

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration	:	
of a Dispute Between	:	
	:	
VERNON COUNTY HIGHWAY EMPLOYEES,	:	
LOCAL 1527, affiliated with the	:	Case 83
AMERICAN FEDERATION OF STATE, COUNTY	:	No. 45528
AND MUNICIPAL EMPLOYEES, AFL-CIO	:	MA-6632
	:	
and	:	
	:	
COUNTY OF VERNON, WISCONSIN	:	
	:	

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Appearances:

Mr. Daniel R. Pfeifer, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, Route 1, Sparta, Wisconsin 54656, appearing on behalf of Vernon County Highway Employees, Local 1527, affiliated with the American Federation of State, County and Municipal Employees, AFL-CIO, referred to below as the Union.

Mr. Jerome Klos, Klos, Flynn & Papenfuss - Chartered, Attorneys at Law, 800 Lynne Tower Building, 318 Main Street, P.O. Box 487, La Crosse, Wisconsin 54602-0487, appearing on behalf of County of Vernon, Wisconsin, referred to below as the County.

ARBITRATION AWARD

The Union and the County are parties to a collective bargaining agreement which was in effect at all times relevant to this proceeding and which provides for the final and binding arbitration of certain disputes. The Union requested, and the County agreed, that the Wisconsin Employment Relations Commission appoint an Arbitrator to resolve a dispute reflected in a grievance filed on behalf of Dennis Engh and Larry Hooverson. The Commission appointed Richard B. McLaughlin, a member of its staff. Hearing on the matter was held on June 26, 1991, in Viroqua, Wisconsin. The hearing was not transcribed, and the parties filed briefs by July 25, 1991.

ISSUES

The parties stipulated the following issues for decision:

Did the County have just cause to suspend the Grievants Dennis Engh and Larry Hooverson for one day without pay for the incidents that occurred on July 19, 1990?

If not, what is the appropriate remedy?

RELEVANT CONTRACT PROVISIONS

ARTICLE I  
Recognition

. . .

1.03 Subject to the provision of this contract and applicable law, the County possesses the right to operate County government and all management

rights repose in it. These rights include, but are not necessarily limited to the following:

. . .

D. To suspend, demote, discharge and take other disciplinary action against employees, for just cause . . .

. . .

ARTICLE IV  
Hours of Work, Wages, Overtime Pay

. . .

4.08 . . . When deemed necessary, employees shall work reasonable amounts of overtime and shall not be released from duty unless a circumstance exists whereby the employee absence is necessary and approval is received from the Commissioner or foreman.

BACKGROUND

The Union filed the grievance on behalf of Dennis Engh and Larry Hooverson, who are both employed by the County as Mechanics. Hooverson has been a County employe for about twenty-seven years. Engh has worked for the County for about five years. Neither employe had received any discipline until receiving a one-day suspension for July 23, 1990. 1/

The grievance filed by the Union on July 23 states the relevant "Circumstances of Facts" thus:

A(c)ording to Orland he told us (myself and Larry Hooverson) to work overtime or late to finish putting a g(r)ader back together. He told us to work late if we wanted to. I told him I had to pick my wife up at 3:30 p.m. We never refused to work late.

William R. Stahl is the County's Highway Commissioner, and documented the basis for the suspension in an office memorandum dated July 23, which reads thus:

On Thursday morning, July 19, 1990 I advised the shop foreman, Orland Kinserdahl to make sure that the Clark Grader (No. 348) was repaired by that evening as it was needed on a project beginning at 7:00 A.M. the following day, July 20, 1990. I further advised him that if mechanics had to work overtime to accomplish this, he was so authorized.

Upon arriving at the shop at 6:09 A.M. on July 20, I noted said grader was not completely repaired; a gear case had not been filled with oil and a wheel and tire had not been mounted.

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1/ References to dates are to 1990, unless otherwise noted.

Mr. Kinserdahl arrived at the shop about 6:30 A.M. on Friday the 20th of July. I said to him that the Clark grader was not repaired. He responded with 'I noticed that'. I asked why it was not completed; he said he didn't know. I asked if he had told the mechanics to complete the work on overtime if necessary; he said he had told them. I asked if they had refused to do the work; he said they had not. I again asked why the work was not done and again he replied he did not know.

Mr. Hooverson had requested and was authorized a vacation day for Friday, the 20th. Mr. Engh arrived for work prior to 7:00 A.M., advised the shop clerk that he was ill and left the premises.

At 7:00 A.M. (normal starting time) on Friday the 20th of July, I directed a grader operator and two truck drivers to complete the repair work. I returned about 7:50 A.M. and they advised the repair work was done but the nuts to secure the wheel to the axle were missing; that they searched everywhere and could not find them. They improvised by removing nuts from other wheels and finally had the grader underway around 8:00 A.M. During this time, six men and trucks were idle waiting for the grader and operator.

About 2:30 P.M. on Friday, July 20th, 1990, I reached Mr. Engh by phone and asked him why he had not completed the subject repair work; he advised that he had to pick up his wife and was unable to work overtime. I asked if he had so informed his foreman and he did not reply. I told him he was suspended without pay, for Monday the 23rd of July 1990 and that he should consider his actions and advise me on Tuesday morning, the 24th why he should be retained by Vernon County.

I did not reach Mr. Hooverson by phone until Sat. afternoon, the 21st of July. I asked him why he did not complete the repair work and he advised that Mr. Kinserdahl said that he could work overtime and not that he had to. He decided not to work. There was no doubt in my mind that Mr. Kinserdahl had told both men alike; that they should work overtime if necessary. I suspended Mr. Hooverson without pay for Monday, the 23rd of July 1990.

I asked Mr. Hooverson the location of the missing nuts, that men had searched to no avail and it appeared they had been hidden; he stated he knew nothing of th(eir) whereabouts and perhaps they were disposed of in garbage by another crew.

Both mechanics reported to the shop just before 7 A.M. on Monday the 23rd of July; I asked why they were there and they said they were advised to but did not say b(y) whom. In the presence of the Union Steward, Mr. Phil Hewitt, I informed Mr. Hooverson and Mr. Engh that they

were to leave the premises and they did so.

Loren Gronning is employed by the County as the Patrol Superintendent of the Highway Department. He signed the July 23, memo under a sentence which reads: "The discussion related between Mr. Stahl and Mr. Kinserdahl around 6:30 A.M. on the 20th of July, 1990 was witnessed by me and is correct." The memo was also signed by Orland Kinserdahl, a Foreman in the Highway Department, under a sentence which reads: "The quotations in the above made by me are correct."

The background to the events of July 19 is essentially undisputed. The conversations by which the disputed work assignments were made are the essential facts in dispute regarding the events of July 19. In early July, one of the County's Clark road graders was immobilized with a broken axle and damaged housing. The County had some difficulty in locating replacement parts, but needed the grader for shouldering work on Highway 56 on July 20. That work was contracted by the State of Wisconsin, and the County had scheduled the work to begin at 7:00 a.m. on July 20. The replacement axle for the Clark grader was not delivered to the County Highway Shop until about 11:00 a.m. on July 19. Stahl told Kinserdahl in the morning of July 19 that the County needed the grader by 7:00 a.m. the following day, and that Kinserdahl should assign the Mechanics to work overtime if necessary to complete the job by that deadline. Kinserdahl assigned Engh to work on the grader as soon as the axle arrived. Hooverson was working outside of the shop that morning. The axle arrived without bearings, and Kinserdahl had to order bearings from a shop in LaCrosse. The bearings were delivered to the County Highway Shop sometime between 2:00 and 2:30 p.m. on July 19. Engh and Hooverson worked on the grader until the normal quitting time of 3:30 p.m. Kinserdahl left the shop before Engh and Hooverson did. The Highway Committee had a meeting in the shop that day, and left the shop around 3:20 p.m., while Engh and Hooverson were cleaning their work area before leaving.

The disputed conversations by which the work was assigned, and the events following that assignment, are best set forth as a summary of the testimony of individual witnesses.

#### William Stahl

Stahl could not recall either directly assigning, or discussing the work assignment with, either Engh or Hooverson on July 19. He testified that there was, however, no ambiguity in the instructions he left Kinserdahl with. He felt Kinserdahl clearly understood that the work was to be completed by 7:00 a.m. on July 20, using overtime, if necessary.

Stahl stated he phoned Engh on July 20, and asked Engh why he had not worked overtime to complete the repair on the grader. Engh responded, according to Stahl, that he had to pick his wife up, and was not available to do the work. Engh did not respond, Stahl testified, when asked if he had noted his unavailability to Kinserdahl.

Stahl phoned Hooverson on July 21, and was informed by Hooverson that Kinserdahl had told him he could, but did not have to, work overtime.

#### Orland Kinserdahl

Kinserdahl affirmed that Stahl had informed him on July 19 that the grader would be needed at the start of the shift on July 20, and that he should authorize overtime if necessary to complete the work. Kinserdahl did not, however, know what job the grader was needed for. Kinserdahl stated that he went to LaCrosse over the lunch hour to get the bearings, and that Hooverson started to work on the grader at about 2:00 p.m. He later rescinded his

testimony that he had picked up the bearings, and acknowledged that the Shop Clerk had done so.

Kinserdahl testified that he assigned Engh to work on the grader at about 11:00 a.m., when the first replacement parts arrived. He testified that he specifically told Engh that, if necessary, "you fellas" could work overtime. He thought he had informed Engh that Stahl would like to have the grader ready by the morning of July 20, even if that required overtime. He never specifically instructed Hooverson on the work assignment or on the deadline, but relied on Engh to convey that message. Kinserdahl left the shop at around 3:00 p.m., thinking that the job was so close to being done that it would be done well in advance of the 7:00 a.m. July 20 deadline. Kinserdahl specifically denied that Engh ever informed him that he had to pick up his wife after work, but acknowledged that he may have instructed Engh or Hooverson that the job could be completed in the morning of July 20.

Kinserdahl is a member of the bargaining unit represented by the Union, and acknowledged he was "quite nervous" regarding signing the July 23 memo.

Dennis Engh

Engh testified that Kinserdahl told him on July 19 that Stahl wanted the grader done on July 19. Engh stated he asked Kinserdahl about working overtime, and specifically told Kinserdahl he had to pick up his wife after work to take her to an appointment, but that he could come back to the shop if necessary after the appointment. At sometime around 3:00 p.m., Hooverson discussed the job with Kinserdahl, and reported to Engh that Kinserdahl had stated the job could be finished the next morning. Engh felt he could easily finish the work the following day, and reported to work about 6:30 a.m. He testified that he became ill, and informed the Shop Clerk that he was punching out.

Engh stated that he never mentioned to Hooverson that Stahl expected the work to be done on July 19. He also acknowledged that Kinserdahl does assign work to both mechanics by discussing the assignment with one of them and relying on that person to inform the other mechanic.

Engh stated that Stahl phoned him on the evening of July 20, and asked why Engh had not put in overtime work on July 19 to finish the job. Engh responded that he felt he could have finished the job on July 20. Stahl responded, according to Engh, by calling him a liar, or words to that effect. Stahl also asked him about the missing lug nuts.

Larry Hooverson

Hooverson testified that neither Engh nor Kinserdahl ever specifically informed him of the deadline for repairing the grader. Kinserdahl never specifically assigned him to the grader at all. Rather, Hooverson noted that when he came in off the road, he noted Engh was working on the grader, and he came to his assistance. Hooverson testified that Kinserdahl called LaCrosse to locate replacement bearings, but that the bearings were actually picked up and delivered by the Shop Clerk, who happened to be driving back from Lacrosse at the time Kinserdahl located the replacement bearings.

Hooverson stated that Kinserdahl left the shop at about 3:10 p.m., and asked Hooverson if the job would be done by quitting time. Hooverson informed Kinserdahl the job would be close to done, and that he would be on vacation the following day. Kinserdahl responded, according to Hooverson, that the job could be completed the next day. Hooverson returned to the grader, and then informed Engh that he could complete the job the next day. Hooverson estimated that, by the close of the July 19 shift, about twenty minutes of work remained to be done.

Hooverson acknowledged he knew the grader was needed on July 20, but did not know why. He also acknowledged that Kinserdahl would assign work to the mechanics by discussing the assignment with one employe and relying on that employe to inform the other. Hooverson could not recall if Engh specifically informed him that overtime had been authorized for July 19.

Stahl approved Hooverson's use of vacation for July 20 on July 19.

Further facts will be set forth in the DISCUSSION section below.

#### THE COUNTY'S POSITION

After a review of the evidence, the County notes that the contract authorizes the Commissioner "to order the overtime work herein involved and to discipline insubordination of that order by a penalty of one day off without pay." Acknowledging that Kinserdahl "has difficulty remembering whether he directly told Hooverson of the overtime order later in the day", the County argues that the July 23, 1990, memo, and Kinserdahl's testimony regarding his conversation with Engh is sufficient to establish that both Engh and Hooverson received a direct order which each chose to disobey.

The County contends that Hooverson's claim that he never received a direct order is not credible for several reasons. First, the County argues that since Hooverson asked Kinserdahl on July 19 whether the project could be finished the next day, it is apparent that he was aware that the original order was for the project to be finished on July 19. Beyond this the County asserts that Hooverson's testimony "is self-serving and denied as having occurred by the shop foreman." The County also questions the veracity of Hooverson's account given the fact that he asked, on July 19, for a vacation day on July 20. According to the County, this undermines Hooverson's assertion that he thought the work could be completed on July 20, and tends to indicate Hooverson planned "to leave late afternoon on the 19th to add to July 20 as a vacation period." That the Highway Committee might have seen the two mechanics putting away their tools on July 19 adds nothing to the credibility of Hooverson's testimony, according to the County.

The County then dismisses Engh's assertion that Kinserdahl informed them on July 19 that the work could be completed on July 20. This assertion is, the County argues, inconsistent with the original grievance and ignores that Engh could have returned to work on July 19 after picking up his wife.

The Union's claim that no overtime was necessary because the work could have been done on July 20 is, according to the County, illustrative of an attitude that employes need not take direct orders seriously. That fourteen wheel nuts were misplaced between July 19 and July 20, coupled with Engh's momentary appearance on July 20 "all give credence to conspiracy", the County concludes.

Whether the Grievants performed a job action or not, the County argues that "there is substantial record evidence to support just cause for a one-day, non-pay suspension for insubordination of an order, and the penalty clearly is not excessive." To tolerate conduct such as that at issue here would, according to the County, result in "work assignment and completion chaos" and would render "all supervision ineffective" at great cost to County taxpayers.

Viewing the record as a whole, the County concludes that the Union has "not satisfied their burden of proof as to the grievance or the appeal, and it should be dismissed."

## THE UNION'S POSITION

After a review of the evidence, the Union asserts that the record establishes that the grievance must be sustained because "the County did not have just cause to discipline the grievants" and because there was not "appropriate due process granted to the grievants."

The sole relevant evidence on the propriety of the discipline is the testimony of Engh, Hooverson and Kinserdahl, according to the Union, since these were the only employees "involved in the actual assignment or lack of assignment of duties on July 19". That testimony establishes, the Union argues, that Kinserdahl never informed Hooverson that the work had to be completed on July 19; that Hooverson informed Engh that the work could be completed on July 20; and that neither Engh nor Hooverson ever refused to carry out an order. The Union contends that this establishes only that "Mr. Kinserdahl got caught between what he was instructed to do by the Highway Commissioner and what he actually instructed the grievants to do and did not know how to get out of a difficult situation because of his admitted belief that it would cause trouble."

Asserting that the County has failed to prove any link between the missing wheel nuts and this case, the Union concludes this issue plays no role in this case.

The Union's next major line of argument is that the County failed to grant the Grievants appropriate due process. More specifically, the Union asserts that Stahl discussed the work only with Kinserdahl, and neither sought nor received the Grievants' account. This conduct, according to the Union "renders the County's actions fatally flawed."

Viewing the record as a whole, the Union concludes that the County "did not meet its burden of proving that it had just cause to suspend" the Grievants, and failed to afford either Grievant "appropriate due process". It follows, according to the Union, that the Grievants should "be made whole for all losses and (should have) any references to this issue be deleted from any and all personnel files."

## DISCUSSION

The stipulated issue is whether the County had just cause, as required by Section 1.03, to suspend each Grievant for one day. The Union poses a threshold issue questioning whether the County afforded the Grievants due process before issuing the suspensions.

What constitutes the process due an employe is a matter initially defined by the parties to the agreement. The parties can expressly incorporate the standards defining just cause into the agreement, or can mutually establish such standards in the presentation of their arguments. 2/ In the absence of

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2/ The parties can, for instance, establish the standards defining just cause by mutually citing outside precedent such as the seven standards of Enterprise Wire Co., 46 LA 359 (Daugherty, 1966).



stipulated standards, I believe the determination of cause must address two fundamental elements. First, the employer must establish the existence of conduct in which it has a disciplinary interest. Second, the employer must establish that the discipline imposed reasonably reflected that interest.

In this case, Stahl made an abbreviated effort to investigate the underlying basis for the suspensions. He confronted Kinserdahl, and determined Kinserdahl was aware of the deadline, and had communicated it to the Mechanics. He then confronted each Mechanic, and permitted each a brief response. How open an inquiry this was is questionable. Whatever is said of that inquiry, it is apparent Stahl chose to rely on Kinserdahl's statement that he had instructed the Mechanics to work overtime, if necessary, to complete the work on July 19.

Stahl's determination to rely on Kinserdahl's representations at the peril of having to prove at hearing that this reliance was well-founded can not be dismissed as a "fatal flaw" in the County's case. Not all employment relationships are alike, whatever difficulty this poses arbitral precedent. The size and economic well-being of an employer may alone dictate the investigation undertaken by an employer. That an employer may devote more of its available resources to hearing preparation rather than pre-discipline investigation is not, in itself, objectionable. The wisdom of such an approach is for bargaining parties, less than arbitrators, to determine. The just cause provision assures that discipline will be tested at a hearing. This should assure that a disciplined employe will receive due process. In this case, Stahl's reliance has been subjected to the hearing process, and that process has defined, as will be discussed below, the risk of Stahl's reliance on Kinserdahl's statements. That Stahl was curt in his investigation is not, in itself, a basis to conclude the County's case is fatally flawed.

The primary thrust of the County's case is that the Grievants' failure to complete the repairs on July 19 constitutes insubordination. Insubordination has been defined as "(a) worker's refusal or failure to obey a management directive". 3/ Insubordination thus requires proof of the following elements:

(1) the issuance to a worker of a clear and direct order; (2) the issuance of the order by a person known by the worker to be a supervisor; and (3) the refusal by the worker to obey the order. 4/

Discussion of the application of these elements to the evidence requires that the Grievants be handled separately. While the County treated each Grievant as being guilty of the same refusal to obey the same work order, this conclusion is better rooted in Stahl's anger than in proven fact.

The evidence affords no persuasive basis for concluding that any of the three elements of insubordination has been proven regarding Hooverson. There was no issuance of a clear and direct order to Hooverson to complete the work on July 19. Stahl issued such an order to Kinserdahl, but the clarity of the communication of that order suffered greatly from that point. Kinserdahl never directly ordered Hooverson to do anything. Hooverson was not in the shop when

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3/ Robert's Dictionary of Industrial Relations, H.S. Roberts (BNA, 1986).

4/ See, generally, Management Rights, Hill & Sinicropi (BNA, 1986) at 506-507. Specific circumstances, and the nature of the discipline imposed may bring in other elements of proof. See, for example, Kay-Brunner Steel Products, 78 LA 367 (Gentile, 1982). The three elements stated above are fundamental to any finding of insubordination.

Kinserdahl spoke to Engh about the job, and was not even directly instructed to assist Engh when he returned to the shop. The need for the work was apparent, and Hooverson assisted in it without having been expressly instructed to do so.

Engh testified, without rebuttal, that he never informed Hooverson about the deadline. The sole evidentiary support in the record for the issuance of a direct order to Hooverson lies in his own acknowledgment that he knew the grader was needed on July 20. Hooverson's contention that Kinserdahl told him the work could be completed the following morning stands un rebutted. This evidence is insufficient to undermine the validity of Hooverson's conclusion, as he left work on July 19, that Engh could complete the job on July 20.

Because it has not been proven that Hooverson was issued a clear and direct order, it necessarily follows that the second element of proof remains unmet.

Nor has the final element of proof of insubordination been met. From the July 23 memo through his testimony at hearing, Kinserdahl maintained that neither employe had refused to do the work. Kinserdahl did not recall the 3:00 p.m. discussion with Hooverson regarding the completion of the work, but acknowledged he may have told Hooverson the work could be completed on July 20.

In any event, it is apparent Kinserdahl left work on July 19 secure in the belief that the job had been all but completed. It is just as apparent that Hooverson, on July 19, asked for, and was granted, a day of vacation for July 20. His conduct throughout the two day period was open and above-board. There is no evidentiary support for a conclusion that he openly or tacitly refused to complete the job.

Because the elements of proof for insubordination have not been met, it follows that the County has failed to demonstrate the existence of insubordinate conduct.

Stahl's July 23 memo is broad, and indicates he viewed the conduct of each employe to warrant discipline. He referred to the conduct as insubordination in the heading of the memo, but it is apparent from the memo and from his testimony that he viewed the conduct of each employe as demonstrating a dereliction of duty. The definition of insubordination set forth above, and the related elements of proof are rooted in arbitral precedent which tends to focus on insubordination as a willful act of disobedience. Thus defined, negligent or grossly negligent conduct is not insubordinate. My reading of the July 23 memo and Stahl's testimony is that Stahl was less concerned with such distinctions than with sanctioning what he viewed as a dereliction of duty.

Thus, the question remains whether Hooverson's conduct demonstrates such a negligent performance of his duties that the negligence could be considered conduct in which the County has a disciplinary interest. The evidence will not support such a conclusion. As noted above, nothing in the evidence undermines the validity of Hooverson's conclusion at the close of the July 19 shift that the repair work could be completed by Engh in roughly twenty minutes on July 20.

It is necessary now to apply the same analysis to Engh. Engh acknowledged that Kinserdahl informed him that Stahl wanted the grader repaired on July 19. Kinserdahl, as a member of the bargaining unit, is arguably not a supervisor. However, it is apparent from Engh's testimony that he understood that Kinserdahl spoke with Stahl's authority, and spoke clearly enough to communicate that Stahl wanted the grader repaired on July 19. This is sufficient to establish the first two of the three elements to insubordination.

The evidence will not, however, support a conclusion that Engh refused to perform the repair work. Kinserdahl, from the July 23 memo on, refused to

characterize either Mechanic's conduct as a refusal to perform the work. This can not be dismissed as the loyalty of one unit member to another. Kinserdahl testified he never directly assigned Hooverson to complete the work on July 19, but unequivocally stated that he so informed Engh. This testimony can not be characterized as protective of Engh's interests. The more troublesome point here is whether Engh's failure to work on July 20 constitutes a refusal of the work order. That Engh punched out "ill" on July 20 before doing any work is consistent with a conclusion that he refused to perform the work. It is also consistent with a conclusion that he had become ill, as he testified. His testimony that he was ill stands un rebutted. Since there is no evidence to indicate he was not ill, there is no solid evidence that he willfully refused to complete the repair. Such a finding is essential to establishing insubordination. Because the evidence will not persuasively support the conclusion that Engh left work on July 20 to avoid completing the grader repair, it follows that the final element of proof necessary to establish insubordination remains unmet.

The County has implied that Hooverson and Engh engaged in a sort of job action, by which the repairs to the grader were deliberately delayed. There is no persuasive evidentiary support for this assertion. Significantly, there is no persuasive evidence of what would have prompted, or of what either Grievant would have gained from, such action. Beyond this, the testimony of the Grievants is not mutually self-serving, as one would expect of a "conspiracy".

Engh's testimony exonerates Hooverson, but the reverse is not true. Hooverson's testimony that Engh never informed him of the deadline serves his own interest, but puts Engh at risk, as does Hooverson's testimony that Kinserdahl would issue work assignments to one employe, relying on that employe to inform his co-workers. Finally, that each employe would openly clean their work area at the normal quitting time, while the Highway Committee was meeting in the Shop, undermines any conclusion that the employes were covertly working to delay the work on July 20. Their conduct was flagrant and open.

The final point to be addressed is whether the evidence establishes a negligent failure to follow a work assignment by Engh in which the County has a disciplinary interest. The County has strong evidentiary support on this point. Kinserdahl informed Engh of the deadline, and relied on Engh to communicate this point to Hooverson. Engh failed to do so. Engh was aware, at the close of the shift on July 19, that he was the only Mechanic available to complete the repair. Crediting his testimony, he informed Kinserdahl that he had to pick up his wife after work, but would be able to return to the shop afterwards to complete the repair. In spite of this, he cleaned and put away his tools at the normal quitting time on July 19, thus committing himself to finish the repair on July 20. In spite of this, he left work on July 20, notifying only the Shop Clerk of his departure. At a minimum, Engh should have taken some step to notify Highway Department management that the work he had committed to do would not be done by the known deadline due to his illness. His failure to do so demonstrates a lack of concern for the deadline in which the County has a disciplinary interest.

The second element of the just cause analysis thus must be applied only to Engh. Stahl based the one-day suspension primarily on the willful insubordination of two employes, but the record will support only a finding of negligence on Engh's part. This act is far less disruptive of the work environment than the more concerted refusal acted upon by Stahl. Stahl had been sufficiently angered by the delay that he included a sentence in the July 23 memo indicating he was considering Engh's discharge. This anger took no account of the rather oblique way in which Kinserdahl chose to communicate the work assignment, and its significance, to Engh. Beyond this, it must be noted that Engh had not, prior to the July 23 suspension, been disciplined. Since

the proven conduct is far less serious than that alleged by the County and since Engh has no record of prior discipline, it follows that the County's disciplinary interest is more reasonably reflected in an introductory level of discipline than in an immediate suspension. The AWARD entered below reflects this by permitting the County to issue Engh no more than a written confirmation of an oral warning for his conduct on July 19 and 20.

Before closing, it is necessary to note that the conclusions reached above make any examination of the provisions of Section 4.08 unnecessary.

AWARD

The County did not have just cause to suspend the Grievants, Dennis Engh and Larry Hooverson, for one day without pay for the incidents that occurred on July 19, 1990.

As the remedy appropriate to the County's violation of Section 1.03, D, the County shall make Engh and Hooverson whole for the wages and benefits each employe would have earned but for the one day suspension on July 23, 1990. The County shall expunge any reference to the suspension or to Hooverson's conduct on July 19 and 20, 1990, from Hooverson's personnel file. The County shall expunge any reference to the suspension from Engh's file, but may include in that file, written confirmation that he received an oral warning for failing to notify Highway Department management on July 20, 1990, that he would be unable to complete the grader repair by 7:00 a.m., as previously instructed.

Dated at Madison, Wisconsin, this 27th day of September, 1991.

By Richard B. McLaughlin /s/  
Richard B. McLaughlin, Arbitrator