegedly due to job related stress in June, 1988. The record does not indicate that she kept her employer apprised of the nature of her illness, her prognosis and her recovery. In a short letter dated December 28, 1988, the County was informed by Dr. Bieter that he had given the grievant permission to return to work on January 3, 1989. 3/ This letter did not contain any supporting details of the grievant's present state of health or any opinion of the possible recurrence or non-recurrence of the problems caused by the asserted job related stress. 4/ The grievant later presented a letter dated January 2, 1989 from Dr. Maniquiz indicating that the grievant had recovered from myofascial pain and duodenal ulcer so that she could return to work on January 3, 1989. 5/ This letter too does not mention job related stress or the probabilities of a recurrence of the illnesses due to job related stress. Without more medical information as to the ability of the grievant to cope with job stress such that an immediate and more serious recurrence of physical ailments would not be the result, the County had a reasonable basis to get further information before reinstating the grievant to her former position. 6/ Also, given the different ailments suffered by the grievant, it was reasonable for the County to request releases from all her treating doctors. 7/ It is further noted that some delay in the County's securing the information related to the grievant's physical condition was the grievant's failure to furnish the information directly and instead the County was given releases and had to seek out the information from the grievant's physicians. 8/ Given the nature of the grievant's illness, the length of time she was off work, the lack of specific medical information supplied by her prior to January 3, 1989, it is concluded that the County acted reasonably in taking a conservative approach and obtaining additional information prior to returning her to work. There was no evidence that the County was not acting in good faith or was discriminatory against the grievant. With the factors present in this case, the County cannot be found to have abused its discretion in seeking additional information before it reinstated the grievant. The delay from January 3, 1989 to February 13, 1989 under the circumstances was not an undue delay and the evidence fails to prove any arbitrary or capricious conduct on the part of the County or any violation of any provision of the parties' agreement.

Based on the above and foregoing, the record as a whole, and the arguments of the parties, the undersigned issues the following

AWARD

2/ Coe Manufacturing Co., 63 LA 418 (Marshall, 1974).

3/ Ex. - 15.

4/ Id.

5/ Ex. - 16.

6/ Coe Manufacturing Co., 63 LA 418 (Marshall, 1974); Kansas Gas & Electric Co., 83 LA 916 (Thornell, 1984).

7/ Ex. 11; American Smelting & Refining Co., 65 LA 328 (Ray, 1975).

8/ Exs. 4 & 8.

The County did not violate the parties' collective bargaining agreement by its failure to return the grievant to full-time employment prior to February 13, 1989, and therefore, the grievance is denied.

Dated at Madison, Wisconsin this 10th day of August, 1989.

By _____
Lionel L. Crowley, Arbitrator

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