BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between LOCAL 20, AFSCME, AFL-CIO and CITY OF BROOKFIELD	Case 95 No. 49005 MA-7788

Appearances:

Ms. Christine Bishofberger, Staff Representative, on behalf of the Union.

Davis & Kuelthau, S.C., by Mr. Roger E. Walsh, on behalf of the City.

ARBITRATION AWARD

The above-entitled parties, herein "Union" and "City", are privy to a collective bargaining agreement providing for final and binding arbitration. Pursuant thereto, hearing was held in Brookfield, Wisconsin, on July 14, 1993. The hearing was transcribed and both parties filed briefs and reply briefs which were received by October 4, 1993.

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

ISSUE

Since the parties were unable to jointly agree on the issue, I have framed it as follows:

> Did the City have proper cause to suspend and discharge grievant Ronald Braunsky and, if not, what is the appropriate remedy?

DISCUSSION

Braunsky, a Crew Chief in the City's Park and Recreation Department, has been employed by the City since 1966. Up until 1991, he had a discipline-free record.

By letter dated December 23, 1991, Park and Recreation Department head Tom Belton notified Braunsky that he would be suspended for two days for driving City vehicles when his driving license was suspended; for failing to disclose that fact to the City; for speeding with a City vehicle; and for having an accident on October 24, 1991. Earlier, Braunsky's license had been suspended for driving a vehicle under the influence of alcohol. Belton's letter also warned:

> "Any further violation of these rules will result in further disciplinary action up to and including discharge."

Braunsky grieved his suspension and the matter was ultimately heard by Arbitrator Sharon A. Gallagher. On October 19, 1992, Arbitrator Gallagher denied the grievance and sustained the two-day suspension.

At about noon on December 2, 1992, Braunsky pulled into a Kwik Pantry parking lot in Brookfield, Wisconsin, with his City truck and hit the rear quarter panel of a parked truck which he knew was owned by fellow worker Paul J. Kluth. Braunsky also knew that Kluth was the fiance of Stephanie Tripoli who, along with Kluth, operated the Kwik Pantry store which he, Braunsky, frequently visited.

After hitting the truck, Braunsky entered the store and made a purchase. He did not tell Tripoli about his accident supposedly because she was too busy - a point disputed by Tripoli. After Braunsky left, Tripoli found out about the accident from another customer and, after calling local police to report the accident, telephoned Kluth at the City garage to tell him about it. Shortly thereafter, Kluth confronted Braunsky about the accident and Braunsky then admitted to it. The damage to Kluth's truck was about $601.00. No police citation was issued over this accident.

On December 15, 1992, Braunsky and several Union officers met with Belton regarding the December 2, 1992, accident, at which time Braunsky said that he did not report the accident to the police because he wanted to work things out with Kluth by himself. Braunsky at that time also volunteered to pay any damages himself.

On January 5, 1993, Braunsky was plowing snow and backing up his City truck at the Beverly Hills Park parking lot in Brookfield, Wisconsin, when he hit a moving car and caused about $2,300 worth of damage to the car. Braunsky, who claims that the truck's warning light sometimes did not work, received a police citation over the accident and he was ultimately found guilty of improperly backing into a vehicle in April, 1993. Braunsky immediately reported that accident to the police and his supervisor.

Braunsky and several Union officers thereafter met with management on January 7 and 15, 1993, regarding this latest accident. At no time during these meetings did Braunsky state that he had a drinking problem.

By letter dated January 15, 1993, Belton informed Braunsky that he was being "immediately suspended without pay for an indefinite period of time" because of his January 5, 1993, and

December 2, 1992, accidents and Braunsky's failure to immediately report the latter accident to the vehicle's owner. Belton suspended Braunsky pending resolution of the traffic citation issued to him over the January 5, 1993, accident. Braunsky grieved his suspension on January 19, 1993.

Braunsky and several Union representatives met with management representatives on March 11, 1993, to discuss Braunsky's grievance, at which time they suggested that Braunsky be given a job which did not require any driving. The City replied that all of its jobs involved driving a truck and that it would not create a special job just to keep him.

Braunsky and Union representatives on April 26, 1993, again met with Belton and Supervisor Joe Leonard to discuss Braunsky's situation and the fact that Braunsky on April 21, 1993 had been found guilty of the traffic citation issued regarding the January 5, 1993, accident. At the end of that meeting, Belton told Union President Richard Paul that he was happy to see that Braunsky conducted himself in a calm manner throughout the meeting.

There is a factual dispute as to whether, after the meeting ended, Union Chief Steward Ray Putchinski related to Belton and Leonard that Braunsky had been experiencing an alcohol problem. If so, that would have marked the first time that any Union officers raised that issue in the grievance meetings. 1/

By letter dated April 27, 1993, Belton informed Braunsky that:

> "You are hereby discharged from your employment with the City of Brookfield. This action is being taken:
>
> A. because of your accident while on duty while driving a City vehicle on January 5, 1993 near the Beverly Hills Park parking lot, and your being found guilty of improper backing in connection with that accident;
>
> B. because of your accident while on duty while driving a City vehicle on December 2, 1992 in the Kwik Pantry parking lot at 18330 W.

1/ Earlier, Union Secretary William Winget on several occasions told Supervisor Leonard about some of Braunsky's personal problems. Leonard replied that he had enough problems of his own and that he did not need to help Braunsky.

Capitol Drive, and your failure to promptly notify the police about this accident as well as your failure to promptly notify the person who had been operating the vehicle -- before it was parked -- that you struck it; and

C. because of your previous disciplinary record relating to your driving City vehicles while on duty, namely your 2 day disciplinary suspension in December, 1991 for operating a City vehicle without a valid driver's license, and for being found guilty of speeding while driving a City vehicle, and also for failure to yield the right-of-way in connection with an accident you had while driving a City vehicle.

You are to immediately return your work clothes furnished by the City to me."

Braunsky grieved his termination on April 29, 1993.

Earlier, Braunsky on January 21, 1993, entered a treatment plan for alcoholics which has resulted in his apparent recovery according to James D. Aro, the Director of the Counseling Center. At no time during his course of employment did Braunsky ever avail himself of the City's Employee Assistance Program even though the City in October, 1992, expressly reminded all City employes about its existence in payroll information.

In support of Braunsky's grievances, the Union mainly argues that the City did not meet the proper cause requirement for discharge; that by relying on Braunsky's prior suspension, the City seeks to punish him beyond the price he has already paid and serves no legitimate purpose; that "the erosion of [Braunsky's] work performance was the product of increasing stress and personal issues, known to the City and not yet resolved"; and that, as a result, discharge is too harsh a penalty for a 26-year employe with a clean work record. Citing arbitrable precedent, the Union further claims that the City has failed to comply with some of the "tests" enunciated by Arbitrator Carroll R. Daugherty in <u>Enterprise Wire Co.</u>, 46 LA 359 (1966); that "mitigating circumstances contributed to [his] job performance"; that Braunsky has finally "sought assistance of his own volition" by entering an alcoholic treatment program; and that management failed to properly handle this matter. As a remedy, the Union seeks a traditional make-whole remedy which includes Braunsky's

reinstatement and backpay.

The City, in turn, maintains that it was not responsible for Braunsky's negligence; that it was never told before Braunsky's April, 1993, termination that he had a drinking problem; that Braunsky "apparently did not get the message" after his first suspension; and that I should defer to management's decision to fire him pursuant to several cited arbitration decisions. The City also contends that Braunsky deliberately tried to hide his December 2, 1992, accident at the Kwik Pantry parking lot by not reporting it to the City or police and that Braunsky's fault regarding the January 5, 1993, accident can be seen by the fact that he ultimately was found guilty of unsafe backing of a vehicle. The City further asserts that Braunsky's personal problems were not given any weight by Arbitrator Gallagher and that they thus should not be given any weight here.

Ordinarily, this would be a fairly straight-forward case to resolve: the discharge would have to be sustained because Braunsky's December 2, 1992, and January 5, 1993, traffic accidents followed his earlier 2-day suspension which partly centered on a prior traffic accident and they also followed Belton's earlier December 23, 1991, warning that:

> "Any further violation of these rules will result in further disciplinary action up to and including discharge."

For by virtue of these last two accidents, it is clear that Braunsky again violated Rule 1.2 of the City's Safety Rules which state: "Every precaution shall be taken to prevent accidents." Braunsky, obviously, has failed to do that, thereby showing that he is unfit to keep driving a City vehicle as part of his regular job duties.

But this case is unique because of Braunsky's alcoholism which he has finally admitted to and which he has tried to cure since January, 1993, when he entered an alcohol treatment plan. Furthermore, it appears that Braunsky at the time of the hearing is successfully dealing with the problem.

That therefore raises the difficult question of just how far an employer must go in trying to rehabilitate an alcoholic employe who has suffered a battery of emotional problems which have included one divorce, the start of another divorce proceeding, separation from a second wife, eviction, loss of his cottage, problems with his children, financial problems, etc. Indeed, Braunsky's personal problems at one point led him to sleep in the City's garage because he had no other place to sleep.

Anyone reviewing Braunsky's plight cannot but be distressed at just how harmful alcohol really is. For contrary to the ever-

rosy advertising scenarios pedaled by its manufacturers, alcohol in fact often kills people and destroys lives. That apparently is what happened here to Braunsky, a long-time employe who never experienced any serious disciplinary problems up to the last several years when his personal problems overwhelmed him.

Moreover, there are certain mitigating factors to be considered here. Thus, Union officer William Winget brought some of Braunsky's personal problems to Supervisor Leonard's attention, only to be brushed off. In addition, Braunsky volunteered to take himself off the truck in a December 15, 1992, meeting with Belton who did not respond to it. Braunsky was also caught sleeping in the City garage by Leonard, thereby showing that Leonard must have been aware that Braunsky was having very serious personal problems.

Given all this, it is clear that the City could have done more to salvage Braunsky - a 26-year employe. But that, of course, is a separate question of whether the City was contractually required to do so when, as here, it has followed progressive discipline; when Braunsky himself did not bring these problems to management's attention before he was suspended and discharged; and when Braunsky did not enter an alcohol treatment plan until after he was suspended.

If the December 2, 1992, and January 5, 1993, accidents were Braunsky's first, and if the City fired him over those incidents alone in the face of a clean work record, he perhaps might deserve another chance. But here, he <u>was</u> given another chance following his initial 1991 suspension for driving a City vehicle without a license; for not reporting that fact to management; for speeding with a City vehicle; and for having an accident. That, surely, should have put him on notice that his job was on the line and that he had to <u>immediately</u> straighten himself out if he wanted to keep his job. That, obviously, was something he failed to do.

In such circumstances, the City had just cause to discharge him over the latest accidents, as Braunsky has demonstrated that he cannot be entrusted with the responsibility of operating a City vehicle, which is one of his principal job duties. For, as noted by Arbitrator Abigail Modjeska in <u>Griffin Industries</u>, 97 LA 370 (1991): "It is axiomatic that an employee hired to drive a truck must do so safely, without accidents, in order to retain his job." The same point was made by Arbitrator David A. Singer, Jr., in <u>Metropolitan Atlanta Rapid Transit Authority</u>, 80 LA 829 (1983), when he stated: "The Company cannot be expected infinitely to sustain the careless and imprudent driving habits of the Grievant."

In so finding, I am of course mindful of the various arbitration cases cited by the Union in support of its contrary claim.

In Kaiser Sand and Gravel, 50 LA 571 (1968), for instance, Arbitrator Adolph Koven reinstated a grievant who had only a prior minor traffic accident before the one leading to his discharge. Here, however, Braunsky had four accidents, along with engaging in the other misconduct leading up to his two-day suspension in 1991. In Pacific Telephone & Telegraph, Co., 73 LA 1185 (1979), Arbitrator Austin J. Gerber overturned the discharge of an alcoholic employe because of the grievant's long seniority and "unblemished" work record and because he never before had been given the chance to straighten out. Here, Braunsky's work record since 1991 can hardly be called "unblemished" and his prior suspension put him on notice that his job was on the line. In National Steel Company, 54 LA 1174 (1970), Arbitrator Samuel Krimsley agreed that "an old offense may not again be brought up as grounds for discharge." But, he actually sustained the discharge of a grievant with a "very poor" work record after he had a near accident with a crane, as Arbitrator Krimsley went on to rule that it was entirely proper to exam his work record "in discussing severity of discipline. . .", which is what the City did here.

In Gould, Inc., 74 LA 1187 (1981), Arbitrator John W. Boyer, Jr., reinstated a grievant who had only received a verbal warning in his 20 years of prior employment. That is not the case here. In Columbus Show Case Co., 44 LA 507 (1965), Arbitrator Samuel Kates overturned the discharge of a grievant who had violated the Company's no-smoking policy and considered certain post-discharge conduct. However, Arbitrator Kates made it clear that "events like these, occurring after a discharge, are not relevant upon the question of the justness of the previous discharge," as they only go to the question of "reinstatement and back pay" and whether reinstatement would adversely affect "plant morale, discipline, efficiency, and the like." These latter considerations do not apply here.

Arbitrator Alexander Cocalis in Buttercrust Bakeries, 78 LA 563 (1982), also considered certain post-discharge conduct i.e., the fact that the grievant - who had been fired for hitting a fellow employe, threatening to kill him, and saying "I'll cut your guts out" - was taking a Dale Carnegie course. I disagree with this ruling.

In Taylor-Winfield Corp., 66-2, 8406 (1966), Arbitrator Vernon L. Stouffer ruled that, "The purpose of discipline, short of discharge, is to attempt to attempt rehabilitation of the employee so that discharge will not be necessary." Here, though, the City did give Braunsky the chance to rehabilitate himself following his 1991 suspension, but he failed to do so. Hence, Arbitrator Stouffer's rationale is inapplicable here.

In Smith & Wesson - Fiocchi, Inc., 60 LA 366 (1973),

Arbitrator Duane L. Traynor sustained the discharge of a grievant who displayed poor hygiene and who had a poor attendance record. That case, though, actually supports the City since it holds that management's decision to terminate must be sustained when it "has acted in good faith upon a fair investigation and fixes a penalty not inconsistent with like cases, or what would be fair and just under the circumstances." So, too, here.

In light of the above, it is my

AWARD

That the City had proper cause to suspend and terminate grievant Ronald Braunsky; the grievances are therefore denied.

Dated at Madison, Wisconsin this 14th day of December, 1993.

By Amedeo Greco /s/
Amedeo Greco, Arbitrator