BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between	:	
GREEN BAY PARK DEPARTMENT EMPLOYEES LOCAL 1672, AFSCME, AFL-CIO	:	Case 202 No. 44296 MA-6245
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 March 1, 1991.

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

ISSUE:

The parties have agreed to the following issue:

> Did the City have just cause to discharge grievant Lyle Piontek, and if so, what is the appropriate remedy?

DISCUSSION:

Piontek worked in the City's Park Department for about 11 years as a seasonal worker. In 1989 and 1990, he worked with casual employe Terry Deprey who worked for a temporary employment agency which had contracted her services with the City. As a result, she was never employed directly by the City and she was never in the collective bargaining unit.

Deprey alleges, and Piontek denies, that Piontek approached her in early April, 1990, 1/ and while raking leaves together and when no one else was present, asked her whether, for an undetermined sum of money, she would be willing to falsely say that their foreman, Keith Wilhelm, had sexually harrassed her at work. Going on, Deprey testified in substance that Piontek told her that he disliked Wilhelm and that he was being a real "asshole"; that he would get other employes to chip in the money to pay her; that she should not mention his proposition to anyone else; and that once started, she would have to go all the way with her charge and could not back out. Deprey claims that she then told Piontek that she would think about it and give him an answer later on, but she never did.

Deprey claims she immediately thereafter told fellow employe Norman Mineau who was working near her: "Lyle just said something to me that really blew me. But he asked me to keep a secret so I'm not going to say anything." At that point according to Deprey, Mineau replied, "Well, keep it under your hat and don't say anything"; that she should "leave it alone" and not get involved with something Piontek "dreamed up" or otherwise she could get herself in "big trouble"; and that Lyle was a "big liar" and likes to make trouble.

A few days later, and after Piontek told employes that Deprey was not paying for her coffee out of the communal coffee pot, Deprey told fellow employe Charley Leurquin about what Piontek allegedly told her. The two of them brought it to the attention of Union Chief Steward Mike Landry, who in turn, brought it to management's attention. Deprey at that time also told Landry that she did not want to cause any problems and she did not initially discuss it with management until it contacted her.

Following an investigation, the City on April 18 terminated Piontek and he filed the instant grievance the same day.

In support thereof, the Union primarily asserts that the City has failed to meet its burden of proof that Piontek in fact made the statement attributed to him. It thus argues that Deprey's testimony cannot be credited because it was inconsistent and contradictory and because she fabricated her testimony for "revenge" to get even with Piontek after he had complained to other workers that Deprey had not paid her fair share into the communal coffee fund.

1/ Unless otherwise noted, all dates hereinafter refer to 1990.

Moreover, the Union maintains that even if Piontek made such a statement, the City in any event did not have just cause to discharge him because it did not first give him any written notice as required under the contract. As a remedy, the Union requests the issuance of a traditional make whole order, including Piontek's reinstatement.

The City sees things differently, as it maintains that Deprey's testimony should be credited in its entirety under the multi-pronged test regarding credibility resolutions provided for in Wisconsin Civil Jury Instruction 215. It thus claims that Deprey told the truth because, in its words, she "had nothing to gain by making the report." It also argues that Piontek's immediate discharge was warranted without a prior warning notice because Piontek attempted to destroy Wilhelm's "reputation and livelihood" and that he therefore was "dishonest" in trying to get Deprey to spread a false story about him which could have led to Wilhelm's loss of employment. The City thus maintains that Piontek committed a criminal act when he violated Sec. 134.03, Wis. Stats., which makes it a crime to interfere with someone's employment.

Both parties recognize that this case turns on the head-on credibility clash between Deprey and Piontek as to what Piontek did or did not say regarding the alleged scheme to discredit Wilhelm. The resolution of this issue is no easy task, as there were no witnesses to said conversation.

In this connection, the Union rightfully notes that some of Deprey's testimony was contradictory and simply wrong. That being so, this case then turns upon whether her other testimony should be credited.

I believe it should because of several reasons:

One, despite the difficulty she had in testifying, the fact remains that she stuck with her story in spite of very vigorous cross-examination which did not cause her to change her testimony regarding the key issue in this case, i.e., whether Piontek in fact had the conversation attributed to him.

Two, no plausible explanation has been offered as to why she would deliberately lie and try to get Piontek into trouble. The Union argues that she did it for "revenge" after Piontek complained to others that Deprey was not paying for her coffee. But that theory flies in the face of the fact that Deprey went out of her way not to relate her story to management on the day she finally spoke to Landry. That is why management had to contact her to find out what had happened. Had Deprey really been interested in "revenge", she would not have been so reticent in speaking to management.

Three, and most importantly, Deprey testified that on the same day Piontek spoke to her, she spoke to fellow employe Norman Mineau about what Piontek said to her, telling him: "Lyle just said something to me that really blew me. But he asked me to keep a secret so I'm not going to say anything."

Now, Deprey either did or did not make this statement to Mineau. If she did, the Union's "revenge" theory is blown out of the water because this exchange occurred several days before Piontek complained about Deprey's supposed failure to pay for her coffee. Deprey's testimony on this point is undisputed since Mineau never appeared at the hearing and never testified to the contrary. Hence, Deprey's testimony must be credited.

Once that is done, it must be concluded that Piontek did make the proposition attributed to him and that the Company did have just cause to issue some kind of discipline for propositioning Deprey the way he did.

The Union maintains that the County nevertheless lacked just cause to fire him because it did not first give him a written warning as required under Article 14 of the contract which states in pertinent part:

> (A) The Employer shall not discharge any employee without just cause, and shall give at least one (1) warning notice of the complaint against such employee to the employee in writing, and a copy of the same to the Union affected, except that no warning notice need be given to an employee before discharge if the cause of such discharge is dishonesty, being under the influence of intoxicating beverages while on duty, recklessness, endangering others while on duty, the carrying of unauthorized passengers, or other flagrant violations.

Hence, the penultimate question here therefore becomes whether, given the absence of any prior warning notice for this particular offense, Piontek was guilty of the kind of "flagrant" violation which warranted his immediate discharge. The resolution of this question must also take into account the fact that Piontek in 1989 received a one-day suspension for sick leave abuse.

I conclude that it was because his proposition to Deprey, if carried out, could easily have ruined Wilhelm's life if Deprey's charges of sexual

harrassment against him were believed, since that probably would have adversely affected his employment relationship, to say nothing of the social stigma that such a charge brings. Furthermore, even if he were exonerated of those false charges, he surely would have had the scars of such a serious charge for the rest of his life.

And serious it is: There are few things which can hurt a person more than the charge of sexual harrassment or abuse. In short, it was just about the very worst thing that anyone can say of someone else, given society's ever growing sensitivity and concern regarding such matters.

Piontek's attempt to ruin Wilhelm's life therefore is about as "flagrant" misconduct that one can possibly imagine. Hence, the County was not required to give him a prior warning under the contract and its discharge decision must stand.

In light of the above, it is my

AWARD

That the County had just cause to discharge grievant Lyle Piontek; his grievance is therefore denied and dismissed.

Dated at Madison, Wisconsin this 1st day of July, 1991.

By Amedeo Greco /s/
Amedeo Greco, Arbitrator