BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between	
CITY OF GREEN BAY CITY HALL, TRANSIT, AND PARKING UTILITY EMPLOYEES UNION, LOCAL 1672-A, AFSCME, AFL-CIO	Case 203 No. 44297 MA-6246
and	
THE CITY OF GREEN BAY	

Appearances:
Mr. James W. Miller, Staff Representative, on behalf of the Union.
Mr. Mark A. Warpinski, Assistant City Attorney, on behalf of the City.

ARBITRATION AWARD

The above-entitled parties, herein the Union and the City, are privy to a collective bargaining agreement providing for final and binding arbitration before a Wisconsin Employment Relations Commission staff arbitrator. Pursuant thereto, I heard this matter on October 25, 1990, in Green Bay, Wisconsin. The hearing was transcribed and both parties filed briefs and reply briefs which were received by January 30, 1991.

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

ISSUE:

> Whether the City violated the contract by failing to have a city-wide policy governing the use of time clocks and, if so, what is the appropriate remedy?

DISCUSSION:

The parties have agreed upon having this case decided via a stipulated record which establishes the following:

The City's Planning Department operates Mason Manor, a housing unit for the elderly which has about 15 apartments and houses about 120 people.

There is no on-site supervision at the facility and, as a result, the three (3) employes working there have no direct supervisor present when they perform their work. Two of them, Lee Lewis and Gabe Biemeret, provide maintenance services and one, Janelle Mehan, provides tenant services. Up until about June, 1990, Lewis and Biemeret were required to punch a time clock; Mehan was not.

Mehan between 1986 and 1990 was never required to do so even though Lewis at all times material herein was required to. Lewis was treated differently than Mehan because he, unlike her, replaced an individual who about eight or nine years ago was required to punch in because of difficulties with when he was working. Biemeret was hired in about mid-1990 and was required to punch the time clock from his initial hiring.

Biemeret complained to management over the fact that he was required to punch a time clock while Mehan was not. On or about June 8, the management informed all three (3) employes that effective June 17 all of them henceforth would be required to punch a time clock when they work their normal shifts which are 7:00 a.m. - 4:00 p.m. for Lewis and Biemeret and 8:00 a.m to 4:00 p.m. for Mehan, Monday through Friday. Other clerical employes in the Planning Department who are also in the same bargaining unit are not required to punch a time clock.

The City does not claim that any of these three employes have abused their time privileges at Mason Manor. Furthermore, they are only required to punch in and out in the beginning and at the end of their shifts, as they are not required to do so on either their coffee or lunch breaks. The City does not have any written policy describing its time clock policies and procedures.

The City's time clock policy is mixed. Employes working outside City Hall - such as at the west side garage and in the Police Department where the Union represents clericals and the radio operators - do not have a time clock. However, the maintenance employes in the Police Department and the cleaners in City Hall who come in at the end of the day do. A supervisor is present for some of the time that the cleaners work in City Hall. In addition, word processing and printing employes in City Hall who work the same hours as other City Hall employes do not have direct supervision and do not punch a clock.

Mehan, Lewis, and Biemeret filed the instant grievance on June 13 claiming that the City's time clock policy "is inconsistently applied and discriminatory as applied to various members of the bargaining unit".

In support thereof, the Union primarily contends that the City violated Article 2 of the contract by not submitting its revised time clock policy to the Union at least five (5) days before it was promulgated, and that said inconsistent time clock policy also is violative of the Preface which states that the City shall "maintain a uniform scale of wages, hours and working conditions. . ." Thus, it points out that time clocks in some instances are used where direct supervision is present and that time clocks sometimes are not used when there is no such direct supervision. That, states the Union, is wrong because "arbitrators have consistently held that a valid work rule must be reasonable, published, and must be applied in an even-handed manner."

The City, in turn, argues that the Union's failure to grieve this matter much earlier shows that "management has reserved unto itself the right to impose these types of work rules"; that said right is spelled out in the contractual management rights clause; that there is no other contract language or past practice limiting the City's right to properly record an employe's time for pay purposes; and that since the City retains the right to schedule work, "it follows logically that the City of Green Bay has the authority to insist that its employes begin using time clocks."

I disagree.

True, Article 25 of the contract provides that the City retains the right to "establish reasonable work rules. . .; to determine the kind and amounts of services to be performed as pertains to City government; to change existing methods and facilities. . .by which the City operations are to be conducted. . ."

But this case does not involve the question of whether the City can set work hours or whether it can exercise any of the rights just noted. Of course it can.

This case, instead, centers upon whether the use of time clocks represents a reasonable work rule and, if so, whether the City was contractually required to discuss same with the Union before it was promulgated pursuant to Article 2 of the contract which provides:

> (A) In keeping with the above, the Employer shall adopt and publish rules which may be amended from time to time, provided, however, that such rules and regulations shall be first submitted to the Union for its consideration five (5) days prior to effective date, except time may be amended by mutual agreement. In the event of a dispute as to such proposed rules or regulations, the dispute shall be referred to the Grievance Procedure.

Under this language, it is clear that the City was contractually required to submit its revised time clock policy at Mason Manor to the Union at least five (5) days before said policy was implemented. The City was required to do so irrespective of its separate right to schedule work, as the time clock rule is a separate issue which stands independently from the former. That is why the Union was entitled to be consulted and to provide input before it became effective.

Moreover, the Union is entirely correct when it complains that uneven application of the rule here "can cause employee friction, departmental disarray, unequal treatment, and a way for the Employer to punish certain departments or individuals by making them adhere to a certain set of rules that are not required to be followed by all employees in the bargaining unit." The advance notification requirement, if adhered to here, might obviate some of these problems.

But as matters stand now, it must be concluded that the City's time clock policy, as applied, is unreasonable because the City has offered no valid explanation as to: (1) why some employes without supervision are required to punch a time clock while other employes in similar instances are not; and (2), why some employes with supervision are required to punch a time clock while other employes in similar circumstances are not.

In short, the policy herein suffers from the fact that it is not evenly applied and that it is unreasonable. As a result, the City is hereby required to immediately rescind and withdraw its time clock procedures at Mason Manor and to not reimpose them unless and until the City first consults the Union regarding its policy.

In so finding, I want to make it clear that the decision herein is very narrow in scope and that nothing herein should be misconstrued into leaving the impression that the City is precluded from establishing a uniform time clock policy covering all members of the bargaining unit. It can, since it has the inherent managerial perogative to make sure that its employes are properly working the hours they should. But it can do so only after it follows the advance notification requirement provided for in Article 2.

In so finding, I am of course aware of the City's contention that the Union for a long time never complained about the City's time clock policies at Mason Manor. The Union's inaction over this issue, however, can be explained by the fact that no employes ever before questioned it. As a result, the Union had no reason to raise this issue before the City in June altered its prior practice by having Mehan punch a time clock. It was this change in circumstance which led to the present proceeding and it was this change which now enables the Union to grieve and to have this matter resolved.

In light of the above, it is my

AWARD

1. That the City violated the contract by failing to have a city-wide policy governing the use of time clocks.

2. That as a remedy, the City shall immediately rescind its time clock policy at Mason Manor.

Dated at Madison, Wisconsin this 20th day of June, 1991.

By Amedeo Greco /s/
Amedeo Greco, Arbitrator

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