BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

LOCAL 2223, AFSCME, AFL-CIO

and

EAU CLAIRE COUNTY

Case 184
No. 51421
MA-8604

Appearances:

Mr. Steve Day, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, P.O. Box 1937, Eau Claire, Wisconsin 54702-1937, for the Union.

Mr. Keith R. Zehms, Corporation Counsel, Eau Claire County, 721 Oxford Avenue, Eau Claire, Wisconsin 54702, for the County.

ARBITRATION AWARD

Local 2223, AFSCME, AFL-CIO (the "Union") and Eau Claire County (the "County"), are signatories to a collective bargaining agreement providing for final and binding arbitration. Pursuant to the parties' request, the Wisconsin Employment Relations Commission, on September 6, 1994, appointed Jane B. Buffett, a member of its staff, to hear and decide a dispute regarding the interpretation and application of the agreement. Hearing was held on November 15 and December 2, 1994, in Eau Claire, Wisconsin. A transcript was taken, the last volume of which was received December 9, 1994. The parties filed briefs and reply briefs, the last of which was received January 31, 1995.

ISSUE

The parties stipulated to the following statement of the issue:

Did the County have just cause to discharge the Grievant C.B.?

If not, what is the appropriate remedy?

BACKGROUND

For a little more than four years, Grievant C.B. was a scale attendant at the County's landfill, working in the office which is located in a trailer at the landfill site, six-and-a-half miles from Eau Claire. She worked three days a week, which at the time of the events herein were Monday through Wednesday. Her supervisor, Solid Waste Manager Janet Pavlini, was aware that beginning in late 1991 she worked approximately 20 Saturdays a year for the Fall Creek post

office, delivering mail. In addition, the post office occasionally asked her to fill in on days that she was scheduled to work for the County. On those days, Pavlini allowed her to be absent on unpaid leave. Throughout her employment, the evaluations of her performance were all satisfactory or above, but she did receive a one-day suspension in June, 1992 for leaving the worksite without giving explanation to her supervisor.

On March 29, 1994 the County Personnel Committee proposed an amendment to the Personnel Ordinance which was ultimately adopted by the County Board on May 17, 1994. The proposed amendment prohibited an unpaid leave for the express purpose of working elsewhere, but gave authority for department heads to allow an employee on an involuntary unpaid leave to work at gainful employment for another employer. (The County gave as an example of an involuntary unpaid leave a medical situation such as pregnancy which prevented an employe from working at the employe's County position but allowed other work.)

Upon hearing of this proposed change in the Personnel Code, Pavlini requested direction from County Personnel Director Marvin Niese. On May 10, 1994 Niese made the following reply:

> Concerning [C.B.]'s part-time employment, note these conclusions:
>
> 1. Like any county employee, [C.B.] may work a second job.
>
> 2. However, you have no authority to authorize a voluntary leave of absence for [C.B.] to work as a substitute for the postal service. The County Code clearly prohibits such a leave of absence under Section 3.21.100 H.
>
> Call me if you have further questions.

The next day Pavlini showed the memo to Grievant and told her that she would no longer be allowed to use unpaid leave to be absent from her landfill position in order to work at the post office. Additionally, Pavlini told Grievant that if she were absent from work for any reason other than a scheduled vacation, Pavlini would check to make sure she was not working for the post office.

On Sunday evening, July 10, 1994, Grievant telephoned Pavlini to say that her father had a heart attack and she would have to go Texas to be with him and she would not be able to work her scheduled days in the coming week. Pavlini granted the leave, but subsequently began to doubt Grievant's story and investigated, ultimately learning that, in fact, Grievant was not in Texas, but was working at the post office on the days in question. At a meeting with Pavlini, Niese, the Director of Transportation and Public Works, the Union President and the Union Staff Representative, Grievant admitted to her lie and was discharged. That discharge was grieved and is the subject of this award.

POSITIONS OF THE PARTIES

The Union

The Union asserts that the penalty was too harsh. This harshness comes from the unnecessary constraints created by the amendment to the personnel ordinance and the Personnel Director Marvin Niese's interpretation of that ordinance. Furthermore it questions the correctness of Niese's interpretation. It also argues that Grievant's work record does not justify a discharge. It alleges that the one item in Grievant's past discipline record is different from the current incident. It believes a discharge in these circumstances violates the County's policy of progressive discipline. It believes that the discipline imposed on Grievant is disproportionately severe compared to the County's treatment of an employe who submitted an incorrect time card. Finally, it argues that even if the Arbitrator should find discipline necessary, it should be less than discharge.

In its reply brief, the Union points out that the infraction of another employe which was minimized in the County brief was, in fact, considered serious by the County at the time it occurred. It also disputes the County's position regarding modification of penalties, insisting that the Arbitrator does have such a right.

The County

The County argues that its disciplinary decision to discharge Grievant should not be disturbed by the Arbitrator unless it is shown to be patently baseless. It enumerates the seven standards of just cause, all of which it believes it has met. It argues that Grievant was fairly warned of the rule she violated, that the rule was a reasonable one, that there was a fair investigation which indicated the misconduct had been committed, that the standard of the penalty was applied evenly to all employes and that the penalty was appropriate to the severity of the misconduct.

In its reply brief, the County asserted there could not be an allegation of disparate treatment since the instant dispute involves a case of first impression. Also, it asserts the matter is governed by the just cause standard, and any interpretation of the County Code regarding leaves of absence is irrelevant.

RELEVANT COLLECTIVE BARGAINING AGREEMENT PROVISIONS

1.06 The Employer shall have the right to:

. . .

(c) Suspend, discharge, or take other appropriate disciplinary action against the employee for just cause;

. . .

ADDITIONAL FACTS AND DISCUSSION

The essential facts are not in dispute. After being told that she could not use unpaid leave to work at a second part time job during her scheduled work days, Grievant sought an excused absence from work by lying to her supervisor that her father had suffered a heart attack and she had to go to Texas.

The undersigned first examines the Union's contention that discharge is a disparately severe sanction compared to the County's response to another employe's submission of an incorrect time card. In that other case, an employe at the landfill told her supervisor that she would have to be gone from work during part of the following day to be in court for her divorce proceeding. Pavlini approved the unpaid leave but did not initially check the employe's time card. The employe's time card, when submitted, did not show the two hours the employe was absent from work. Initially, the Director of Transportation and Public Works was going to impose a five day suspension. When Pavlini notified him that the employe had previously told her of the absence, and she considered the time card notation merely an inadvertent error resulting from the employe's preoccupation with the divorce proceedings, and not an attempt to defraud the County, no discipline was imposed, but the time card was corrected to reflect the two-hour absence from the work site.

I do not conclude that this incidence indicates that the County had in the past tolerated dishonesty. The employe's prior notification of her impending absence shows that she expected to lose her pay for the time of her absence, and justifies the County's conclusion that she was not seeking to deceive the County and be paid for time that she did not work. This event does not demonstrate that the County discriminated against the Grievant by punishing her while condoning dishonesty in other employes. Disparate treatment, therefore, is rejected as a basis for overturning the discharge.

The Union also attacks the discharge by arguing that it is too harsh in relation to the Grievant's actions.

This argument must also be rejected. Grievant told her supervisor a deliberate, complicated lie about a significant employment matter. This was not a case of stretching the truth about something unrelated to her job duties. This was a deliberate lie about something the supervisor needed to know. In a case such as this, an employer has the right to act unambiguously to maintain a standard of honesty. Once that standard is breached, the atmosphere of distrust is poisonous to the workplace.

The particular lie was the more reprehensible because it was designed to contravene the clear warning Grievant had been given only two months earlier. It was an attempt to flout the County Ordinance regarding unpaid leave to work for another employer. (The Union contests both the Personnel Director's interpretation of that rule, arguing that an unpaid leave might have been granted under the exception for supervisor's discretion, and also the practicality of the

ordinance as it applies to situations such as a part time position at the landfill. I decline to examine the rule itself, noting only that by her actions, Grievant put into question her own misconduct and not the rule itself. This is not a case in which the employe complied with a rule, while grieving its propriety.)

Since the Grievant committed a grave misdeed in lying about a fabricated family illness in order to obtain an unpaid leave to which she would otherwise not be entitled, and since the County did not treat Grievant unequally in discharging her, I find there was just cause for her discharge.

In light of the record and the above discussion, it is this Arbitrator's

AWARD

1. The County had just cause to discharge Grievant C.B.

2. The grievance is denied and dismissed in its entirety.

Dated at Madison, Wisconsin this 21st day of April, 1995.

By Jane B. Buffett /s/
Jane B. Buffett, Arbitrator