BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between	
GREEN BAY BOARD OF EDUCATION EMPLOYEES UNION, LOCAL 3055, AFSCME, AFL-CIO	Case 129 No. 45988 MA-6833
and	
GREEN BAY PUBLIC AREA SCHOOL DISTRICT	

Appearances:
Mr. James W. Miller, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, appearing on behalf of the Union.
Mr. J. D. McKay, Attorney at Law, appearing on behalf of the District.

ARBITRATION AWARD

Green Bay Board of Education Employees Union, Local 3055, AFSCME, AFL-CIO, hereinafter referred to as the Union, and the Green Bay Area Public School District, hereinafter referred to as the District, are parties to a collective bargaining agreement which provides for the final and binding arbitration of disputes arising thereunder. The Union made a request, with the concurrence of the District, that the Wisconsin Employment Relations Commission designate a member of its staff to act as an arbitrator to hear and to decide a grievance involving a discharge. The undersigned was so designated. Hearing was held in Green Bay, Wisconsin on September 17, 1991. The hearing was not transcribed and the parties filed posthearing briefs which were exchanged on November 13, 1991. The parties had reserved the right to file reply briefs and both parties informed the undersigned by December 6, 1991 that they would not file a reply brief, whereupon the record was closed.

BACKGROUND

The facts are not in dispute. The grievant was employed as a custodian by the District. On April 19, 1991, the grievant was discharged by the Custodial Services Manager by a letter dated that day which stated as follows:

> After meeting with you and Al Rymer, Union President on April 19, 1991, I find your answers and explanations as to why you did not report to work on April 17, 1991 totally unacceptable.
>
> As a result of discussions with the Administrative staff in the Personnel and Buildings and Grounds Departments regarding your work record, we have made a decision to discharge you effective at the end of the work day on April 19, 1991.
>
> In compliance with Article VIII of the collective bargaining agreement between the District and Local 3055, our reasons for this action came about as a result of your continued poor job performance. Specifically your unauthorized absence from work on April 17, 1991 and the events that occurred that evening when Jackie Fisher attempted to contact you. The District has provided you with progressive disciplinary action consisting of oral and written reprimands and suspension leading to discharge.

As noted in the discharge letter of April 19, 1991, the grievant failed to report to work at the start of his shift on April 17, 1991. The grievant was scheduled to work the 11:00 p.m. to 7:00 a.m. shift on April 17-18, 1991. The grievant did not report at 11:00 p.m.. The supervisor called the grievant's apartment for at least twenty minutes leaving the phone ring at least 15 times each call but no one answered. The supervisor then drove to the grievant's apartment and knocked on the door. After repeated knocking on the door someone answered through the door very quietly. The supervisor asked if it was the grievant and stayed at the door. The supervisor's pager went off and it was the grievant asking the supervisor to call him at home. The supervisor responded "I'm right here." The supervisor waited ten minutes but no one answered. The supervisor then went to the nearest pay phone and called the grievant. The grievant answered at 12:30 a.m. and stated that his alarm didn't go off and a friend had answered from inside the door at the apartment. The grievant stated that he didn't come to the door as he was putting on his pants. The grievant said he would get dressed and report for work but the supervisor told him that substitute custodians were called to perform in the grievant's area and that the grievant need not come in. The grievant was suspended with pay pending an investigation. On April 19, 1991 a meeting was held on the grievant's failure to report to work on April 17, 1991 and his failure to answer the phone or the door. The grievant indicated that he forgot to set his alarm and overslept. The grievant stated his son and a friend of the grievant were also at his apartment that night but none answered the phone and his friend answered through the door and the grievant stated he was putting his pants on when the supervisor was at the door. After this meeting, the grievant was discharged.

The grievant had previously been discharged on February 23, 1990 for continued poor job performance and excessive absenteeism. The grievant agreed to a voluntary commitment to Bellin Hospital's inpatient treatment program for alcohol abuse. The District withdrew the February 23, 1990 discharge and the grievant was returned to work on April 9, 1990 in accordance with the following letter dated March 30, 1990, by the District's Assistant Superintendent:

> I was pleased to participate in your "back to work" conference held this afternoon. You really looked good and, as we discussed, are beginning again as a new employee with the school district.
>
> As your counselor mentioned, you will be expected to be an active and full participant in the aftercare program. You agree to provide a release of information form to Debbie whereby she can communicate with us at any time should you violate the program's expectations.
>
> We also discussed your working conditions upon return to work on Monday night, April 9, 1990. You stated that you had a preference for a late shift position in order to deal with your sons at home and to continue in your aftercare program. We agreed that you would report to Franklin Middle School where you will be temporarily assigned until you are able to bid on the same position.
>
> You expressed your desire to remain on a late shift assignment long term whereby you can conquer your short and long-term problems at home.
>
> Once again, as I stated at the interview, you are to be

> congratulated for taking this major step in turning your life around. The employer expects nothing more than a productive employee with a satisfactory work performance record. As all of the above continue to happen, we should have no problems in the future; should you revert back to your poor job performance which lead to this action, we will be forced to deal with this again in a negative fashion.

On July 18, 1990, the Manager of Custodian Services sent the grievant the following letter:

> This letter is a follow-up to our phone conversations on 7/12/90 and our meeting at Franklin Middle School on 7/16/90.
>
> I received a call at my home from you at 12:05 a.m. on 7/12/90. You said you were having family problems and were requesting the next day (Thursday) as a vacation day. I approved your request. At approximately 8:30 a.m. that same morning you called me at my office and requested Friday also as a vacation day to solve your family problems. I also approved that day. Since you sounded disoriented I asked if you had been drinking. You admitted to me that you had "fallen off the wagon", but needed Friday off to solve your family problems. I asked if you were still enrolled in the Bellin Hospital Alcohol Abuse Outpatient Program, you said you had completed it last week.
>
> On 7/16/90 I met with you at Franklin Middle School. At that time we discussed what had happened on Thursday and Friday. I asked how long you had continued drinking alcohol. You stated you had quit Friday. I expressed

my disappointment in your reverting back to drinking alcohol, especially after so recently completing the Alcohol Abuse Program.

In view of the fact that you were given a reprieve from you February employment discharge based on your enrollment in the Inpatient Alcohol Abuse Program, your return to using alcohol constitutes a serious personal decision. Any return to the poor job performance or excessive absenteeism of the past will negate the reprieve you received. Put simply, Ron, "you've had your chance"!

In the future I will insist on at least a 24 hour notice on vacation requests and a Doctor's verification on all sick leave and in-family illness requests from you.

I would also urge you to contact the Bellin Alcohol Abuse Center and re-enter their outpatient program.

The grievant had also apparently been suspended for three days in October, 1988.

ISSUE:

The District stated the issue as follows:

> Did the employer violate the collective bargaining agreement when it terminated the grievant as an employee and if so, what is the remedy?

The Union stated the issue as follows:

> Was the Grievant discharged for just cause? If not, what is the appropriate remedy?

The undersigned adopts the Union's statement of the issue.

PERTINENT CONTRACTUAL PROVISIONS

ARTICLE VIII

SUSPENSION - DISCHARGE

Suspension: Suspension is defined as the temporary removal without pay of an employee from h/er designated position.

a. Suspension for cause: The Employer may for just cause suspend an employee. Any employee who is suspended, except probationary and temporary employees, shall be given a written notice of the reasons for the action and a copy of such notice shall be made a part of the employee's personal history record and a copy shall be sent to the Union. Such reprimands shall be removed from the employee's file after two (2) years. No

suspension for cause shall exceed thirty (30) calendar days.

No employee who has completed probation shall be discharged or suspended, except for just cause. An employee may be discharged immediately for dishonesty, drunkenness, reckless conduct endangering others, drinking alcoholic beverages while on duty, use of controlled substances or unauthorized absence. An employee who is discharged or suspended, except probationary and temporary employees, shall be given a written notice of the reasons for the action and a copy of the notice shall be made a part of the employee's personal history record and a copy sent to the Union. An employee who has been suspended or discharged may use the grievance procedure by giving written notice to h/er steward and h/er immediate supervisor within five (5) workdays after such discharge or suspension. Such appeal will go directly to the appropriate step of the grievance procedure.

Usual disciplinary procedure: The progression of disciplinary action shall be oral reprimand, written reprimand, suspension, and discharge. The Union shall also be furnished a copy of any written notice of reprimand, suspension or discharge.

DISTRICT'S POSITION

The District contends that the grievant was discharged for just cause. It submits that after a progression of discipline for poor job performance, the grievant was discharged for his failure to report to work on April 17, 1991. The District argues that the case is to be decided on the facts and the facts are undisputed and it believes these facts constitute just cause for the grievant's termination. The District concludes that the grievance should be dismissed as it has not violated the provisions of the collective bargaining agreement.

UNION'S POSITION

The Union contends that Article VIII of the parties' agreement is clear and unambiguous and spells out the progression of the discipline. It points out that the letter of discharge states that the District has met these requirements but the grievant's October, 1988 suspension is over two years old and is to be removed from the grievant's record under Article VIII. The Union submits that the District's reason for the grievant's discharge as set forth in the letter of discharge does not fall in the category for immediate discharge allowed under Article VIII. the Union maintains that the April 17, 1991 incident does not justify a suspension so discharge is out of the realm of possibility as there is no just cause for any discipline. It claims that the grievant overslept and called in late and the supervisor told him not to report to work and, at most, the grievant would have missed two hours but was docked for a full shift. The Union asserts that the District saved money because the substitutes were not called in as additional employes but were regularly scheduled extra employes.

The Union acknowledges that there is plenty of paperwork on the grievant's problem with alcohol, his treatment and his reprieve from termination but since then there has been no discipline. It submits that Exhibits 16 through 22 were not in the grievant's file and no copy was sent to

the Union, so the grievant had no chance to grieve or defend them and the Union had no opportunity to investigate these and advise the grievant. It submits that the District cannot accumulate notes or whatever and then discharge the grievant based on these documents. In conclusion, the Union alleges that the District did not follow the disciplinary procedures, there were no grounds for an immediate discharge, neither the Union nor the grievant were given copies of the notes or charges against the grievant, there is no suspension in the grievant's file as the October, 1988 suspension was to be removed, there is no evidence that the District discharged anyone for showing up two hours late and two hours is the maximum unauthorized time off chargeable to the grievant. It requests that the grievance be granted and the grievant be made whole for the loss of wages and/or fringe benefits.

DISCUSSION

At issue is whether there was just cause for the grievant's discharge for failing to report to work at the start of his shift on April 17, 1991. The undisputed facts established that the grievant failed to report at his normal starting time at 11:00 p.m. on April 17, 1991. Despite repeated telephone calls for a long duration to the grievant's apartment and a personal visit by his supervisor to the grievant's door, the grievant did not respond to these attempts to contact him. The grievant's explanation that he overslept and did not hear the phone or the knock at his door and his excuse that he didn't answer the door for the ten minutes the supervisor was waiting there was because he was putting on his pants is simply not credible especially when it was admitted that two other persons were in the apartment, one of whom answered the supervisor through the door.

In assessing the appropriate discipline for the grievant's misconduct, the Union submits that the suspension of October, 1988 should not be considered as this was over two years old and should have been removed from the grievant's file. This suspension need not be considered. The record establishes that the grievant's employment status was tenuous as he had been terminated on February 23, 1990 and was only reinstated after he completed treatment for alcohol abuse. The grievant was given a reprieve and reinstated but was informed that if the past problems returned, the District would deal with him in a negative fashion. In July, 1990, the grievant admitted to his supervisor

that he had reverted to the use of alcohol and was again informed that a return to poor performance or excessive absenteeism would result in his discharge. In particular, the grievant was told, "you've had your chance."

Thus, the grievant was given fair warning and the District had made appropriate efforts to help him deal with his problems. The grievant's absence on April 17, 1991 was unexcused and the grievant's explanation is not credible. The grievant had to know that his job was in extreme jeopardy, yet he alone is responsible for the predicament he now finds himself in as it resulted from his own conduct. In light of the grievant's situation, and all the relevant facts, the District had just cause to terminate the grievant for his failure to report at the starting time of his shift on April 17, 1991.

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

AWARD

The grievant was discharged for just cause, and therefore, the grievance is denied.

Dated at Madison, Wisconsin this 3rd day of January, 1992.

By _____
Lionel L. Crowley, Arbitrator