

BEFORE THE ARBITRATOR

 In the Matter of the Arbitration :
 of a Dispute Between :
 :
 TEAMSTERS UNION LOCAL 328 : Case 65
 : No. 49333
 : MA-7903
 and :
 :
 CITY OF MARINETTE :
 :
 :

Appearances:

Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., by
Mr. Richard B. Boren, City Attorney, on behalf of the City.

Ms. Marianne

ARBITRATION AWARD

The above-entitled parties, herein "Union" and "City", are privy to a collective bargaining agreement providing for final and binding arbitration. Hearing was held in Marinette, Wisconsin, on September 17, 1993. The hearing was transcribed and both parties filed briefs which were received by October 13, 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 just cause to discharge grievant Richard Camps and, if not, what is the appropriate remedy?

DISCUSSION

Camps, who was classified as City Electrician/Field Engineer, was hired by the City in 1987. His duties primarily consisted of maintaining traffic and street lights, inspecting construction and road projects, and inspecting sidewalks.

According to City Engineer George Cowell, Camps' job description at the time of his hire was "quite outdated" because, contrary to the job description, Camps did not do any topological surveys and he did a "very minimal amount of anything to do with the wastewater utility. . ."

Camps became the City's Electrical Inspector in 1991 upon the retirement of the former Electrical Inspector. He received no increase in pay and he thereafter did less construction inspections and more sidewalk inspections. In 1991, Cowell told him to spend less time inspecting a structure which was being built. By 1992, Camps was responsible for providing input regarding occupancy permits, inspecting, traffic lights, and electrical inspections. Furthermore, Camps by June, 1992, had been relieved of occupancy inspections, sidewalk inspections, and road construction inspections.

From that time forward, Camps never claimed that he had too many duties and he never requested to work overtime to catch up with any of his work. Moreover, Cowell throughout this time did not review any of Camps' work to make sure that it was being performed properly and he never warned him about not maintaining proper records.

By letter dated June 12, 1989, Camps was disciplined and suspended for three days for taking about \$2,300 worth of City electrical equipment to a private storage rental garage. Camps did not grieve his suspension beyond the City's Personnel Licensing Committee.

By letter dated September 16, 1992, Camps received a one-day suspension for sending unauthorized communications to a potential litigant with the City in violation of Cowell's express written directive that that not be done. Camps did not grieve his one-day suspension. 1/

In 1992 and in the beginning of 1993, Camps was responsible for inspecting electrical work at a large building project involving four separate buildings which were being constructed in downtown Marinette by the Alexander Company - a warehouse, the Bijou Theatre, a department store, and an office building. As noted in greater detail below, a dispute thereafter arose over whether Camps was following different standards for different contractors and whether he had improperly inspected the facilities for electrical wiring, with various electrical contractors asserting, and Camps denying, that he did. Camps during that period issued multiple letters against the contractors detailing various electrical violations on the project.

Camps met with various City officials on January 20, 1993, to discuss these alleged shortcomings, at which time he was suspended with pay from his job.

By letter dated January 22, 1993, Mayor Robert G. Schacht informed Camps:

This letter will confirm the meeting in my office on January 20, 1993, at which the following people were present: you; Howard Smale, Union Business Agent; Joan Kelly, Union Steward; George Cowell, City Engineer; Richard Boren, City Attorney; and me.

We indicated that there appear to be serious electrical inspection irregularities in the Alexander Project. This includes uneven application of the electrical code among contractors, missing obvious code violations on work you did inspect, and missing other code violations because of your lack of comprehensive inspection.

Based on the preliminary assessment by the State Electrical Inspector's Office, major correction of these violations appears to be necessary. We have been informed by a representative of the Alexander Company that he estimates corrective work may exceed \$100,000.00. Litigation is a strong possibility.

This will confirm at the meeting that you were suspended with pay pending the receipt by the City of further information including the written report of the State Electrical Inspector. At that time a decision will be made as to whether any disciplinary action is warranted.

This will also confirm that you were ordered to, by the end of that day, turn over to the City Engineer,

1/ The parties have argued over whether Camps throughout that time acted properly. Since that suspension was not grieved and therefore must stand, it is unnecessary to address this issue.

George Cowell, all documents and records pertaining to your job. You were further ordered not to communicate with the State or other governmental entities or authorities on behalf of the City and that you have no authority to act on behalf of the City in any manner during your suspension.

If you have any questions or comments, please feel free to contact me.

Earlier, Camps contacted the State of Wisconsin's Safety and Buildings Division about this matter for, in his words, "added support" and "help". By letter dated January 26, 1993, State Electrical Engineer Donald P. Covill informed the Alexander Company:

The following violations of the Wisconsin and National Electric Codes were noted during the subject inspection on January 13, 1993.

1. ILHR 16.25(4) The door between the building and the service conductor entrance tunnel shall be a three-hour, labeled fire door equipped with a self-closer.
2. NEC 373-4 The unused openings in the panel located next to the fire alarm panel in the basement of the department store shall have all unused openings effectively closed to afford protection substantially equivalent to that of the wall of the cabinet.
3. NEC 110-14(a) There shall be only one wire per terminal in the electrical panels. One of the places this violation was noted was the panel noted in item #2 above.
4. ILHR 16.45(2) The exit lights wiring shall be in listed raceways or type MC cable if the exit light fixture does not contain an integral emergency power source.
5. NEC 210-52(a) Receptacle outlets shall be installed in all dwelling units so that no point along the floor line in any wall space is more than six feet, measured horizontally from an outlet in that space, including any wall space two feet or more in width. The wall space afforded by fixed room dividers, such as free-standing bar-type counters, shall be included in the six-foot measurement. Violations were noted in units 101, 106 and 110 and there may be violations in other units which were not inspected at this time.

6. NEC 250-60 The branch circuit for the electrical range in the dwelling units does not originate at the service panel; therefore, the grounded (neutral) conductor shall be an insulated conductor terminating on the neutral bar in apartment panel.
7. NEC 300-15 (b)
NEC 370-17 (a)
ILHR 16.18
- A fixture outlet box shall be installed for mounting of the bathroom vanity light as required by the manufacturers [sic] instructions.
8. NEC 210-8(a)(5) All 125-volt, single-phase, 15- and 20-ampere receptacles installed within six feet of a kitchen sink to serve counter top surfaces shall have ground-fault circuit interrupter protection for personnel.
9. NEC 110-16 The dimensions of the working space in the direction of access to the panels located in the roof access stairway of the Dunlap Square Building shall not be less than three feet. The workspace shall be as wide as the panels, but not less than 30 inches. This working space shall be free of any obstructions from the floor to a height of 6-1/2 feet. In all cases the work space shall permit at least a 90-degree opening or equipment doors or hinged panels.
10. NEC 331-8 Proper connectors shall be used for the transition between the electrical metallic tubing and the electrical nonmetallic tubing in the Bijou Building.
11. NEC 250-75 An equipment grounding conductor shall be installed with the circuit conductors, where the ENT is connected to EMT, to bond the isolated metal raceways and enclosures to assure electrical continuity to conduct safely any fault current likely to be imposed on them.
12. NEC 331-11 ENT shall be firmly fastened within three feet of each outlet box, junction box, cabinet or fitting.

Tubing shall be secured at least every three feet.

13. NEC 370-17(a) Boxes used at lighting fixture outlets shall be designed for the purpose. At every outlet used exclusively for lighting, the box shall be so designed or installed that a lighting fixture may be attached.

Please contact me if I can be of any further assistance."

. . .

This letter was copied to Camps and the City's Electrical Inspection Department and it was subsequently relied upon in part by the City in its decision to discharge Camps.

Shortly after suspending Camps, the City learned that he had not filed certain documents with the Wisconsin Public Service Commission and that he had not turned over to the City a handful of checks and other overdue documents relating to his work.

By letter dated January 29, 1993, and after the City had received Cowell's aforementioned letter, Mayor Schacht sent Camps a "Notice of Discharge From Employment" which provided in pertinent part:

Dear Mr. Camps:

I am informing you that you are discharged from your employment with the City of Marinette. Your paid suspension will continue through today. The discharge becomes effective at the end of the normal workday today.

As I indicated in my January 22, 1993 letter to you, there are serious electrical inspection irregularities in the Alexander Project. This includes apparent uneven application of the electrical code among contractors, missing obvious code violations on work you did inspect, and missing other code violations because of your lack of comprehensive inspection.

Two (2) of the more serious problems in this regard concern the exit lights and the range wiring. The exit lights were not inspected or incorrectly inspected and now require re-wiring or modification. The range wiring, by your own admission, was not inspected by you. Major corrective re-wiring will be required in the warehouse and store buildings after units have already been substantially completed. You also allowed department store apartments to be energized even after the State Inspector had informed you of electrical safety problems.

Litigation concerning the Alexander Project electrical inspection is a strong possibility. Estimates for corrective work may exceed \$100,000.00.

At our January 20, 1993 meeting, you were

ordered to turn over, by the end of that day, all documents, records, and files pertaining to your job. You disobeyed that order and returned some materials days later.

Certificates of installation dating back to 1990 were conveyed en masse in a large manila envelope to Wisconsin Public Service during the week of Monday, January 25, 1993. This action was obviously improperly late. In addition, it violated your direct order referred to in the preceding paragraph and also, the direct order given to you on January 20, 1993, not to act on behalf of the City in any manner during your suspension without pay.

You have also mishandled public funds in that you had approximately six (6) checks in your files made out to the City of Marinette which had not been turned over to the Treasurer. Some of these date back to June and July of 1992. There was also \$10.00 in cash in one (1) file for an inspection done on December 4, 1992, which had not been turned over.

There are also numerous tapper reports that you never transmitted to the City Engineer or the Water Utility.

You did not provide inspection information to the Building Inspector in a timely fashion.

The above actions constitute at least gross negligence or willful dereliction of duty. In addition, I am taking into consideration your past disciplinary history. On June 13, 1989 you were given a three (3) day suspension without pay for misappropriation of approximately \$2,300 worth of City equipment. On September 15, 1992 you were given a one (1) day suspension without pay for a violation of a direct order of your superior.

Because of the multiple occurrences of gross negligence and willful dereliction of duty and your disciplinary history, discharge is an appropriate punishment.

Camps grieved his discharge, thereby leading to the present proceeding.

In support thereof, the Union mainly argues that any failures in properly inspecting the Alexander Project arose because Cowell expressly ordered Camps to spend less time on his inspection duties and more time as the City's Electrician and because the developer "took no responsibility itself for electrical code compliance essentially relying on [Camps] to act as the developer's supervisor." The Union therefore claims that Camps "was discharged for failure to provide the type of guarantee which the [City of] Marinette code disclaims"; that the City erred in failing to properly support him against the complaints lodged by various contractors; that the "City appears to blame Camps because the developer and contractors irresponsibly ignored code requirements and were caught"; that Camps properly brought certain deficiencies to the contractors' attention; that no one ever told Camps that his "spot checks" were improper; and that he was not responsible for the improper installation of range cables and exit lights. The Union also maintains that the City erred in not warning Camps about his alleged shortcomings and that it was improper for

the City to have relied on Camps' prior disciplinary suspensions because they dealt with different matters and because Camps was never subjected to progressive discipline for the alleged wrongdoing here. As a remedy, the Union requests a traditional make-whole order consisting of Camps' reinstatement and backpay.

The City, in turn, maintains that it had just cause to terminate Camps in light of his past disciplinary record because he failed to follow elementary inspection procedures and because he had plenty of time to do his job properly. The City also attacks Camps' credibility by asserting that some of Camps' testimony is contrary to the facts in this record.

It is somewhat difficult to sort out all these issues in part because the City itself never directly supervised Camps' work as the City's Electrical Inspector and because Cowell admitted here that he does not know that much about electricity and that was why, in his words, "I relied on Mr. Camps for electrical decisions made." Furthermore, we cannot exclusively rely on contractor complaints regarding Camps, as some contractors were unhappy over the fact that Camps caused them to spend considerable extra time and money to rectify their mistakes. Fritz Electric, for instance, had to spend about \$35,000 to correct such matters. Moreover, the Union correctly points out that the Alexander Company, which did not even have detailed job specs, bore primary responsibility for adhering to the City of Marinette's requirements. Hence, it cannot shift its responsibility to Camps on the theory that he was totally responsible for determining how electrical work was to be performed.

But having said all that, a few crucial facts nevertheless emerge.

One is that Camps' work load was not as onerous as Camps now asserts. For while it is true that his work as the City's Electrical Inspector was added on to his prior work as a City Electrician/Field Engineer, the record further shows that by June, 1992, he no longer was responsible for residential housing inspections, sidewalk inspections, field engineering, and road construction inspections. Furthermore, if Camps believed that he did not have enough time to properly inspect the Alexander Project, he could have complained about that fact before his discharge or requested to work overtime - neither of which he did. In addition, the City's Engineering Department by 1992 had grown from the two that existed at Camps' hire to four, thereby ensuring that there was a sufficient employe complement to do all the work that had to be done.

Secondly, there is no merit to Camps' claim that he was ever ordered to spend less time inspecting the Alexander Project and more time performing his duties as an Electrician. For on this issue, I credit Cowell's testimony to the effect that he once ordered Camps to spend less time inspecting a structure because Camps was not properly using his time there and his further testimony that he never ordered Camps to spend less time on the Alexander Project. Moreover, even if there was some confusion over this issue, Camps in any event still had enough time to perform basic inspection duties at the Alexander Project.

One of these basic duties involved the installation of electric cables for ranges. Camps properly determined that the electric cables at the former Bijou Theatre, which was being converted to residences, had to be four-wire cable which carried an extra ground, rather than three-wire cable which had been installed there by Town and Country, one of the several electrical contractors on the job. Town and Country complied with Camps' directive by replacing the three-wire cable with four-wire cable. But in doing so, Lee Schumacher of Town and Country complained to Camps towards the end of December, 1992 that he was using different standards for different contractors by allowing Fritz Electric to install three-wire cable in the former Lauerman department store building and a former warehouse which also were part of the Alexander Project. It is undisputed that three-wire cable was installed there

and that Camps never objected to it.

In his defense, Camps maintains that because the ranges had not arrived on the scene and because he could not see the electrical outlets, he assumed that "it was going to be special cable with the special wiring installation" because the electrical contractor told him that the cable was on special order.

That was a major mistake. Camps' job required that he not assume anything but, rather, to find out exactly what in fact was being constructed before he approved rough-in and before any such mistakes were covered over with drywall. Moreover, I discredit his claim that he was unable to see the range wires at rough in, as I instead credit the testimony of electrician Todd Meetz and Delmer Fritz of Fritz Electric that they were readily observable because they were sticking out of the walls. 2/

Camps compounded that major mistake by not immediately bringing this problem to the attention of Fritz Electric once he learned from Schumacher that three-cable wire had been installed elsewhere in the project. Camps testified that he did not do so because he did not hear anyone from Town and Country tell him that. I discredit this denial and find that Schumacher expressly brought this matter to his attention and that Camps thereafter did nothing about it.

Another major mistake centered on his wrongful approval of exit lighting in the former Lauerman department store building which used an inappropriate NM cable and which therefore required that a battery pack be used. Again, Camps testified here that he approved it because Fritz Electric was the contractor for another building which had proper lighting and that, in his words, "I believed that they were the same in both buildings because the same contractor did the work." Again, Camps' job required that he not assume anything and that he, instead, inspect the actual electrical work being performed in each building.

Yet another mistake - as detailed in State Electrical Engineer Covil's January 26, 1993, letter - centered on his failure to bring certain code violations to the attention of the contractors. Both the Union and the City rely on Covil's report in support of their respective positions. The Union contends that all of the code violations listed therein show that the contractors on the Alexander Project in fact were not adhering to the applicable codes and that Camps acted correctly when he wrote the contractors up. The City maintains that Camps erred in allowing so many violations to go undetected up to the time of his termination. Again, while it is difficult to sort just where all the blame falls in this matter, I find that Camps at a minimum erred by not finding before rough-in that certain receptacle outlets were not properly spaced and that certain receptacles were not properly grounded.

Altogether, then, Camps erred in not catching the improper installation of three cable range wire in the former department store building; in not immediately bringing that fact to the attention of Fritz Electric once he learned about it; in not catching the improper installation of exit lighting in that building; and in not finding that certain receptacles and outlets were improperly spaced and that they were not properly grounded. Altogether, these errors resulted in \$35,000 in added contractor costs, with another \$200,000 in such costs being narrowly averted only because a variance was ultimately obtained.

These errors establish that Camps was unable to perform the basic functions of an Electrical Inspector and that the City therefore had just cause

2/ But for a variance which was subsequently granted, this error could have cost the Alexander Company about \$200,000 to fix.

to discipline him over such serious matters.

The degree of such discipline must also take into account Camps' prior two disciplinary suspensions. For contrary to the Union's claim, I find that there is nothing in Article 16 of the contract, entitled "Disciplinary Procedure", which mandates progressive discipline for each separate unrelated incident rather than a combination of such incidents. Thus, while Union Business Agent Howard Smale testified that his understanding of the contract was otherwise, he himself acknowledged that he did not participate in the negotiations leading up to this part of the contract and that he did not know its bargaining history.

It is true, as the Union correctly points out, that the City's September 16, 1992, letter to Camps stated that Camps' suspension - which related to his unauthorized sending of a letter regarding the Dettman mobile home matter - was warranted by "a deviation from the progressive discipline outlined in the Collective Bargaining Agreement." The City apparently predicated this claim on its belief that Camps' conduct constituted "gross negligence or willful dereliction of duty. . .", which is one of the stated exceptions in the contract to progressive discipline. Well here - given the severity of his errors - Camps also was guilty of "gross negligence" on the Alexander Project.

When that is combined with the fact that Camps had been suspended twice before, I conclude that the City had just cause to terminate him.

In light of the above, it is my

AWARD

That the City had just cause to terminate grievant Richard Camps; the grievance is therefore denied.

Dated at Madison, Wisconsin this 21st day of January, 1994.

By Amedeo Greco /s/
Amedeo Greco, Arbitrator