

BEFORE THE ARBITRATOR

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 In the Matter of the Arbitration :
 of a Dispute Between :
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 LOCAL 67, AFSCME, AFL-CIO :
 :
 and : Case 319
 : No. 41924
 : MA-5504
 CITY OF RACINE :
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Appearances:

Mr. John P. Maglio, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, appearing on behalf of the Union.
Mr. Guadalupe G. Villarreal, Assistant City Attorney, City of Racine, appearing on behalf of the City.

ARBITRATION AWARD

The Union and the City named above are parties to a 1988-1989 collective bargaining agreement which provides for final and binding arbitration of certain disputes. The Union made a request, with the concurrence of the City, that the Wisconsin Employment Relations Commission appoint an arbitrator to resolve the grievances concerning Tim Uick. The undersigned was appointed and held a hearing on July 28 and September 11, 1989, in Racine, Wisconsin, at which time the parties were given full opportunity to present their evidence and arguments. Transcripts of the hearing were made, both parties filed briefs, and the record was closed on December 20, 1989.

ISSUES:

The parties stipulated that the following issues are to be decided by the Arbitrator:

Did the Employer violate the collective bargaining agreement by Joe Golden's and Glenn Meteyard's actions on January 20, and January 23, 1989? If so, what is the appropriate remedy?

Did the City of Racine have just cause to issue the Grievant, Tim Uick, an oral reprimand on February 9, 1989? If not, what is the appropriate remedy?

RELEVANT CONTRACT PROVISIONS:

WITNESSETH

Both of the parties to this Agreement are desirous of reaching an amicable understanding with respect to the Employer-Employee relationship which exists between them and to enter into an agreement covering minimum rates of pay, hours of work and other conditions of employment with a view of securing a harmonious cooperation between Employer and employees and averting disputes.

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ARTICLE II

Management and Union Recognition

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E. Management Rights. The City possesses the sole right to operate City government and all management rights repose in it, but such rights must be exercised consistently with the other provisions of this contract and the past practices in the departments covered by the terms of this Agreement unless such past practices are modified by this Agreement, or by the City under rights conferred upon it by this Agreement, or the work rules established by the City of Racine. These rights which are normally exercised by the various department heads include, but are not limited to, the following:

- 1.To direct all operations of City government.
- 2.To hire, promote, transfer, assign and retain employees in positions with the City and to suspend, demote, discharge and take other disciplinary action against employees, for just cause.

. . .

- 4.To maintain efficiency of City government operations entrusted to it.
- 5.To introduce new or improved methods or facilities.
- 6.To change existing methods or facilities.

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- 8.To determine the methods, means and personnel by which such operations are to be conducted.

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In addition to the Management Rights listed above, the powers of authority which the City has not officially abridged, delegated or modified by this Agreement are retained by the City. The Union recognizes the exclusive right of the City to establish reasonable work rules.

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**ARTICLE III
Grievance Procedure**

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- J. Decision of the Arbitrator. The decision of the Arbitrator shall be limited to the subject matter of the grievance and shall be restricted solely to interpretation of the contract area where the alleged breach occurred. The Arbitrator shall not modify, add to or delete from the express terms of the Agreement.
- K. Discipline. The Union shall be furnished with a copy of any written notice of reprimand, suspension or discharge. The City agrees that it will attempt at all times to use the disciplinary process as a means to correct shortcomings on the part of City employees in terms of their overall work performance. Discipline, therefore, is intended to initiate a corrective action on the part of the employee. A written reprimand sustained in the Grievance Procedure or not contested shall be considered a valid warning. The Union agrees upon receipt of the reprimand notice to review the situation with the employee in an attempt to correct the problem. When an employee's record is cleared of minor infringements for a year, all previous records of minor infringements shall be removed from his personnel file.

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BACKGROUND:

The Grievant, Tim Uick, has worked for the Solid Waste Department, picking up trash in the City, for the past nine and a half years. This grievance arose because of an incident that occurred with a paper recycling truck when the Grievant and his partner, Joseph Pribyl, were collecting garbage along a residential street.

In 1974, the City undertook a paper recycling program, with homeowners bundling papers and garbage collectors putting them into a bin on the passenger side of the garbage truck. The City has one recycling truck which services all 11 garbage routes by collecting the papers from the side bins. The recycling truck usually comes to the collectors' route and pulls ahead of the garbage truck by a few stops. Then the driver of the garbage truck has a chance to see him and put his truck alongside the recycling truck, in effect parallel parking or double parking next to it, so that the side bin with papers is near the hopper of the recycling truck for ease of the transfer of papers. If the trucks are not in a position to parallel park, the distance between the bin with papers and the hopper of the recycling truck becomes greater, slowing down the transfer. The driver of the recycling truck is responsible for taking the papers from the side bin, although the collectors often help out with that task.

Anthony Pearson was assigned to be the recycling truck driver in October of 1988. When he first started that job, Pribyl and Uick pulled the garbage truck alongside of his truck, double parking it. However, a couple of weeks before an incident of January 20, 1989, 1/ they had been parking the garbage truck behind the recycling truck instead of alongside of it. Pearson talked about the problem with his two field supervisors, Jeffrey Fidler and Joe Johnson.

On January 20, Pribyl and Uick were working Route 9, a mostly residential area, picking up garbage on Russet Street around 8:45 a.m. when Pearson came along with the recycling truck. Pribyl was driving the garbage truck, and he pulled his truck up behind the recycling truck instead of alongside of it. According to Pribyl, Pearson had parked too far from the curb, and if Pribyl had pulled alongside Pearson, the garbage truck would have been over the center line and in a position possibly to cause an accident. When Pearson asked them what the problem was, Pribyl and Uick told him double parking would be a safety hazard. Pearson left without taking any papers, and called his supervisor, Johnson. Johnson met Pearson and then went to see Glen Meteyard, the Superintendent of Streets, Solid Waste and Bridges.

According to Meteyard, Johnson told him that Pribyl and Uick were pulling the garbage truck up behind Pearson's recycling truck, and then sitting there and smoking while Pearson unloaded the papers. Meteyard told Johnson to stop out on the route and inform them of the procedures they were to follow.

Sometime after 9:00 a.m. on January 20, Johnson caught up with Pribyl and Uick and asked them if they had a problem with Pearson. Both of them said no. According to Johnson, he then asked them why they were not parking alongside the recycling truck, and Uick told him that it was a safety hazard. According to Uick, Johnson was not talking about the parking procedure but was telling them that from now on, they had to help Pearson unload the paper bin, and those were orders coming from Meteyard. Pribyl asked if Pearson would have to help them pick up the garbage, and Johnson replied that he was just asking them if they had a problem with Pearson. According to Pribyl, Johnson told them to help Pearson transfer the papers and to double park the garbage truck.

While talking with the two collectors, Johnson thought that Pribyl understood what was expected of him, but that Uick was not accepting what Johnson was telling him. Uick did not respond or say anything to Johnson, but just stood there. Johnson told Uick that if he did not like the orders, he could have a meeting with Meteyard and Joe Golden, the general maintenance supervisor. Uick told Johnson that if there was going to be a meeting with Meteyard, he had better get the Mayor there. Johnson left the route, reported back to Meteyard, who decided to have a meeting at the end of the day.

Meteyard arrived at the solid waste office shortly before 3:00 p.m. for a meeting. Meteyard, Johnson, and Fidler were there for management, and the intention was to call in Pribyl and Uick, as well as the Union president, Douglas Dresen. Meteyard asked Johnson to call Pribyl and Uick into the office about 2:55 p.m., and Johnson went outside the office where a number of employees were waiting at a nearby time clock to punch out. Johnson told Pribyl and Uick that Meteyard was there and they were going to have a meeting. According to Johnson, Pribyl walked into the office but Uick said he was on his wash-up period and that he was not coming in. Meteyard said he could hear this remark because the door was partially open. Johnson testified that when Uick said he was not going to a meeting with Meteyard because he was on his wash-up time, the crowd around the time clock all laughed and called it great.

1/ All dates are for the year 1989 unless otherwise noted.

According to Uick, he saw Johnson but the conversations going on near the time clock were loud and he did not pay any attention to Johnson. Then Johnson went back into the office, where Meteyard told him to tell Uick that if he did not come into the office, he did not have to report for work the following Monday morning. Johnson relayed that message, and about the same time, Dresen peeked out the door and told Uick to come into the office. Uick went into the office.

The six people attending this meeting have a couple of different versions about what happened next, particularly concerning Meteyard's conduct toward Uick. According to Uick, when he walked into the meeting, Meteyard told him, "You and I are going to have a blow out." Meteyard and Uick were standing about six inches apart, with a railing dividing them, and Meteyard told Uick that he had a "horseshit" attitude. Meteyard had raised his voice and told Uick that he should shape up or move out of the department. Meteyard also said that from now on, they had to help Pearson unload the paper bin. Pribyl asked if this was being directed just toward them or if this was a rule for everybody in the solid waste division. Meteyard replied that it was for everyone, and there would be a general announcement that everyone was to help Pearson unload the paper bin. According to Uick, Meteyard indicated that Uick was smirking at him, and asked him several times if he was refusing that order. While Meteyard was talking to Uick, he poked him in the chest with his index finger about three or four times, while telling him that he had a "horseshit" attitude and that he had better clean up his act. Uick then asked Meteyard if he was touching him, and Meteyard backed off and told him to get "the hell" out of there. Uick said nothing to Meteyard except to ask if he was touching him.

According to Pribyl, Meteyard was standing right in front of Uick, and poked him at least three times in the right shoulder. Pribyl recalled seeing Uick's sweater pushed in by Meteyard's poking. Meteyard stated that he wanted them to help Pearson unload the bin, but did not discuss how to park the garbage truck during this meeting. Pribyl told Meteyard that he understood and that Uick said he did not refuse to follow the orders. According to Dresen, Uick came into the meeting and leaned on the railing. Meteyard walked up to Uick and remained about six inches from him, told him that he had a "horseshit" attitude, and poked him about three or four times in the chest.

According to Meteyard, Pribyl had come in first and asked if all the collectors were going to be informed that they would double park and that they were to help unload the bin. Meteyard said yes, that there would be a general statement made Monday morning, but because of the fact that Johnson had brought this to his attention, he wanted to make sure that Pribyl and Uick heard directly the procedures to follow. Pribyl said that was fine and he had no problem with it. Uick would not answer or say anything. So Meteyard told Uick that he felt his attitude was bad, that if he did not want to follow the procedures set up by the Commissioner and the Public Works committee, that it would be best if he went to another department or left and got a job some place else. Meteyard said Uick had turned his back to him as he was talking, and Meteyard reached out, grabbed the upper part of Uick's shoulder, shook his arm, and said, "Tim, I am not done talking to you yet." Uick told him to take his hand off his arm and not to touch him again. At that point, Meteyard felt that meeting had gone too far and ended the meeting.

According to Johnson, Meteyard was trying to tell Uick about helping unload the bin, but Uick was looking away. Meteyard grabbed Uick by the arm to get his attention and said, "Listen to me when I'm talking to you." Uick replied, "Hey, you get your hand off of me. You don't touch me." Johnson stated that Meteyard did not raise his voice. According to Fidler, the meeting was volatile, with Meteyard raising his voice and telling Uick, "You have a horseshit attitude." Meteyard put his hand on Uick's shoulder and said, "Will you look at me, I'm trying to talk to you." Uick told Meteyard to take his hand off him, and Meteyard then ended the meeting.

After Uick left the meeting, Joe Golden, the general maintenance supervisor, came in. While Dresen, Fidler, and Johnson were still there, Meteyard told Golden that the meeting had gotten out of hand, and that Golden should have a meeting with Uick on Monday morning. Meteyard felt that Uick had a problem dealing with supervisors or anyone in authority, and that they had talked with Uick in the past but had not reprimanded him. Therefore, Meteyard determined that in the future, the supervisors would be reprimanding him on work rule violations, safety violations, or contract violations. Dresen told Meteyard that if he was going to yell at Uick, he should have stayed back and not have touched him.

Another meeting took place on Monday, January 23, with Golden, Fidler, Johnson, Dresen and Uick in attendance. Golden told Uick that in the past, the supervisors had been reluctant to give him any reprimand because they felt that they could correct a situation by talking about it. Golden further told him that there had been problems with the public and with his supervisors who felt somewhat intimidated by him, because he would make comments to them about being singled out. Golden told Uick that the supervisors would not stand for that anymore, and if it continued, he would be reprimanded accordingly. Uick told Golden that he was upset that Pearson, who had only two years seniority, had been chosen for the recycling truck job when other people had more seniority. Golden also told Uick that because he had been involved with complaints from

the public, it would be difficult for the supervisors to lean in his favor if there was a question.

Fidler recalled the January 23rd meeting very low keyed, and that Uick was told that there were enough complaints on him in dealing with the public, and that if there were other complaints and Uick was found to be wrong, he would be reprimanded. Fidler said that he and Uick had a working relationship and that the two of them had no problems lately.

According to Uick, Golden also told him that he had a problem with his partner, Pribyl. Uick said that Golden told him he had a poor work attitude, that taxpayers are not pleased with him, his partners are not pleased with him, and that the whole Union was not pleased with him. When Golden said that they had complaints, Uick asked, "Where are they?" However, Golden did not supply Uick with any documentation of the complaints and said that taxpayers do call in. Golden said that from then on they would send two supervisors to talk to him, and Uick felt that he was going to be given a hard time on the job. According to Uick, Golden said, "If there would be a complaint coming in from the taxpayers, that we would listen to the issues, but with your past, we're going to lean more towards the taxpayers than you." When Uick asked about Pearson's assignment to the recycling truck, Golden explained that Pearson was put on the job because employees with a lot of seniority get promoted into the street maintenance department and do not stay in the solid waste department. Therefore, the department would have trained people on the recycling job only to lose them as they moved into street maintenance. The solid waste department hoped to use a younger person with less seniority who would be with the department for five years or more.

According to Dresen, Golden made a statement toward the end of the meeting to the effect that supervisors were going to be watching Uick, and they would take the citizen's word for something over Uick's word, and they were not going to give him any break at all. Dresen raised a concern that such supervisory conduct would be a form of harassment, and that he did not want to see supervisors following Uick around looking for something.

Uick filed two grievances, one against Golden (#8-89) and one against Meteyard (#9-89) sometime between the dates of January 23 and January 30. 2/ Grievance #8-89 states the following:

On January 23, 1989, Tim Uick was verbally harassed and intimidated by Mr. Joe Golden. We feel this is a violation of Management Rights, Article II, Section E and any other article(s) that may apply. Adjustment required: Written letter of apology. Cease and desist from any and all further harassment and intimidation toward Mr. Uick.

Grievance #9-89 states the following:

While attending a meeting on January 20, 1989, Tim Uick was physically and verbally abused; threatened and intimidated by Mr. Glenn Meteyard. We feel this is a violation of Article II, Section E and any other article(s) that may apply. As well as a gross unprofessional and capricious action not harmonious to a good cooperative labor-management relationship. Adjustment required: Written letter of apology. Cease and desist from any and all further harassment and unprofessional conduct towards Mr. Uick.

On January 30, Meteyard issued the following oral reprimand to Uick:

On Friday, January 20, 1989 you were insubordinate to both your immediate supervisor and the superintendent of streets and solid waste. You also verbally threatened the superintendent during the course of a meeting that was held with you and your partner. For these reasons, I am issuing this oral reprimand for the following work rule violations:

Section "Q" work performance paragraph A)
Section "R" personal actions paragraph B)

Any further violations of the work rules will result in the next step of progressive discipline.

On January 31, Uick filed a third grievance, #10-89, which states the following:

On Monday, January 30, 1989, Tim Uick received an Oral Reprimand for violating work rule: Section "Q" Work Performance Paragraph (A) Section R Personal Actions Paragraph (B). We feel this is a violation of management rights, Article II, Section E and any other article(s) that may apply. We also feel this is further harassment of Tim Uick of the incident that happened on January 20, 1989. Adjustment required: Remove oral reprimand from any and all of Tim Uick's personnel files.

The City denied the first two grievances, #8-89 and #9-89, stating that it found no violation of Article II, Section E, or any other contractual provision. In addition, the City responded to #8-89, the grievance against Golden, with the following:

Mr. Uick is not being harassed or intimidated by management; if anything, the opposite is occurring.

The City's response to grievance #10-89, the one protesting the oral reprimand of January 30, was the following:

The City will be removing the oral reprimand of January 30, 1989 issued to the grievant and will

2/ The dates of grievance #8-89 and 9-89 are uncertain because the Arbitrator's record of Joint Exhibits #2 & 3 show the filing dates at Step 2, instead of Step 1, and reflect a date of February 10. However, Uick's testimony, which was un rebutted, indicates that he filed two grievances before the City issued an oral reprimand to him. The Arbitrator considered having the parties jointly submit the Step 1 documents for grievances 8-89 and 9-89, but inasmuch as the resolution of this case does not turn on the filing dates, she accepts as fact that Uick filed these two grievances sometime before January 30 when the City subsequently issued an oral reprimand to Uick. While the Union is attempting to show that the City's reprimand was in retaliation for Uick's grievances against Meteyard and Golden, the Arbitrator does not need to reach such a conclusion.

replace it with an oral reprimand which more appropriately reflects the corrective action expected.

A further review of the original reprimand revealed that you may not have been "technically" insubordinate, therefore a more appropriate reprimand will be issued.

The City revised its oral reprimand on February 9 to state the following:

On Friday, January 20, 1989, you were disrespectful, uncooperative and contentious with the supervision in the Department of Public Works. Your attitude was threatening, intimidating and quarrelsome which showed a lack of willingness to cooperate. You have been spoken with in the past concerning your attitude toward supervision, your job and the public. Therefore, you are being issued this oral reprimand in violation of Local 67 Work Rules "Q" and "R" as well as the commonly accepted modes of conduct in an employee-employer relationship. Further violations of these or other work rules will result in further disciplinary action.

The grievances were all processed to arbitration. Grievances #8-89 and #9-89 are reflected in the first stipulated issue, and #10-89 is reflected in the second stipulated issue.

THE PARTIES' POSITIONS:

The City:

The City asserts that both Pribyl and Uick did not comply with the proper way to unload the newspaper bin into Pearson's recycling truck. While the Union and Uick have attempted to cloud the issue by claiming that the collectors did not double park next to the recycling truck on January 20 because it presented a safety hazard, Russet Street is a residential street and not a busy street. The collectors double park 95 percent of the time in the downtown area where traffic is ten times as heavy as on a residential street. Also, the January 20th incident was not the only time that Pribyl and Uick refused to double park next to Pearson's truck to unload the paper bin.

The City argues that Uick would not acknowledge that he understood what he was being told by Pearson, Johnson, and Meteyard. Uick refused to take part in any discussion regarding his shortcomings and simply refused to respond.

While Pribyl was the driver on January 20 and equally responsible with Uick for conduct on the street, the City submits that Uick was orally reprimanded for his failure to acknowledge the directions given to him by Johnson, Golden, and Meteyard, and for his actions in response to being called into the meeting with Meteyard on January 20. Uick's response to Johnson's visit on the route was to ignore and laugh at Johnson and to sarcastically indicate that if he had to meet with Meteyard, he wanted the Mayor of the City to be present. Uick then ignored Johnson's request to come into the DPW office by saying he did not hear Johnson's request, while Johnson's testimony shows that Uick refused, saying he was on his wash-up period. Pribyl was in the same area with Uick, and he came into the DPW office without a problem. Dresen corroborated Johnson's testimony that Johnson heard Uick refuse to come in because it was five minutes to 3:00 p.m.

The City notes that an oral reprimand is the first step in corrective discipline. Pribyl did not receive an oral reprimand because he acknowledged the problem and accepted what Johnson and Meteyard attempted to communicate to him. The City objects to the Union's attempt to emphasize that the January 20 meeting was called without notice and with the intent to discipline an employee, as the meeting was called to the Union's president's attention and no discipline was imposed at the meeting. The oral reprimand given to Uick resulted from Uick's continued efforts to ignore what he was being told by Meteyard, which included his initial refusal to come into the DPW office and to acknowledge that he was being told to comply with the proper way of parking and unloading newspapers. In a follow-up meeting with Fred Larson, the Commissioner of Public Works, Uick continued to indicate that he would not unload from a double parked position because he considered it an unsafe operation.

The City acknowledges that Meteyard's description of Uick's attitude was crude, but notes that Meteyard had one supervisor visit Pribyl and Uick on the route, when Uick refused to respond and asked that the Mayor be at any meeting, and then Meteyard heard Uick's response that he was on his wash-up time and was not coming into the meeting. Meteyard outlined his concerns in the initial oral reprimand, which was amended to eliminate charges of insubordination. The amended reprimand was to correct Uick's actions in the future in dealing with the recycling truck operations and to address his conduct at the January 20 meeting.

Further evidence of Uick's attitude is that he believed the January 23 meeting with Golden was set up possibly to get an apology from Meteyard. The City asserts that this shows Uick's inability to understand what he is being told, and an oral reprimand is the only way to emphasize what corrective action needed to be taken.

The City submits that the record does not show that there was a long delay in imposing discipline. While the Union has urged that there is the concept of "double jeopardy" in this case, the concept is inapplicable where the preliminary action taken against the employee may not reasonably be considered final, as in a case where an initial suspension later becomes a discharge. In this case, the only change was to amend the rationale for the oral reprimand whereby the term "insubordination" was eliminated after a review of the facts. Nonetheless, the City's position is that the present record before the arbitrator could support a charge of insubordination if it were still part of the oral reprimand.

In conclusion, the City submits that the evidence shows that the oral reprimand was issued for cause based on Uick's actions on January 20, where he refused to acknowledge Johnson's initial instructions on how to pick up recycled newspaper with the recycling truck, his initial refusal to come into the DPW office, and his conduct during the meeting. The City asserts that the Grievant has failed to produce any evidence that the meeting on January 20 with Meteyard or the meeting on January 23 with Golden was harassment or, more importantly, a violation of any of the provisions of the collective bargaining agreement. These meetings included Union representatives and established the City's attempt to get Uick's acknowledgement and/or understanding of what he was being asked to do when the recycling truck came to his route.

The Union:

The Union asserts that the January 20 meeting which was held by management was grossly unprofessional and capricious, resulting in a break down of harmonious labor-management relations. The record shows the volatile manner in which Meteyard conducted himself, beginning the meeting by telling Uick that they were going to have a "blow-out" and positioning himself one-half foot from Uick. Uick did not incite or provoke Meteyard, or say one word or confront Meteyard, although Meteyard's unprofessional demeanor escalated. The Union looks to prior meetings with Meteyard, Dresen, and LeRoy Schmidt, the chief steward, as examples of Meteyard's management style.

The Union notes that by Meteyard's own admission, he made physical contact with Uick on January 20. If an employee initiated physical contact with Meteyard, discipline would be warranted. Thus, the Union submits that Meteyard is not above his own standard and not above nor beyond reproach. Meteyard's disregard of Uick's contractual rights are in violation of provisions contained in the Witnesseth section of the labor agreement, as well as Article II, Management Rights, Section E, 1. As to Article II, the Union asserts that there is no rationale for how yelling, using profane language, or physically abusing an employee can help maintain the efficiency of City government operations.

According to the Union, the January 23 meeting with Golden was a further display of harassment against Uick which was unjustified and resulted in a further erosion of harmonious labor-management relations. Golden told Uick that there were problems between Uick and his partner, Pribyl, while Pribyl had no problems working with Uick. Other members of the bargaining unit had no problems working with Uick, although Golden said that they did. Although the City has attempted to show that there have been many complaints filed against

Uick by taxpayers, the City introduced only one complaint into evidence. Golden produced no documentation of alleged complaints when asked to do so by Uick. Golden's statements that two supervisors would talk to Uick in the future and that taxpayers' statements would be given more weight than Uick's defenses are not conducive to efficient City operations.

The Union argues that the City failed to meet its burden of proof in issuing an oral reprimand to Uick on February 9, that it subjected Uick to double jeopardy in issuing the reprimand, and issued the reprimand without just cause. When the City called Uick adversely as a witness in the arbitration hearing, it asked him if he understood that the reprimand was for his actions on January 20 as to how he carried out his job duties. If Uick were reprimanded for performance of his job duties, which was from the method of parking the solid waste truck to unload papers to the recycling truck, the driver of the solid waste truck on January 20 was Pribyl. Therefore, the reprimand should never have been issued to Uick for his job performance on the morning of January 20.

In its oral reprimand issued on February 9, the City failed to substantiate what Uick violated. While the reprimand stated that Uick violated work rules Q and R, there is no evidence in the record to show what work rules Q and R, there is no evidence in the record to show what work rules Q and R state.

The Union notes that when the City issued the first reprimand on January 30, Uick grieved it, and the City revised the reprimand. The Union submits that the revised reprimand was in retaliation for Uick's grieving the original reprimand, placing him in double jeopardy.

The Union asserts that Uick had no notice of a rule for parking garbage trucks, as Uick had never seen a copy of "Recycle for Racine" (City Ex. #7), but testified that the collectors use common sense in parking. The record shows that employees do not double park next to the recycling truck in all cases but only under safe conditions.

The Union argues that the City did not conduct a fair investigation into the incident. When Johnson went out to the route, he did not meet with Pribyl and Uick at the same location where they had met up with Pearson. The afternoon meeting with Meteyard later in the day cannot constitute a fair investigation where Meteyard yelled at Uick, used profane language toward him, and physically abused him. The "judge" at the investigation was Meteyard. The Union asks how Uick could be accused of being disrespectful, uncooperative and contentious as well as threatening, intimidating and quarrelsome when he never said a word. Finally, the Union asks how Uick could be disciplined for the manner of parking the solid waste truck when he was not driving the truck.

The Union notes that the action of discipline must be commensurate with an employee's proven offense, and submits that the City did not prove that Uick was guilty as charged.

The Union requests the Arbitrator to find that the City violated the labor agreement. As a remedy, it asks that the City issue a written letter of apology to the Grievant (from both Meteyard and Golden), that the City be ordered to cease and desist from further harassment of the Grievant; and that the City remove the oral reprimand from any and all of the Grievant's personnel files.

DISCUSSION:

The Arbitrator will deal first with the second issue stipulated, that is: Did the City of Racine have just cause to issue the Grievant, Tim Uick, an oral reprimand on February 9, 1989? The parties have been somewhat unclear about why the reprimand was issued. Uick believed that the reprimand was issued for his performance on the morning of January 20th. 3/

If the oral reprimand were in fact handed down to Uick for his work performance on the morning of January 20th, it would have been a reprimand for the manner in which the solid waste truck parked, behind the recycling truck instead of parallel to it. However, the oral reprimand could not withstand scrutiny for that reason, because Pribyl, not Uick, was the driver of the truck on that morning. 4/ At a minimum, the City would have had to issue an oral reprimand to Pribyl for parking the truck in an incorrect manner as well as to his partner Uick in order to avoid disparate treatment of the two employees. Furthermore, the City does not have a hard and fast rule that the solid waste trucks are to be parallel parked next to the recycling truck on all occasions, as it has left some discretion up to the drivers depending on the conditions they encounter. While the parallel parking method is the preferred procedure, there is no evidence that drivers cannot, on occasion, deviate from that procedure under certain conditions.

There is no doubt in the Arbitrator's mind that Pribyl and Uick were deviating from the preferred procedure on too many occasions, as she accepts Pearson's testimony that they were parking behind him instead of parallel to him for the last couple of weeks preceding the January 20th incident. It is not likely that Pearson would have gone to Johnson or Fidler if this had been an isolated incident. However, the City would not have just cause to issue a reprimand to Uick for the parking of the truck where in fact Pribyl was the driver.

Meteyard's understanding of why the reprimand was issued was the following:

Q:What was, in your understanding, the oral reprimand for?
What was it for?

A:For refusing a direct order from a supervisor to come into the meeting and for the attitude that was shown during the meeting.

Q:With respect to his actions on January 20 on the street, was that taken into account?

A:The fact that he wasn't following in the -- Let's see here.
Work performance, not following instructions of his supervisor.

Q:What, to your understanding, was what he was not performing or following instructions from his supervisor?

A:That he wasn't following the proper procedure for unloading papers on the recycling truck. 5/

Meteyard first noted that the reprimand was issued for refusing Johnson's order to come into the meeting later in the afternoon on January 20th. However, the City had already rescinded the portion of the reprimand which dealt with Uick's initial refusal to come into the meeting by revising the reprimand. Both the documentary evidence and the testimony show that the City decided that Uick was not technically insubordinate, inasmuch as he came into the meeting on the second request. As for the reprimand being issued for the "attitude that was shown during the meeting," this will be dealt with in some detail later. If Meteyard considered the reprimand to be for not following the instructions of his supervisor, Johnson, Johnson never gave Uick a direct order. 6/

Then Meteyard said the reprimand was for not following the proper procedure for unloading papers on the recycling truck. Meteyard testified that the recycled paper is the responsibility of the driver of the recycling truck

3/ See Tr. Vol. I - p. 32.

4/ Pribyl testified that he always drove the truck. While the City attempted to refute that statement by Johnson's rebuttal testimony to the effect that the City would not allow one person to always drive and that Johnson had seen Uick drive the truck in the past, there is no doubt but that on January 20, Pribyl was the driver of the solid waste truck when Pearson arrived at Route 9 to pick up papers for recycling.

5/ Tr. Vol. I - p. 63 - 64.

6/ See Tr. Vol. II - p. 40.

(Tr. Vol. I - p. 42) but that the route collectors are to help unload that bin for a speedier operation. Pearson considered it his job to take the papers out of the bin (Tr. Vol. I - p. 73). Meteyard told Pribyl during the January 20th meeting that there would be an announcement made the following Monday that all the collectors were to help Pearson unload the bin.

The Arbitrator notes that what started out as a dispute over the parking procedure quickly turned into a dispute over unloading the paper bin. When Johnson went to Meteyard on January 20 before going out on the route, he told Meteyard that Pearson complained about Uick and Pribyl sitting in the truck and smoking while Pearson unloaded the truck. Both Pribyl and Uick related that Johnson's comments to them out on the route dealt with helping unload the bin. Pribyl even raised the question of whether Pearson had to help collect the garbage, if they were to help Pearson unload the bin. At the meeting with Meteyard, Pribyl did not recall Meteyard mentioning the parking dispute, just the unloading procedure. Obviously, Meteyard was talking about the unloading procedure, not the parking procedure, when he told Pribyl that there would be a general announcement for everyone regarding helping unload the paper bin. That announcement was made the following Monday. The City is free to establish such a new work rule - it just cannot apply it retroactively for disciplinary purposes, if it expects to withstand the test of just cause for discipline.

Then there is the oral reprimand itself which states that Uick was disrespectful, uncooperative and contentious with the supervision in the DPW, that his attitude was threatening, intimidating and quarrelsome, showing an unwillingness to cooperate, and that he was being issued the oral reprimand for violating work rules Q and R as well as the commonly accepted modes of conduct in an employee-employer relationship. This comes closer to what the City actually wants to reprimand Uick for -- his attitude.

However, there are several problems with the reprimand, not the least of which is its overbreadth. It is the City's burden to prove that Uick was disrespectful, uncooperative, contentious, threatening, intimidating, quarrelsome, uncooperative, or those things that it states in its reprimand. The City has failed to meet its burden.

At worst, Uick may have been considered to be "contentious" when he told Johnson that parallel parking presented a safety hazard, and that if there was going to be a meeting with Meteyard that the Mayor better be there. However, the evidence does not show that Uick was uncooperative or would be so in the future.

Johnson felt as if Uick was "not accepting" what he was telling Uick (Tr. Vol. II - p. 29). The real problem, as Johnson testified, is that Uick would not say yes or no, but just stood there. This is the same thing that actually happened in the later meeting with Meteyard -- Uick did not respond. Uick may be a difficult employee for management to direct, but there is no showing that Uick's failure to respond meant he was disobeying directions or going to refuse to obey them in the future. It may be preferable for an employee to say something to management to indicate that he both understands and intends to follow directions. However, the City of Racine is not the U.S. Army and an employee is not required to say, "yes sir," to a supervisor, especially where the evidence fails to show that Johnson's statements to Uick demanded a response of some kind. Uick's failure to indicate his acknowledgement of management's directions by saying something is clearly a management problem, but management must deal with that. However, in this case, it dealt with it in a most egregious manner.

The Arbitrator accepts the Union's version of Meteyard's conduct during the meeting on January 20th. While Meteyard, Fidler, and Johnson all testified that Meteyard only put his hand on Uick's arm when Uick turned his back to Meteyard, Meteyard himself admitted that the meeting had gotten out of hand. Meteyard clearly realized that his own conduct had gotten out of hand, and it is more likely that version told by Uick, Pribyl, and Dresen, actually happened -- that Meteyard poked Uick in the chest or shoulder area, yelling at the same time, "You have a horseshit attitude." While Johnson testified that there was no yelling or raised voices, Fidler testified that the meeting was volatile and Meteyard said, "You have a horseshit attitude." Meteyard never denied making that statement. Furthermore, Pribyl recalled that when Meteyard poked Uick, he saw Uick's sweater being pushed in, a recollection of a detail that Pribyl would not likely make up. The Union witnesses to the event had more detail in general, such as recalling the railing that separated Uick and Meteyard, and that Meteyard stood about six inches away from Uick.

The Arbitrator also accepts the fact that Meteyard was upset at the start of the meeting due to Uick's initial refusal to attend it. While Uick claimed that he never heard Johnson tell him to come into the meeting, Pribyl heard the direction. The Arbitrator finds that it is likely that Uick heard the order but said that he was on his wash-up time, because Johnson would not have likely told the people already in the office the same unless it were true. However, Uick responded to the second order, and the City has already acknowledged that it changed the reprimand because Uick came into the meeting, albeit on the second request.

Nothing Uick did -- or could have done -- warranted the tirade launched against him by Meteyard, when Meteyard poked him in the chest, yelling at him that he had a "horseshit" attitude. Meteyard's conduct was both physically and verbally abusive, as well as outrageous and offensive. While Meteyard was trying to get a response from Uick, this employee was suddenly put in an explosive position by a superior, and his restraint to Meteyard's attack was at least appropriate, if not somewhat admirable, under the circumstances. Yet the final irony was that Meteyard then reprimanded Uick, calling him threatening, intimidating and quarrelsome, when just the opposite was true. It was Meteyard who deserved those adjectives, not Uick, who said nothing except that Meteyard should not touch him. 7/

The next part of the reprimand state that Uick violated work rules Q and R, and while those work rules were not entered into the record, the Arbitrator accepts the City's statements in its' post-hearing brief that those work rules state what the City says they state, namely referring to insubordination, disobedience, or conduct which is threatening, intimidating, or abusing others. While it would have been preferable for the work rules to have been entered into the record, there is nothing which those rules state that Uick violated, and those rules appear to be reiterated in the rest of the reprimand anyway.

Finally, the reprimand states that Uick violated the commonly accepted modes of conduct in an employee-employer relationship. The Arbitrator finds that it was Meteyard who violated any commonly accepted mode of conduct in an employee-employer relationship. The Arbitrator is aware of no accepted mode of employee-employer relationship that would accept an employer or supervisor physically and verbally abusing an employee. Even if Uick's conduct had been so egregious (and it was not) that it would have provoked a reasonable person, Meteyard's conduct was well outside the commonly accepted bounds of management.

The Arbitrator finds that there is no just cause for the discipline imposed on Uick. The reprimand cannot stand if it were issued for the manner in which the truck was parked behind the recycling truck, as Pribyl was the driver of the truck. It cannot stand if it were issued for not helping unload the paper bin, as this was a new order being given out prospectively to all employees. Finally, the Arbitrator finds nothing in the face of the written record of the oral reprimand that can stand the test of just cause, as the City has failed to prove that which the reprimand states. The appropriate remedy is for the City to rescind the reprimand and expunge the personnel file accordingly.

However, the Union also asks the Arbitrator to find that Meteyard's and Golden's conduct violated the labor contract. Meteyard's conduct has already been noted. Golden's conduct refers to the January 23rd meeting, attended by Golden, Fidler, Johnson, Dresen and Uick. The Union objects to statements made by Golden to the effect that other Union members and Pribyl had problems working with Uick, and that taxpayers have complained about him. The Union also objects to statements that Golden allegedly made that two supervisors would talk to Uick in the future and that taxpayers' statements would be given more weight than Uick's side of a complain against him.

Where an employee with a clean record of more than nine years is told that he could expect to be reprimanded in the future because of his past problems, management again appears to be sweeping with too broad a brush, as each incident must stand or fall on its own merit. However, neither Golden's conduct nor Meteyard's conduct violates the labor contract. The Union points to the Witnesseth section, which only states that the parties enter into the labor agreement to cover wages and conditions of employment with a view of securing harmonious cooperation between the employer and employees. Such a general purpose statement does not lend itself to a grievance, because there is no specific language that can be violated, and there is no effective remedy for the failure to secure harmonious cooperation. Also, there is nothing in the Management Right's clause that Meteyard and Golden explicitly violated.

7/ Even if Meteyard's version of the meeting were true, that he only put his hand on Uick's arm to get his attention, supervisors should not make physical contact with employees any more than employees should not make physical contact with supervisors, particularly in the heat of the moment.

As a general proposition, the disciplinary provisions of a labor contract do not apply to supervisors. 8/ The conduct of a supervisors is an internal matter for the City, and the Arbitrator does not have the authority to tell the City how to manage its supervisors. While there may be exceptions to the general rule, this case does not present one of them. Therefore, the Arbitrator denies the grievance as framed in the first issue.

Accordingly, it is my decision and award that

AWARD

1. The Employer did not violate the collective bargaining agreement by Joe Golden's and Glenn Meteyard's actions on January 20 and January 23, 1989.

2. The City of Racine did not have just cause to issue the Grievant, Tim Uick, an oral reprimand on February 9, 1989.

3. The City is ordered to rescind the oral reprimand given to Tim Uick and to expunge the personnel files of this reprimand.

Dated at Madison, Wisconsin this 9th day of March, 1990.

By _____
Karen J. Mawhinney, Arbitrator

8/ See United States Pipe and Foundry Co., 82-1 CCH ARB, Para. 8166 (Foster, 1982).